



**REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN**

**REQUEST FOR PROPOSALS**

**for the**

**OLALLA PUMP HOUSE BACK UP POWER DESIGN AND CONSTRUCTION**

**JUNE 4, 2019**

**RDOS-19-PW-14**

**REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN**  
**REQUEST FOR PROPOSALS**  
**OLALLA PUMP HOUSE BACK UP POWER DESIGN AND CONSTRUCTION**

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## REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN

### REQUEST FOR PROPOSALS

## OLALLA PUMP HOUSE BACK UP POWER DESIGN AND CONSTRUCTION

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### **DEFINITIONS**

“**CONTRACTOR or CONSULTANT**” means the Proponent whose Proposal has been accepted by the Regional District and is awarded a contract by the Regional District to carry out the Work

“**PROponent**” means the responder to this RFP

“**PROPOSAL**” means a proposal to carry out the Work submitted by a Proponent in response to this RFP.

“**REGIONAL DISTRICT**” means the Regional District of Okanagan-Similkameen

“**RFP**” means this Request for Proposals.

“**WORK**” means and includes anything and everything required to be done for fulfillment and completion of the project in accordance with this RFP and Proposal.

### **1. INTRODUCTION**

#### **1.1. PURPOSE**

The Regional District of Okanagan-Similkameen is requesting submission of Proposals from qualified Proponents to complete the design and construction of a backup power system for the Olalla water system.

The successful Proponent will submit an engineered design and for a backup power system along with all associated civil, electrical and instrumentation works and construct the system as detailed in the approved design. The successful proponent and their subcontractors will provide all works required to bring the new backup power system into operation including the construction of a concrete base and fenced enclosure for the generator, equipment procurement, generator installation, and commissioning.

#### **1.2. BACKGROUND**

The Olalla Water System is located 45 kilometers southwest of Penticton. It is a small system serving about 400 people with about 235 water connections. The distribution system, which provides fire protection to the community consists of a deep well source, a 50 horse power well pump, reservoir, 4km of water main, and a pump house located near the Olalla Forest Service Road and Main Street / Hwy 3A intersection.

The pump house does not currently have a backup power system however when electrical and alarming upgrades were completed in 2014 an automatic transfer switch was installed.

#### **1.3. SUPPORTING DOCUMENTATION**

The following material is available as attachments to this RFP document to assist in the preparation of Proposals.

- Olalla Pump House Record drawing (1999)

To receive this document contact Darcy Kirkpatrick, [dkirkpatrick@rdos.bc.ca](mailto:dkirkpatrick@rdos.bc.ca).

#### **1.4. MANDATORY SITE MEETING**

There will be a mandatory site meeting held at the Olalla Water System Pumphouse located at 1440 Highway 3A, see attached map.

The meeting will be held on Wednesday, June 19, 2019 @ 1:30 pm.

1.5. PROJECT LOCATION:

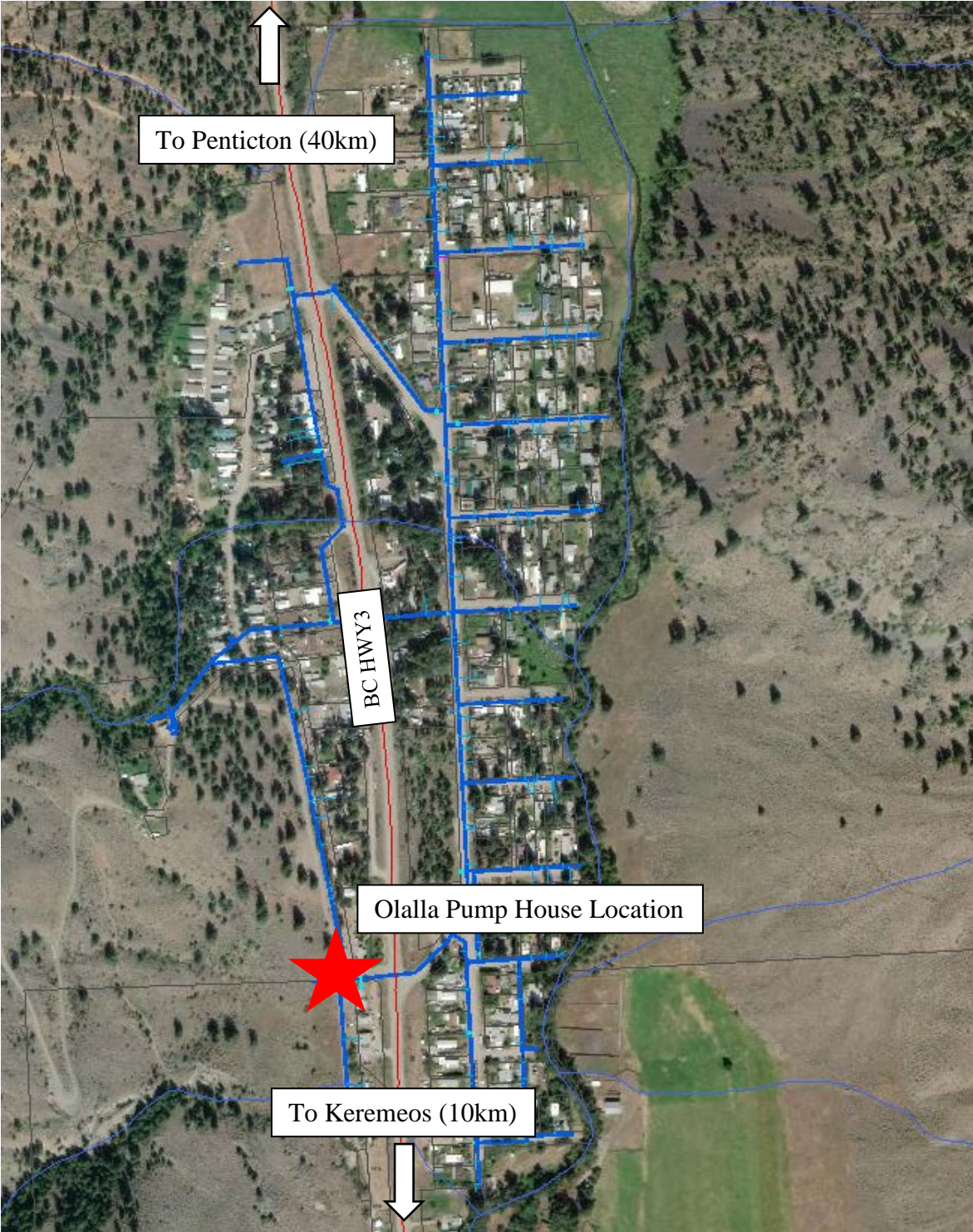


Figure 1. Project Location Map

## **2. INSTRUCTIONS TO PROPONENTS**

### **2.1. SUBMISSION OF PROPOSALS**

The Proposals and their envelopes should be clearly marked with the name and address of the Proponent and the RFP program title, and be addressed to the following:

**Shane Fenske, Engineering Technologist  
Engineering Services  
Regional District of Okanagan-Similkameen  
101 Martin Street  
Penticton, B.C. V2A 5J9**

or

**sfenske@rdos.bc.ca**

Proposals must be received on or before the **Closing Time** of:

**TIME: 3:00 PM local time**

**DATE: Wednesday July 3, 2019**

Proposals may be submitted by email and/or hardcopy until the Closing Time specified. It is the Proponent's sole responsibility to ensure its Proposal is received at the address or email set out above by the Closing Time. If hardcopies are sent please submit three (3) copies. Proposals will not be opened publicly.

Proponents wishing to make changes to their Proposals after submission but prior to the Closing Time may do so by submitting the revisions by fax, email or hard copy. It is the Proponent's sole responsibility to ensure the revisions are received by the Regional District prior to the Time of Closing.

Proposals received after the Closing Time will not be reviewed

### **2.2. INQUIRIES**

All inquiries related to this RFP are to be directed, in writing, to the following person. Information obtained from any other source is not official and should not be relied upon. Inquiries and responses will be recorded and may be distributed through an addendum at the Regional District's option.

Any questions regarding this RFP must be submitted at least five (5) working days prior to the Closing Date. Any questions submitted after this date may not be answered.

Shane Fenske  
250-490-4117  
sfenske@rdos.bc.ca

Proponents shall carefully examine the RFP documents and shall fully inform themselves as to the intent, existing conditions and limitations which may affect their Proposal submission. No

consideration will be given after submission of a Proposal to any claim that there was any misunderstanding with respect to the conditions imposed.

Proponents finding discrepancies or omissions in the Contract or RFP, or having doubts as to the meaning or intent of any provision, should immediately notify the above listed project contact. If there are any changes, additions, or deletions to the Proposal scope, conditions, or closing date, Proponents will be advised by means of an Addendum issued by the Regional District. All Addenda is to become part of the Proposal Documents and receipt of Addenda should be acknowledged by the Proponent in the submission.

Verbal or written discussion between the Regional District directors, trustees or staff and a Proponent shall not become a part of the RFP or modify the RFP unless confirmed by written Addendum.

### **3. GENERAL TERMS OF PROPOSAL PROCESS**

#### **3.1. PROPOSAL PREPARATION COSTS**

All expenses incurred by the Proponent in preparation and submission of this Proposal are to be borne by the Proponent, with the express understanding that no claims for reimbursements against the Regional District, or any of its member municipalities, will be accepted. The Regional District shall not be responsible for any costs involved in or associated with any meetings, discussion or negotiation following submission that could lead to acceptance of the Proposal and award of a contract.

#### **3.2. INTENTION OF THE RDOS**

The Regional District recognizes that “Best Value” is the essential part of purchasing a product and/or service and therefore the Regional District may prefer a Proposal with a higher price, if it offers greater value and better serves the Regional District’s interests, as determined by the Regional District, over a Proposal with a lower price. Appendix A contains the information regarding how Proposals will be evaluated.

The Regional District, at its sole discretion, reserves the right to:

- reject any or all Proposals whether complete or not,
- reject any Proposal it considers not in its best interests,
- waive any minor irregularity or insufficiency in the Proposal submitted,
- not be liable for misunderstandings or errors in the Request for Proposals,
- issue addenda to the Request for Proposals,
- contact references provided by the Proponents,
- retain independent persons or contractors for assistance in evaluating Proposals,
- request points of clarification to assist the Regional District in evaluating Proposals,
- negotiate changes with the successful Proponent,
- award separate contracts for separate work components, and
- withdraw the Request for Proposals.

#### **3.3. PROPOSAL PRESENTATION**

The Regional District reserves the right to request one or more of the Proponents whose submissions are of particular interest to the Regional District, to make an oral presentation to the Regional District.

### **3.4. PROPOSAL CONFIDENTIALITY AND PROPRIETARY INFORMATION**

All submissions become the property of the Regional District and will not be returned to the Proponent. The Regional District will consider all Proposals submitted as confidential but reserves the right to make copies of all Proposals received for its internal review and for review by its financial, accounting, legal, and technical consultants.

Proponents should be aware that the Regional District is a “public body” as defined in and subject to the provisions of the *Freedom of Information and Protection of Privacy Act*.

If the Proponent believes any of the information requested in this RFP and provided by them is confidential, then they should identify it as such and provide a rationale as to why it should not be released under “Freedom of Information” legislation.

### **3.5. CONFLICT OF INTEREST**

A Proponent shall disclose in its Proposal any actual or potential conflicts of interest and existing business relationships it may have with the Regional District, its elected or appointed officials or employees, any property ownership direct or indirect in the project area. The Regional District may rely on such disclosure.

### **3.6. NO COLLUSION**

Except as otherwise specified or as arising by reason of the provision of the contract documents, no person whether natural, or body corporate, other than the Proponent has or will have any interest or share in this Proposal or in the proposed contract which may be completed in respect thereof. There is no collusion or arrangement between the Proponent and any other actual or prospective Proponents in connection with Proposals submitted for this project and the Proponent has no knowledge of the contents of other Proposals and has made no comparison of figures or agreement or arrangement, express or implied, with any other party in connection with the making of the Proposal.

### **3.7. LITIGATION**

Proponents who, either directly or indirectly through another corporation or entity, have been or are in litigation, or who have served notice with intent to proceed with court action against the Regional District in connection with any contract for works or services, may be considered ineligible Proponents. Receipt of Proposals from such Proponents may be disqualified from the evaluation process.

### **3.8. NO CONTRACT**

This RFP is not a tender and does not commit the Regional District in any way to select a preferred Proponent. By submitting a Proposal and participating in the process as outlined in this RFP, Proponents expressly agree that no contractual, tort or other legal obligation of any kind is formed under or imposed on the Regional District by this RFP or submissions prior to the completed execution of a formal written Contract.



### 3.9. ACCEPTANCE OF PROPOSAL

The agreement that the successful Proponent will be expected to execute with the Regional District will contain terms similar to those provided in Appendix B. The agreement attachments will likely include the entire Request for Proposal, the Proponent's total Proposal submission and any mutually agreed upon modifications, changes or negotiated adjustments.

### 3.10. PROPOSAL CONTENT

Content to be included in the Proposal:

- Full name, address and telephone number of the submitting office of the Proponent and where applicable, the name, address and telephone number of any branch office, affiliate or subconsultant(s) that will be involved in the project.
- Project Manager: The Proposal shall identify the proposed project manager who will be the single point of contact, responsible for direct interaction with the Regional District. State his/ her position and professional discipline. Describe the work to be performed by the project manager, his/ her qualifications and substantive experience directly related to the proposed Work.
- Proposed Project Team: The Proposal shall list key individuals including the project manager who will have major responsibilities for the performance of the Work. Describe the work to be performed by each listed individual and their qualifications in terms of education and substantive experience directly related to the proposed project.

The Proposal should include the following endorsement:

*"Identified Key Project Team members shall only be replaced with written approval of the Regional District."*

- Methodology: The Proposal shall contain an outline of strategies and skills that will be used to manage the project's expectations, resources, and budget and to ensure quality control. Discuss how each task will be carried out and what services or interaction is required from/ with the Regional District. Suggest alternative(s), if appropriate. Identify any specialized equipment, unique approaches, or concepts or cost saving measures which your company may use relevant to the required services.
- References: The Proposal shall provide no less than two (2) references that are relevant to the proposed Work. The references should be from a third party who can provide information about the performance of the Proponent in delivering services for the experience cited.

### 3.11. SUBCONTRACTORS AND SUBCONSULTANTS

The Proposal shall include the company name of all subcontractors and subconsultants proposed to be used in the performance of the Work with a description of the work they would be performing.

The subcontractors and subconsultants listed in the Proposal may not be changed without the written consent of the Regional District. If the Regional District so requires, the Proponent shall be prepared to confirm to the Regional District the competence of subcontractors and subconsultants prior to acceptance of the Proposal.

### **3.12. PROPOSAL CONTENT & INNOVATION**

The Proponent shall address in the Proposal submission, all the information as requested in the RFP documentation. The Proponent is also encouraged to include innovative, alternative or unique solutions to the Proposal subject that may, along with other things, indicate cost initiatives, improved environmental impacts, better public relations and/ or project acceptance, reduced risk, improved management or administrative efficiencies, etc. Any alternative Proposals submitted should include all the requirements of the original RFP with costs identified for comparative purposes.

### **3.13. SAFETY REQUIREMENTS**

During completion of the work, the Contractor is required to meet or exceed at all times, the requirements as detailed in the Regional District Health & Safety Manual.

### **3.14. WORKERS COMPENSATION ACT**

The Proponent, and any proposed subcontractors and subconsultants, should provide a Work Safe BC (Workers Compensation Board) Registration Number in the Proposal and shall at the time of signing a contract agreement, provide proof of payment of claims in good standing with Work Safe BC.

#### **4. SCOPE OF WORK AND SCHEDULE**

##### **4.1. STATEMENT OF UNDERSTANDING**

In their own words, the Proponent must show that they have an understanding of what the Work involves and what is required to complete the project. It is the Proponent's responsibility to demonstrate that they possess the required knowledge, understanding and capacity to carry out the Work as outlined in this RFP.

##### **4.2. SCHEDULING**

The Proposal shall contain a work schedule showing the major activities or tasks, order and interdependence of the various milestones, sub-tasks and deliverable for each of the required tasks, including any proposed meetings.

##### **4.3. WORK PLAN**

The successful Proponent, along with any required sub consultants, and sub-contractors will provide the following general services and all work associated with the assessment, design and construction for a backup power system at the Olalla water system pump house. The following is a list of tasks that the consultant is expected to complete but is by no means exhaustive of all tasks required:

###### **4.3.1. Design**

- Determine the proper generator sizing based on critical loads and non-critical loads. The generator should be sized to accommodate future electrical and instrumentation upgrades such as variable frequency drives, telemetry equipment, monitoring equipment, and treatment systems ;
- Determine optimal location for the equipment and design any necessary structures for installation of the equipment (i.e. retaining walls, foundation, access, security);
- Complete any survey work as required;
- Obtain three (3) quotes from three (3) separate suppliers for the supply and delivery of a suitable generator. Assess the quotes and provide the recommendation on the best option. The Regional District will make the final decision on which generator will be purchased;
- Prepare design drawings and specifications for the construction and installation of the Generator for review by the Regional District. Proponents shall budget to provide 2 (two) revisions of design drawings in their proposal;
- Obtain all required permits for completion of the Work;

###### **4.3.2. Construction**

- Procure the new generator and arrange for its delivery to site;
- Complete any site grading and construct a base and enclosure for the generator;

- Provide all necessary construction layout, inspection, supervision, testing services during construction;
- Provide any necessary site security and temporary fencing as required throughout the project.
- Install the new generator and associated equipment including all cabling, terminations, and equipment hook-ups.

#### **4.3.3. Commissioning and closeout**

- Complete Commissioning and testing of the generator and integration of the new equipment into the Regional Districts SCADA and remote alarming systems. The successful proponent will notify the Regional District 48 hours prior to any required pump house shut downs;
- Provide a stamped record drawing package for all associated works including shop drawings, operations and maintenance manuals, and updated electrical and single line drawings for the pump house as well as any applicable process control narrative;
- Provide training for Regional District operations staff on the new backup power system. Proponents shall budget for one half day of training with Regional District staff on site following commissioning and testing of the new equipment.

RDOS may negotiate with the prospective consultant to minimize or change some of the requested duties prior to signing a contract.

#### **4.4. DRAWINGS:**

All drawings shall use SI units throughout and shall use Geodetic datum and UTM Nad 83 coordinates

Drawings shall be drawn and saved in DWG format, and shall meet standards acceptable to the Regional District's Geographical Information Systems (GIS) department.

All drawings shall be provided in DWG and PDF format.

All drawings shall be signed and sealed by a Professional Engineer registered in the Province of British Columbia.

Two (2) hard copies of all the Record Drawings will be provided to the RDOS.

#### **4.5. COMMUNICATIONS AND DOCUMENTATION**

Regular updates to the Regional District project manager are required throughout the project.

At the completion of the project, a final report shall be supplied to the Regional District that summarizes the complete project. The report must include specifications for all material used.

For the final documentation, submit one (1) hard copy and one (1) electronic copy of all reports, spreadsheets and documents to the Regional District

Draft documents may be reviewed electronically.

Electronic copies shall be provided in PDF format and/or MS Word and Excel.

Prior to the start of the project, the successful Proponent is required to supply the Regional District with their safety procedure manuals. At this time the Proponent will also be informed of the Regional District's safety requirements. During the progress meetings, safety issues must be discussed and addressed.

## **5. FEES AND DISBURSEMENTS**

The Proposal shall specify a maximum lump sum fee up to and including the completion of commissioning and testing of the new generator and the submission of record drawings and a final project report.

The maximum costs or fees will include all taxes, labour, equipment, sub-consultant expenses, permits, approvals and disbursement costs. Any costs incurred by the Consultant or Sub-Consultants above the submitted maximum cost will be the sole responsibility of the Consultant unless approved by the Regional District.

A schedule of hourly rates for all personnel proposed, equipment and disbursement rates for the project shall be included in the Proposal. Ensure sufficient detail is provided to facilitate evaluation of level of effort by task and cost.

Fee estimates must include all applicable taxes, but show taxes as separate items.

The Proponent will include details in their Proposal on what services the Regional District will need to carry out over the course of the Work.

The obligations of the Regional District to the Builder's Lien Act of British Columbia will be applied to the payment for the Work as required.

**APPENDIX "A"**

**REQUEST FOR PROPOSALS EVALUATION FORM**

Proponent's Name: _____			
Project Title: OLALLA PUMP HOUSE BACK UP POWER DESIGN AND CONSTRUCTION			
Evaluation Date: _____			
Evaluator: _____			
Step 1:		YES	NO
Mandatories	Proposal received prior to closing		
	Subconsultant list submitted		
	Project Manager identified		
	Proposed schedule included		
	Reference List		
	Hourly rates provided		
	Maximum or upset fee included		
	Complete proposal as requested		
Step 2:		Assigned Points	Points
Proponent (15-30 points)	Qualifications of firm and project team members	10	
	Experience of firm and project team members	10	
	Past Performance / References	5	
	Resources	5	
Proposal (30-50 points)	Scope	5	
	Methodology	20	
	Scheduling	5	
	Project Team - Level of Effort	5	
	Clarity of Proposal	10	
Price (20-50 points)	Points for Price = (lowest cost Proposal divided by Proposal being evaluated) x (25% weight)	25	
Total Score	Proponent + Proposal + Price Scores	100	

1. Requests for Proposals (RFP's) shall be reviewed by an Evaluation Team, which shall consist of at least two staff members.
2. Each Evaluation Team member shall complete the RFP Evaluation Form for each Proposal.
3. Evaluation Team Members will use the following list of questions to complete the RFP Evaluation Form:

**Proponent Evaluation**

- (i) **Qualifications of Firm and Project Team Members**  
Are the firm and project team members specialized and qualified in the nature of the project work?
- (ii) **Experience of Firm and Project Team Members**  
Has the firm completed similar projects during the last three years? Do the assigned project team members have experience with similar projects?
- (iii) **Past Performance**  
Is the firm's record of past performance sound? Do reference checks reveal weaknesses? Was abnormal level of monitoring required? Does the firm consistently complete assignments on time and within budget?
- (iv) **Resources**  
Does the firm have ample resources (e.g. staff, equipment, etc.) to apply to this project?

**Proposal Evaluation**

- (i) **Scope**  
Do the objectives, scope, work plan, and prediction of results comply with the terms of reference and project objectives?
- (ii) **Methodology**  
Is the methodology clear and in sufficient detail to cover all necessary aspects? Does the Proposal reflect the required understanding of the project? Is each task clearly outlined and in logical sequence?
- (iii) **Environmental Performance [see criteria below]**  
What is the environmental burden and unit cost of a product or service, from its design through to production and then final disposal?
- (iv) **Scheduling**  
Does the Proposal indicate that the achievement of objectives will be met according to an acceptable schedule? Are they within the timelines set by the terms of reference (if outlined in the terms of reference). Are problems or delays accounted for? Is timing realistic for the project?
- (v) **Project Team**  
Is the level of effort (total hours) adequate, low or high? Are the hours of professionals involved adequate, low or high? Is the proportion of professional vs. technical hours adequate or appropriate?
- (vi) **Clarity of Proposal**  
Is the Proposal clear, concise, and logical?

**Price Evaluation**

- (i) **Total Price**
4. Upon completion of Step 2, the Evaluation Team shall determine, by consensus, the score for each Proposal and will forward these scores to the Board for its consideration to select the successful Proponent.

## **APPENDIX "B"**

### **SAMPLE SERVICES AGREEMENT TERMS**

#### *SECTION 1. INTERPRETATION*

- 1.1 For purposes of this Agreement, except as otherwise expressly provided:
- (a) Section—all references in this Agreement to a designated “section” or other subdivision or to a Schedule is to the designated section or other subdivision of, or Schedule to, this Agreement;
  - (b) Whole Agreement—the words “herein”, “hereof”, “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular section or other subdivision or Schedule;
  - (c) Headings—any headings have been inserted for convenience only and do not form a part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;
  - (d) Non-limiting—the singular of any term includes the plural, and vice versa; the use of any term referable to a particular gender is equally applicable to any gender and, where applicable, a body corporate; the word “or” is not exclusive and the word “including” is not limiting (whether or not non-limiting language, such as “without limitation” or “but not limited to” or words of similar import is used with reference thereto).

#### *SECTION 2 CONSULTANT'S DUTIES*

- 2.1 The Consultant shall provide, and has agreed to provide to the Regional District all Services set out in the Request for Proposal (attached hereto as Schedule “A”) and the Consultant’s Proposal (attached hereto as Schedule “B”), both of which form part of this agreement (hereinafter collectively called the “Services”). The Services shall be provided within the times specified in Schedules A and B.
- 2.2 In performing the Services under this Agreement, the Consultant shall, at all times, act in the best interests of the Regional District and exercise that degree of professional skill, care and diligence required according to generally accepted professional science and engineering standards applicable to the performance of such Services at the time and place the Services are performed.
- 2.3 It is agreed that in awarding the professional Services encompassed within this agreement to the Consultant, the Regional District has relied upon the Consultant’s representations concerning the experience of certain identified personnel in the employ of the Consultant. It is agreed that, in performing the Services under this agreement, the Consultant shall designate those key staff and subconsultants specified in Schedule “B” to carry out and provide the Services to be provided by the Consultant as referred to herein
- 2.4 The Consultant shall request of the Regional District any information or data contained in Regional District files which the Consultant requires in order to perform the Services. The Regional District is only obligated to provide to the Consultant information and data that is pertinent to the terms



of reference and work program set out in Schedules "A" and "B". The Consultant may rely on such information or data as may be provided by the Regional District without independent verification.

- 2.5 To ensure that the Project is processed in a timely manner, the Consultant and the Regional District will apply their best efforts to meeting the following deadlines:
- a) Phone call inquiries from the Regional District will be returned within 24 hours;
  - b) Public inquiries to the Consultant on technical issues will be returned within 48 hours;
  - c) Meetings will be scheduled within 5 working days from date of request;
  - d) Review comments for material submitted by the Consultant will be processed by the Regional District within 14 days of receipt.
- 2.6 Costs which have not been identified by the Consultant in the cost estimate will not be paid by the Regional District without prior approval and confirmation in writing. No payment shall be made to the Consultant for cost overruns that have not been the subject of prior notice and approval by the Regional District.
- Any change in the rates charged for fees and disbursements must be approved in advance, in writing, by the Regional District.
- 2.7 The Consultant shall submit to the Regional District regular progress reports, as requested from time to time, and such additional reports as may be reasonably required.

### *SECTION 3 FEES AND DISBURSEMENTS*

- 3.1 The Consultant shall receive from the Regional District for the performance of the Services the compensation referred to in \_\_\_\_\_
- 3.2 Invoices may be rendered on a monthly basis prorated to the work completed or, at the conclusion of each phase by the Consultant to the Regional District, and shall be delivered to the Regional District of Okanagan-Similkameen, 101 Martin Street, Penticton, British Columbia, V2A 5J9. Invoices shall be payable in full by the Regional District within thirty (30) days of receipt.
- 3.3 The Consultant shall provide all necessary and sufficient substantiation to the Regional District in order to verify any invoice upon request. If the Regional District is unable to verify any invoice within the said period, any payment by the Regional District either may be withheld or may be made and treated as an advance pending verification of the invoice.
- 3.4 Any necessary adjustments which have not been made prior to payment of an invoice may be made by the Regional District at the time of a later payment. If the Regional District is shown to have overpaid, the Regional District may deduct the amount from any other sums due to the Consultant from the Regional District or the Consultant shall pay the amount to the Regional District within thirty (30) days of the amount being agreed upon or otherwise established.
- 3.5 The Regional District may request the Consultant to submit prior to payment of the final invoice a statutory declaration or other proof that there are no outstanding costs, assessments, liens or claims in connection with the project.

### *SECTION 4 CONFIDENTIALITY, OWNERSHIP AND USE OF DOCUMENTS AND MATERIALS*

- 4.1 The Consultant acknowledges that in the performance of the Consultant's responsibilities hereunder, the Consultant may have access to confidential information, records and customer

lists of the Regional District (the "Confidential Information"). During and after the term of this Agreement, the Consultant shall not, directly or indirectly, disclose such Confidential Information to any person or use any such Confidential Information, except:

- (a) as required in the course of performing such Services and then only to staff of the Regional District on a need-to-know basis; or
- (b) with the prior written consent of the Regional District;

and all Confidential Information which the Consultant shall prepare or use or come in contact with shall be and remain the Regional District's sole property and shall not be removed from the Regional District's premises without its prior written consent, except as required in the normal course of performing the Services under this Agreement.

- 4.2 The Consultant agrees that all base materials, research results, computer programs, computer files, drawings, documents and notes and materials of any type whatsoever developed or prepared by the Consultant (hereinafter called the "Documents") in the performance of the Services shall vest and become the absolute property of the Regional District, including copyright of such Documents and upon completion of the Services or termination of this Agreement, all copies of Documents shall be delivered by the Consultant to the Regional District. The Consultant may retain one copy of it's materials for record purposes.
- 4.3 The Consultant agrees that all restrictions in this Section 4 are reasonable, fair and valid in all the circumstances and, to the fullest extent permitted by law, hereby waives all defences to the strict enforcement thereof by the Regional District.
- 4.4 The Regional District acknowledges and agrees that the Consultant's Services have been provided for a specific purpose. Any reuse, modification, or misuse of the Consultant's studies, reports, drawings, plans, designs, specifications, models, software, processes, documents, or other information by the Regional District or third parties shall be at the Regional District's sole risk and responsibility.

#### *SECTION 5 SPECIAL TOOLS AND EQUIPMENT*

- 5.1 All necessary special tools, equipment and other things shall be acquired by the Consultant solely at the Consultant's cost and shall be the property of the Consultant unless the Regional District specifically authorizes the purchase of a specific item at the Regional District's expense.
- 5.2 The cost of special tools, equipment and other things that have not been specifically identified in detail by the Consultant or specifically authorized in writing by the Regional District during performance of the project shall be considered to be within the overhead of the Consultant.
- 5.3 If the Regional District specifically authorizes, in writing, that the Consultant shall purchase any special tool, equipment, or other things at the expense of the Regional District then such items shall become the property of the Regional District. The Consultant shall bear the risk of loss or damage, normal wear and tear excepted, to all such items for the time when such items are out of the possession and control of the Regional District. Upon completion of the project, the Consultant shall deliver all such special tools, equipment and other things to the Regional District.

**SECTION 6 SUB-CONSULTANTS AND SUB-CONTRACTORS**

- 6.1 The Consultant may, with the prior written approval of the Regional District, engage the services of sub-consultants or sub-contractors to perform work which the Consultant is unable to perform.
- 6.2 The sub-Consultants and sub-contractors shall agree in writing prior to their participation in the Project to be bound by duties and obligations arising out of this Agreement between the Consultant and the Regional District.
- 6.3 The Consultant shall be responsible to the Regional District for all work carried out by sub-consultants and sub-contractors in connection with the project as if such work had been performed by the Consultant.
- 6.4 The Consultant shall be responsible to the Regional District for the acts and omissions of all sub-consultants and sub-contractors, their employees and agents, as if such sub-consultants and sub-contractors, their employees and agents, were persons directly employed by the Consultant.

**SECTION 7 TERMINATION AND SUSPENSION**

*By the Regional District :*

- 7.1 If the Consultant is in default in the performance of any of his material obligations set forth in this agreement, then the Regional District may, by written notice to the Consultant, require such default to be remedied. If, within seven (7) days after delivery of such notice, such default shall not have been corrected or reasonable steps to correct such default have not been taken, the Regional District may, without limiting any other right or remedy the Regional District may have, immediately terminate this agreement and discharge its obligations under this agreement by paying for the cost of the Services rendered and disbursements incurred by the Consultant and remaining unpaid as of the effective date of the termination.
- 7.2 The Regional District may terminate this Agreement upon seven (7) days' prior written notice in the event the Consultant:
- (a) fails to complete the Services or any portion thereon within the time specified by this Agreement;
  - (b) becomes insolvent;
  - (c) commits an act of bankruptcy;
  - (d) assigns this Agreement without the required written consent of the Regional District;
  - (e) fails to adhere to or perform any of the provisions of this Agreement;
  - (f) has any conflict of interest which may, in the opinion of the Regional District, adversely affect any project for which the Services are being provided; or
  - (g) there is a change in the personnel referred to in Schedule "B" herein without the prior written approval of the Regional District.
- 7.3 Notwithstanding anything herein to the contrary, the Regional District may, for whatever reason, terminate this Agreement on One (1) months' prior written notice to the Consultant, in which case the term of this Agreement shall expire upon the effective date set out in the aforesaid notice, and the Regional District shall have no further obligation to the Consultant for the balance

of the term of this Agreement save and except as may exist on the termination date.

Upon receipt of such written notice, the Consultant shall perform no further Services other than those reasonably necessary to close out the project.

In such event, the Consultant shall be paid by the Regional District for all Services performed and all disbursements incurred pursuant to this agreement and remaining unpaid as of the effective date of such termination. On said payment the Regional District shall have no further liability of any nature whatsoever to the Consultant for any loss of profit or any other losses suffered, either directly or indirectly, by the Consultant as a result of the termination of this agreement.

- 7.4 The Consultant shall, upon termination, forthwith provide to the Regional District a reproducible copy of all materials used by the Consultant or prepared by the Consultant in regards to the Services.
- 7.5 The Consultant agrees that the termination or suspension of this agreement or any change thereto does not operate as to relieve or discharge the Consultant from any obligation under this agreement or imposed upon the Consultant by law in respect of the Services or any portion of the Services that the Consultant has completed to date or such termination or suspension. This indemnity shall survive the expiry or sooner termination of this agreement.

*By the Consultant :*

- 7.6 If the Regional District is shown to be in default in performance of any of its material obligations set forth in this agreement, then the Consultant may, by written notice to the Regional District, require such default to be corrected.

If, within seven (7) days after receipt of such notice such default shall not have been corrected, or reasonable steps have not been taken to correct such default, the Consultant may, without limiting any other right or remedy he may have, immediately terminate this agreement. In such an event, the Consultant shall be paid by the Regional District for all Services performed and disbursements incurred pursuant to this agreement and remaining unpaid as of the effective date of such termination.

- 7.7 If the Consultant's Services are suspended by the Regional District at any time for more than thirty (30) days through no fault of the Consultant, then the Consultant shall have the right at any time until such suspension is lifted by the Regional District, to terminate this agreement upon giving written notice thereof to the Regional District.

In such event, the Consultant shall be paid by the Regional District for all Services performed and all disbursements incurred pursuant to this agreement and remaining unpaid as of the effective date of such suspension.

## **SECTION 8 INSURANCE AND INDEMNITY**

- 8.1 The Consultant shall maintain in full force and effect with insurers licensed in the Province of British Columbia, all insurance as outlined on the attached **Certificate of Insurance – Standard Consultant's Certificate Form** as provided by the Regional District. This form must be completed by the Consultant's insurance broker and returned to the Regional District.:
- 8.2 The Consultant shall, at his expense, establish and maintain Errors and Omissions Insurance in

respect to the Services and operations of the Consultant based on the following:

1. Preliminary Project where fees do not exceed \$15,000: Insurance limit shall be a minimum of \$250,000 per claim and \$500,000 per policy period.
2. Studies with no designing required: Insurance limit shall be a minimum of \$500,000 per claim and \$1,000,000 per policy period.
3. Design assignments and/ or planning services covering projects not exceeding \$1,000,000 in value: Insurance limit shall be a minimum of \$1,000,000 per claim and \$1,000,000 per policy period.
4. Design assignments and/ or planning services covering projects exceeding \$1,000,000 in value: Insurance limit shall be a minimum of \$2,000,000 per claim.

- 8.3 The Consultant's Professional Errors and Omissions Insurance shall be maintained continuously during the term of this Consulting Services Agreement and subsequently continue to be in force for twelve (12) months beyond the project completion date of Services (i.e., submission of Final Report, as approved in writing by the Regional District).

The Consultant will provide 30 days written notice in advance of cancelation of any policies.

- 8.4 General liability insurance must be obtained on an occurrence basis for the Consultant with limits of not less than \$5,000,000 inclusive per occurrence for bodily injury and property damage. Detailed coverage is to be as specified on the provided Standard Contractor's Certificate Form.
- 8.5 The Consultant shall at all times indemnify, defend, release, hold harmless and forever discharge the Regional District, and the Regional District elected and appointed officials, officers, employees and agents from and against all liability, claims, damages, losses, costs, actions, causes of action, suits, proceedings and expenses at law and in equity, whether known or unknown, including all actual legal and other professional fees and disbursements on a full indemnity basis, whether arising directly or indirectly from death, personal or bodily injury, sickness, disease, property loss, property damage or other loss or damage which may result from or be connected with the performance of this Agreement, including any breach or default of this Agreement by the Consultant or its employee.

#### **SECTION 9 ARBITRATION**

- 9.1 All matters in dispute under this agreement may, with the concurrence of both the Regional District and the Consultant, be submitted to arbitration to a single arbitrator appointed jointly by them and the provisions of the *Arbitration Act* shall apply.
- 9.2 No one shall be nominated to act as arbitrator who is in any way financially interested in the project or in the affairs of either the Regional District or the Consultant.

#### **SECTION 10 INDEPENDENT CONTRACTOR**

- 10.1 Nothing in this agreement or the Consultant's performance of his duties under this agreement shall constitute or create an employer-employee relationship. The Consultant shall act solely as an independent contractor and not as an employee or agent of the Regional District and is not authorized to create obligations on the part of the Regional District to third parties.

#### **SECTION 11 WAIVER**

- 11.1 Any failure of the Regional District at any time to enforce or require strict compliance with any of the terms of this agreement shall not constitute a waiver or relinquishment of any such terms and the same shall remain at all times in full force and effect.

*SECTION 12 RECORDS AND AUDIT*

- 12.1 The Consultant shall keep reasonable and proper records, accounts, statements and other relevant documents for a period of not less than twelve (12) months after completion of the Project or for such extended period as the Regional District may request in advance and in writing.
- 12.2 The Consultant shall permit the Regional District to inspect, audit and copy all records, accounts, statements and other relevant documents of the Consultant relating to the Project at all reasonable business hours in the offices of the Consultant unless otherwise agreed in writing by the parties.

*SECTION 13 SUCCESSORS AND ASSIGNS*

- 13.1 This agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective executors, heirs, administrators, successors and assigns, as the case may be.
- 13.2 Neither party may assign this agreement without the prior consent in writing of the other, which consent shall not be unreasonably withheld.

*SECTION 14 COMPLIANCE WITH LAWS*

- 14.1 The Consultant shall comply with all applicable bylaws and regulations of the Regional District and all applicable laws of the Province of British Columbia and the Government of Canada. Without restricting the generality of the foregoing, the Consultant shall abide by all provisions of the Workers' Compensation Act of British Columbia and upon request by the Regional District shall supply proof that all assessments have been paid.
- 14.2 The laws of the Province of British Columbia shall govern this agreement and any arbitration or litigation in respect thereof.

*SECTION 15 TERM*

- 15.1 The parties hereto agree that the Term of this Consulting Services Agreement will be from \_\_\_ to \_\_\_.

*SECTION 16 ENTIRE AGREEMENT*

- 16.1 This agreement constitutes and expresses the whole agreement of the parties with reference to the engagement of the Consultant by the Regional District.

*SECTION 17 NOTICE*

- 17.1 Except in the case of emergency, when notice may be given by telephone with later confirmation in writing, any notice, request, approval, demand or other communication which may be or is hereby required or permitted to be given under this agreement shall be in writing and either delivered by hand or sent by facsimile transmission addressed as follows:

- (a) if to the Regional District:  
101 Martin Street, Penticton, BC, V2A 5J9  
Fax No. 250-492-0063; and
- (b) if to the Consultant:  
(TO BE COMPLETED);

or at such other address or facsimile number, which notice has been given as provided in this section. Any notice which is delivered by hand will be deemed to have been given on the first day on which it is delivered. Any notice which is sent by facsimile transmission will be deemed to have been given on the first day after it is transmitted, provided that the sender obtains written

confirmation of successful transmission. If a party will promptly give notice of its new address or facsimile number, or both, to such other parties provided in this section, whereupon such notice to such party will thereafter be sent to such new address or facsimile number.

*SECTION 18 TIME OF THE ESSENCE*

18.1 Time shall remain of the essence with respect to this Agreement.

*SECTION 19 EXECUTION*

19.1 This agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original and the counterparts together from a valid and binding agreement which may be sufficient evidence by any one such original counterpart.

19.2 In the event this agreement is executed by two or more persons, the covenants and agreements herein shall be deemed to be joint and several covenants.

*SECTION 20 ELECTRONIC MAIL*

20.1 This agreement may be executed by the parties and transmitted by facsimile or electronic mail and if so executed and transmitted, this agreement will be for all purposes as effective as if the parties hereto had delivered an executed original of this agreement.