

**REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN**

**REQUEST FOR PROPOSALS**

**for the**

**PROVISION OF BYLAW ENFORCEMENT SERVICES**

**December 2017**

**REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN**  
**REQUEST FOR PROPOSALS**  
**REGULATORY BYLAW ENFORCEMENT SERVICES**

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**REQUEST FOR PROPOSALS**  
**BYLAW ENFORCEMENT SERVICES**

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**DEFINITIONS**

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

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

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

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

“**SERVICE PROVIDER**” 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 Services

“**SERVICES**” means and includes anything and everything required to be done to provide for the enforcement of regulatory bylaws

**1. INTRODUCTION**

**1.1. PURPOSE**

The Regional District of Okanagan Similkameen is requesting submission of Proposals from qualified Proponents to provide the Services of bylaw enforcement services as outlined within this Request for Proposals.

**1.2. SUPPORTING DOCUMENTATION**

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

- DRAFT Agreement for Regulatory Bylaw Enforcement Services

**INSTRUCTIONS TO PROPONENTS**

**1.3. 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:

**Brad Dollevoet  
Development Services Manager  
Regional District of Okanagan-Similkameen  
101 Martin Street  
Penticton, B.C. V2A 5J9**

**or**

**[bdollevoet@rdos.bc.ca](mailto:bdollevoet@rdos.bc.ca)**

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

**TIME: 4:00 p.m. local time (16:00 hours)**  
**DATE: Monday, December 11, 2017**

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 submitted, please provide 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 accepted or considered and hard copies will be returned to the Proponent at the Proponent's expense.

#### **1.4. INQUIRIES**

All inquiries related to this RFP are to be directed, in writing, to the following person:

Roza Aylwin, Bylaw Enforcement Coordinator  
101 Martin Street  
Penticton, B.C. V2A 5J9  
[raylwin@rdos.bc.ca](mailto:raylwin@rdos.bc.ca)

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.

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 Draft Agreement 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.

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

The Scope of Work is referred to as “Services” within this document.

In their own words, the Proponent must show that they have an understanding of what the Services involve and what is required to provide the Services to the degree of skill, care and diligence required accordingly to generally accepted Bylaw Enforcement Officer standards applicable to the situation. It is the Proponent’s responsibility to demonstrate that they possess the required knowledge, understanding and capacity to carry out the Services as outlined below.

### **2.1. SCHEDULING AND WORK PLAN**

Services will be provided on a complaint generated basis, with an expectation to provide the Services on a Sunday or Statutory Holiday on an as needed basis. The Proponent should be flexible in their ability to schedule hours to conform to this expectation.

- **Bylaw Enforcement Officer:** The Proposal shall identify an employee or employees of the Proponent that is proposed to assume the duties of Bylaw Enforcement Officer. The employee identified will be the single point of contact and will be responsible for direct interaction with the Regional District. His / her position and professional discipline, as well as experience directly relating to the Services is required to be provided in detail within the Proposal.
- **Methodology:** The Proposal shall contain an outline of strategies and skills that will be used to manage the expectations, resources, and budget and to ensure quality control. How will the Officer be managed, supervised and/or disciplined? Discuss how each provision of the Service will be carried out and what interaction or resources is required from 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.

It is anticipated that the successful Proponent, its employees, representatives, along with any required subcontractors, will provide the following Services as a minimum:

- 1.** The Service Provider (SP) is required to carry out Bylaw Enforcement work throughout the Service Area as shown in Appendix “B” of this RFP and on the following RDOS Bylaws:
  - a.** Official Community Plan Bylaws
  - b.** Zoning Bylaws
  - c.** Untidy and Unsightly Bylaws
  - d.** Noise Control Bylaws; and
  - e.** Other regulatory bylaws as directed from time to time.
- 2.** The SP will be required to attend to complaints, carry out site inspections, communicate with the violator, provide inspection reports, take photographs, issue Municipal Ticket Information and / or Bylaw Offence Notices, with the RDOS providing specific direction when required or requested by the SP.
- 3.** The SP will be available to provide the Services Monday to Friday, typically between the hours of 8:00 a.m. and 5:00 p.m. The SP may work flexible hours during the week and may schedule hours to provide the Services over the weekend or on a Statutory Holiday, as deemed necessary.
- 4.** Notwithstanding Section 3 above, and for Noise Bylaw complaints only, the SP will provide an officer 24 hours per day, 365 days a year and will:
  - a.** Maintain a record of all noise complaints, including the property address, the time of the call, the nature of the call and the action taken by the Officer.
  - b.** Contact and advise alleged violators of complaint(s) received and means to comply within 24 hours of complaint receipt.
  - c.** Forward copies of tickets issued to RDOS office by the next business day, and
  - d.** Provide noise complaint records when requested by RDOS.
- 5.** The SP will advise the RDOS of names and qualifications of all employees associated with RDOS bylaw enforcement. The SP will be responsible for all costs associated with employees, including wages, benefits, vacations, statutory vacation pay, sick leave, insurance and any other benefits.
- 6.** The SP and all appointed staff shall be of good character, be courteous to the public, and shall submit to a criminal records check upon request of the RDOS.
- 7.** For the purposes of this Agreement, the SP will work under the direction of the Regional District of Okanagan-Similkameen, specifically the Development Services Manager and/or Bylaw Enforcement Coordinator.
- 8.** When on RDOS duty, the vehicle being used by the Officer will bear the magnetic signage provided by RDOS to identify the affiliation with RDOS.
- 9.** All reports and pictures will be submitted to RDOS within 7 days of inspection date.
- 10.** The SP will notify the Bylaw Enforcement Coordinator when fines are issued and will submit all copies (with the exception of the Officer’s copy) within 24 hours of issuance.

11. Revenue from fines collected will be retained by the RDOS.
12. The SP will provide monthly invoices including hours worked by date, segregated by the Bylaw being enforced, and Electoral Area, and record of mileage. The monthly report shall be submitted to the RDOS within the 7 days of the end of the previous month.
13. The SP will prepare reports and other necessary documents and to give evidence in Court or at a Bylaw Adjudication Hearing as required by the RDOS for prosecutions of bylaw violations. Upon request of the RDOS, the SP will forward all records and materials (electronic or written) with respect to the Services within 10 working days.
14. The SP is required to track all fossil fuel consumption for each calendar year throughout the entire project. The SP shall provide a fossil fuel report to the Regional District by February 1<sup>st</sup> of each year detailing the previous year's usage. The consumption shall be tracked by vehicle type and type of fuel used, and should include all subcontractor usages.
15. The SP will provide such other bylaw enforcement services as may be required by the RDOS from time to time, acting reasonably.

The Regional District reserves the right to negotiate with the prospective proponent to amend the Services prior to signing a contract.

## **2.2. COMMUNICATIONS**

Monthly reports must be submitted broken down by Electoral Area and by subject bylaw and containing the number of complaints received and action taken by the Officer. The report will identify mileage utilized and time spent on each call, and outcome for each complaint.

If payment will be through invoicing, invoices must be received within 7 calendar days of the previous month's end.

Attendance at public meetings and functions associated with the Services may be required from time to time. The Regional District will provide 14 days written notice if attendance of the Officer is required.

### **A. Final\_Report**

At the completion of the term a final report shall be supplied to the Regional District that summarizes the extent of Services provided throughout the term of the Agreement.

### **B. Safety Procedures**

Prior to the start of the Services, 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.

### **C. Environmental Report**

The Proponent is required to track all fossil fuel consumption throughout the term of the agreement for Services for all vehicles used for this Service. The Proposal shall describe how the Proponent will track and report to the Regional District the fossil fuel consumption during the term of the Agreement.

### **FEES AND DISBURSEMENTS**

The Proponent will provide an upset fee limit of costs on an annual basis for the provision of the Services on behalf of RDOS.

A schedule of hourly rates for all personnel proposed, equipment and disbursement rates for the Services 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 Services.

## **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 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 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 evaluation team will not be limited to the criteria listed in Appendix A, and the evaluation team may consider other criteria that the team identifies as relevant during the evaluation process. However, any criteria considered will be applied evenly and fairly to all Proposals.

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.

The rationale for keeping information confidential under this legislation includes:

- a) Trade secrets of the Proponent;
- b) Financial, commercial, scientific or technical information, the disclosure of which could reasonably be expected to result in material financial loss or gain or could reasonably be expected to prejudice the competitive position of the Proponent; or
- c) Information the disclosure of which could be reasonably expected to interfere with contractual or other negotiations of the Proponent.

### **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 and all affiliation with member Municipalities, or 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 acceptance of a Proposal will be made in writing from the Regional District, and will be addressed to the successful Proponent at the address given in the submitted Proposal. Following acceptance and approval to proceed with the Proposal, the Proponent is expected to enter into a contract with the Regional District to perform the works or services set out and agreed upon in the Proposal.

The agreement that the successful Proponent will be expected to execute with the Regional District will contain terms similar to those contained in the draft Contracting Services Agreement provided in Appendix B.

### **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 subcontractors that will be involved in the project.
- Bylaw Enforcement Officer: The Proposal shall identify an employee of the Proponent that is proposed to assume the duties of Bylaw Enforcement Officer. The employee identified will be the single point of contact and will be responsible for direct interaction with the Regional District. His / her position and professional discipline, as well as experience directly relating to the Services is required to be provided in detail within the Proposal.

- Proposed Service Team: The Proposal shall list key individuals affiliated with the Proponent who will have major responsibilities relating to the performance of the Services. 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 Services.
- Methodology: The Proposal shall contain an outline of strategies and skills that will be used to manage the expectations, resources, and budget and to ensure quality control. How will the Officer be managed, supervised and/or disciplined? Discuss how each provision of the Service will be carried out and what interaction or resources is required from 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 Services. 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. EMPLOYEES, SUBCONTRACTORS AND SUBCONSULTANTS**

The Proposal shall include the company name of all employees and / or subcontractors proposed to be used in the performance of the Services with a description of the work they would be performing in carrying out the Services.

The employees 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 employees 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 that may, along with other things, indicate cost initiatives, improved environmental impacts, better public relations and/ or service 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 Service Provider 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, its employees, and any proposed subcontractors, 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. APPENDIX "A"

**REQUEST FOR PROPOSALS EVALUATION FORM**

Proponent's Name: _____			
Project Title: Bylaw Enforcement Services			
Evaluation Date: _____			
Evaluator: _____			
Step 1:		YES	NO
Mandatories	Proposal received prior to closing		
	Employee experience and qualifications included		
	Project Manager identified		
	Reference List		
	Hourly rates provided		
	Maximum or upset fee included		
	Complete proposal as requested		
Step 2:		Assigned Points	Points
Proponent	Qualifications and experience of firm	15	
	Qualifications and experience of proposed Officer	15	
	Past Performance / References	10	
	Resources	10	
	Scope	5	
	Methodology	10	
Proposal	Project Team - Level of Effort	5	
	Clarity of Proposal	10	
	Points for Price = rank of lowest cost Proposal divided by number of Proposals being evaluated) x (20% weight)	20	
Price	Proponent + Proposal + Price Scores	100	
Total Score			

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 services? Is each item 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?
- (v) Project Team  
Is the level of effort 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.

## **Environmental Performance Decision Criteria**

Basic evaluation criteria for rationalizing the purchase of environmentally sound alternatives:

- (i) Does the alternative product meet or exceed the minimum required performance specifications? (e.g.) durability, safety, structural integrity. (If no, use the conventional product; if yes move to (ii)).
- (ii) Is the unit pricing of the alternative product equal, or less than, the conventional product? (If yes purchase the alternate product; if no move to (iii)).
- (iii) What is the total annual cost differential of using the alternate product instead of the conventional? (If the effect on budget is nominal use the alternate product; if the effect on budget is more than nominal go to (iv)).
- (iv) By using the alternate product are there any offsetting benefits that can be clearly measured and recorded in cost avoidance accruing to the same Business Unit, or to other business Units and, if so, do those benefits equal or exceed the extra acquisition costs? (If yes purchase the alternate product; if no go to (v)).
- (v) Are there any other benefits that are not measurable in any direct monetary sense but are benefits that we ought to realize for other on-pecuniary reasons?, e.g. "green benefits" such as reduced pollution, air emissions, effluent release, recyclable & disposal issues etc. (If no, purchase the conventional product; if yes define those reasons and report them through established reporting channels to get the increased budget commitment approved. In either case go to (vi)).
- (vi) If acquisition of the alternative product at the higher cost is approved purchase the alternate product; if not purchase the conventional product.

**AGREEMENT FOR REGULATORY BYLAW ENFORCEMENT SERVICES**

THIS AGREEMENT, dated for reference this day of .

**BETWEEN:**

**REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN**

101 Martin Street  
Penticton BC  
V2A 5J9

(hereinafter referred to as the "RDOS")

**OF THE FIRST PART**

**AND:**

(hereinafter referred to as the "Service Provider")

**OF THE SECOND PART**

both of whom are sometimes referred to as the "Parties" and each of whom is a "Party" to this agreement

**WHEREAS:**

- A. The RDOS wishes for the Service Provider to provide regulatory bylaw enforcement services as described in Schedule "A" hereto (the "Services") within the area of the geographical boundaries of the RDOS ("Service Area"); and
- B. The Service Provider confirms that he has the skills necessary to ensure the Services can be performed in a diligent and timely manner and has agreed to provide the Services on the terms and conditions hereinafter set out.

NOW THEREFORE, in consideration of the mutual exchange of benefits resulting from this agreement, the RDOS and the Service Provider agree as follows:

**ARTICLE 1 - Services Agreement**

1.01 The RDOS engages the Service Provider to provide the Services within the Service Area.

- 1.02 The Service Provider shall perform the Services to a standard of care, skill and diligence of that of a similar person providing, on a timely commercial basis, the Services comparable and similar to the Services using qualified personnel and unless otherwise provided herein, shall provide, at the Service Provider's expense, all labour and related coordination and supervision including all tools, equipment, materials, vehicles, and supplies required to perform the Services in accordance with the requirements of this Agreement.
- 1.03 The Service Area is the area within the geographical boundaries of the RDOS.
- 1.04 The Service Provider shall obtain WorksafeBC coverage for itself and all employees engaged in the performance of the Services and provide a certified copy of proof of current coverage issued by WorksafeBC.
- 1.05 The Service Provider shall not have the right to assign, sublicense or subcontract or otherwise transfer this Agreement any of the Service Provider's rights and obligations herein without the prior written consent of the RDOS, which consent may be arbitrarily withheld.
- 1.06 The Service Provider agrees that, prior to entering into this Agreement, they have considered the services to be rendered herein and are fully aware of the nature and extent of the work required to provide regulatory Bylaw enforcement services.

## **ARTICLE 2 – Duration and Modification**

- 2.01 Subject to the termination provisions as provided herein, the fixed term of this Agreement shall be for \_\_\_\_\_ years commencing on \_\_\_\_\_ and shall terminate on the \_\_\_\_ day of \_\_\_\_\_. Provided further, that in the event this Agreement has not been terminated prior to the \_\_\_\_ day of \_\_\_\_\_, the parties hereto may immediately thereafter, by mutual agreement, continue this Agreement on a month-to-month basis on the same terms and conditions as amended herein and either Party may terminate the said month-to-month term at any time on Thirty (30) days' prior written notice to the other without compensation or payment of any kind, other than any amounts owing up to the date of termination.
- 2.02 This Agreement may not be modified except by a subsequent agreement in writing between the Parties, unless otherwise provided herein.
- 2.03 Notwithstanding anything herein to the contrary, either Party may terminate this Agreement at any time after the first two years of the term as referred to in paragraph 2.01 herein on six months' prior written notice to the other and in such event, each of the parties will be unconditionally released from any of their respective obligations herein, save and except for those obligations which are outstanding as at the date of termination referred to in the termination notice and neither Party shall be liable to the other for compensation for any damages, costs or losses resulting from the exercise of this right of termination.

## **ARTICLE 3 - Compensation**

- 3.01 There will be no charges to the Service Provider for business cards, photocopying, mail out service, advertising and the placement of phone numbers in related telephone listings, provided that these relate to administration of the Services.

- 3.02 The RDOS shall pay to the Service Provider, in lawful money of Canada, an amount based on invoices submitted by the Service Provider as follows;
- (a)
  - (b)

#### **ARTICLE 4 – Representations of the Service Provider**

- 4.01 The Service Provider will comply or cause to comply with all applicable laws, including, without limiting the generality of the foregoing, Federal and Provincial legislative enactments, or any other governmental or municipal regulations which relate to the Services; and
- 4.02 The Service Provider acknowledges and agrees that they will:
- (a) be solely responsible for any applicable employee labour costs, including statutory contributions and the Service Provider agrees that such person(s) shall be considered to be the sole employee of the Service Provider and shall not be construed in any way to be an officer or employee of the RDOS;
  - (b) when the Service Provider hires a worker, or contracts with an employer, the Service Provider will observe and enforce all safety measures required by the *Workers Compensation Act* of British Columbia, attendant Regulations and all applicable statutes; and
  - (c) secure in advance from before the time and date of this Agreement, at the Service Provider's sole cost, all licenses and permits that may be required for the supply of the Services.

#### **ARTICLE 5 - Confidentiality**

- 5.01 The Service Provider acknowledges that in the performance of his responsibility hereunder the Service Provider will have access to confidential information, records of the RDOS (the "Confidential Information"). During and after the term of the Agreement, the Service Provider 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 the staff of the RDOS on a need to know basis; or
  - (b) with the written consent of the RDOS;

and all confidential information which the Service Provider shall prepare or use or come in contact with shall be and remain the RDOS' sole property and shall not be removed from the RDOS' premises without prior written consent, except as required in the normal course of performing the duties of the Service Provider pursuant to the terms of this Agreement.

- 5.02 The Service Provider agrees that all restrictions in this Article 5 are reasonable, fair and valid in all circumstances and, to the fullest extent permitted by law, hereby waives all defenses to the strict enforcement thereof by the RDOS.

## **ARTICLE 6 – Independent Contractor**

6.01 The Service Provider shall be an independent contractor in performing the Services hereunder. As an independent contractor, the Service Provider shall be responsible for payment of all income taxes attributable to any payments made under this Agreement during the period of this Agreement.

The Service Provider agrees to indemnify and save harmless the RDOS from and against any and all manner of actions, claims and demands which may be made against it in respect of any fees, assessments, levies, rates, taxes or other charges made, demanded, assessed or otherwise claimed by any provincial government or other body of competent jurisdiction in respect of any monies paid to the Service Provider under this Agreement.

## **ARTICLE 7 -Dispute Resolution**

7.01 If any dispute arises between the parties as to whether either party has complied with its obligations under this Agreement or if any dispute or controversy arises between the parties with respect to the interpretation or implementation of any of the provisions of this Agreement (any and all disputes and controversies described in this Section 7 are hereinafter collectively referred to as a “Dispute” or “Disputes”), the parties shall make all reasonable efforts to resolve any and all Disputes by amicable negotiations, and the parties shall provide, on a without prejudice basis, full, frank, candid and timely disclosure of relevant facts, information and documents in order to facilitate such negotiations, provided that in so doing the Service Provider and the RDOS are bound to comply with all applicable laws respecting such disclosure.

7.02 In the event either of the parties is of the reasonable opinion that a Dispute cannot be resolved by such negotiation, either party may, upon TEN (10) days’ prior written notice to the other party, require that the Dispute be referred to a mediator for mandatory mediation. The mediator shall be selected by the party to whom notice is given under this paragraph 7.02, from a list of THREE (3) mediators identified in the written notice given by the party requiring the mediation.

7.03 The purpose of any mediation that takes place pursuant to paragraph 7.02 hereof shall be to assist the parties in reaching a voluntary agreement respecting the Dispute. The format and timing of any such mediation shall be as agreed upon by the parties and the mediator, and the costs of the mediator shall be borne equally by the parties.

7.04 In order to promote communication between the parties, counsel, and the mediator and to facilitate settlement of the Dispute, each of the parties will agree that all statements made during the course of the mediation are privileged settlement discussions, are made without prejudice to either party’s legal position, and are inadmissible for any purpose in any legal proceeding. Any information disclosed by a party, or by a witness on behalf of a party, at such mediation is confidential.

7.05 Neither party will make any attempt to compel the mediator’s testimony, nor compel the mediator to produce any documents provided by the other party to the mediator. In no event will the mediator disclose confidential information provided during the course of the mediation, testify voluntarily on behalf of either party, or submit any type of report to any court in connection with the Dispute in issue. The mediator may find it helpful to meet with each party separately in the course of the mediation, and in such event, the mediator will not reveal what is said by a

- party, without that party's permission.
- 7.06 Representatives of the parties will be invited to attend mediation sessions, but no one else may attend without the permission of the parties and the consent of the mediator.
- 7.07 In the event that any Dispute referred to mediation pursuant to paragraph 7.02 hereof has not been resolved with TEN (10) days of the date the mediator was selected, or such further period as may be agreed upon by the parties in writing, the mediator shall terminate the mediation by giving notice of termination to both parties.
- 7.08 In the event the parties are not in agreement to refer a dispute to arbitration pursuant to the *Arbitration Act of British Columbia*, a mediator has not been appointed for whatever reason, or the mediator has been terminated pursuant to paragraph 7.07 herein, in such an event, either party shall then be at liberty to refer the dispute to any Court having jurisdiction and competency to hear the relevant matters.
- 7.09 Any mediation or arbitration proceeding contemplated herein shall be held in the City of Penticton, British Columbia unless the parties mutually agree otherwise.

#### **ARTICLE 8 - Insurance**

- 8.01 Comprehensive General Liability – At the time of signing this Agreement, the Service Provider shall provide, maintain, and pay for Comprehensive General Liability Insurance on an occurrence basis for the Service Provider with limits of not less than \$5,000,000.00 inclusive per occurrence for bodily injury and property damage arising out of the performance of the Services and shall include coverage for:
- (a) premises, activities and operations liability;
  - (b) blanket contractual liability;
  - (c) cross liability;
  - (d) contingent employer's liability;
  - (e) Service Providers protective liability;
  - (f) employees as additional insureds;
  - (g) personal injury;
  - (h) broad form loss of use;
  - (i) broad form property damage;
  - (j) owned and non-owned automobile liability.
- 8.02 The RDOS shall also be named as an additional insured.
- 8.03 This insurance shall be maintained continuously from commencement of the Services until termination of this Agreement.
- 8.04 Public Liability and Property Damage Insurance – The Service Provider shall, at all times, indemnify and save harmless the RDOS and its officers, directors, agents, and employees from and against all claims, damages, losses and expenses arising from personal injury, death, or damage to third party property to the extent directly attributable to the negligent acts, errors, or omissions of the Service Provider.

- 8.05 Equipment Insurance – Notwithstanding anything contained elsewhere herein, it is understood and agreed that the RDOS shall not be liable for any loss or damage to the Service Provider’s equipment, including loss of use thereof. Each and every policy insuring the Service Provider’s equipment to be used on the Services shall contain the following clause:

“It is agreed that the right to subrogation against the RDOS or any of its officers, employees or agents of their parent, subsidiary, affiliated or associated companies or corporations is hereby waived.”

#### **ARTICLE 9 - Termination**

- 9.01 If the RDOS is in default in the observance of any of its covenants, agreements, provisions or other conditions contained herein and such failure continues for a period of 15 days after the giving of written notice by the Service Provider to the RDOS of the nature of the failure, then the Service Provider may cancel this Agreement, without prejudice to any rights to which the Service Provider has accrued under this Agreement before the said cancellation.
- 9.02 If the Service Provider is in default in the observance of any of its covenants, agreements, provisions or other conditions contained herein and such failure continues for a period of 15 days after the giving of written notice by the RDOS to the Service Provider of the nature of the failure, then the RDOS may cancel this Agreement, without prejudice of any rights to the RDOS which the RDOS has accrued under this Agreement before the said cancellation.
- 9.03 The Service Provider agrees that, on termination of this contract, they will do all things necessary to ensure the proper and adequate prosecution of any and all bylaw infractions on which process has been issued, up to and including the date of termination, including the attendance at any court proceedings, as required. This clause shall survive the termination of this contract.

#### **ARTICLE 10 – Indemnity and Waiver**

- 10.01 The Service Provider will indemnify and save harmless the RDOS, its elected officials, its servants, employees and agents from and against:
- (a) any and all claims, suits, lawsuits, injuries, damages, liabilities and expenses (including without limitation, reasonable legal fees and expenses on a solicitor-client basis) and costs of investigation (whether or not litigation occurs) (collectively the “Losses”), occasioned in connection with, or arising or alleged to arise from, wholly or in part, from any breach by the Service Provider, of any of its representations, warranties, covenants or agreements contained herein;
  - (b) any and all Losses occasioned in connection with, or arising or alleged to arise from, wholly or in part:
    - (i) the acts or omissions or violations of any applicable law, rule, regulation or order, of or by the Service Provider or any of its agents, owners, officers, directors, members, managers, representatives, suppliers, employees, servants, players, guests, invitees, participants or performers in connection with the Services; or
    - (ii) the Service Provider’s exercise of the privileges herein granted, except to the extent any such Losses were caused by the negligence of the RDOS and their employees or agents.

- 10.02 The Service Provider will exercise due diligence and all reasonable care to prevent damage to, or loss of any property in the Service Area. On the occurrence of damage or loss to property, the Service Provider will immediately take appropriate action to mitigate or prevent further damage or loss and immediately notify the RDOS so the RDOS can provide direction as to remedial measures to be undertaken.  
The Service Provider will comply with any directions given by the RDOS under this paragraph 10.02 in a timely manner.

#### **ARTICLE 11 – Miscellaneous Terms and Conditions**

- 11.01 Any notice or document required to be given under this Agreement shall be conclusively deemed to be validly given or delivered to and received by the Parties:
- (a) if hand delivered, included by bonded courier, to a Party at the address specified in this Agreement, as amended from time to time, on the date of that personal delivery; or
  - (b) if mailed, on the third business day after the mailing of the same by prepaid post to the addresses specified in this Agreement, as amended from time to time; or
  - (c) if sent by facsimile transmission, when transmitted, only if transmitted to the facsimile machine numbers specified in this Agreement, as amended from time to time. The onus of proving transmission and valid delivery lies with the transmitting Party, by copy of a facsimile transmission confirmation to the appropriate fax number;
  - (d) if sent by email as of the time of verified reception to an email address specified in this Agreement, as amended from time to time. The onus of proving reception lies with the mailing Party, by copy of an email confirmation to the appropriate email address.
- 11.02 If either party to this Agreement is prevented or delayed from performing any of its obligations on its part to be performed hereunder by reason of an event of force majeure then and in every such event, any such prevention or delay shall be deemed to be a breach of this Agreement. The performance shall not be deemed to be a breach of this Agreement but performance of any of the said obligations or requirements shall be suspended during such period or disability and the period of all such delays resulting from any such thing required or permitted by either party to be done is to be done hereunder, it being understood and agreed that the time within which anything is to be done, or made pursuant hereto, shall be extended by the total period of all such delays unless is otherwise provided herein. For the purposes of this paragraph 11.02, an event of force majeure means any circumstances or act beyond the reasonable control of the party claiming force majeure and which could not have been avoided or prevented by due diligence and the use of reasonable efforts by the party claiming force majeure, including, without limitation, labor disputes, strikes, lock outs, unavoidable casualties, riots, insurrection or terrorism, which have the effect of preventing or hindering performance, if such circumstance or events are beyond the reasonable control of the party claiming force majeure and could not have been avoided or prevented by due diligence and the use of reasonable efforts by the party claiming force majeure, provided in no event will a lack or insufficiency of funds or failure to make payment of monies on the part of the party claiming force majeure or be allowed to give rise to an event of force majeure and in no event will a circumstance or act arising out of the default by a party claiming force majeure of its obligations under this agreement be allowed to give rise to an event of force majeure.

- 11.03 Time shall be of the essence of this Agreement and of every part hereof and no extension or variation of this Agreement shall operate a waiver of this provision.
- 11.04 The duties and obligations imposed by this Agreement and the rights and remedies under this Agreement are in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- 11.05 All representations, indemnities and warranties set forth in this Agreement and all provisions of this Agreement, the performance of which is not required prior to the termination of the Agreement shall survive such termination and shall be fully enforceable hereunder.
- 11.06 This Agreement shall enure to the benefit of the parties and their respective heirs, executors, administrators, successors and permitted assigns as the case may be and shall be binding upon their heirs, executors, administrators, successors and assigns as the case may be.

#### **ARTICLE 12 - Whole Agreement**

- 12.01 The provisions of this Agreement constitute the whole agreement between the parties and supersedes all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the provision of the Services.

#### **ARTICLE 13 – Waiver or Non-Action**

- 13.01 Waiver by the RDOS of any breach of any term, covenant or condition of this Agreement by the Service Provider shall not be deemed to be a waiver of any subsequent default by the Service Provider. Failure by the RDOS to take any action with respect to any breach of any term, covenant or condition of this Agreement by the Service Provider shall not be deemed to be a waiver of such term, covenant or condition.

#### **ARTICLE 14 - Interpretation**

- 14.01 In this Agreement, unless the Agreement otherwise requires, the singular includes the plural and the masculine includes the feminine, corporation or body politic.
- 14.02 The captions and headings contained in the Agreement are for convenience only and are not be construed as defining or in any way limiting the scope or intent of the provisions of the Agreement.
- 14.03 In this Agreement, a reference to an enactment of the Province of British Columbia or of Canada includes a reference to any subsequent enactment of like effect, and unless the Agreement otherwise requires, all statutes referred to in this Agreement are enactments of the Province of British Columbia.
- 14.04 If any part of this Agreement is found to be illegal or unenforceable, that part will be considered separate and the remaining parts will be enforceable to the fullest extent permitted by law.

**ARTICLE 15 - Execution**

15.01 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original, faxed or electronic mail form and the Parties adopt any signatures received by a receiving fax machine or electronic mail as original signatures in such manner promptly forward to the other Parties an original of the signed copy of this Agreement which was so faxed or electronically mailed.

**ARTICLE 16 - Schedules**

16.01 The Schedules to this Agreement form part of this Agreement. In the event of a conflict between the main body of this Agreement and a Schedule, the main body of this Agreement shall prevail. This Agreement includes the following Schedules:

<u>Schedule</u>	<u>Title</u>
A	List of Services
B	Service Area

IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the day and year last written below.

**REGIONAL DISTRICT OF  
OKANAGAN-SIMILKAMEEN**  
by its authorized signatories:

\_\_\_\_\_

\_\_\_\_\_

Date Executed: \_\_\_\_\_

by its authorized signatory:

\_\_\_\_\_

Date Executed: \_\_\_\_\_

## **6. SCHEDULE "A"**

### **LIST OF SERVICES**

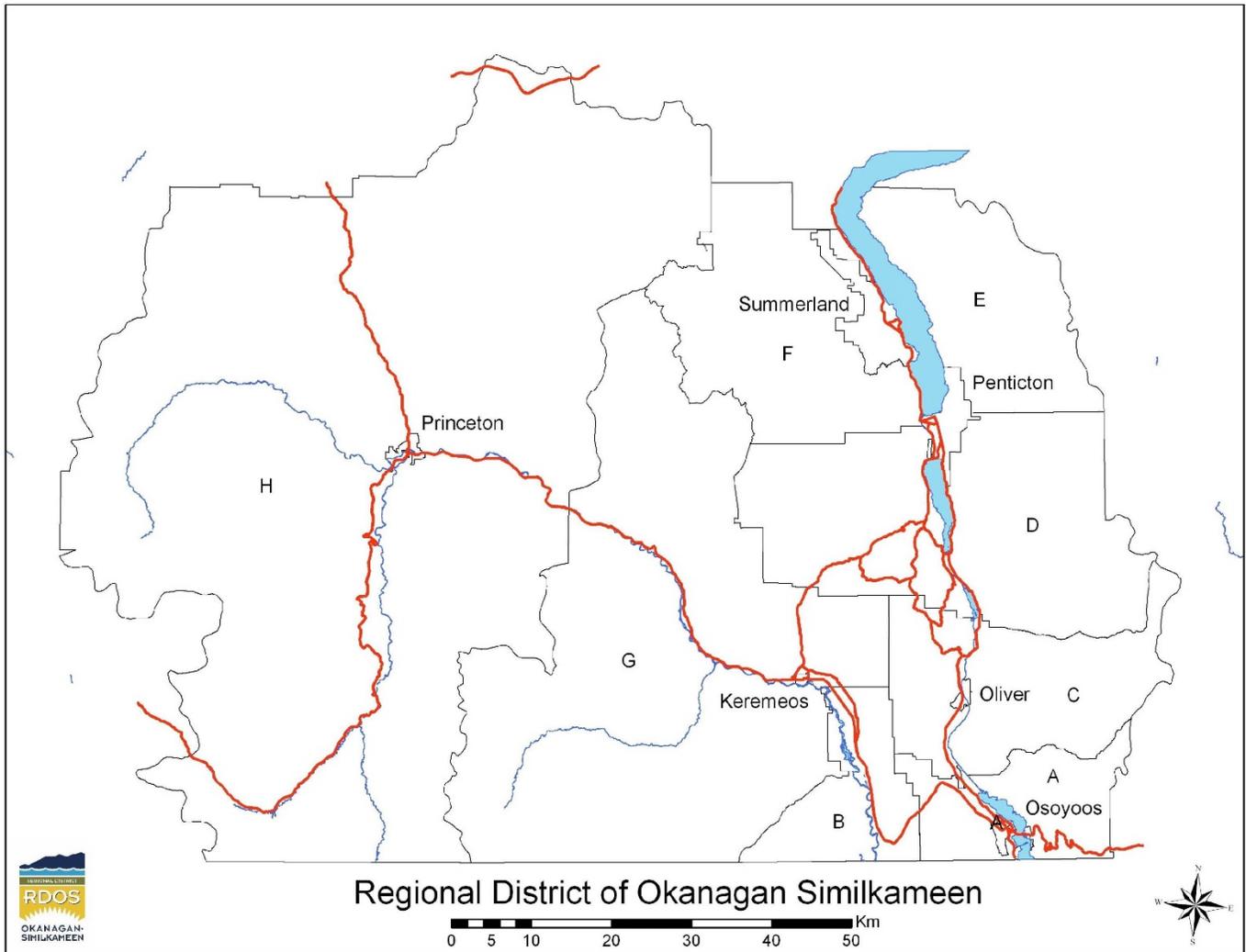
- 1.** The Service Provider (SP) is required to carry out Bylaw Enforcement work throughout the Service Area and on the following RDOS Bylaws:
  - a.** Official Community Plan Bylaws
  - b.** Zoning Bylaws
  - c.** Untidy and Unsightly Bylaws
  - d.** Noise Control Bylaws and
  - e.** Other regulatory bylaws as directed from time to time.
- 2.** The SP will be required to attend to complaints, carry out site inspections, communicate with the violator, provide inspection reports, take photographs, issue Municipal Ticket Information and / or Bylaw Offence Notices, with the RDOS providing specific direction when required or requested by the SP.
- 3.** The SP will be available to provide the Services Monday to Friday, typically between the hours of 8:00 a.m. and 5:00 p.m. The SP may work flexible hours during the week and may schedule hours to provide the Services over the weekend or on a Statutory Holiday, as deemed necessary.
- 4.** Notwithstanding 3 above, and for Noise Bylaw complaints only, the SP will provide an officer 24 hours per day, 365 days a year and will:
  - a.** Receive and maintain a record of all noise complaints, including the property address, the time of the call, the nature of the call and the action taken by the Officer.
  - b.** Contact and advise alleged violators of complaint(s) received and means to comply within 24 hours of complaint receipt.
  - c.** Forward copies of tickets issued to RDOS office by the next business day, and
  - d.** Provide noise complaint records when requested by RDOS.
- 5.** The SP will advise the RDOS of names and qualifications of all employees associated with RDOS enforcement. The SP will be responsible for all costs associated with employees, including wages, benefits, vacations, statutory vacation pay, sick leave, insurance and any other benefits.
- 6.** The SP and all appointed staff shall be of good character, be courteous to the public, and shall submit to a criminal records check upon request of the RDOS.
- 7.** For the purposes of this agreement, the SP will work under the direction of the Regional District of Okanagan-Similkameen, specifically the Development Services Manager and/or Bylaw Enforcement Coordinator.
- 8.** When on RDOS duty, the vehicle being used by the Officer will bear the magnetic signage provided by RDOS to identify the affiliation with RDOS.
- 9.** All reports and pictures will be submitted to RDOS within 7 days of inspection date.
- 10.** The SP will notify the Bylaw Enforcement Coordinator when fines are issued and will submit copies (with the exception of the Officer's copy) within 24 hours of issuance.

- 11.** Revenue from fines collected will be retained by the RDOS.
- 12.** The SP will provide monthly invoices including hours worked by date, segregated by the Bylaw being enforced, and Electoral Area, and record of mileage. The monthly report shall be submitted to the RDOS within the 7 days of the end of the previous month.
- 13.** The SP will prepare reports and other necessary documents and to give evidence in Court or at a Bylaw Adjudication Hearing as required by the RDOS for prosecutions of bylaw violations. Upon request of the RDOS, the SP will forward all records and materials (electronic or written) with respect to the Services within 10 working days.
- 14.** The SP is required to track all fossil fuel consumption for each calendar year throughout the entire project. The SP shall provide a fossil fuel report to the Regional District by February 1<sup>st</sup> of each year detailing the previous year's usage. The consumption shall be tracked by vehicle type and type of fuel used, and should include all subcontractor usages.
- 15.** The SP will provide such other bylaw enforcement services as may be required by the RDOS from time to time, acting reasonably.

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## 7. SCHEDULE "B"

### Service Area



**SERVICE AREA excludes: District of Summerland, City of Penticton, Town of Oliver, Town of Osoyoos, Village of Keremeos, Town of Princeton and First Nation Lands**