

# THE CORPORATION OF THE DISTRICT OF OAK BAY



## Request for Proposals

Carnarvon Park Master Plan

RFP No. OBRC 02 - 2018

May 24, 2018

DISTRICT OF  
OAK  BAY

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## 1.0 Introduction

The Corporation of the District of Oak Bay is requesting proposals from qualified consultants/consulting firms who are interested in producing a long term vision and plan for Carnarvon Park in Oak Bay.

## 2.0 Submission Details

2.1 Proponents are requested to submit two (2) copies of their Proposal marked "RFP OBRC 02-2018 Carnarvon Park Plan" to Oak Bay Municipal Hall, 2167 Oak Bay Avenue, Victoria, BC, V8R 1G2 on or before:

**Thursday, 12:00:00 noon, local time, on June 18<sup>th</sup>, 2018**

2.2 All enquiries relating to this RFP, including any requests for information and clarification, are to be directed to Ray Herman by email at [rherman@oakbay.ca](mailto:rherman@oakbay.ca) by June 8, 2018. Inquiries and responses relating to this RFP will be distributed by email to the proponents that register. All proponents must register using the above email address in order to obtain addenda by June 6, 2018. It is the sole responsibility of each Proponent to ensure that they have received all amendments and addenda related to this RFP.

2.3 The District reserves the right to cancel this Request for Proposal for any reason without any liability to any proponent or to waive irregularities at their own discretion.

2.4 Proposals may be withdrawn by written notice only, provided such notice is received at the office of the Director of Parks, Recreation and Culture, Ray Herman, prior to the date/time set as the closing time for receiving proposals.

2.5 Proposals shall be open for acceptance for sixty (60) days following the submission closing date.

2.6 Except as expressly and specifically permitted in these instructions, no Proponent shall have any claim for any compensation of any kind whatsoever, as a result of participating in the RFP, and by submitting a proposal each proponent shall be deemed to have agreed that it has no claim.

2.7 Proponents are advised that the District will not necessarily accept any Proposal and the District reserves the right to reject any or all Proposals at any time without further explanation or to accept any Proposal considered advantageous to the District.

2.8 A Proposal which contains an error, omission, or misstatement, which contains qualifying conditions, which does not fully address all the requirements of this RFP, or which otherwise fails to conform to the requirements in this RFP may be rejected in whole or in part by the District at its sole discretion.

- 2.9 The District may waive any non-compliance with the RFP, specifications, or any conditions including the timing of delivery of anything required by the RFP and may, at its sole discretion, elect to retain for consideration Proposals which are non-conforming, which do not contain the content or form required by the RFP or because they have not complied with the process for submission set out herein.
- 2.10 The District may choose, at its sole discretion, to proceed with all of the components of the work, none of the components or selected components of the work.
- 2.11 All Proposals will remain confidential, subject to the Freedom of Information and Protection of Privacy Act of British Columbia.
- 2.12 The Consultant must not disclose personal information to any person other than the District. If the Consultant receives a request for access to personal information from any person other than the District, the Consultant must promptly direct the person to contact the Director of Parks, Recreation and Culture.
- 2.13 Proposals must be submitted in English.

### **3.0 Negotiations**

- 3.1 If a written contract cannot be negotiated within fifteen (15) days of notification to the preferred Proponent, the District may, at its discretion at any time thereafter, terminate negotiations with the preferred Proponent and either enter into negotiations with any qualified Proponent or cancel the RFP process in its entirety.

### **4.0 Review of Proposals**

- 4.1 The District will review the Proposals submitted to determine whether, in the District's opinion, Proponents have demonstrated the required experience and qualifications to fulfill the obligations of the services identified in this RFP.
- 4.2 The District, in its sole discretion and without having any duty or obligation to do so, may conduct any inquiries or investigations, including but not limited to contacting references, to verify the statements, documents, and information submitted in connection with the Proposal and may seek clarification from the Proponent's clients regarding any financial and experience issues.
- 4.3 Proposals will be reviewed on the following criteria:
- i. Understanding of scope of work;
  - ii. Relevant experience, capability & qualification;
  - iii. Proposal Fee;
  - iv. Project Deliverables and timelines; and
  - v. References.

4.4 Proponents may be scheduled for an interview at the discretion of the District.

## **5.0 Non-Conforming Applications**

5.1 Proposals which fail to conform to any requirement of this RFP may be rejected by the District. Notwithstanding the foregoing or any other provision of this RFP, the District may at its sole discretion elect to retain for consideration Proposals which deviate either materially from the format requirements set out in hereto or which otherwise fail to conform to any other requirement of this RFP except the requirement of delivery of the Proposal prior to Closing Time.

## **6. RFP Process**

6.1 The District may unilaterally take the following actions, and shall not be liable for any such actions:

- i. Amend the scope and description of the services to be procured as described in this RFP, and the qualifications that may be required to meet those requirements;
- ii. Reject or accept any or all Submissions;
- iii. Cancel the RFP process at any time and reject all submissions; or
- iv. Cancel the RFP process and recommence in respect of the same RFP with the same or an amended set of documents, information and requirements.

6.2 The Respondent acknowledges and agrees that any RFP is in no way whatsoever an offer to enter into an agreement and submission of a Request of Proposal by any Respondent does not in any way whatsoever create a binding agreement. The Respondent acknowledges that the District has no contractual obligations whatsoever arising out of the RFP process.

## **7.0 Information Disclaimer**

7.1 The District and its directors, officers, employees, agents, consultants and advisors are not liable or responsible for any verbal or written information, or any advice, or any errors or omissions, which may be contained in this RFP or otherwise provided to the Serviced provider pursuant to this RFP.

7.2 The District makes no representation, warranty, or undertaking of with respect to this RFP and the District and its directors, officers, employees, agents, consultants and advisors, shall not be liable or responsible for the accuracy or completeness of the information in this RFP or any other written or oral information made available to any interested person or its advisors, and any liability however arising, is expressly disclaimed by the District.

## 8.0 Scope of Work

### 8.1 Background

Carnarvon Park is a 4 hectare developed sports park surrounded by residential housing in central Oak Bay. The park includes sports fields and ball diamonds, tennis courts, a lacrosse box, a water park/playground, lawn bowling greens/clubhouse and a building which includes change rooms, washrooms and spaces that were previously utilized for daycare. The building, lacrosse box and tennis courts are in various states of disrepair, and the water park will need refurbishment and/or potential expansion in the foreseeable future.

As a number of the park's amenities are aging and will require refurbishment or replacement, Oak Bay requires a long term plan to allow for the most efficient use of future funding. This park is well used and is important to user groups and neighboring residents. A thorough public consultation process will be important to the success of the project. The budget for this project is \$45,000.

### 8.2 Purpose

The District of Oak Bay's Official Community Plan (2014) includes a recommendation to prepare a master plan for Carnarvon Park, given current redevelopment opportunities, in the short term (1-3 years). While the OCP also recommends preparation of a Parks, Recreation & Culture Master Plan, the planning of Carnarvon Park is of such timely importance that it was deemed to be the more immediate priority.

It is expected that the sports fields and the lawn bowling greens/clubhouse will not require significant attention – Oak Bay is not looking to make changes in these areas of the park. The primary area of focus for this project is the northwest section of the park. It is in this area where the main building, water park, tennis courts and lacrosse box are located.

### 8.3 Objectives

- In consultation with municipal staff, the Parks, Recreation & Culture Commission, Oak Bay Council, stakeholder groups and the community, develop a plan for the re-development of Carnarvon Park that will serve Oak Bay for the next 20-30 years.
- Include in the plan Class 5/Order of Magnitude Cost Estimates for all proposed capital improvements to the park, including the removal of any existing infrastructure.
- Include in the plan a prioritized list of all proposed improvements (i.e. numbered, or Low/Medium/High).
- Meet initially with municipal staff for identification of key issues, options and constraints.
- Compile pertinent background material and information about the park and its users.

- Facilitate an initial meeting with Council, and the Parks, Recreation & Culture Commission to solicit their input regarding the park's future.
- Conduct a thorough and comprehensive public consultation process, which is inclusive of all park user groups, neighbors and the general public. A detailed overview of this process should be included in the proponent's submission.
- Consider trends and current pressures on the Oak Bay park system (e.g. pickleball, dog parks, community gardens) as part of the analysis of potential appropriate uses of Carnarvon Park in the future.
- The consultant will provide a Draft Report for review.
- Attend a meeting in the community to present the draft plan.
- Provide a Final Report including the park plan and a drawing(s). The Final Report to be in 8.5" x 11" format, including one electronic copy in Word 2013 and three bound hard copies.
- The consultant will be required to present the Final Report to Council and the Parks, Recreation & Culture Commission in one joint meeting.
- The consultant will be responsible to lead all public meetings and presentations. The District of Oak Bay will be responsible for notification and advertising of meetings, arranging meeting spaces and provision of refreshments.

#### 8.4 Reporting Structure

The Consultant will report directly to the District of Oak Bay's Director of Parks, Recreation & Culture.

#### 8.5 Meetings and Presentations

As part of the proposed public consultation process, the Consultant will be required to meet with the following groups at minimum:

- Municipal Council
- District of Oak Bay staff
- Oak Bay Parks, Recreation and Culture Commission
- Carnarvon Park stakeholder groups

The consultant will be required to present the Draft Final Report to Council and the Parks & Recreation Commission. This can be addressed in a combined meeting (one presentation).

The consultant will be responsible to lead all meetings. The District of Oak Bay will provide administrative support related to notification and advertising of meetings, along with the provision of meeting spaces.

#### 8.6 Deliverables

- Final report in 8½" x 11" format (3 bound copies)

- One electronic copy of the above, in Word 2013
- Feedback from the public consultation processes

## 9. Minimum Qualifications for Contractors

- Proponents will be qualified consulting parks planners, landscape architects or similar multi-disciplinary teams with extensive experience with public space master planning.
- Skill and experience in leading effective and comprehensive public consultation processes related to public park spaces.

## 10. Proposal Submissions

The following should be included in the proposal submission and will be the basis for evaluation. Information should be provided sequentially as listed.

### 10.1 Qualifications and Experience: *25 points*

Identify staff and/or sub-consultants to be assigned to the project along with their related qualifications and experience. Demonstrate the firm's ability to complete the project to a high standard.

### 10.2 References: *15 points*

Prepare a list, in chronological order, of three (3) similar projects completed for a municipal government. Provide a name and contact information for each of the referenced projects.

### 10.3 Methodology and Work Plan: *35 points*

Describe your understanding of the project and the methodology to be utilized in your work plan. Include person-hour estimates for each of the work activities. This section to include a detailed overview of the public consultation process.

### 10.4 Proposal Fee: *20 points*

Provide a fee proposal which includes a breakdown of the hourly rates of all personnel, disbursements, taxes and any other charges as applicable.

### 10.5 Schedule: *5 points*

Provide a proposed work schedule including earliest start date and final completion date. In addition, provide evidence of your availability and commitment for meetings, including those with short notice.

**10.6 Evaluation Committee**

The Evaluation Committee may apply the evaluation criteria on a comparative basis, evaluating the proposals by comparing one proponent's proposal to another proponent's proposal. The Evaluation Committee will not be obligated to select the proposal that offers the lowest price or any proposal at all.

**11. Reference Material**

The District of Oak Bay shall make all reference material and requested municipal information available to the Consultant for review. This material will include, but may not be limited to:

- Official Community Plan (2014)
- Report of the Parks Vision Committee (Updated 2011)

**12. Working Agreement**

The successful proponent will enter into a contract for services with the District based upon the information contained in this request for proposal and the successful proponent's submission and any modifications thereto.

**13. Insurance**

The Consultant shall, at his own expense, provide and maintain until the completion of the Services the following insurance in a form acceptable to the District with an insurer licensed in British Columbia:

13.1	Commercial General Liability	\$3,000,000.00
13.2	Professional Liability	\$2,000,000.00
13.3	Automobile Insurance (owned and non-owned)	\$3,000,000.00

Commercial General Liability policies shall name the District as an additional insured, and all such policies shall contain a provision that the insurance shall apply as though a separate policy had been issued to each named insured. Commercial General Liability policies shall provide that no cancellation or lapse in the policy shall become effective until THIRTY (30) Days after written notice of such cancellation; lapse has been given to the District.

Any deductible amounts in the foregoing insurance which are payable by the policyholder shall be in an amount acceptable to the District.

The Consultant shall provide the District with a certificate or certificates of insurance as evidence that such insurance is in force including evidence of any insurance renewal or policy or policies.

Maintenance of such insurance and the performance by the Consultant of their obligation under this clause shall not relieve the Consultant of liability under the indemnify provisions set forth herein.

**APPENDIX 1 –  
PROPONENT INFORMATION AND AGREEMENT FORM**

(should be completed and returned)

**PROPONENT INFORMATION**

Legal Business Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Information: \_\_\_\_\_  
(telephone / cell / fax / email)

**PROPONENT AGREEMENT**

The enclosed proposal is submitted in response to the above-referenced Request for Proposals, including any addenda. Through submission of this proposal we agree to all of the terms and conditions of the Request for Proposals and agree that any inconsistent provisions in our proposal will be as if not written and do not exist. We have carefully read and examined the Request for Proposals, including the Instructions to Proponents and the Sample Contract, and have conducted such other investigations as were prudent and reasonable in preparing the proposal. We agree to be bound by statements and representations made in our proposal.

Signature of Authorized Representative: \_\_\_\_\_

Printed Name of Authorized Representative: \_\_\_\_\_

Title of Authorized Representative: \_\_\_\_\_

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

To acknowledge receipt of each addendum, each addendum number issued should be noted below with a signature of an authorized representative of the organization, as being received.

Addendum No. 1                      Signature \_\_\_\_\_                      Date \_\_\_\_\_

Addendum No. 2                      Signature \_\_\_\_\_                      Date \_\_\_\_\_

Addendum No. 3                      Signature \_\_\_\_\_                      Date \_\_\_\_\_

## APPENDIX 2 – CONTRACT

**THIS PROFESSIONAL SERVICES AGREEMENT** is dated the \_\_\_\_\_ day of \_\_\_\_\_, 2018

BETWEEN:

**THE CORPORATION OF THE DISTRICT OF OAK BAY**  
2167 Oak Bay Avenue  
Victoria, BC V8R 1G2

(Hereinafter called “**District**”) OF THE FIRST PART

AND:

**NAME OF CONSULTANT**

(Inc. No.)

Address

Address

(Hereinafter called the “**Consultant**”) OF THE SECOND

PART

### WHEREAS:

- A. The District issued Request for Proposals No. RFP OBRC 02-2018 (the “**RFP**”) for the provision of Consulting Services for Carnarvon Park Master Plan, which is known as Schedule “A”;
- B. The Consultant in reply to the RFP submitted a proposal dated June 6, 2018 (the “**Proposal**”), which is known as Schedule “B”, which the District has accepted under the terms set out herein;
- C. The District has agreed to engage the Consultant, and the Consultant has agreed to be engaged by the District in respect of the Services on the terms and subject to the conditions set out in this Agreement.

**NOW THEREFORE** the District and the Consultant, in consideration of their mutual duties and responsibilities to one another as set out in this Agreement, agree as follows:

### ARTICLE 1 – DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following words have the following meanings:
  - 1.1.1 “**Agreement**” means this agreement for services, including its recitals.
  - 1.1.2 “**Business Day**” means any Day except Saturday, Sunday, or a statutory holiday as defined in the *Interpretation Act* (British Columbia).

- 1.1.3 **“Change Notice”** means a change notice issued by the District in accordance with section 10.1.
- 1.1.4 **“Day”** means a calendar day.
- 1.1.5 **“Event of Default”** means any of the following:
- 1.1.5.1 an Insolvency Event;
  - 1.1.5.2 the Consultant fails to perform any of the Consultant’s obligations under this Agreement;
  - 1.1.5.3 any representation or warranty made by the Consultant in this Agreement is untrue or incorrect.
- 1.1.6 **“Insolvency Event”** means any of the following:
- 1.1.6.1 an order is made, a resolution is passed or a petition is filed, for the Consultant’s liquidation or winding up;
  - 1.1.6.2 the Consultant commits an act of bankruptcy, makes an assignment for the benefit of the Consultant’s creditors or otherwise acknowledges the Consultant’s insolvency;
  - 1.1.6.3 a bankruptcy petition is filed or presented against the Consultant or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by the Consultant;
  - 1.1.6.4 a receiver or receiver-manager is appointed for any of the Consultant’s property; or
  - 1.1.6.5 the Consultant ceases, in the District’s reasonable opinion, to carry on business as a going concern.
- 1.1.7 **“Services”** means the Consultant’s duties and responsibilities to the District as described in the RFP and the Proposal.
- 1.1.8 **“Term”** means the term of this Agreement as set out in Schedule “A”, and where applicable includes any renewal thereof.
- 1.2 The captions or headings appearing in this Agreement are inserted for convenience of reference only, and shall not affect the interpretation of any provision in it.
- 1.3 Whenever the singular or masculine is used in this Agreement, the same shall be deemed to include the plural or the feminine or the body politic or corporate where the context or the parties so require.
- 1.4 In this Agreement, unless expressly provided otherwise, in the event of any conflict or inconsistency between or among the provisions of this Agreement and any other documents forming a part of this Agreement, the documents shall govern and take precedence in the following order:
- 1.4.1 Change Notices, with the most recent taking precedence;
  - 1.4.2 this Agreement;
  - 1.4.3 Schedule “A”
  - 1.4.4 Schedule “B”

- 1.4.5 Schedule "C"
- 1.4.6 Schedule "D" – not required
- 1.4.7 Schedule "E" – not required

## **ARTICLE 2 - CONSULTANT'S DUTIES AND RESPONSIBILITIES TO THE DISTRICT**

- 2.1 The Consultant must render the Services to the District under this Agreement with that degree of care, skill and diligence normally provided by consultants having similar qualifications in the performance of duties of a similar nature to that contemplated by this Agreement at the time and place that such services are rendered and more particularly set out in the RFP and the Proposal, and ensure that all persons employed or retained by the Consultant to perform the Services are qualified and competent to perform them and are properly trained, instructed and supervised.
- 2.2 The Consultant must charge for the performance of all of the Services only the fees and disbursements authorized under this Agreement. Unless the District agrees otherwise in writing, the Consultant must supply and pay for all labour, equipment, tools, facilities, approvals and licenses necessary or advisable to perform the Services.
- 2.3 The Consultant must perform the Services to be provided under this Agreement within the time limits specified in the RFP and the Proposal or, if no time limit is specified for a particular component of the Services, the Consultant must perform such component of the Services promptly, it being acknowledged and agreed that time is of the essence of this Agreement.
- 2.4 The Consultant must comply with any reasonable instructions given to the Consultant (in writing or otherwise) by the District from time to time with respect to the performance of the Services.
- 2.5 The Consultant must obtain and maintain throughout the Term the insurance required under Schedule "C" of this Agreement.
- 2.6 Without limiting the generality of section 2.5, the Consultant must comply with, and must ensure that any permitted subcontractors comply with, all applicable occupational health and safety laws in relation to the Services, including the Workers Compensation Act and regulations thereunder. The Consultant must, prior to the commencement of the Services, execute and deliver to the District an Occupational Health and Safety Agreement in the form set out in Schedule "D". If the Consultant is an individual or a partnership of individuals and does not have the benefit of mandatory workers compensation coverage under the Workers Compensation Act, the Consultant must apply for and maintain personal optional protection insurance (consisting of income replacement and medical care coverage) during the Term at the Consultant's expense if such personal optional protection insurance is available for the Consultant from WorkSafeBC or other sources.
- 2.7 The Consultant must perform the Services in compliance with all applicable laws.

- 2.8 The Consultant must release, indemnify and keep indemnified the District, its officers, employees, servants, agents and contractors of and from all claims, costs, losses, damages, actions, causes of action, expenses and costs arising from an error, omission or negligent act of the Consultant in the performance of the Services by the Consultant or arising from the breach of this Agreement by the Consultant. The release and indemnity in this section 2.8 shall survive the expiry or earlier termination of this Agreement.
- 2.9 If one or more individuals are specified as “Key Personnel” of the Consultant in the Proposal, the Consultant must cause those individuals to perform the Services on the Consultant’s behalf, unless the District otherwise approves in writing, which approval must not be unreasonably withheld.
- 2.10 Whenever in the performance of the Services the Consultant supplies or provides to the District any good or material item whatsoever, in addition to and without derogating from the Consultant’s duties and responsibilities set out elsewhere in this Agreement, the Consultant must supply or provide such good or material item in accordance with the terms and conditions set out in Schedule “E”.
- 2.11 The Consultant must obtain and maintain throughout the Term a valid District of Oak Bay Business Licence or a valid Inter-municipal Business Licence and must provide evidence of the same upon request by the District.
- 2.12 The Consultant must be able to take over monthly support for the District within 30 days of award, not including site visit.
- 2.13 The Consultant must sign a Non-Disclosure Agreement with the District.

### **ARTICLE 3 - DISTRICT’S DUTIES AND RESPONSIBILITIES TO THE CONSULTANT**

- 3.1 The District must make available to the Consultant all relevant information or data pertinent to the Services which is in the hands of the District and is required by the Consultant and instruct the Consultant to the extent of the District’s ability as to the District’s total requirements in connection with the Services. The Consultant will be entitled to rely upon the accuracy and completeness of such information and data furnished by the District, except where it is stated otherwise or unreasonable to do so.
- 3.2 Where the District has provided an instruction under section 2.4 other than in writing, and the Consultant has requested written confirmation, the District must give written confirmation of the instruction to the Consultant as soon as reasonably practicable. A request for written confirmation by the Consultant shall not relieve the Consultant from complying with the instruction at the time the instruction is given.
- 3.3 Upon the request of the Consultant, the District will authorize the Consultant to act as its agent for such purposes as are necessary to the Consultant providing the Services.

- 3.4 The District must give reasonably prompt consideration to all draft reports, drawings, Proposals and other documents relating to the Services provided to the District by the Consultant, and, whenever prompt action is necessary, where possible, inform the Consultant of a decision in such reasonable time so as not to delay the services of the Consultant.

#### **ARTICLE 4 - FEES & EXPENSES**

- 4.1 The District shall pay to the Consultant for the Services rendered under this Agreement fees, including disbursements.
- 4.2 The Consultant will be paid for the Services on a monthly basis. The District's payment policy is to pay within THIRTY (30) Days from the date of receipt of invoice. Invoices issued by the Consultant must be in a form satisfactory to the District. Final payment will be made upon the submission of completed works including reports, contract documents, drawings, etc. The invoices submitted shall indicate the person hours expended on the Services in each category with other costs detailed as appropriate. Final billing must be received within THIRTY (30) days of the completion of the Services.
- 4.3 Without limiting section 2.8, the District may withhold from any payment due to the Consultant an amount sufficient to indemnify, in whole or in part, the District, its officers, employees, servants, agents and contractors against any liens or other third-party claims that have arisen or could arise in connection with the provision of the Services. An amount withheld under this section must be promptly paid by the District to the Consultant upon the basis for withholding the amount having been fully resolved to the satisfaction of the District.
- 4.4 Disbursements incurred by the Consultant in rendering the Services may include the following:
- 4.4.1 The expense of necessary and reasonable transport, subsistence and lodging in connection with the Services where the Consultant is required or requested by the District to travel to a location more than FIVE (5) kilometres from the Consultant's ordinary place of business.
  - 4.4.2 All other reasonable and necessary disbursements made by the Consultant in rendering the Services, other than those listed above.
  - 4.4.3 All the Consultant's direct costs of reasonable office photocopying, printing, reproductions, mailing, packaging, shipping, deliveries and duties, long distance telephone charges, telecopies and other normal disbursements necessarily incurred by the Consultant in connection with the performance of this Agreement.
- 4.5 Unless otherwise specified in this Agreement, all references to money are to Canadian dollars.
- 4.6 Except as provided in this Agreement, or as otherwise agreed in writing, the District shall not be liable to pay or reimburse the Consultant for any costs incurred or

expenditures made or purported to be made by the Consultant on behalf of the District.

- 4.7 The Consultant must, for a period of not less than 7 years following the expiry or earlier termination of this Agreement, keep and maintain accurate time sheets, proper accounts and records of all expenditures in connection with the Services performed under this Agreement, including without limitation all wages paid to the Consultant's employees, and these shall at all times be open to audit and inspection by the authorized representative of the District.
- 4.8 The Consultant must submit monthly statements and vouchers to the District to verify all Disbursements.

## **ARTICLE 5 – DEFAULT AND TERMINATION**

- 5.1 On the happening of an Event of Default, or at any time thereafter, the District may, at its option, elect to do any one or more of the following:
- 5.1.1 by written notice to the Consultant, require that the Event of Default be remedied within a time period specified in the notice;
  - 5.1.2 pursue any remedy or take any other action available to it at law or in equity; or
  - 5.1.3 by written notice to the Consultant, terminate this Agreement with immediate effect or on a future date specified in the notice, subject to the expiration of any time period specified under section 5.1.
- 5.2 In addition to the District's right to terminate this Agreement under section 5.1.3 on the happening of an Event of Default, the District may terminate this Agreement for any reason by giving at least 10 Business Days' written notice of termination to the Consultant.

Consulting firms may be terminated at the sole discretion of the District under any of the following circumstances:

- 5.2.1 Repeated inability of a Proponent to provide support in response to a District request.
  - 5.2.2 Provision of a resource in response to a District request where the submitted resource does not meet the criteria set in this document.
  - 5.2.3 A supplied resource does not complete an assignment to the satisfaction of the District
  - 5.2.4 A breach of the confidentiality requirements contained in this request.
- 5.3 If the District terminates this Agreement under section 5.2:
- 5.3.1 the District must, within 30 Days of such termination, pay to the Consultant any unpaid portion of the fees and expenses described in the Proposal which corresponds with the portion of the Services that was

completed to the District's satisfaction before termination of this Agreement; and

- 5.3.2 the Consultant must, within 30 Days of such termination, repay to the District any paid portion of the fees and expenses described in the Proposal which corresponds with the portion of the Services that the District has notified the Consultant in writing was not completed to the District's satisfaction before termination of this Agreement

5.4 The payment by the District of the amount described in section 5.3.1 discharges the District from all liability to make payments to the Consultant under this Agreement.

5.5 If the Consultant becomes aware that an Event of Default has occurred or anticipates that an Event of Default is likely to occur, the Consultant must promptly notify the District of the particulars of the Event of Default or anticipated Event of Default. A notice under this section as to the occurrence of an Event of Default must also specify the steps the Consultant proposes to take to address, or prevent recurrence of, the Event of Default. A notice under this section as to an anticipated Event of Default must specify the steps the Consultant proposes to take to prevent the occurrence of the anticipated Event of Default.

## **ARTICLE 6 — DISPUTE RESOLUTION**

6.1 If requested in writing by either the District or the Consultant, the District and the Consultant shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by first entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. If a dispute cannot be settled within a period of thirty (30) Days with the mediator, if mutually agreed, the dispute shall be referred to arbitration pursuant to the *Arbitration Act* (British Columbia).

6.2 No one shall be nominated to act as an arbitrator who is in any way financially interested in the provision of the Services or in the business affairs of either the District or the Consultant.

6.3 If the parties cannot agree on the choice of an arbitrator each party shall select a nominee and the nominees shall jointly appoint an arbitrator.

6.4 The award of the arbitrator shall be final and binding upon the parties.

6.5 Costs of the arbitration must be divided equally between the parties.

## **ARTICLE 7 – INFORMATION SECURITY AND CONFIDENTIALITY**

7.1 The Consultant acknowledges and represents and warrants to the District that it is familiar with the requirements of the FOI Act concerning the collection, storage and use of personal information that are applicable to the Contractor as a service provider to the District, and that it understands the obligations set out in this Agreement.

- 7.2 The Consultant must, in relation to personal information, comply with all requirements of the FOI Act applicable to the Consultant as a service provider, including without limitation any order of the Information and Privacy Commissioner pursuant to the FOI Act, and any direction given by the District under this Agreement.
- 7.3 The Consultant must treat as strictly confidential all personal information and must not, except as provided in Appendix 2, collect, use or disclose or permit the collection, use or disclosure of personal information without the District's prior written consent. Without limiting the foregoing, the Consultant must not use personal information for purposes of marketing or promoting the Consultant's services or activities, unless such use is permitted in writing by the District and in accordance with the FOI Act.
- 7.4 The Consultant may, in accordance with the FOI Act, collect and use personal information as necessary for the performance of the Consultant's obligations under this Agreement.
- 7.5 The Consultant must not disclose personal information to any person other than the District. If the Consultant receives a request for access to personal information from any person other than the District, the Consultant must promptly direct the person to contact the Recreation Programmer.
- 7.6 The Consultant must store, use, and (where permitted) disclose personal information only inside Canada.
- 7.7 The Consultant must at all times ensure the confidentiality and security of personal information in the custody of the Consultant as a result of this Agreement, and must take all reasonable steps to secure personal information against any unauthorized access, collection, use, disclosure or disposal, including without limitation any security arrangements prescribed in this Agreement.
- 7.8 Unless expressly provided otherwise in this Agreement, the Consultant must dispose of personal information and records containing personal information only in accordance with the written directions of the District.
- 7.9 The Consultant must immediately advise the District of any circumstances, incidents or events which have jeopardized or may jeopardize the security and confidentiality of personal information in the custody of the Consultant as a result of this Agreement.

## **ARTICLE 8 - CONFIDENTIALITY AND OWNERSHIP**

- 8.1 The Consultant must not disclose any information, data or secret of the District to any person other than representatives of the District duly designated for that purpose, in writing, by the District and must not use for the Consultant's own purposes or for any purpose other than those of the District, any information, data or secret the Consultant may acquire as a result of being engaged pursuant to this Agreement. These obligations of confidentiality shall not apply to information which was or is already public or which is required to be disclosed by law or court order.

- 8.2 The Consultant must not, during the term of this Agreement, perform a service for, or provide advice to any person, firm or corporation, which gives rise to a conflict of interest between the obligations of the Consultant under this Agreement and the obligation of the Consultant to such other person, firm or corporation.
- 8.3 All plans, maps, reports, specifications, manuals, preliminary drafts, copies, data, software, programs and information and all other property and materials which are produced under this Agreement, and all intellectual property and proprietary rights whatsoever therein, including without limitation all copyright, are and will remain the property of the District even though the Consultant or another party has physical possession of them. Until the termination of this Agreement, the Consultant may retain copies, including reproducible copies of maps, reports, manuals, data or information in connection with the Services. The Consultant must not use the maps, reports, manuals, plans, specifications, preliminary drafts, copies, data, software, programs, information or other property and materials which are produced under this Agreement on other projects or for other clients except with written consent from the District.
- 8.4 Upon termination of this Agreement, the Consultant must turn over to the District, an original copy of all maps, reports, plans, specifications, manuals, preliminary drafts, copies, data, software, programs and information and all other property and materials produced under this Agreement.
- 8.5 The parties to this Agreement recognize that a breach by the Consultant of any of the requirements contained in paragraphs 7.1 to 7.4 hereof would result in damages to the District and that the District could not adequately be compensated for such damages by monetary award. Accordingly, the Consultant agrees that, in the event of any such breach, in addition to all other remedies available to the District at law or in equity, the District shall be entitled as a matter of right to apply to a court of competent equitable jurisdiction for such relief by way of restraining order, injunction, decree or otherwise as may be appropriate to ensure compliance with this article.
- 8.6 It is understood and agreed that the agreements contained in paragraphs 7.1 to 7.5 shall subsist even if the rest of this Agreement shall be terminated for any reason whatsoever and that those paragraphs are severable for such purpose.

## **ARTICLE 9 – NOTICES**

- 9.1 Unless otherwise specified herein, any notice required to be given hereunder by any party shall be deemed to have been well and sufficiently given if mailed by prepaid registered mail, sent by facsimile to or delivered at the address of the other party set forth in section 8.2 or 8.3, as applicable, or at such other address as the other party may from time to time direct, in writing, and any such Notice will be deemed to have been received **SEVENTY-TWO (72)** hours after the time of mailing or faxing and, if delivered, upon the date of delivery. If normal mail service or facsimile is interrupted by strike, slow down, force majeure or other cause, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice shall utilize any other such services which

have not been so interrupted or shall deliver such notice in order to ensure prompt receipt thereof.

The address for service for the District is as follows:

2167 Oak Bay Avenue  
Victoria, BC V8R 1G2  
Fax: 250-598-9108  
Attention: Deputy Director of Financial Services

The address for service for the Consultant is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_ - \_\_\_\_ - \_\_\_\_ Email \_\_\_\_\_  
Attention: \_\_\_\_\_

**ARTICLE 10 – CHANGE NOTICES**

10.1 The District may issue to the Consultant a Change Notice to make changes to the Services, omit part of the Services, or require additional Services. A Change Notice shall form a schedule to this Agreement and the terms of the Change Notice shall prevail over any other provision of the Agreement, in the event of an inconsistency between them. The District and the Consultant shall appraise the value of the changes to the work specified by the Change Notice, and within **SIXTY** (60) Days of receipt of the Change Notice, agree on the new price to be paid for the work or the reduction in the fee payable to the Consultant.

**ARTICLE 11 - NO DUTY OF CARE**

11.1 The Consultant acknowledges that the District, in the preparation of the contract documents, supply of oral or written information to Consultants, or the carrying out of the District's responsibilities under this Agreement, does not owe a duty of care to the Consultant and the Consultant waives for itself, its successors and assigns, the right to sue the District in tort for any loss, including economic loss, damage, cost or expense arising from or connected with any error, omission or misrepresentation occurring in the preparation of this Agreement, or carrying out of the District's responsibilities under this Agreement, with the exception of fraud on the District's part.

**ARTICLE 12 - WAIVER**

12.1 Except as may be specifically agreed in writing, no action or failure to act by the District or the Consultant shall constitute a waiver of any right or duty afforded any of them under this Agreement nor shall any such action or failure to act constitute an approval of or acquiescence in any breach of this Agreement.

### **ARTICLE 13 - RELATIONSHIP**

13.1 The legal relationship between the Consultant and the District arising pursuant to this Agreement is that of an independent contractor and purchaser of services, and, in particular and without limiting the generality of the foregoing, nothing in this Agreement shall be construed so as to render the relationship between the Consultant and the District to be that of employee and employer. The Consultant must not do anything that would result in personnel hired or used by the Consultant or a subcontractor in relation to providing the Services being considered employees of the District.

### **ARTICLE 14 - VALIDITY**

14.1 If any part of this Agreement is or is declared invalid, the remainder shall continue in full force and effect and be construed as if the Agreement had been executed without the invalid portion.

### **ARTICLE 15 - LAW**

15.1 This Agreement shall be governed by and construed in accordance with the laws in force from time to time in the Province of British Columbia.

15.2 Nothing in this Agreement shall prejudice or impair the District in the exercise of any of its rights, powers and privileges under any law, bylaw, order or regulation or in equity all of which may be fully and effectively exercised by the District as if this Agreement had not been made by the parties, provided that the foregoing shall not restrict the rights and remedies of the Consultant arising from a breach of this Agreement by the District.

### **ARTICLE 16 - EXECUTION**

16.1 Each of the parties must perform the acts, execute and deliver the writings, and give the assurances as may be reasonably necessary to give full effect to this Agreement.

### **ARTICLE 17 - TRANSFER OF INTEREST**

17.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns. The Consultant must not assign, subcontract or transfer any interest in this Agreement without the prior written consent of the District.

### **ARTICLE 18 – REPRESENTATIONS AND WARRANTIES**

18.1 As at the date this Agreement is executed and delivered by, or on behalf of, the parties, the Consultant represents and warrants to the District as follows:

- 18.1.1 All information, statements, documents and reports furnished or submitted by the Consultant to the District in connection with this Agreement (including as part of any competitive process resulting in this Agreement being entered into) are in all material respects true and correct;
- 18.1.2 The Consultant has sufficient trained staff, facilities, materials, appropriate equipment and approved subcontractual agreements in place and available to enable the Consultant to fully perform the Services;
- 18.1.3 The Consultant holds all permits, licenses, approvals and statutory authorities issued by any government or government agency that are necessary for the performance of the Consultant's obligations under this Agreement;
- 18.1.4 This Agreement has been legally and properly executed by, or on behalf of, the Consultant and is legally binding upon and enforceable against the Consultant in accordance with its terms; and
- 18.1.5 If the Consultant is not an individual, the Consultant has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement and all necessary corporate or other proceedings have been taken and done to authorize the execution and delivery of this Agreement by, or on behalf of, the Consultant.

## **ARTICLE 19 – ENTIRE AGREEMENT**

- 19.1 This Agreement constitutes the entire Agreement between the District and the Consultant and supersedes all previous expectations, understandings, communications, representations and agreements whether verbal or written between the District and the Consultant with respect to the Services and may not be modified except by subsequent agreement in writing executed by the District and the Consultant.

**IN WITNESS WHEREOF** the District and the Consultant have executed this Agreement.

**THE CORPORATION OF THE DISTRICT OF OAK BAY** on the \_\_\_\_ day of \_\_\_\_\_, 2018  
by its Authorized Signatory )

\_\_\_\_\_  
Authorized Signature )

\_\_\_\_\_  
Title )

\_\_\_\_\_  
Printed Name )

\_\_\_\_\_  
Witness )

\_\_\_\_\_  
Printed Name )

**XXXXXXXXXXXXXXXXXXXXXXXXXXXX**  
on the \_\_\_\_ day of \_\_\_\_\_, 2018  
by its Authorized Signatory )

\_\_\_\_\_  
Authorized Signature )

\_\_\_\_\_  
Title )

\_\_\_\_\_  
Printed Name )

\_\_\_\_\_  
Witness )

\_\_\_\_\_  
Printed Name )

**SCHEDULE "C"**  
**INSURANCE**

**1.0** The Consultant shall, at his own expense, provide and maintain until the completion of the Services the following insurance in a form acceptable to the District with an insurer licenced in British Columbia:

1.1	Commercial General Liability	\$3,000,000.00
1.2	Professional Liability	\$2,000,000.00
1.3	Automobile Insurance (owned and non-owned)	\$3,000,000.00

Commercial General Liability policies shall name the District as an additional insured, and all such policies shall contain a provision that the insurance shall apply as though a separate policy had been issued to each named insured. Commercial General Liability policies shall provide that no cancellation or lapse in the policy shall become effective until **THIRTY** (30) Days after written notice of such cancellation; lapse has been given to the District.

Any deductible amounts in the foregoing insurance which are payable by the policyholder shall be in an amount acceptable to the District.

**2.0** The Consultant shall provide the District with a certificate or certificates of insurance as evidence that such insurance is in force including evidence of any insurance renewal or policy or policies.

**3.0** Maintenance of such insurance and the performance by the Consultant of their obligation under this clause shall not relieve the Consultant of liability under the indemnify provisions set forth herein.

**SCHEDULE "D"**  
**OCCUPATIONAL HEALTH AND SAFETY AGREEMENT**  
(“Not required”)

**SCHEDULE "E"**  
**SUPPLY OF GOODS TERMS AND CONDITIONS**  
(“Not required”)