



**DISTRICT OF SOOKE  
REQUEST FOR PROPOSALS**

**Building Maintenance Services**  
Request for Proposals No. 2015-05

**Closing location:**

District of Sooke  
2205 Otter Point Road  
Sooke, BC  
V9Z 1J2

**Closing date and time:**

Friday June 26, 2015  
at 2:00 pm Pacific time

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## **1. Overview of the Requirement**

The District of Sooke plans to retain a contractor for oversight of its administration building maintenance requirements. Maintenance activities will include, but are not limited to, preventive maintenance and repairs of HVAC, plumbing and electrical systems, building exterior and interior maintenance items such as painting, carpentry, flooring and roofing. The contractor will be responsible for arranging and managing sub-trades and may directly conduct maintenance activities the contractor is qualified to undertake.

Based on a review of responses to this Request for Proposals, the District of Sooke intends to select a Proponent who would then be invited to enter into a contract for provision of the services described in section 4.

## **2. Definitions**

Throughout this Request for Proposals, the following definitions will be used:

- a) “Contract” means a written contract executed by the District of Sooke and the Contractor;
- b) “Contractor” means the successful Proponent to this Request for Proposals who enters into a written contract with the District of Sooke;
- c) “must”, or “mandatory” means a requirement that must be met in order for a Response to receive consideration;
- d) “Proponent” means an individual or a company that submits, or intends to submit, a Response.
- e) “Response” means a submission in reply to this RFP;
- f) “RFP” or “Request for Proposals” means the process described in this document; and
- g) “should” or “desirable” means a requirement having a significant degree of importance to the objectives of this RFP.

## **3. RFP Terms and Conditions**

### **3.1 Enquiries**

All enquiries related to this RFP are to be directed to:

Michael Dillabaugh, CA  
Director of Finance  
District of Sooke  
2205 Otter Point Road  
Sooke, BC V9Z 1J2  
Email: [mdillabaugh@sooke.ca](mailto:mdillabaugh@sooke.ca)  
Telephone: (250) 642-1634

Information obtained from any other source is not official and should not be relied upon. Enquiries and responses will be recorded and will be posted to the District of Sooke's website for reference for all Proponents ([www.sooke.ca](http://www.sooke.ca)).

### **3.2 Closing Date**

Responses will be received up to and including 2:00 p.m., local time, on Friday, June 26, 2015. Responses should be submitted in a sealed envelope clearly marked and addressed as follows:

**Request for Proposals: Building Maintenance Services**  
Michael Dillabaugh, CA  
Director of Finance  
District of Sooke  
2205 Otter Point Road  
Sooke, BC V9Z 1J2

### **3.3 Submission**

Contents of the submission are left to the discretion of the proponent but must include, as a minimum, the requirements detailed in this RFP Schedules A through D.

### **3.4 Information Meeting**

Proponents are invited to a non-mandatory information meeting at 9:30 a.m. on Wednesday, June 17, 2015, in the District of Sooke's Municipal Meeting Room at 2205 Otter Point Road, Sooke, BC.

### **3.5 Proposal Review Committee**

Review of Responses will be by a committee formed by the District of Sooke and may include staff and contractors of the District of Sooke.

### **3.6 Review and Selection**

The qualifications review committee will check Responses against the mandatory criteria. Responses not meeting all mandatory criteria will be rejected without further consideration. Responses that do meet all the mandatory criteria will then be assessed and scored against the desirable criteria. Responses will be ranked and the District of Sooke's intent is to enter into contract negotiations with the Proponent who has the highest overall ranking.

### **3.7 Signed Responses**

The Response must include a cover letter substantially similar to the cover letter set out in Appendix 1 and the cover letter must be signed by a person authorized to sign on behalf of the Proponent.

### **3.8 Changes to Response Wording**

The Proponent will not change the wording of its Response after the closing date and time specified on the front cover of this RFP, and no words or comments will be added to the Response unless requested by the District of Sooke for purposes of clarification.

### **3.9 Proponent's Expenses**

Proponents are solely responsible for their own expenses in preparing a Response and for subsequent negotiations with the District of Sooke, if any. The District of Sooke will not be liable to any Proponent for any claims, whether for costs or damages incurred by the Proponent in preparing the Response, loss of anticipated profit in connection with any final Contract, or any other matter whatsoever.

### **3.10 Acceptance of Responses**

This RFP is not an agreement to purchase services. The District of Sooke is not bound to enter into a Contract with any Proponent. Responses will be assessed in light of the review criteria. The District of Sooke will be under no obligation to receive further information, whether written or oral, from any Proponent.

### **3.11 Definition of Contract**

Notice in writing to a Proponent that its proposal has been selected as successful will neither constitute a Contract nor give the Proponent any legal or equitable rights or privileges relative to the service requirements set out in this RFP. Only if a Proponent and the District of Sooke enter into a subsequent full written Contract will a Proponent acquire any legal or equitable rights or privileges.

### **3.12 Modification of Terms**

The District of Sooke reserves the right to modify the terms of this RFP at any time in its sole discretion. This includes the right to cancel this RFP at any time without entering into a Contract.

### **3.13 Ownership of Responses**

All documents, including Responses, submitted to the District of Sooke become the property of the District of Sooke. They will be received and

held in confidence by the District of Sooke, subject to the provisions of the *Freedom of Information and Protection of Privacy Act*.

### **3.14 Confidentiality of Information**

Information pertaining to the District of Sooke obtained by the Proponent as a result of participation in this RFP is confidential and must not be disclosed without written authorization from the District of Sooke.

### **3.15 Collection and Use of Personal Information**

Proponents are solely responsible for familiarizing themselves, and ensuring that they comply, with the laws applicable to the collection and dissemination of information, including resumes and other personal information concerning employees and employees of any subcontractors. If this RFP requires Proponents to provide the District of Sooke with personal information of employees who have been included as resources in response to this RFP, Proponents will ensure that they have obtained written consent from each of those employees before forwarding such personal information to the District of Sooke. Such written consents are to specify that the personal information may be forwarded to the District of Sooke for the purposes of responding to this RFP and use by the District of Sooke for the purposes set out in the RFP. The District of Sooke may, at any time, request the original consents or copies of the original consents from Proponents, and upon such request being made, Proponents will immediately supply such originals or copies to the District of Sooke.

### **3.16 Additional Information on the RFP**

All subsequent information regarding this RFP, including changes made to this document, will be posted on the District of Sooke website ([www.sooke.ca](http://www.sooke.ca)). It is the sole responsibility of the Proponent to check for amendments and additional information on the website.

### **3.17 Form of Contract**

Any Contract with a Proponent will be substantially similar to the terms and conditions of the District of Sooke's General Service's Agreement, a copy of which is attached as Appendix 2.

## **4. Requirements and Response**

### **4.1 Summary of the Requirement**

The District of Sooke plans to retain a contractor to oversee maintenance requirements for its buildings.

Maintenance activities will include, but are not limited to, preventive maintenance and repairs of HVAC, plumbing and electrical systems, building exterior and interior maintenance items such as painting, carpentry, flooring and roofing. The contractor will be responsible for arranging and managing subcontractors and may directly conduct maintenance activities the contractor is qualified to undertake.

Key duties and responsibilities are described in Schedule D.

The objective of this RFP is to identify and select a maintenance contractor that best meets the requirements of the District of Sooke for the provision of these services.

## **4.2 Project Background**

The District of Sooke's administration building is located at 2205 Otter Point Road in Sooke. This building also services the Fire Department, Council Chambers and the Firefighters Lounge. A portion of the first floor is also used by the Vancouver Island Health Authority (*not part of the services requested under this RFP*).

The first floor of the Administration Building (2205 Otter Point Road) services the District's administration staff, the second floor (2225 Otter Point Road) services the Fire Department and the third floor is the location of Council Chambers and the Firefighters Lounge. The Administration Building is approximately 21,000 square feet.

The project scope also includes the District's Public Works Yard (2080 Kaltasin Road) and Fire Hall #2 (2011 Goodridge Road).

## **4.3 Additional Definitions**

In addition to the RFP Definitions set out in section 2, throughout this RFP the following definitions will apply:

- a) "Buildings" means the municipal building on Otter Point road servicing the District's administrative staff (2205 Otter Point Road), the District's Fire Department (2225 Otter Point Road – second floor of 2205 Otter Point Road) and Council chambers (third floor of 2205 Otter Point Road). Also included is the District's Public Works Yard (2080 Kaltasin Road) and Fire Hall #2 (2011 Goodridge Road).
- b) "Contract Price" means the sum payable by the District of Sooke to the Contractor in respect of the Maintenance Services.
- c) "Cost of Living Factor" means the percentage cost of living increase (or decrease) using the Victoria Consumer Price Index (CPI) from Statistics

Canada obtained from BC Stats.

- d) “Maintenance Services” means the provision of all labour, materials and equipment for the purpose of providing the services described in “Schedule D” as may be amended from time to time.
- e) “Subcontractors” means an arms length subcontractor of the Contractor satisfactory to the District of Sooke in its sole discretion engaged in providing labour, equipment and materials in performing the Maintenance Services.

#### **4.4 Project Scope**

The building maintenance services are required for the Buildings only and are subject to the standards outlined in Schedule D.

#### **4.5 Project Goals and Objectives**

The building maintenance services will help ensure a safe and sustainable location for the District to serve the public.

#### **4.6 Deliverables**

An assessment of the current building conditions will be required within one month of the award of the contract. The District of Sooke requires monthly reports of work done to be submitted with monthly invoices. An example of the General Services Agreement that will be entered into by the District of Sooke and the successful proponent is provided in Appendix 2. Schedules A through D of this document will combine to be part of the “Schedule A – Description of Services and Fee Schedule” of the General Services Agreement.

#### **4.7 Carbon Emissions Reporting**

The District of Sooke requires the successful proponent to submit a report detailing the type of fuel (gasoline, diesel, natural gas, bio-fuel and/or propane) and total volume used, in litres, while carrying out the works described in Schedule D. The report must be received by January 30 each year detailing the previous year’s fuel consumption. The information provided by the successful proponent is an important component of the District of Sooke’s commitment to measuring and reporting of green house gas emissions under the Climate Action Charter.



## 5. RFP Review Criteria

### 5.1 Mandatory Criteria

The following are mandatory requirements. Responses not clearly demonstrating that they meet them will receive no further consideration during the evaluation process.

Mandatory Criteria
a) The Response must be received at the closing location.
b) The Response must be in English and must not be sent by facsimile or email.
c) One hard copy of the Response must be submitted.
d) The Response must include a completed form, in substantially the same form as Appendix 1.

### 5.2 Desirable Criteria

Responses meeting the mandatory requirements will be further assessed against the following desirable criteria. A Proponent not reaching the minimum score in a given category (if applicable) will receive no further consideration during the RFP review.

Desirable Criteria	Points Available
Performance Measures (see below)	50
Fees as outlined in Schedules A and C	50
<b>TOTAL POINTS AVAILABLE</b>	<b>100</b>

### 5.3 Performance Measures

**Quality of RFP** will be evaluated with respect to the level of effort perceived as going into the RFP for resumes and other documentation.

**Resume/Qualifications** will be evaluated with respect to level of qualified staff dedicated to the project and relevant experience.

**Methodology for Project** will be evaluated by how the proponent defines and describes the work plan, how each task will be carried out, the anticipated deliverables and what services or interaction with District of Sooke staff is required.

**Level of Effort** will be evaluated through the total number of hours proposed and the distribution amongst the most qualified team members.

## Schedule A – Fee Schedule

### 1.1 BUILDING MAINTENANCE SERVICES - CONTRACT PRICE

(1) *The 12-month time frames for the three year Term are follows:*

*July 1, 2015 to June 30, 2016*

*July 1, 2016 to June 30, 2017*

*July 1, 2017 to June 30, 2018*

(2) *The Contract Price for Maintenance Services will be paid by the District of Sooke to the Contractor by way of one twelfth of the annual Contract Price each month for those months of the Term, upon delivery of a statement of account.*

*The annual contract price for the 12-month period July 1, 2015 to June 30, 2016 is as follows:*

*\_\_\_\_\_ dollars  
and \_\_\_\_\_ cents. (\$\_\_\_\_\_).*

(3) *The contract price will be adjusted annually by the Cost of Living Factor.*

(4) *The annual contract price is net of Goods and Services Tax. GST will be added at time of invoicing.*

### 1.2 EMERGENCY AND ADDITIONAL MAINTENANCE SERVICES - FEES

(1) *Fees for Additional Maintenance Services and Emergency Maintenance Services will be based on the rates set out in Schedule C, and will be payable to the Contractor during the period which the Contractor is engaged in providing Additional Maintenance Services.*

(2) *The Contractor will submit to the District of Sooke monthly, in arrears, on or after the first day of each month and commencing no sooner than August 1, 2015, a written statement of account in a form satisfactory to the District of Sooke:*

*(a) showing the calculation of all fees claimed for Additional Maintenance Services for the month preceding the month in which the statement is submitted; and*

*(b) Listing, in reasonable detail with dates, any and all expenses claimed with receipts, where applicable, attached.*

*(c) Itemizing all adjustments to the Contract Price under Section 2.0.*

## Schedule B – Proponent Information

1.1 LEGAL NAME AND ADDRESS

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1.2 OWNERSHIP STRUCTURE

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1.3 REFERENCES

Company	Contact Person	Telephone	Email

1.4 CERTIFICATIONS / QUALIFICATIONS (example: BCIT’s Maintenance Management Professional, BOMI’s Facilities Management Certificate, ITA’s Red Seal Program)

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1.5 LIABILITY INSURANCE (Type of coverage, carrier, and amount of coverage)

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1.6 WorkSafeBC INSURANCE

Number\_\_\_\_\_

1.7 DISTRICT OF SOOKE BUSINESS LICENCE

Number:\_\_\_\_\_

**Schedule C – Hourly Rates**

Hourly rates to be paid for performing Emergency and Additional Maintenance Services within Year 1 as defined in Section 1.2 of Schedule A (Fee Schedule) are as follows:

**Contractor’s Own Labour**

**2015 Rate**  
*(Insert hourly rate)*

Emergency / Additional maintenance

\_\_\_\_\_

**Goods and Services Tax**

The labour rates are net of Goods and Services Taxes. GST will be added at time of invoicing.

## Schedule D – Maintenance Requirements and Standards

### 1. General

The Contractor shall:

- a. Maintain all areas covered by this contract in a safe, clean and orderly manner.
- b. Seek approval from the Director of Finance (or delegate) prior to installing any materials or equipment and prior to engaging any sub-trades to work on the premises.
- c. Establish, monitor, and conduct preventative maintenance procedures and schedules for the Buildings. Help ensure the Buildings meet all safety, security and fire regulations and policies by informing the Director of Finance of any deficiencies where noted.
- d. Develop an annual and a long-term maintenance plan to be reviewed and approved by the Director of Finance.
- e. Prepare estimates of labour and material costs for maintenance and repairs.
- f. Make recommendations for repairs and maintenance to the Director of Finance or delegate.
- g. Directly perform, or supervise the work of qualified sub-trades, the required Maintenance Services listed in 6 below.
- h. Contact external subcontractors where necessary to obtain quotes per the District's *Purchasing and Disposal of Assets* policy.
- i. Monitor the work performed by subcontractors.
- j. Prepare records of maintenance performed and planned and provide copies to the Director of Finance or delegate.
- k. Be responsible for disposing of materials/supplies in a legal and safe manner whenever required to remove or dispose materials/supplies offsite under this agreement.

### 2. Safety

The Contractor shall:

- a. Plan and conduct the work in a manner that will safeguard all persons from injury.
- b. Obey regulations of the Workers' Compensation Board of BC and all other applicable laws and regulations.
- c. Immediately make safe any hazards discovered during the course of the work and within twenty-four (24) hours, email or hand deliver a full report to the Director of Finance outlining the nature of the hazard and steps taken to make safe.
- d. Be entitled to payment as outlined in Section 1.2 of Schedule A (Fee Schedule), where the securing of the hazard is not work covered elsewhere in this specification.

### 3. Building Employees and Visitors

The Contractor shall:

- a. Conduct the work so as to cause the least amount of interference to staff and visitors in carrying out their duties and business at the Buildings.
- b. Adjust maintenance scheduling, by mutual agreement with the District, to accommodate special meetings and events.
- c. For scheduling purposes, be provided with notice of special meetings and events as they are issued by the District of Sooke.

### 4. Communications

The Contractor shall:

- a. Provide email service, cellular telephone service, and a phone answering service or machine twenty-four (24) hours a day to receive notice of situations requiring response as set out in the specifications.
- b. Ensure that the messages received in (4a) are reviewed sufficiently often that the response time required in these specifications is met.
- c. Attend meetings as requested with the Director of Finance.
- d. Be available for other additional meetings with two working days notice to discuss complaints or perceived problems when requested by the Director of Finance.
- e. Provide monthly reports of completed work with monthly invoices.

### 5. Service Level

The Contractor shall:

- a. Develop an annual and long-term maintenance service level plan for review and approval by the Director of Finance.
- b. Conduct preventative maintenance and scheduled repairs as per the agreed upon service level plan developed in section 5a.

### 6. Scope

Maintenance Services includes the following areas of responsibility:

- a. HVAC system (includes maintenance of the Fire Department's vehicle exhaust extraction systems)
- b. electrical system – including parking lot/security lighting
- c. plumbing system
- d. natural gas system and associated radiant heaters
- e. building alarm, fire alarm and fire sprinkler system
- f. servicing portable fire extinguishers
- g. emergency generator (testing and servicing)

- h. elevator maintenance contract
- i. overhead doors in the two fire halls and the public works building
- j. interior and exterior painting requirements
- k. outside window washing
- l. gutter, roof drains, and roof cleaning
- m. storm drains in municipal parking lot(s) and inside apparatus bays of Fire Hall #1
- n. emergency lighting
- o. furnace(s) – Fire Hall #2 and public works yard office
- p. pest control

## Appendix 1 – Response Covering Letter

*(Company Letterhead)*

Date:

District of Sooke of Sooke  
2205 Otter Point Road  
Sooke, BC V9Z 1J2

Attention: Michael Dillabaugh, Director of Finance

Subject: RFP Building Maintenance Services

The enclosed proposal is submitted in response to the above-referenced Request for Proposals.

Through submission of this proposal we agree to all 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 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.

I am duly authorized to submit this proposal on behalf of the Proponent.

Yours truly,

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*Signature*

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Address of Proponent: \_\_\_\_\_

Legal name of Proponent: \_\_\_\_\_

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



## Appendix 2 – Sample General Services Agreement



### GENERAL SERVICES AGREEMENT

Project Name: \_\_\_\_\_  
District of Sooke File No: \_\_\_\_\_

THIS AGREEMENT dated for reference this day \_\_\_ of \_\_\_, \_\_\_

#### BETWEEN:

**[NAME OF CONTRACTOR]**, [*incorporation no. where applicable*], having an address at [*address with postal code*]

(“the Contractor”)

#### AND:

**DISTRICT OF SOOKE**, a municipal corporation incorporated under the *Local Government Act*, having an address at 2205 Otter Point Road, Sooke, British Columbia, V9Z 1J2

(the “District of Sooke”)

#### GIVEN THAT:

- A. The District of Sooke desires to engage the services of the Contractor as an independent contractor to perform [*type of services*] services as more particularly described below, and
- B. The Contractor agrees to provide such services on the terms and subject to the conditions set out in this Agreement,

**IN CONSIDERATION OF** the sum of ten (\$10.00) dollars paid by the District of Sooke to the Contractor, and the mutual agreements and covenants under this Agreement, and as a condition of the District of Sooke retaining the Contractor, the receipt and sufficiency of which consideration is hereby acknowledged, the parties to this Agreement agree as follows:

#### (a) Interpretation

- a. In this Agreement, the following terms have the meanings set out after each:

“Agreement” means this agreement, including the recitals and schedules hereto, each as supplemented or amended from time to time;

#### (b) Schedules Incorporated

- a. The following are Schedules to, and form an integral part of, this Agreement:

## Schedule "A" – the Services

## Schedule "B" – the Rates

- b. If there is a conflict between a provision in a schedule to this Agreement and any other provision of this Agreement, then the provision in the schedule is inoperative to the extent of the conflict, unless it states that it operates despite a conflicting provision of this Agreement.

### **(c) Effective Date and Term**

- a. This Agreement takes effect immediately upon execution by all of the Parties.
- b. The term of this Agreement is for that period set out in Schedule A.

### **(d) Authority**

- a. The Contractor represents and warrants to the District of Sooke that it has the authority to enter into this Agreement and carry out its transactions and all necessary resolutions and procedural formalities have been completed and the persons executing this Agreement on its behalf are duly authorized to do so.

### **(e) Services**

- a. The District of Sooke hereby retains the Contractor as an independent contractor to provide the services described in Schedule A ("the Services").
- b. The Contractor shall provide the Services strictly in accordance with the terms and conditions set out in this Agreement.
- c. The Contractor shall provide the Services during the time period set out in Schedule A, regardless of the date of execution or delivery of this Agreement unless an extension of the time period is agreed to in writing by both parties.
- d. The Contractor will perform the Services to a standard of care, skill and diligence maintained by person providing, on a commercial basis, services similar to the Services.

### **(f) Compensation**

- a. During the term of this Agreement the District of Sooke shall pay the Contractor for the Services at the rates and times described in Schedule B.
- b. The Contractor shall submit written statements of account to the District of Sooke according to the schedule set out in Schedule B.
- c. The District of Sooke shall reimburse the Contractor for all necessary expenses that the Contractor incurred while performing the Services and shall do so in accordance with the terms set out in Schedule A.
- d. The District of Sooke shall not pay the Contractor for any fees or expenses in excess of any limit specified in Schedule A, except where that is agreed to in writing by the parties.
- e. Any expense claims provided by the Contractor to the District of Sooke shall be supported by proper receipts.

**(g) Contractor's Obligations**

- a. The Contractor shall be responsible for the payment of all income and other taxes attributable to any payments made under this Agreement. The Contractor agrees to indemnify and save harmless the Company 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 or federal government or other body of competent jurisdiction in respect of any monies paid to the Contractor under this Agreement.
- b. The Contractor shall apply for and, immediately on receipt, remit to the District of Sooke any refund or remission of federal or provincial tax or duty available with respect to any items used in connection with this Agreement.
- c. The Contractor shall supply and pay for all labour and materials necessary or advisable to provide the Services.
- d. The Contractor shall be responsible for all applications, permits or other approvals necessary or advisable to provide the Services.
- e. The Contractor shall maintain time records and books of account, invoices, receipts, and vouchers for all expenses incurred, in form and content satisfactory to the District of Sooke.
- f. The Contractor shall, upon request, fully inform the District of Sooke of all work done in connection with providing the Services.
- g. The Contractor shall comply with the District of Sooke's instructions regarding the performance of the Services, but not as to the manner in which those instructions are carried out, except as specified in this Agreement.
- h. The Contractor shall, when necessary, provide and supervise a sufficient number of workers to enable timely and proper performance and completion of the Services, and shall ensure that all such workers are competent, work efficiently and are qualified by education, training and experience to carry out the tasks to which each is assigned.
- i. All workers hired by the Contractor to perform the Services shall be the employees of the Contractor and shall not be the employees of the District of Sooke.
- j. The Contractor shall refrain from doing anything that would result in workers hired by the Contractor being considered the employees of the District of Sooke.
- k. The Contractor shall reassign, replace or remove a worker who does not meet the requirements described above, or who has behaved or is likely to behave in a manner detrimental to the provision of the Services, or has violated or is likely to violate the confidentiality provisions of this Agreement.
- l. Where a worker is identified in a schedule to this Agreement as "Key Personnel" and is essential to the performance of the Services, then the Contractor shall not remove or replace them without the District of Sooke's prior written approval.
- m. The Contractor shall bear the expense of replacing its workers.
- n. Nothing in this Agreement restricts the right of the Contractor to terminate its employee's employment, or renders the Contractor liable for an employee's voluntary termination, or for any labour strike or lockout involving the Contractor's employees.

**(h) Conflict of Interest**

- a. The Contractor shall not provide services to any other person or organization where that could reasonably give rise to a conflict of interest.

**(i) Subcontracting**

- a. The Contractor shall not subcontract any obligation under this Agreement, other than to persons or firms listed in this Agreement, without the prior written consent of the District of Sooke.
- b. The District of Sooke may, for reasonable cause, object to the use of a proposed subcontractor and require the Contractor to retain another qualified subcontractor.
- c. No subcontract, whether consented to or not, shall relieve the Contractor of any obligations under this Agreement.
- d. The Contractor shall ensure that any subcontractor fully complies with this Agreement when performing the subcontracted Services.

**(j) Non-Compliance**

- a. If the Contractor fails to observe, perform, or comply with any provision of this Agreement, then the District of Sooke may, at its sole discretion:
  - (k) allow the Contractor to continue to provide the Services with a time limit for compliance, rectification or both; or
  - (l) suspend all or part of the Services, including payments in whole or in part, and give the Contractor a time limit for compliance, rectification or both.
- a. If the District of Sooke has set a time limit for compliance, rectification or both and believes that the Contractor has failed to meet the time limit, the District of Sooke may employ whatever means necessary to rectify that non-compliance, including performance of the Contractor's obligations on the Contractor's behalf and/or termination of this Agreement, and the Contractor shall pay an amount equal to all costs reasonably incurred by the District of Sooke in rectifying the non-compliance.

**(m) Termination**

- a. The District of Sooke may terminate this Agreement at any time, and without cause, by giving 5 (five) days' written notice of termination to the Contractor and paying the Contractor an amount equal to the minimum fees that would otherwise have been payable for the Services completed at the time of termination. That payment shall discharge the District of Sooke from all liability to the Contractor under this Agreement.
- b. The District of Sooke may terminate this Agreement if the Contractor fails to comply with any of the terms, covenants and agreements that the Contractor must observe or perform under this Agreement and that failure continues for 5 (five) days after receipt by the Contractor of notice in writing from the District of Sooke specifying the failure.
- c. The Contractor may terminate this Agreement by providing 5 (five) days' written notice of termination to the District of Sooke.

**(n) Information Made Available**

- a. The District of Sooke shall make available to the Contractor all information in its possession that the District of Sooke considers relevant to the Contractor's performance of the Services.

**(o) Intellectual Property**

- a. The Contractor agrees that any documentation or deliverables developed by the Contractor for the purposes of this Agreement is the property of the District of Sooke and any copyrights, ownership rights or any other rights to such documentation or deliverables remain solely with the District of Sooke.

**(p) Materials and Equipment**

- a. Any material or equipment that the District of Sooke provides to the Contractor, or to a subcontractor hired by the Contractor, shall remain the exclusive property of the District of Sooke.
- b. The Contractor shall deliver to the District of Sooke any material or equipment provided to the Contractor or the Contractor's subcontractor immediately following expiration or termination of this Agreement, or as requested by the District of Sooke, and the material or equipment shall be returned in the same condition that it was supplied to the Contractor, except for loss or damage resulting from reasonable wear and tear associated with the performance of the Services.

**(q) Insurance**

- a. The Contractor shall, at its own expense, maintain at all times during the term of this Agreement, general liability insurance coverage in an amount and with deductibles as described in Schedule A, and shall ensure that the District of Sooke is named as an insured.
- b. The Contractor shall apply to the Workers' Compensation Board for coverage for the Contractor and any workers or other persons engaged by the Contractor to perform the Services during the term of this Agreement.
- c. The Contractor may, at its own expense, provide additional insurance for its members to augment WorkSafe BC coverage.
- d. The Contractor shall comply with all conditions of the *Workers Compensation Act* and regulations, and will be responsible for all fines, levies, penalties and assessments made or imposed under the *Workers Compensation Act* and regulations relating in any way to the Services, and shall indemnify and save harmless the District of Sooke, its employees and agents, from and against any such fines, levies, penalties and assessments.

**(r) Confidentiality**

- a. The Contractor acknowledges that in the performance of its responsibilities hereunder, the Contractor may have access to confidential information and records and the Contractor shall maintain strict confidentiality concerning any information, data, reports, instructions

or directions received from or delivered by the District of Sooke in connection with the providing of any Services under this Agreement (“the Confidential Information”).

- b. Statements or materials related to the Services shall not be released by the Contractor to the public without the prior written approval of the District of Sooke.
- c. During and after the term of this Agreement, the Contractor shall not, directly or indirectly, disclose Confidential Information to any person or use any Confidential Information, except:
  - (a) as required in the course of performing the Services and then only to staff of the District of Sooke on a need-to-know basis; or
  - (b) with the prior written consent of the District of Sooke.
- d. All Confidential Information which the Contractor shall prepare or use or come in contact with shall be and remains the District of Sooke sole property and shall not be removed from the District of Sooke premises without its prior written consent, except as required in the normal course of performing the Services under this Agreement.
- e. The Contractor agrees to return to the District of Sooke all the Confidential Information provided by the District of Sooke and any copies of such material in its possession forthwith upon demand.
- f. The Contractor agrees that it will cause any worker, before commencing his or her duties, to sign a written confidentiality agreement and the Contractor shall be liable to the District of Sooke for any breach of any such agreement by the worker.
- g. The Contractor agrees that, upon request of the District of Sooke, or in the event that the Contractor ceases to require use of the Confidential Information, or upon expiration or termination of this Agreement, the Contractor will turn over to the District of Sooke all data, documents, specifications, drawings, reports, software, disks or other computer media, or other material in the possession or control of the Contractor that:
  - (a) may contain or be derived from ideas, concepts, creations, or trade secrets and other proprietary and Confidential Information; or
  - (b) is connected with or derived from the Contractor's Services to the District of Sooke.
- h. The Contractor agrees and acknowledges that the Confidential Information is of a proprietary and confidential nature and that any failure to maintain the confidentiality of the Confidential Information in breach of this Agreement cannot be reasonably or adequately compensated for only in money damages and would cause irreparable injury to the District of Sooke. Accordingly, the Contractor agrees that the District of Sooke is entitled to, in addition to all other rights and remedies available to him at law or in equity, an injunction restraining the Contractor and any agents of the Contractor, from directly or indirectly committing or engaging in any act restricted by this Agreement in relation to the Confidential Information.

**(s) Notices**

- a. Any notice permitted or required to be given by a party hereunder shall be given in writing, and may be delivered by hand, sent by facsimile transmission, or forwarded by first-class prepaid registered mail to the addresses and fax numbers set forth below, or to such other addresses as may from time to time be provide by the parties in writing. Any notice delivered by hand or sent by facsimile shall be deemed to be given and received at the

time of sending. Any notice that is sent by prepaid or registered mail shall be deemed to have been received by the party to whom it is addressed on the fourth (4<sup>th</sup>) business day (Saturdays, Sundays and Statutory Holidays excluded) following the date of posting, provided that Canada Post service is not interrupted by strike or lock-out at the time of posting or within four (4) business days thereafter, in which case the notice shall only be effective once it is actually delivered.

- b. Notices under this Agreement are to be delivered as follows:

**To the District of Sooke:**

District of Sooke of Sooke  
2205 Otter Point Road  
Sooke, BC V9Z 1J2  
Attention: Corporate Officer

Fax: (250) 642-0541

**To the Contractor:**

[Name]  
[Street Address]  
[Town/City], [Province], [Postal Code]

**(t) Dispute Resolution**

- a. In the case of any dispute arising between the District of Sooke and the Contractor, a party to this Agreement may give the other party notice of the dispute, and if the matter cannot be resolved the parties may submit the dispute to arbitration by a single arbitrator in accordance with the *Commercial Arbitration Act* (British Columbia), as amended.

**(u) Force Majeure**

- a. For the purposes of this Agreement, the term "Force Majeure" is defined as an Act of God, an act of a public enemy, war, labour disruptions and other extraordinary causes not reasonably within the control of the Contractor.
- b. If the Contractor is rendered unable, wholly or in part, by Force Majeure to provide the Services then the Contractor shall provide to the District of Sooke notice of the Force Majeure as soon as reasonably possible, and to the extent that the Contractor's performance is impeded by the Force Majeure it shall not be in breach of its obligations under this Agreement.
- c. The parties acknowledge and agree that during an event of Force Majeure, the Contractor's obligations pursuant to this Agreement shall be reduced or suspended as the case may be, but not longer than the continuance of the Force Majeure, except for a reasonable time period after if required by the Contractor to resume its obligations.

**(v) No Assignment**

- a. The Company may not assign any of its rights or interests in this Agreement.

**(w) Binding on Successors**

- a. This Agreement enures to the benefit of and is binding upon the parties and their respective successors and permitted assigns, notwithstanding any rule of law or equity to the contrary.

**(x) Remedies Cumulative**

- a. No reference to or exercise of any specific right or remedy by the District of Sooke prejudices or precludes the District of Sooke from any other remedy, whether allowed at law or in equity or expressly provided for in this Agreement. No such remedy is exclusive or dependent upon any other such remedy, but the District of Sooke may from time to time exercise any one or more of such remedies independently or in combination. Without limiting the generality of the foregoing, the District of Sooke is entitled to commence and maintain an action against the Contractor to collect any sum not paid when due, without exercising the option to terminate this Agreement.

**(y) Waiver**

- a. Waiver by the District of Sooke of any breach of any term, covenant or condition of this Agreement by the Contractor must not be deemed to be a waiver of any subsequent default by the Contractor. Failure by the District of Sooke to take any action in respect of any breach of any term, covenant or condition of this Agreement must not be deemed to be a waiver of such term, covenant or condition.

**(z) Indemnity**

- a. The Contractor shall indemnify, release and save harmless the District of Sooke and its elected and appointed officials, officers, employees, agents, contractors, successors and assigns from any and all liabilities, actions, damages, claims, losses, orders, fines, penalties, costs and expenses, including the full amount of all legal fees and expenses that may be brought against, or suffered or incurred by, the District of Sooke or any of its elected and appointed officials, officers, employees, agents, contractors, successors and assigns, in any way directly or indirectly arising from or in connection with the activities, actions or omissions of the Contractor or any of its employees, subcontractors, agents, licenses, servants, invitees or anyone for whom the Contractor is in law responsible, in relation to the Services or in connection with this Agreement. The indemnities set out in this paragraph do not include indemnifications for negligence or wilful or malicious misconduct on the part of the District of Sooke or a person for whom the District of Sooke is responsible at law. This paragraph will survive termination of this Agreement.

**(aa) Release**

- a. The Contractor releases the District of Sooke from and against all liabilities, claims, demands, damages, costs, expenses, suits and actions which the Contractor may at any time have against the District of Sooke in respect of the Services, this Agreement and related matters. The obligations of the Contractor under this section survive the expiry or earlier termination of this Agreement.



**(bb) General**

- a. Time is of the essence of this Agreement.
- b. Parties may by written agreement amend this Agreement
- c. Every reference to each party is deemed to include the heirs, executors, administrators, corporate successors, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires or permits.
- d. Wherever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural, the feminine or body corporate where the context or the parties so require.
- e. Unless otherwise specified in this Agreement, all references to currency are in Canadian dollars.
- f. The headings included in this Agreement are for convenience only and do not form part of this Agreement and will not be used to interpret, define or limit the scope or intent of this Agreement.
- g. This Agreement shall be construed in accordance with the laws of the Province of British Columbia. Without limitation, the Contractor acknowledges that this Agreement is subject to the *Freedom of Information and Protection of Privacy Act*.
- h. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Agreement.
- i. The provisions in this Agreement constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements whether verbal or written, between the parties with respect to the subject matter of this Agreement.

**NOW THEREFORE** as evidence of their agreement to be bound by the terms of this Agreement, the parties have executed this Agreement as follows:

DATED the  day of , 20

**District of Sooke** by its authorized signatories:

\_\_\_\_\_  
Mayor:

\_\_\_\_\_  
Clerk:

DATED the  day of , 20

**[Name of Contractor]** by its authorized signatories:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

**SCHEDULE A – the Services**

(to be determined)

**SCHEDULE B – the Rates**

(to be determined)