



REQUEST FOR PROPOSAL

2015-RFP-01 FOR DEVELOPMENT OF MUNICIPAL PROPERTY AT 8709 JUBILEE ROAD IN THE DISTRICT OF SUMMERLAND

Original, five (5) hard copies and one (1) electronic copy of a Proposal in a sealed envelope plainly marked "**2015-RFP-01 Development of Municipal Property**" will be received at

Municipal Hall,
13211 Henry Avenue,
Summerland, B.C., V0H 1Z0

up to **2:00 p.m.** local time on

Closing Date: 29 May 2015

Any questions or clarification regarding this Request for Proposal must be submitted, in writing, to the District's Contact Person, Ian McIntosh, Director of Development Services at imcintosh@summerland.ca

*** PROPOSALS WILL NOT BE OPENED IN PUBLIC ***

NOTE: Should any potential bidders download this Request for Proposal, it is the Proponent's responsibility to check for Addenda which will be posted on the District of Summerland's website:

<http://www.summerland.ca/business-economy/bids-tenders>

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1.0 SCOPE OF THE PROPOSAL

1.1 INTRODUCTION

This document outlines the overall scope of the project, sets out the basic requirements for the Proposal document and provides the evaluation criteria to be used as the basis for awarding the assignment. The objectives of the RFP are to evaluate the Proponent's experience, technical expertise, project methodology, schedule and fees to provide the services for this assignment.

1.2 BACKGROUND

The District of Summerland (District) owns a piece of property it would like to see redeveloped. The District invites development firms to submit a proposal to develop the 5,018 m² site at 8709 Jubilee Road in the District of Summerland. The property is current zoned RPN-Residential Pocket Neighbourhood zone (zoning regulations attached); however the District is amenable to alternate proposals that may better match the evaluation criteria.

The RPN zone contemplates the construction of multiple small single family homes in a traditional strata environment (not bareland strata). The concept has a central parking area with units located around a central "green". A central parking area removes the requirement for vehicle access to each unit and the need for parking at each unit.

1.3 SCOPE OF WORK

The Scope of Work is intended to define the work activities as accurately as possible. The Proponent is encouraged to use innovation when developing its Proposal and propose revisions or alternatives that are considered beneficial to the project.

The Project will include the following phases:

- Design a development that meets the RPN zoning requirements or an alternative design that better meets the Evaluation Criteria
- Apply for and receive rezoning (if proposal does not meet the current RPN zoning)
- Apply for and receive development permits
- Apply for and received the appropriate building permits
- Construct the new development including all utility servicing in accordance with the conditions of the building permit
- Provide the District payment for the property
- Undertake transfer of title from the District to the Successful Proponent

Please note the following:

- a) The District of Summerland will undertake to remove the existing building from the site.
- b) The District will provide certification the site is not contaminated.
- c) The proponent may need to upgrade 98 meters of water main in Jubilee Rd from 100mm (4 inch) to 200mm (8 inch) to provide adequate fire protection depending on the type and design of the development.

Issues of particular interest include;

- Affordability of the homes
- Livability of the individual units and the development as a whole
- Time period required to complete full construction
- Environmental sustainability ("green" building practices)
- Revenue to the District for the land sale

2.0 PROCESS AND SCHEDULE

2.1 COLLABORATIVE MEETINGS

Prior to the Closing Time, the District will make available certain of its personnel, consultants and advisors (the “**District Representatives**”) to participate in collaborative meetings (“**Collaborative Meetings**”) with each of the Proponents. The District expects the Collaborative Meetings to take place as follows:

- a) the purpose of the Collaborative Meetings is to provide a process that will assist the Proponents to develop optimal solutions for the Project while minimizing the risk that a Proponent’s solution is unresponsive, and in particular:
 - a. to permit the Proponent Representatives to provide the District Representatives with comments and feedback on major issues; and
 - b. to permit the Proponent Representatives to discuss with the District Representatives potential solutions and approaches that the Proponent may be considering for various aspects of its Proposal;
- b) at least five (5) Business Days in advance of each Collaborative Meeting each Proponent should provide the District with a proposed meeting agenda, a list of prioritized issues it would like to discuss and any materials relevant to such issues, and the District may provide Proponents with comments on the agenda and a list of any prioritized issues the District would like to discuss;
- c) the District will determine which District Representatives will be present at any Collaborative Meeting;
- d) at each Collaborative Meeting, a Proponent may have such officers, directors, employees, consultants and agents of the Proponent and the Proponent Team members present as the Proponent considers reasonably necessary for effective communication with the District and to fulfill the objectives of the Collaborative Meeting provided that the District may, in its discretion, limit the number of participants at any one meeting;
- e) to facilitate free and open discussion at the Collaborative Meetings, Proponents should note that any comments provided by or on behalf of the District during any Collaborative Meeting, including in respect of any particular matter raised by a Proponent or which is included in any documents or information provided by a Proponent prior to or during the Collaborative Meeting, and any positive or negative views, encouragement or endorsements expressed by or on behalf of the District during the Collaborative Meetings to anything said or provided by Proponents, will not in any way bind the District and will not be deemed or considered to be an indication of a preference by the District even if adopted by the Proponent;
- f) if for the purposes of the preparation of its Proposal a Proponent wishes to rely upon anything said or indicated at a Collaborative Meeting, then the Proponent must submit an Enquiry describing the information it would like to have confirmed and request that the District provide that information to the Proponent in written form and, if such information relates to a clarification, explanation or change to a provision of this RFP, request an Addendum to this RFP clarifying and amending the provision in question;
- g) by participating in the Collaborative Meetings a Proponent confirms its agreement with these procedures and that the meetings are an integral part of the procurement process as described in this RFP and are in the interests of all parties; and
- h) the District anticipates holding up to two Collaborative Meetings with each Proponent prior to the Closing Date. Following the release of the RFP, the District will consult with each Proponent to confirm specific dates for Collaborative Meetings. If the District considers it desirable or necessary to schedule additional or fewer Collaborative Meetings, the District may, in its discretion, amend the anticipated schedule.

2.2 DATA ROOM

The District has established a web site to be used as an electronic data room (the “**Data Room**”) in which it has placed documents in the possession of the District that the District has identified as relevant to the Project and to the Project site, and that may be useful to Proponents. The District does not make any representation as to the relevance, accuracy or completeness of any of the information available in the Data Room except as the District may advise with respect to a specific document. The District will grant Proponents access to the Data Room upon request.

The information in the Data Room may be supplemented or updated from time to time. Although the District will attempt to notify Proponents of all updates, Proponents are solely responsible for ensuring they check the Data Room frequently for updates and to ensure the information used by the Proponents is the most current, updated information.

2.3 SCHEDULING

The Proposal will include the Proponent's itinerary to complete the work proposed (start-up, information gathering, site visits, preliminary plans, etc.)

Activity	Timeline
RFP issued to Proponents	April 27, 2015
Data Room made available to Proponents who have requested access	April 27, 2015 onward
General Proponent Meeting for all Proponents	May 7, 2015
Last Date for Enquiries	5 days before Closing Time
Closing Time	2:00 pm on May 29, 2015
Selection of Preferred Proponent	June 22, 2015
Contract Award	June 30, 2015
Contract Execution	No later than September 1, 2015
Construction Commences	No later than March 1, 2016

3.0 INTERPRETATION

3.1 DEFINITIONS

- a. “Best Value” means the value placed upon quality, service, past performance and price.
- b. “Business Day” means a day other than a Saturday, Sunday or statutory holiday in British Columbia;
- c. “Claim” means any claim, demand, suit, action, or cause of action, whether arising in contract, tort or otherwise, and all costs and expenses relating thereto;
- d. “Collaborative Meeting” has the meaning set out in Section 2.3;
- e. “Competitive Selection Process” means the overall process for the selection of a Preferred Proponent (s) for the Project including, but not limited to, this RFP stage;
- f. Contact Person means the person identified as such on the cover page of this RFP, or their delegate;
- g. “Contract” means an agreement between the District and the Successful Proponent.
- h. “Contract Award” means the time when all commercial terms of the Contract have been agreed upon;
- i. “Contract Execution” means the time when the Contract and all other agreements related to the Project have been executed and delivered and all conditions to the effectiveness of the Contract have been satisfied;
- j. “Data Room” has the meaning set out in Section 2.4;
- k. “Delivery Address” means the delivery address identified as such on the cover page of this RFP;
- l. “District” means The Corporation of the District of Summerland.

- m. "District Representative" means the representative or appointee engaged by the District to supervise the work.
- n. "Intellectual Property Rights" has the meaning set out in Section 6.2;
- o. "Key Individuals of a Proponent" means the specific firms and persons, exclusive to the Proponent, filling the following roles (or equivalent) in the Proponent's Proposal;
- p. "must," "mandatory" or "required" means a requirement that must be met in order for a Proposal to receive consideration.
- q. "Preferred Proponent" means any entity, including the company, firm, consortium of any legal entity selected to negotiate the Project Agreement
- r. "Premises" shall mean building(s) or part of a building with its appurtenances.
- s. "Project" means the provision of complete services for the Development of the Property;
- t. "Project Agreement" means the agreement between the District and the Proponent to provide all or some of the services;
- u. "Proposal" shall mean the Proponent's submission to the RFP.
- v. "Proponent" means a party submitting a Proposal to this RFP.
- w. "RFP" means this "Request for Proposal".
- x. "Request for Proposal" (RFP) includes the documents listed in the index of the RFP and any modifications thereof or additions thereto incorporated by addenda before the close of RFP.
- y. "should" or "desirable" means a requirement having a significant degree of importance to the objectives of the Request for RFP.
- z. "Special Conditions" means the special conditions, which are included in the RFP.
- aa. "Specifications" means the specifications which are included in the RFP.
- bb. "Statement of Requirements" means the functional requirements and specifications for the Services as set out in the Statement of Requirements;
- cc. "Subcontractor" includes, inter alia, a person, firm or corporation having a contract with the Successful Proponent for the execution of a part or parts, or furnishing to the Successful Proponent materials and/or equipment called for in the RFP.
- dd. "Successful Proponent" means the Proponent submitting the most advantageous RFP as determined by the District of Summerland.
- ee. "Third-Party Intellectual Property Rights" means all Intellectual Property Rights of any Person which is not a member of, or a related party to, a member of the Proponent Team;
- ff. "Work" means any labour, duty and/or efforts to accomplish the purpose of this project.

4.0 FORM OF PROPOSAL

Project Title: 2015-RFP-01 Development of Municipal Property

Department: Development Services

The Proponent confirms it has obtained and carefully examined all of the documents making up the Request for Proposal issued by the District of Summerland and any addenda issued in connection therewith.

The Proponent undertakes and agrees that:

4.1 EXECUTION OF CONTRACT

If the offer contained in this Proposal is accepted, upon being advised that the Contract (the Contract) are available at the office of the Corporate Officer, the Proponent will obtain the Contract and Drawings, if any, and will execute and identify the Contract and Drawings in a form and manner acceptable to the Corporate Officer and will deliver the same within (10) days from the time when the same are available or are delivered or mailed to the Proponent.

4.2 COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK

If awarded the Contract, the Proponent shall comply with the dates set out in the Contract and shall complete the contract within the time specified in the Contract.

4.3 NO COLLUSION

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

4.4 ACCEPTANCE OF PROPOSAL

The acceptance of the Proposal by the District shall be made only by the notice in writing from the Corporate Officer of the District, and will be addressed to the Successful Proponent at the address given in this Form of Proposal; and if the Proposal Documents are so worded, the Proposal may be accepted either in whole or part.

4.5 FAILURE OR DEFAULT OF PROPONENT

If the Proponent for any reason whatsoever fails or defaults in respect of any matter or thing which is an obligation of the Proponent under the terms of this Proposal, the District at its option may consider the Proponent has abandoned the offer made or the contract if the offer has been accepted, whereupon the acceptance, if any, of the District shall be null and void and the District shall be free to select an alternate solution of its choosing.

Executed at _____, in the Province of BC this _____ day of _____, AD 2015, under seal of the Proponent as a speciality instrument.

NOTE: If the Proponent is a corporation, in addition to signature, affix corporate seal (if available). If a natural person makes the Proposal, the Proponent must sign it with his/her name typed or clearly printed below the signature. If the Proponent is carrying on business under a firm name and **NOT** incorporated, the members of the firm must sign below the firm name and their names must be typed or clearly printed below the signature.

(Corporate Name if Proponent is a Corporation)

Per: _____

Per: _____

Mailing Address of Proponent:

Street

District

Province

Postal Code

Telephone

5.0 INSTRUCTIONS TO PROPONENTS

The following terms will apply to this RFP and to any subsequent Contract. Submission of a Proposal in response to this RFP indicates acceptance of all the following terms:

5.1 GENERAL

- a. The law applicable to this RFP shall be the law in effect in the Province of British Columbia. Except for an appeal from a British Columbia Court to the Supreme Court of Canada, no action in respect to this RFP shall be brought or maintained in any court other than in a court of the appropriate jurisdiction of the Province of British Columbia.
- b. In carrying out its obligations hereunder, the Proponent shall familiarize itself and comply with all applicable laws, bylaws, regulations, ordinances, codes, specifications and requirements of all regulatory authorities, and shall obtain all necessary licenses, permits and registrations as may be required by law. Where there are two or more laws, ordinances, rules, regulations or codes applicable to the Works, the more restrictive shall apply.
- c. **Applicability of law:** All references in the RFP to statutes and regulations thereto and District bylaws shall be deemed to be the most recent amendments thereto or replacements thereof.
- d. **Copyright:** All designs, drawings, concept drawings, specifications, digital, hard copies, web pages, internet pages, maps and plans commissioned by the District of Summerland, shall remain the property of the District of Summerland.
- e. In the case of any inconsistency or conflict between the provisions of the RFP, the provisions of such documents and addenda thereto will take precedence in governing in the following order: (1) addenda; (2) RFP; (3) Special Conditions; (4) Specifications; (5) Drawings; (6) Executed Form of RFP; (7) all other documents.
- f. **Headings are for convenience only:** Headings and titles in the RFP are for convenience only and are not explanatory of the clauses with which they appear.
- g. **Method of payment is governed by District policy as well as applicable Federal and Provincial laws.**
- h. The RFP, accepted submission, and District Contract represent the entire Agreement between the District and the Successful Proponent and supersede all prior negotiations, representations or agreements either written or oral. The Contract may be amended only by written instrument agreed and executed by the Successful Proponent and the District.

5.2 INTELLECTUAL PROPERTY RIGHTS

- a. Grant of License

Subject to Section 5.2 b., by submitting a Proposal, each Proponent will and will deem to have:

1. granted to the District a royalty-free license without restriction to use for this Project, any and all of the information, ideas, concepts, products, alternatives, processes, recommendations, suggestions and other intellectual property or trade secrets (collectively the "Intellectual Property Rights") contained in the Proponent's Proposal, or that are otherwise disclosed by the Proponent to the District;
2. waived or obtained a waiver of all moral rights with respect to the Intellectual Property

Rights contained in the Proposal;

Proponents will not be responsible or liable for any use by the District or any sub-licensee or assignee of the District of any Intellectual Property Rights contained in a Proposal.

b. Exceptions to License

The license granted under Section 5.2 a. does not extend to Third Party Intellectual Property Rights to non-specialized third-party technology and software that are generally commercially available. By submitting a Proposal, each Proponent represents to the District that it owns or has, and will continue to own or have at the Proposal Closing Time, all necessary rights to all Third-Party Intellectual Property Rights contained in its Proposal or otherwise disclosed by the Proponent to the District and, subject to the foregoing exceptions, has the right to grant a license of such Third-Party Intellectual Property Rights in accordance with Section 5.2(a).

6.0 REQUEST FOR RFP PROCESS

6.1 NOT A TENDER CALL

This RFP is not a tender call, and the submission of any response to this RFP does not create a tender process. This RFP is not an invitation for an offer to contract, and it is not an offer to contract made by the District.

6.2 NO OBLIGATION TO PROCEED

Though the District fully intends at this time to proceed through the RFP, in order to select the Works, the District is under no obligation to proceed to the purchase, or any other stage. The receipt by the District of any information (including any submissions, ideas, plans, drawings, models or other materials communicated or exhibited by any intended Proponent, or on its behalf) shall not impose any obligations on the District. There is no guarantee by the District, its officers, employees or Managers, that the process initiated by the issuance of this RFP will continue, or that this RFP process or any RFP process will result in a contract with the District for the purchase of the equipment, service, or project.

6.3 LATE PROPOSALS

Proposals received after the final date and time for receipt of Proposals will be considered as "late Proposals." Late Proposals will not be accepted and will be returned unopened to the sender.

7.0 PRE-RFP INFORMATION

7.1 COST OF PREPARATION

Any cost incurred by the Proponent in the preparation of this Proposal will be borne solely by the Proponent.

7.2 INTENTION OF THE DISTRICT

The Proponent that submits to the District the most advantageous Proposal and which represents the interests of the District, Best Value, may be awarded the Contract. The District reserves the right to accept or reject all or part of the RFP, however, the District is not precluded from negotiating with the Successful Proponent to modify its Proposal to best suit the needs of the District.

7.3 REJECTION OF PROPOSALS

The District reserves the right to reject, at the District's sole discretion, any or all Proposals, without limiting the foregoing, any Proposal which either:

- a. is incomplete, obscure, irregular or unrealistic;
- b. has non-authorized (not initialed) erasures or corrections in the Proposal or any schedule thereto;
- c. omits or fails to include any one or more items in the Proposal for which a price is required by the RFP;
- d. fails to complete the information required by the RFP to be furnished with a Proposal; and/or
- e. fails to complete the information required whether the same purports to be completed or not.

Further, a Proposal may be rejected on the basis of the Proponents past performance, financial capabilities, completion schedule and compliance with Federal, Provincial, and/or Municipal legislation. As it is the purpose of the District to obtain a Proposal most suitable to the interests of the District and what it wishes to accomplish, the District has the right to waive any irregularity or insufficiency in any Proposal submitted and to accept the Proposal which is deemed most favourable and the Best Value to the District.

7.4 EVALUATION CRITERIA

The Evaluation Matrix attached as Schedule 1, but not restricted thereto, will be used to evaluate Proposals. Awards will be made based on the Best Value offered, and the Best Value will be determined by the District. The quality of the service to be supplied, the conformity with the specifications, the suitability to requirements, guarantee clauses, and references shall all be taken into consideration.

7.5 EVALUATION COMMITTEE

Evaluation of Proposals will be by an Evaluation Committee formed by the District.

CONFIDENTIALITY

The District will endeavour to keep all Proposals confidential. The material contained in the Proposal from the Successful Proponent will be incorporated in a contract and information which is considered sensitive and/or proprietary shall be identified as such by the Proponent. Technical or commercial information included in the District contract shall not be released if the Purchasing Department of the District deems such releases inappropriate, subject to the *Protection of Privacy and Freedom of Information Act*.

7.6 CLARIFICATION

The District reserves the right to seek Proposal clarification with the Proponents to assist in making evaluations.

7.7 GIFTS AND DONATIONS

Proponents will not offer entertainment, gifts, gratuities, discounts, or special services, regardless of value, to any employee of the District. The Successful Proponent shall report to the District any attempt by District employees to obtain such favours.

7.8 ACCEPTANCE OF PROPOSAL

The District of Summerland shall not be obligated in any manner to any Proponent whatsoever until a written agreement has been duly executed relating to an approved Proposal.

No act of the District other than a notice in writing signed by the District's Corporate Officer shall constitute an acceptance of a Proposal. Such acceptance shall bind the Successful Proponent to execute in a manner satisfactory to the District.

7.9 NEGOTIATION DELAY

If a written Contract cannot be negotiated within thirty days of notification of the Successful Proponent, the District may, at its sole discretion at any time thereafter, terminate negotiations with that Proponent and either negotiate a Contract with the next qualified Proponent or choose to terminate the RFP process and not enter into a Contract with any of the Proponents.

7.10 ENQUIRIES

All enquiries related to this RFP are to be directed, in writing, to the following person. Information obtained from any other source is not official and should not be relied upon. Enquiries and responses will be recorded and may be distributed to all Proponents at the District's option. Questions will be answered if time permits.

Ian McIntosh, Director of Development Services
Summerland Municipal Hall
13211 Henry Avenue
Summerland, BC V0H 1Z0
imcintosh@summerland.ca

7.11 SUBMITTAL DEADLINE AND INSTRUCTIONS

Delivery of Proposals to the District located at Summerland Municipal Hall prior to the specified date and time is solely and strictly the responsibility of the Proponent. The District shall not, under any circumstances, be responsible for delays caused by any private delivery service, or for delays caused by any other occurrence. All Proposals must be manually and duly signed by an authorized corporate officer or principal of the organization with the authority to bind said Proponent. Proposals must not be sent by mail, facsimile or e-mail.

Proposals must be received in a sealed envelope by 2:00 p.m. (local Summerland Time) prior to Friday 29 May 2015 (Closing Time) at:

Municipal Hall Office
13211 Henry Avenue
Summerland, BC V0H 1Z0

Proposals and their envelopes should be clearly marked with the name and address of the Proponent and the RFP program title.

8.0 PROPOSAL PREPARATION

8.1 ALTERNATIVE SOLUTIONS

If alternative solutions are offered, please submit the information in the same format, as a separate Proposal.

8.2 CHANGES TO PROPOSAL WORDING

The Proponent will not change the wording of its Proposal after the Closing Time and no words or comments will be added to the Proposal unless requested by the District for purposes of clarification.

8.3 LIMITATION OF DAMAGES

The Proponent, by submitting a Proposal, agrees that it will not claim damages, for whatever reason, relating to the RFP or in respect of the competitive process, in excess of an amount equivalent to the reasonable costs incurred by the Proponent in preparing its Proposal. The Proponent, by submitting a Proposal, waives any claim for loss of profits if no agreement is made with the Proponent.

8.4 FIRM PRICING

Proposals must be firm for at least 90 days after the final date. Prices will be firm for the entire Contract period.

8.5 CURRENCY AND TAXES

Prices quoted are to be:

- in Canadian dollars;
- inclusive of duty, where applicable;
- FOB destination, delivery charges included where applicable; and
- applicable taxes extra.

9.0 ADDITIONAL TERMS

9.1 SUB-CONTRACTING

- a. Using a Sub-contractor (who must be clearly identified in the Proposal) is acceptable. This includes a joint submission by two (2) Proponents having no formal corporate links. However, in this case, one of these Proponents must be prepared to take overall responsibility for successful interconnection of the two (2) product or service lines and this must be defined in the Proposal.
- b. A Sub-contractor individual or firm, whose current or past corporate or other interests may, in the District's opinion, give rise to a conflict of interest in connection with this project will not be permitted. This includes, but is not limited to, any firm or individual involved in the preparation of this Proposal.

9.2 LIABILITY FOR ERRORS

While the District has used considerable efforts to ensure an accurate representation of information in this RFP, the information contained in this RFP is supplied solely as a guideline for Contractors. The information is not guaranteed or warranted to be accurate by the District, nor is it necessarily comprehensive or exhaustive. Nothing in this RFP is intended to relieve Contractors from forming their own opinions and conclusions with respect to the matters addressed in this RFP.

9.3 AGREEMENT WITH TERMS

By submitting a Proposal the Contractor agrees to all the terms and conditions of this RFP. Contractors who have obtained the RFP electronically must not alter any portion of the document, with the exception of adding the information requested. To do so will invalidate the Proposal.

9.4 USE OF REQUEST FOR RFP

This document, or any portion thereof, may not be used for any purpose other than the submission of Proposals.

10.0 CONDITIONS

- a. A qualified Proposal is one which meets the needs and specifications of the District, the terms and conditions contained in the RFP. The preferred Proposal is a qualified Proposal offering the Best Value, as determined by the District.
- b. The District will decide whether a Proposal is qualified by evaluating all of the Proposals based on the needs of the District, specifications, terms and conditions and price. The Evaluation Committee will examine all Proposals and recommend which Proposal is in the District's best interest.
- c. A Proposal which is unqualified is one that exceeds the cost expectations of the District and/or does not meet the terms and conditions contained in the RFP and/or does not meet the needs and specifications of the District. The District reserves the right to reject any or all unqualified Proposals.
- d. The District recognizes that Best Value is the essential part of purchasing a product and/or service and therefore the District may prefer a Proposal with a higher price, if it offers greater value and better serves the District's interests, as determined by the District, over a Proposal with a low price. The District's decision shall be final.
- e. All equipment, goods and workmanship must conform to all Laws and Standards necessary for use in Canada and the Province of British Columbia.
- f. The Successful Proponent, herein named the Contractor, shall guarantee that his Proposal will meet the needs of the District and that any or all item(s) supplied and/or service(s) rendered shall be correct. If the item(s) supplied by the Contractor and/or the service(s) rendered by it are in any way incorrect or unsuitable, all correction costs shall be borne solely by the Contractor.
- g. All proposed prices shall assume that the Contractor shall bear all risks of loss and/or damage.
- h. Where only one Proposal is received, the District reserves the right not to make public the amount of the Proposal. The amount of the Proposal will be made public if a contract is awarded. The District reserves the right to accept or reject a Proposal, where only one Proposal is received.
- i. The District reserves the right in its sole discretion to accept or reject all or part of any Proposal which is non-compliant with the requirements of this RFP.
- j. The District shall not be obligated either to accept or reject any non-compliance with the requirements of this RFP.

11.1 RESERVATION OF RIGHTS

The District reserves the right, in its discretion, to:

- a. amend the scope of the Project, modify, cancel or suspend the Competitive Selection Process at any time for any reason;
- b. accept or reject any Proposal based on the District's evaluation of the Proposals in accordance with Appendix B, and in particular the District is not obliged to select the Proposal with the lowest Guaranteed Maximum Price;
- c. waive a defect or irregularity in a Proposal and accept that Proposal;
- d. reject, disqualify or not accept any or all Proposals without any obligation, compensation or reimbursement to any Proponent or any of its team members;
- e. re-advertise for new Proposals, call for tenders, or enter into negotiations for this Project or for work of a similar nature;
- f. make any changes to the terms of the business opportunity described in this RFP;
- g. negotiate any aspects of a Preferred Proponent's Proposal; and
- h. extend, from time to time, any date, time period or deadline provided in this RFP, upon written notice to all Proponents.

11.2 NO LOBBYING

Proponents, Proponent Team members and Key Individuals, and their respective directors, officers, employees, consultants, agents, advisors and representatives will not engage in any form of political or other lobbying whatsoever in relation to the Project, this RFP, or the Competitive Selection Process, including for the purpose of influencing the outcome of the Competitive Selection Process. Further, no such person (other than as expressly contemplated by this RFP) will attempt to communicate in relation to the Project, this RFP, or the Competitive Selection Process, directly or indirectly, with any representative of the District, any Restricted Parties, or any director, officer, employee, agent, advisor, consultant or representative of any of the foregoing, as applicable, for any purpose whatsoever, including for purposes of:

- a. commenting on, or attempting to influence views on, the merits of the Proponent's Proposal, or in relation to Proposals of other Proponents;
- b. influencing, or attempting to influence, the evaluation, scoring and ranking of Proposals, the selection of the Preferred Proponent, or any negotiations with the Preferred Proponent;
- c. promoting the Proponent or its interests in the Project, including in preference to that of other Proponents;
- d. commenting on or criticizing aspects of this RFP, the Competitive Selection Process, or the Project, including in a manner which may give the Proponent a competitive or other advantage over other Proponents; and
- e. criticizing the Proposals of other Proponents.

In the event of any lobbying or communication in contravention of this Section, the District in its discretion may at any time, but will not be required to, reject any and all Proposals submitted by that Proponent without further consideration.

11.3 LIMITATION OF DAMAGES

Each Proponent on its own behalf and on behalf of the Proponent Team and any member of a Proponent Team:

- a) agrees not to bring any Claim against the District or any of its employees, advisors or representatives for damages in excess of an amount equivalent to the reasonable costs incurred by the Proponent in preparing its Proposal for any matter in respect of this RFP or Competitive Selection Process, including:
 - a. if the District accepts a non-compliant proposal or otherwise breaches (including breach of material terms) the terms of this RFP or the Competitive Selection Process; or
 - b. if the Project or Competitive Selection Process is modified, suspended or cancelled for any reason (including modification of the scope of the Project or modification of this RFP or both) or the District exercises any rights under this RFP; and
- b) waives any and all Claims against the District or any of its employees, advisors or representatives for loss of anticipated profits or loss of opportunity if no agreement is made between the District and the Proponent for any reason, including:
 - a. if the District accepts a non-compliant proposal or otherwise breaches (including breach of material terms) the terms of this RFP or the Competitive Selection Process; or
 - b. if the Project or Competitive Selection Process is modified, suspended or cancelled for any reason (including modification of the scope of the Project or modification of this RFP or both) or the District exercises any rights under this RFP.

11.0 CONTRACTOR'S OBLIGATIONS

11.1 REGISTRATION WITH WORKSAFE BC (WCB)

The Contract may contain a provision that the Contractor and any approved Sub-contractors must be registered with Worksafe BC (WCB), in which case Worksafe BC (WCB) coverage must be maintained for the duration of the Contract. Prior to receiving any payment, the Contractor may be required to submit a Worksafe BC (WCB) Clearance Letter indicating that all WCB assessments have been paid.

The Contractor shall ensure compliance on his part with the *Workers' Compensation Act* and any regulations there under, especially provisions of said Act or of regulations under said Act having to do with the prevention of accidents, the prevention of diseases and the provision of safe working conditions, including proper sanitation and ventilation.

In any case where pursuant to the provisions of the *Workers' Compensation Act*, the Workers' Compensation Board orders the Contractor in respect of his operations under this Agreement, to cease operations because of failure to install or adopt safety devices or appliances directed by the order of the said Board, or required under said Act or regulations there under or because said Board is of the opinion that conditions of immediate danger exist that would be likely to result in injury to any person, or because of lack of payment of an account due to the Board, the District on twenty-four (24) hours written notice to the Contractor, may terminate the Contract.

11.2 GOVERNING REGULATIONS

The Contractor shall apply and pay for all necessary permits or licenses required for the execution of the Work (but this shall include the obtaining of permanent easements or rights of servitude). The Contractor shall give all necessary notices, pay for all fees required by law, and comply with all laws, ordinances, rules and regulations relating to the Work and to the preservation of the public health. The Contractor shall be responsible for the safety of all workmen and equipment on the project in

accordance with all applicable safety legislation passed by Federal, Provincial and local authorities governing safety.

12.0 INSURANCE PROTECTION AND DAMAGE

12.1 GENERAL INSURANCE

Before starting the Work, the Contractor shall file with the District, certificates of all insurance policies acceptable to the District. These certificates shall state that the insurance complies with the requirements of the Contract and that the territory of the policy includes the country in which the Work is to be constructed.

Each insurance policy required under this Article shall contain an endorsement to provide all Additional Insured with prior notice of changes and cancellations. Such endorsement shall be in the following form:

"It is understood and agreed that the coverage provided by this policy will not be changed or amended in any way or cancelled until thirty (30) days after written notice of such change or cancellation shall have been given or sent by registered mail to all Additional Insured."

Should the Contractor fail to make a payment of any premiums or other assessments required by the Contractor's insurers to maintain such policies in force and effect, the District may in their discretion make payment of such premiums or assessments and deduct the amount thereof from such monies as may then or later be payable to the Contractor pursuant to the Contract or recover the same from the Contractor as the District in his discretion may determine.

Whenever the word The District is to appear in the insurance policies, the legal name shall be inserted.

12.2 PROTECTION OF WORK, PROPERTY AND PUBLIC:

The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

The Contractor shall protect the property adjacent to the Work areas from damage as the result of operations under the Contract. The Contractor shall protect the Work and the District's property from damage and shall make good at their own expense any damage which may arise as the result of the Contractor's operations under the Contract.

12.3 CONTRACTOR'S INSURANCE:

Public Liability & Property Damage Insurance. The Contractor shall save and hold harmless the District, its officers, Managers, servants and employees, from and against any and all suits or claims alleging damage or injury (including death) to any person or property that may occur or that may be alleged to have occurred, in the course of the performance of this Contract, whether such claim shall be made by an employee of the Contractor, or by a third person and whether or not it shall be claimed that the alleged damage or injury (including death) was caused through a wilful or negligent act or omission of the Contractor, its officers, servants, Managers or employees, or a wilful negligent act or omission of any of its sub-contractors or any of their officers, servants, Managers or employees; and at its own expense, the Contractor shall defend any and all such actions and pay all legal charges, costs and other expenses arising there from.

The Contractor shall maintain and keep in force during the term of the Contract and until the date of the completion certificate, Five Million Dollars (\$5,000,000) inclusive limits for public liability and

property damage, against liabilities or damages in respect of injuries to persons (including injuries resulting in death) and in respect of damage to property arising out of the performance of work.

The Contractor shall, at the time the Contract is signed, submit to the District two copies of the insurance policies required under this Article and shall also provide to the District from time-to-time, as may be required, satisfactory proof that such policies are still in full force and effect.

The District shall be an additional insured on the policy. The policies shall preclude subrogation claims by the insurer against anyone insured thereunder. In addition, such insurance policy shall include the following "Cross Liability" clause:

"The insurance afforded by this policy shall apply in the same manner, as though separate policies were issued, to any action brought against any of the additional insured by or on behalf of any other additional insured."

12.4 EQUIPMENT INSURANCE

Notwithstanding anything contained elsewhere herein, it is understood and agreed that the District shall not be liable for any loss or damage to Contractor's equipment, including loss or use thereof. Each and every policy insuring the Contractor's equipment to be used on the Work shall contain the following clause:

"It is agreed that the right to subrogation against the District or any of its officers, employees, or Managers or their parent, subsidiary, affiliated, or associated companies or corporations, is hereby waived."

12.5 AUTOMOTIVE INSURANCE

A minimum of Two Million Dollars (\$2,000,000) of public liability and property damage insurance shall be carried on all automotive equipment.

12.6 INDEMNITY

The Contractor shall be liable for all loss, costs, damages, and expenses whatsoever incurred or suffered by the District, its elected officials, officers, employees and Managers (collectively) including but not limited to damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with the performance, purported performance, or non-performance of this contract, excepting only where such loss, costs, damages and expenses are as a result of the sole negligence of the Indemnities.

The Contractor shall defend, indemnify and hold harmless the Indemnities from and against all claims, demands, actions, proceedings, and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the performance, purported performance, or non-performance of this contract, excepting only where such claim, demand, action, proceeding or liability is based on the sole negligence of the Indemnities.

12.7 CITY REPRESENTATIVE

A District Representative will be assigned by the District to oversee the compliance of the Proposal awarded to the Contractor. In addition, the Contractor will be expected to name a counterpart Project Manager. The Contractor's project manager will be responsible for providing scheduled status reports to "Ian McIntosh, Director of Development Services" or a designate.

12.8 PAYMENT HOLDBACK

The Contract may contain a provision whereby the District will hold back a portion of the total Contract price until the requirements of the RFP have been met.

12.9 SOFTWARE

It is the Contractor's responsibility to ensure that the District has all licenses required to use any software that may be supplied by the Contractor pursuant to the Contract.

12.10 ARBITRATION

All disputes arising out of or in connection with the Contract must, unless the parties otherwise agree, be referred to and finally resolved by arbitration pursuant to the *Commercial Arbitration Act*.

SCHEDULE 1 – EVALUATION MATRIX

1.1 MANDATORY REQUIREMENTS

The District will review Proposals to determine whether they substantially comply with the Statement of Requirements, and provide comments to the respective Proponents regarding any substantially non-compliant omissions or inclusions with their Proposal identified by the District.

The District reserves the right to reassess whether the amended Proposal is substantially compliant. Any response or amendment from the Proponent will not be assumed to mean that the Proponent has complied with the District's request. If a Proponent cannot comply with a requested change, or chooses not to without acceptable reason, as determined by the District, the District reserves the right to reject the Proposal and not consider it further in the evaluation process. By responding to a request from the District to make an amendment to its Proposal, the Proponent is not relieved in any way from taking full responsibility for the contents and terms of its Proposal according to the terms of this RFP.

The District has determined that the following are the Mandatory Requirements:

- a) the Proponent must have signed and delivered to the Contact Person the Participation Agreement in accordance with Section 2.5; and
- b) the Proposal must be received at the Delivery Address no later than the Proposal Closing Time.

1.2 EVALUATION OF PROPOSALS

The District will evaluate Proposals in the manner set out in this Schedule. To assist in evaluation of the Proposals, the District may, in its sole and absolute discretion, but is not required to:

- a) conduct reference checks relevant to the Project with any or all of the references cited in a Proposal to verify any and all information regarding a Proponent, inclusive of its directors/officers and Key Individuals, and to conduct any background investigations that it considers necessary in the course of the Competitive Selection Process, and rely on and consider any relevant information from such cited references in the evaluation of Proposals;
- b) seek clarification of a Proposal or supplementary information from any or all Proponents and consider such clarifications and supplementary information in the evaluation of Proposals; and
- c) request interviews or presentations with any, all or none of the Proponents to clarify any questions or considerations based on the information included in Proposals during the evaluation process, with such interviews or presentations conducted in the discretion of the District, including the time, location, length and agenda for such interviews or presentations. The cost of the interview or presentation shall be the sole responsibility of the proponent.

and the District may in their sole and absolute discretion rely on and consider any information received as a result of such reference checks, background investigations, requests for clarification or supplementary information and interviews/presentations in the evaluation of Proposals.

The District will evaluate the Proposals in accordance with this Schedule 1. Without limiting the rest of this Schedule, the overall objective of the evaluation is to select the Proposal or combination of Proposals that substantially satisfies the Statement of Requirements and provides Best Value to the District.

1.3 EVALUATION PROCESS AND CRITERIA

An Evaluation Committee will evaluate each Proposal. The Evaluation Committee will recommend a preferred Proponent to District Council. The Council may, in its sole and absolute discretion, accept or reject the recommendations of the Evaluation Committee.

If the District determines that a Proposal is unclear in some aspects, a list of questions may be prepared to provide the Proponent with an opportunity to clarify its Proposal. If these clarifications are insufficient, the District may in its sole and absolute discretion decline the Proposal.

Evaluation of Proposals will be based solely on the contents of the submissions and any clarifications provided in writing in response to the questions asked by the District's Contact Person. The evaluation will be conducted in the manner and sequence described below.

- completeness review of proposal;
- rated evaluation;
- qualitative evaluation; and
- financial evaluation.

Completeness Review of Proposal

Proposals will be reviewed to ensure they meet all the Mandatory Requirements, policies and procedures as stated in this RFP. The following are the Mandatory Requirements:

- The Proposal must be received at the Delivery Address prior to Closing Date; and
- The Proposal Form must be signed by the Proponent or each member of the Proponent consortia, if the consortia is a partnership or joint venture.

Proposals that are considered to have passed the criterion, by meeting the Mandatory Requirements, will be evaluated on a completeness review basis for their compliance with the stated requirements.

All Proposals must successfully address all of the required elements to proceed to the rated evaluation.

Rated Evaluation of the Proposal

Proposals will be evaluated by the Evaluation Committee. The combination of Proposals judged to provide the Best Value to the District will be recommended by the Evaluation Committee as the preferred Proponent(s). The rated evaluation has two components: qualitative evaluation and financial evaluation.

Qualitative Evaluation

Aspects of the Proposal submission which are neither part of the financial evaluation, nor pass/fail in nature, will be subject to a qualitative evaluation.

The qualitative evaluation will be a comparative assessment of the Proposals. The District's Evaluation Committee members will rate Proposals against the predetermined evaluation criteria for the relevant activity. Proposals will receive points related to the criteria to the extent that the Evaluation Committee, in its sole and absolute discretion, considers appropriate in terms of adding value to the Project. If there are no discernible differences between Proponents in a specific evaluation category, or no price differential can be supported, all Proponents will score zero in that category.

The following criteria will be used for qualitative evaluation:

Evaluation Criteria**Total Value 100 points**

Development Company's Experience	Pass/Fail
<ul style="list-style-type: none">• Related experience, capability, and background of the company and the principal contact leading this assignment.	
Project Team Members Experience	Pass/Fail
<ul style="list-style-type: none">• Experience, capability, and professional standing of each key participant on Proponent's team.	
Financial Capacity	Pass/Fail
<ul style="list-style-type: none">• Evidence of the financial capacity of the proponent organization or team, indicating that adequate resources are available to implement the vision detailed	
Comparable Projects	5 points
<ul style="list-style-type: none">• Suitability of the Proponent's Proposed Comparable Projects to the experience required for this assignment.	
Proposed Design Concept	30 points
<ul style="list-style-type: none">• Livability and appeal of the project• Energy efficiency and sustainability initiatives• Street presence• Proposed green space• Finishing standards	
Revenue to the District from land sale	35 points
<ul style="list-style-type: none">• Revenue• Terms	
Market Affordability	30 points
<ul style="list-style-type: none">• Price point of the units (within 10%)• Marketing strategy and timeline	

The Evaluation Committee and its advisors are seeking a proposal satisfactory to the District's needs and are under no duty to the Proponents except to bona fide consider all Proposals.

SCHEDULE 2 - PROPOSAL REQUIREMENTS

1. SUBMISSION PACKAGE

A Proponent should submit five (5) hard copies (4 bound copies numbered 1 through 4; plus one unbound copy marked as "Master") and one (1) electronic copy (CD or USB flash drive, with a label on each describing its contents), appropriately packaged and clearly marked "2013-RFP-01 Request for Proposals for Development of Municipal Property".

1.1 COVERING LETTER

A covering letter signed by an authorized representative of the company should be provided outlining the intent of the response and stating that the information contained in the response accurately describes the services to be provided. The response must also guarantee that all quoted prices will be honoured for a specified period from the submission date.

1.2 EXPERIENCE

Please answer the following questions with short narratives.

1. Provide a brief description of your organization, including the year it was founded, its mission, major accomplishments and other information that demonstrates your capacity to carry out development of an affordable housing project. References must be provided. If there are special concerns or restrictions on our use of the reference, these concerns must be addressed in the Proposal. We will not complete any agreement without adequate reference checks. Please provide references as described.
2. Describe the Applicant's experience, if any, in the following categories. Please provide specific examples in your narrative answers.
 - a. Cost efficiency
 - b. Unique or distinctive design features, including use of non-residential space
 - c. Green Building including energy efficiency
3. Provide a brief resume for each member of the Project Team.

1.3 FINANCIAL CAPACITY – ONLY REQUIRED IF THE PROPOSAL INCLUDES CONDITIONS REQUIRING THE DISTRICT TO PARTICIPATE IN FINANCING OF THE PROJECT

It is the Proponent's responsibility to adequately demonstrate to the District that it has the financial capacity to undertake the project. The following are suggestions as to some of the methods by which adequate financial capacity may be demonstrated;

1. Letter from a recognized financial institution indicating that the Respondent has the financial capacity to undertake a project of this size.

2. Other financial/project references.
3. Letter from Respondent's auditor confirming its tangible net worth in the most recent set of audited financial statements.

In addition to the above, provide the following information:

1. Copies of annual audited financial statements and annual reports or other similar financial information for each of the last three fiscal years;
2. If available, copies of the interim financial statement for each quarter since the last fiscal year for which audited statements are provided;
3. Details of any material financing arrangements currently in place;
4. Details of any material events that may affect the entity's financial standing since the last annual or interim financial statements provided;
5. Details of any credit rating; and
6. Details of any bankruptcy, insolvency, company creditor arrangement or other insolvency litigation in the last three fiscal years.

For entities where the accounts provided are for a parent company, rather than the entity submitting the proposal, please provide evidence of the parent company's willingness to provide a guarantee in respect of the Proponent.

1.4 COMPARABLE PROJECTS

Provide a completed *Table B-1 Sample Form – Project Experience* with details of projects the Proponent considers most relevant to this project, which may include:

1. Canadian and global affordable housing projects, including the business structures;
2. Other long-term similar arrangements; and
3. Other public infrastructure projects, both Canadian and non-Canadian.

Proponents should submit a maximum of ten projects.

1.5 PROPOSED DESIGN CONCEPT

a. **Concept:** Provide a clear outline of the concept (project):

- Describe the type of development, number of units, and explain the marketing strategy
- Provide any proposed site layout, building schematics, drawings or floor plans (if available)
- Amenities and services to be offered (if any)
- Identify and explain any partnering arrangements or relationships and then rationalize as to how and why these partners were chosen and how the proponent intends to manage these partnerships going forward
- general standards to be applied in the design and construction of housing units

Proponents are encouraged to look for creative solutions to solving the affordability issues.

b. **Project Schedule:** Include a realistic project schedule showing a chronological progression of work with time estimates for major activities and an overall time-length for completion. The project schedule should include identification of project milestones.

1.6 FINANCIAL PROPOSAL

Provide the following information:

1. The payments and timing of those payments to the District
2. Price points for the housing units (within 10%)
3. Evidence that financing for the Project is in place or that there is a strong probability that financing can be easily obtained

**TABLE B-1
PROJECT EXPERIENCE**

Project Name	Project Description/ Sector	Location (Province/ Country)	Current status of this project	Approximate capital value (Cdn\$MM)	Approximate services value (Cdn\$MM)	Proponent's role in project	Stage Proponent reached in this procurement process	Reference - Name, email address and telephone number	Parties to the project:				
									Sponsor	Funder	Constructor	Facilities Maintenance/ Rehabilitation	Design

Notes on completion of table:

Project description: Affordable Housing/Accommodation/Health/Other (please specify)
 Respondent's role: Specify extent of involvement of major parties to the project
 Project status: Bid phase/Construction phase/Operations phase
 Stage reached: Not short-listed/Short-listed bidder/preferred bidder
 Reference: Provide name and contact details of someone who can attest to your role in this project
 Parties to the project: Corporate name of partners involved in the project

SCHEDULE 3 - PERFORMANCE REQUIREMENTS

The following sections outline performance criteria and scope of work that may be included in the Project Agreement.

SCHEDULE 4 – RPN ZONING REGULATIONS

RPN - RESIDENTIAL POCKET NEIGHBOURHOOD ZONE

RPN

Purpose

To provide a zone to accommodate the comprehensive *Development of Single Detached Housing* in a format which appears as a *Cluster* of cottages grouped around a shared open space and served by a shared parking area, on lands having Full Urban Services. Lands must be designated as LDR(i)-Low Density Residential (intensification) under the District's Official Community Plan.

Principal Uses

The following *Uses* and no other *Uses* shall be permitted *Principal Uses* in this zone subject to all applicable regulations of the Bylaw.

- (a) Single Detached Housing.

Accessory Uses

The following *Uses* and no other *Uses* shall be the permitted *Accessory Uses* in this zone subject to all applicable regulations of this bylaw.

- (a) *Accessory Buildings and Structures* not exceeding 6.0m² in *Gross Floor Area*, per *Single Detached Dwelling*; and
- (b) *Home Occupation* - type 1.

Subdivision Regulations (*Development Site*)

- | | | |
|-----|--------------------------------|---------------------|
| (a) | Minimum Development Site Area | 1,300m ² |
| (b) | Minimum Development Site Width | 36.0m |
| (c) | Minimum Development Site Depth | 30.0m |
| (d) | Maximum Development Site Area | 3,795m ² |

Development Regulations (*Development Site*)

- | | | |
|-----|---|----------------------|
| (a) | Maximum <i>Lot Coverage</i> | 40 percent |
| (b) | Maximum <i>Floor Area Ratio</i> | 0.55 |
| (c) | Maximum <i>Density</i> | 28 Dwellings/hectare |
| (d) | Maximum <i>Gross Floor Area</i> (individual Dwelling) | 100m ² |

Siting Regulations (*Development Site*)

- (a) *Principal Buildings and Structures:*
 - (i) Minimum Front *Setback* 6.0m
 - (ii) Minimum Rear *Setback* 6.0m
 - (iii) Minimum Side *Setback* (Interior) 1.5m
 - (iv) Minimum Side *Setback* (Exterior) 3.5m
 - (v) Maximum *Height* The lesser of 7.0m or 1.5 Storeys

- (b) *Accessory Buildings and Structures*
 - (i) Minimum Front *Setback* 6.0m
 - (ii) Minimum Rear *Setback* 1.5m
 - (iii) Minimum Side *Setback* (Interior) 1.5m
 - (iv) Minimum Side *Setback* (Exterior) 4.5m
 - (v) Maximum *Height* The lesser of 4.5m or 1 Storey

Other Regulations

- (a) A minimum of 15 percent of the *Development* site shall be retained as *Amenity Space*.
- (b) Only one (1) *Accessory Building or Structure* will be allowed per Principal Dwelling.
- (c) No communal parking, loading or garbage collection facilities shall be permitted in any required yard *Abutting* a public *Highway*.
- (d) In addition to the regulations listed above, other regulations may apply. These include [Section 4: General Regulations](#), [Section 5: Landscaping and Screening Regulations](#), [Section 6: Parking and Loading Regulations](#), and [Section 7: Specific Use Regulations](#).

SCHEDULE 5 – CONFIDENTIALITY CONDITIONS

1. **Definitions.** In these confidentiality conditions:
 - a) **“Confidential Information”** means all documents, knowledge and information provided by the Disclosing Party to, or otherwise obtained by, the Receiving Party, whether before or after the date of the RFP, whether orally, in writing or other visual or electronic form in connection with or relevant to the Project, the RFP, or the Competitive Selection Process, including, without limitation, all design, operational and financial information, together with all analyses, compilations, data, studies, photographs, specifications, manuals, memoranda, notes, reports, maps, documents, computer records or other information in hard copy, electronic or other form obtained from the Disclosing Party or prepared by the Receiving Party containing or based upon any such information. Notwithstanding the foregoing, Confidential Information does not include information which:
 - i. is or subsequently becomes available to the public, other than through a breach by the Receiving Party of the terms of this Schedule 1;
 - ii. is subsequently communicated to the Receiving Party by an independent third party, other than a third party introduced to the Receiving Party by the Disclosing Party or connected with the Project, without breach of this Schedule 1 and which party did not receive such information directly or indirectly under obligations of confidentiality;
 - iii. was rightfully in the possession of the Receiving Party or was known to the Receiving Party before the date of the RFP and did not originate, directly or indirectly, from the Disclosing Party;
 - iv. was developed independently by the Receiving Party without the use of any Confidential Information; or
 - v. is required to be disclosed pursuant to any judicial, regulatory or governmental order validly issued under applicable law;
 - b) **“Disclosing Party”** means the District or any of its Representatives;
 - c) **“Permitted Purposes”** means evaluating the Project, preparing a Proposal, and any other use permitted by the RFP or this Participation Agreement;
 - d) **“Receiving Party”** means the Recipient or any of its Representatives;
 - e) **“Recipient”** means a Proponent or any other interested party who completes a Receipt Confirmation Form; and
 - f) **“Representative”** means a director, officer, employee, agent, accountant, lawyer, consultant, financial adviser, subcontractor, Key Individual, or any other person contributing to or involved with the preparation or evaluation of Proposals or proposals, as the case may be, or otherwise retained by the Recipient, the District in connection with the Project.
2. **Confidentiality.** The Recipient will keep all Confidential Information strictly confidential and will not without the prior written consent of the District, which may be unreasonably withheld, disclose, or allow any of its Representatives to disclose, in any manner whatsoever, in whole or in part, or use, or allow any of its Representatives to use, directly or indirectly, the Confidential Information for any purpose other than the Permitted Purposes. The Recipient will make all reasonable, necessary, and appropriate efforts to safeguard the Confidential Information from disclosure to any other person, firm, corporation, or other entity except as permitted in this Schedule 1, and will ensure that each of its Representatives agrees to keep such information confidential and to act in accordance with the terms contained herein.
3. **Ownership of Confidential Information.** The District owns all right, title and interest in the Confidential Information and, subject to any disclosure requirements under applicable law, and except as permitted by this Schedule 1, the Recipient will keep all Confidential Information that the Recipient receives, has access to, or otherwise obtains strictly confidential for a period of three years after the

date of the RFP, and will not, without the prior express written consent of an authorized representative of the District, which may be unreasonably withheld, use, divulge, give, release or permit or suffer to be used, divulged, given or released, any portion of the Confidential Information to any other person, firm, corporation or other entity for any purpose whatsoever.

4. **Limited Disclosure.** The Recipient may disclose Confidential Information only to those of its Representatives who need to know the Confidential Information for the purpose of evaluating the Project and preparing its Proposal or proposal as applicable and on the condition that all such Confidential Information be retained by each of those Representatives as strictly confidential. The Recipient will notify the District, on request, of the identity of each Representative to whom any Confidential Information has been delivered or disclosed.
5. **Destruction on Demand.** On written request, the Recipient will promptly deliver to the District or destroy all documents and copies thereof in its possession or control constituting or based on the Confidential Information and the Recipient will confirm that delivery or destruction to the District in writing, all in accordance with the instructions of the District (for this purpose information stored electronically will be deemed destroyed upon removal from all storage systems and devices); provided, however, that the Receiving Party may retain one copy of any Confidential Information which it may be required to retain or furnish to a court or regulatory authority pursuant to applicable law.
6. **Acknowledgment of Irreparable Harm.** The Recipient acknowledges and agrees that the Confidential Information is proprietary and confidential and that the District may be irreparably harmed if any provision of this Schedule 1 were not performed by the Recipient or any party to whom the Recipient provides Confidential Information in accordance with its terms, and that any such harm could not be compensated reasonably or adequately in damages. The Recipient further acknowledges and agrees that the District will be entitled to injunctive and other equitable relief to prevent or restrain breaches of any provision of this Schedule 1 by the Recipient or any of its Representatives, or to enforce the terms and provisions hereof, by an action instituted in a court of competent jurisdiction, which remedy or remedies are in addition to any other remedy to which the District may be entitled at law or in equity.
7. **Waiver.** No failure to exercise and no delay in exercising, any right or remedy under this Schedule 1 by the District will be deemed to be a waiver of that right or remedy.