

RULES FOR PARTICIPATION

- 1 OWNERSHIP OF PROPOSAL AND PROTECTION OF PRIVACY** - All responses to this NRFP become the property of the RDCK. By submitting a Proposal, the Proponent agrees the RDCK has the right to copy the Proposal Documents. Proposals will be held in confidence by the RDCK, subject to the provisions of the *Freedom of Information and Protection of Privacy Act* and any requirement for disclosure of all or a part of a Proposal under that Act. The requirement for confidentiality shall not apply to any Proposal that is incorporated into the Contract for the supply of the Services. Further, the RDCK may disclose all or part of any Proposal to the RDCK Board of Directors or a delegated governance body of the RDCK.
- 2 EXAMINATION OF DOCUMENTS** - The Proponent must carefully examine the NRFP and addenda. The Proponent may not claim after the submission of a Proposal that there was any misunderstanding with respect to the requirements and conditions imposed by the RDCK. These documents will be incorporated into a Contract between the RDCK and the successful Proponent and therefore must be considered by the Proponent in preparing their Proposal.
- 3 LIABILITY FOR ERRORS** - While the RDCK has undertaken efforts to ensure accurate representation of information in this NRFP, the information contained is supplied solely as a guideline for Proponents. The information is not guaranteed or warranted to be accurate by the RDCK, nor is it necessarily comprehensive or exhaustive. Nothing in this NRFP is intended to relieve Proponents from forming their own opinions and conclusions with respect to the information in this NRFP.
- 4 PROPONENT QUESTIONS AND CLARIFICATION** - Prior to submitting their Proposal, the Proponent must seek clarification from the RDCK for any items within the NRFP documents that may appear to be unclear or conflicting, or otherwise requiring the attention of the RDCK. The Proponent must satisfy themselves as to the quantities and nature of the Services to be supplied and in general, shall obtain all relevant information as to risks, contingencies and other circumstances which may influence their Proposal. Queries and requests for clarification are to be submitted as per the instructions in the NRFP Key Information section. The RDCK shall determine, at its sole discretion, whether the query requires response, and such responses will be made available to all by issue of addenda posted on the RDCK's website. No oral conversation will affect or modify the terms of the NRFP.
- 5 ADDENDA** - Proponents are required to check the RDCK's website for any updated information by the NRFP closing date. Upon submitting a response to this NRFP, Proponents are deemed to have received all addenda posted on the RDCK's website and deemed to have considered the information for inclusion in their submission. Should there be any discrepancy in the NRFP documentation provided, the RDCK's original file copy shall prevail.
- 6 NRFP CLOSING DATE AND TIME** - Proposals and responses will be received on or before the closing date indicated in the NRFP document.
- 7 INSTRUCTIONS FOR PROPOSAL SUBMISSIONS** - Proposals must be submitted following the instructions in the NRFP Key Information section. Proposals submitted shall be deemed to be successfully received once a confirmation of receipt email is sent from the RDCK Representative to the Proponent. The RDCK will not be liable for any delay for any reason including technological delays, or issues by either party's network or email program, and the RDCK will not be liable for any damages associated with Proposals not received.
- 8 PRICES** - Prices proposed by the Proponent shall be all-inclusive and stated in Canadian Funds. Except

where expressly stated to the contrary in the NRFP documents, the intention is that Prices shall remain fixed for the completion of the Services. Prices shall include the provision of all tools, materials, equipment, commissioning, labour, transportation, fuel, supervision, management, overhead, materials, traffic control, services, all necessary packing and crating (where applicable), Canadian Customs import and export duties, freight, handling, insurance, all other associated or related charges, foreign, and municipal taxes, bonding costs, all licences, permits, inspections and all other requirements necessary for the commencement, performance and completion of Services as described.

- 9 CONFLICT OF INTEREST** - By submitting a Proposal, the Proponent confirms that the current or past employment or other interests or relationships of the Proponent (including a Proponent's subcontractors and named personnel, if any) do not create or lead to any actual, potential or perceived conflict of interest, unfair advantage, bias or reasonable apprehension of bias that would favor the Proponent (including a Proponent's subcontractors and named personnel, if any) with respect to the procurement process. The RDCK may, in its sole discretion, disqualify a Proposal or cancel its decision to identify a Proponent as a successful Proponent at any time prior to the execution of the Contract by the RDCK if the Proposal, in the sole discretion of RDCK, reveals a conflict of interest that cannot be managed, mitigated or minimized.

For the purposes of this section, the term "Conflict of Interest" means:

- (a) in relation to the NRFP process, the Proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to;
 - (i) having, or having access to, confidential information of the RDCK in the preparation of its Proposal that is not available to other Proponents;
 - (ii) communicating with any person with a view to influencing preferred treatment in the NRFP process (including but not limited to the lobbying of decision makers involved in the NRFP process; or
 - (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of the NRFP process; or
- (b) in relation to the performance of its contractual obligations contemplated in the contract that is the subject of this procurement, the Proponent's other commitments, relationships or financial interests;
 - (i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement, or
 - (ii) could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

- 10 NO CONTRACT** - This is a Request for Standing Offers and not a tender process. This NRFP is not intended to create a contractual relationship between the RDCK and any Proponent. By issue of this NRFP document, the RDCK intends to reserve itself to absolute and unfettered discretion to invite, consider and analyze Proposals, select preferred Proponent(s) and negotiate with the preferred Proponent(s). No contractual, tort, or other legal obligations are created or imposed on the RDCK, or any other individual, officer or employee of the RDCK with respect to the NRFP documentation or by submission or consideration by the RDCK of any Proposal.

- 11 RIGHT TO MODIFY OR CANCEL NRFP** - The RDCK reserves the right to modify the terms of the NRFP at any time prior to the Closing Date and Time, including the right to cancel the NRFP at any time prior to entering into a Contract with a Proponent.
- 12 NO CLAIM** - Each Proponent, by submitting a Proposal, irrevocably waives any claim, action, or proceeding including without limitation any judicial review or injunction application, against the RDCK or any of the RDCK's elected officials, employees, advisors or representatives, for damages, expenses or costs including costs of Proposal preparation, loss of profits, loss of opportunity or any consequential loss for any reason including: any actual or alleged unfairness on the part of the RDCK at any stage of the NRFP process; if the RDCK does not award or execute a contract; or, if the RDCK is subsequently determined to have accepted a noncompliant Proposal or otherwise not complied with the terms of this NRFP, with the exception of fraud on the RDCK's part
- 13 NO ASSIGNMENT** - Under no circumstances may the Proponent assign any rights to any other party. Joint submissions must identify a prime Proponent that will assume responsibility for the Proposal as well as for the professional standards, actions and performance of Proponents if awarded the Services. Services or any part thereof may not be subcontracted, transferred, or assigned to another firm, person, or company without prior written authorization of the RDCK.
- 14 WITHDRAWAL OF PROPOSAL** - Proposals may be withdrawn upon request by following the instructions on the NRFP Key Information section.
- 15 RIGHT TO ACCEPT AND REJECT PROPOSALS** - The RDCK may, in its sole discretion, reject any and all Proposals, or accept the Proposal deemed most favourable in the interests of the RDCK. The lowest, or any Proposal, will not necessarily be awarded. Proposals which contain qualifying conditions or otherwise fail to conform to the instructions contained in this NRFP may be disqualified or rejected. The RDCK may, however, in its sole discretion, reject or retain for its consideration Proposals which are non-conforming because they do not contain the content or form required by the NRFP, or for failure to comply with the process for submission set out in this NRFP, whether or not such non-compliance is material.
- 16 LITIGATION** - Without limiting section 15 of these Rules for Participation, the RDCK may, in its absolute discretion, reject a Proposal if the Proponent, or any officer or director has been engaged directly or indirectly in a legal action against the RDCK, its elected or appointed officers, representatives or employees in relation to any matter, or if the RDCK has initiated legal action against any officers or directors of the Proponent. In determining whether or not to reject a Proposal, the RDCK will consider whether the litigation is likely to affect the Proponent's ability to work with the RDCK, its consultants and representatives, and whether the RDCK's experience with the Proponent indicates there is a risk the RDCK will incur increased staff and legal costs in the administration of an agreement if it is awarded to the Proponent.
- 17 NEGOTIATION** - The RDCK reserves the right, prior to contract award, to negotiate changes to the scope of the services (including pricing to meet budget) with the Proponent or any one or more Proponents, proposing the "best value" without having any duty to advise any other Proponent or to allow them to vary their Proposal as a result of changes to the scope of the services or to the contract documents; and the RDCK may enter into a changed or different contract with the Proponent proposing the "best value", without liability to Proponents who are not awarded the contract.
- 18 AWARD TO MULTIPLE PROPONENTS** - The RDCK reserves the right to award sections of the Services to

separate companies to obtain best value.

- 19 TERMS AND CONDITIONS OF THE CONTRACT** - The form of contract will be similar to the RDCK's Construction Service Agreement terms published on the RDCK website, the Schedules in this NRFP and other terms and conditions mutually agreed upon by the parties and finalized to the satisfaction of the RDCK.
- 20 REQUESTED DEPARTURES** - By submitting a Proposal, the Proponent agrees that the departures requested in the Proposal Form will not form part of the Contract unless and until the RDCK specifically consents in writing. The RDCK reserves the right not to consider departures not stated in the Proponent's Proposal Submission.