



## **Request for Proposal**

### **RFP# 2016-01 MANAGEMENT AND OPERATION OF PEACH ORCHARD CAMPGROUND**

**Issue date: August 15, 2016**

#### **Closing location:**

District of Summerland  
P.O. Box 159  
13211 Henry Avenue  
Summerland, B.C. V0H 1Z0  
Attention: Corporate Officer

#### **Closing date and time:**

One completed copy of this proposal must be received by 4:00 PM Pacific Time on  
**August 31, 2016**

#### **Contact Person:**

Brenda Ingram, Recreation Manager  
Fax: 250-494-3222  
Email: [bingram@summerland.ca](mailto:bingram@summerland.ca)

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## Executive Summary

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### 1. Summary of Requirement

*The District of Summerland is seeking proposals for management and operation of the Peach Orchard Campground as per schedules described in this document. It is intended that any contract entered into as a result of this Request for Proposal will be for a three-year period.*

## **Administrative Requirements**

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

### **2. Request for Proposal Terminology**

Throughout this Request for Proposal, terminology is used as follows:

- a) “Contract” means the written agreement resulting from this Request for Proposal executed by the Corporation of the District of Summerland and the Contractor;
- b) “Contractor” means the successful Proponent to this Request for Proposal who enters into a written Contract with the District;
- c) “District” means the Corporation of the District of Summerland.
- d) “must”, or “mandatory” means a requirement that must be met in order for a proposal to receive consideration;
- e) “Proponent” means an individual or a company that submits, or intends to submit, a proposal in response to this “Request for Proposal”; and
- f) “should” or “desirable” means a requirement having a significant degree of importance to the objectives of the Request for Proposal.

### **3. Request for Proposal Process**

#### **3.1 Receipt Confirmation Form**

Proponents are advised to fill out and return the attached Receipt Confirmation Form (Appendix C). All subsequent information regarding this Request for Proposal, including changes made to this document, will be directed only to those Proponents who return the form. Subsequent information will be distributed by the method authorized on the Receipt Confirmation Form.

### **3.2 Enquiries**

All enquiries related to this Request for Proposal 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.

Brenda Ingram  
Recreation Manager  
District of Summerland  
P.O. Box 159  
13211 Henry Avenue  
Summerland, B.C. V0H 1Z0  
Fax: (250) 494-3222  
E-mail: [bingram@summerland.ca](mailto:bingram@summerland.ca)

### **3.3 Closing Date**

One completed copy of this proposal must be received by 4:00 PM, Pacific Time, on Wednesday, August 31, 2016 at:

District of Summerland  
P.O. Box 159  
13211 Henry Avenue  
Summerland, B.C. V0H 1Z0  
Attention: Corporate Officer

**Proposals must not be sent by facsimile.** Proposals and their envelopes should be clearly marked with the name and address of the Proponent and the project or program title.

### **3.4 Late Proposals**

Late proposals will not be accepted and will be returned to the Proponent.

### **3.5 Eligibility**

- a) Proposals will not be evaluated if the Proponent's current or past corporate or other interests may, in the District's opinion, give rise to a conflict of interest in connection with this contract.
- b) Proposals from not-for-profit agencies will be evaluated against the same criteria as those received from any other Proponents.

**3.6 Evaluation Committee**

Evaluation of proposals will be by a committee formed by the District and may include a representative of the Finance Department and the Parks and Recreation Department.

**3.7 Evaluation and Selection**

The evaluation committee will check proposals against the mandatory criteria. Proposals not meeting all mandatory criteria will be rejected without further consideration. Proposals that do meet all the mandatory criteria will then be assessed and scored against the desirable criteria. The District’s intent is to enter into a Contract with the Proponent who has the highest overall ranking.

**3.8 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 Request for Proposal process and not enter into a Contract with any of the Proponents.

**3.9 Debriefing**

At the conclusion of the Request for Proposal process, all Proponents will be notified. Unsuccessful Proponents may request a debriefing meeting with the District.

**3.10 Estimated Time Frames**

The following timetable outlines the anticipated schedule for the Request for Proposal and contract process. The timing and the sequence of events resulting from this Request for Proposal may vary and shall ultimately be determined by the District.

<b>Event</b>	<b>Anticipated Date</b>
Request for Proposal is issued	August 15, 2016
Request for Proposal closes	August 31, 2016
Proposal evaluation completed	September 8, 2016
Contract is signed	September 9, 2016
Service delivery starts	October 15, 2016

**4. Proposal Preparation**

**4.1 Signed Proposals**

The proposal must be signed by a person authorized to sign on behalf of the Proponent and to bind the Proponent to statements made in response to this Request for Proposal. The Proponent should ensure its proposal includes a letter

or statement(s) substantially similar in content to the sample Proposal Covering Letter provided in Appendix A.

**4.2 Alternative Solutions**

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

**4.3 Irrevocability of Proposals**

By submission of a clear and detailed written notice, the Proponent may amend or withdraw its proposal prior to the closing date and time. Upon closing time, all proposals become irrevocable. By submission of a proposal, the Proponent agrees that should its proposal be successful the Proponent will enter into a Contract with the District.

**4.4 Changes to Proposal Wording**

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

**4.5 Working Language of the District**

The working language of the Corporation of the District of Summerland is English and all responses to this Request for Proposal must be in English.

**4.6 Proponents' Expenses**

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

**4.7 Limitation of Damages**

Further to the preceding paragraph, the Proponent, by submitting a proposal, agrees that it will not claim damages, for whatever reason, relating to the Contract 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, not to exceed \$500, and the Proponent, by submitting a proposal, waives any claim for loss of profits if no agreement is made with the Proponent.

**4.8 Currency and Taxes**

Prices quoted are to be:

- a) in Canadian dollars; and

- b) exclusive of Goods and Services Tax and Provincial Sales Tax. (Taxes to be reported separately.)

## **5. Additional Terms**

### **5.1 Sub-Contracting**

Using a sub-contractor is not acceptable, except in emergency situations and with the prior approval of the District.

### **5.2 Acceptance of Proposals**

- a) This Request for Proposal should not be construed as an agreement to purchase goods or services. The District is not bound to enter into a Contract with the Proponent who submits the lowest priced proposal or with any Proponent. Proposals will be assessed in light of the evaluation criteria. The District will be under no obligation to receive further information, whether written or oral, from any Proponent.
- b) Neither acceptance of a proposal nor execution of a Contract will constitute approval of any activity or development contemplated in any proposal that requires any approval, permit or license pursuant to any federal, provincial, regional district or municipal statute, regulation or by-law.

### **5.3 Definition of Contract**

Notice in writing to a Proponent that it has been identified as the successful Proponent and the subsequent full execution of a written Contract will constitute a Contract for the goods or services, and no Proponent will acquire any legal or equitable rights or privileges relative to the goods or services until the occurrence of both such events.

### **5.4 Liability for Errors**

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



**5.5 Ownership of Proposals**

All documents, including proposals, submitted to the District become the property of the District. They will be received and held in confidence by the District, subject to the provisions of the Freedom of Information and Protection of Privacy Act.

**5.6 Use of Request for Proposal**

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

**5.7 Confidentiality of Information**

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

**5.8 Reciprocity**

The District may consider and evaluate any proposals from other jurisdictions on the same basis that the government purchasing authorities in those jurisdictions would treat a similar proposal from a British Columbia supplier.

**6. Selected Contract Clause**

**6.1 Registration with Workers' Compensation Board**

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

**6.2 Business Registration**

The successful Proponent must hold a valid District of Summerland business licence.

**6.3 Laws of British Columbia**

Any Contract resulting from this Request for Proposal will be governed by and will be construed and interpreted in accordance with the laws of the Province of British Columbia.

**6.4 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*.

**6.5 Indemnity**

The Contractor will indemnify and save harmless the District, its employees and agents from and against all claims, demands, losses, damages, costs and expenses made against or incurred, suffered or sustained by the District at any time or times (either before or after the expiration or sooner termination of this Contract) where the same or any of them are based upon or arise out of or from anything done or omitted to be done by the Contractor or by any servant, employee, officer, director or sub-Contractor of the Contractor pursuant to the Contract excepting always liability arising out of the independent acts of the District.

**6.6 Insurance**

Any Contract resulting from this Request Proposal may require that the Contractor, without limiting its obligations or liabilities and at its own expense, provide and maintain throughout the Contract term, the following insurances with insurers licensed in British Columbia in forms acceptable to the District. All required insurance will be endorsed to provide the District with 30 days' advance written notice of cancellation or material change. The Contractor will provide the District of Summerland with a Certificate of Insurance, immediately following execution and delivery of the Contract.

Comprehensive General Liability in an amount not less than \$2,000,000 inclusive per occurrence insuring against bodily injury and property damage and including liability assumed under the Contract. The District is to be added as an additional insured and the policy shall contain a cross liability clause.

Automobile Liability on all vehicles owned, operated or licensed in the name of the Contractor in an amount not less than \$2,000,000.

**6.7 Compliance with Laws**

The Contractor will give all the notices and obtain all the licenses and permits required to perform the work. The Contractor will comply with all laws applicable to the work or performance of the Contract.

## Project or Program Requirements

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### 7. Situation Overview

#### 7.1 District Responsibility

The District of Summerland requires an individual or corporation to manage and operate a public campground facility owned by the Municipality known as the Peach Orchard Campground.

#### 7.2 Background

From October 1, 2011 to September 15, 2016 the campground has been serviced by one Contractor. Their contract has expired and the District is looking for new proposals for the management and operation of its public campground facility.

### 8. Requirements and Project Scope

#### 8.1 Project Scope, and Time-Frames

**8.1.1** The District requires a Contractor for the management and operation of its public campground. The Contractor should have the following attributes:

- professionalism
- communication skills
- performance
- previous experience

**8.1.2** The term of the contract will be for October 15, 2016 to October 15, 2019, with an option to renew by mutual agreement of both parties.

#### 8.2 Basic Requirements

The services the Contractor will provide to the District are as follows:

- Manage and operate a staffed public campground for tents and recreational vehicles including the maintenance of a reservation system for taking advance bookings of campsites.
- Be responsible for all costs of labour and supplies and material used on the premises for the guests of the campground, for the normal day to day operation and maintenance during the terms of this lease, and;

- ( i) to provide commercial and recreational entertainment compatible with campgrounds for the guests of the campground.
- ( ii) to provide each guest with a copy of the campground regulations.
- Properly maintain the Premises, at all times to an excellent standard of maintenance, including;
  - ( i) to irrigate all grass together with any hedges, trees and shrubs, pertaining to the premises.
  - ( ii) to mow all grass and trim all willow trees and hedges when required.
  - ( iii) to clean and maintain the washroom facilities daily, and to be responsible for gathering and removal of all garbage and refuse so as to maintain the premises in a neat, clean and tidy condition.
  - ( iv) to ensure no waste or other material is allowed to dirty or pollute the natural creek flowing through the premises.
  - ( v) to ensure no person will place obstructions in Eneas Creek so as to impede the flow of water.
  - ( vi) all decisions relating to landscaping, trees and the physical layout of the park must have the final approval of the Summerland Parks and Recreation Department.
- Supply and maintain all containers and equipment necessary to carry out the efficient operation of the public campground.
- Properly document all usage of the campground facilities and prepare receipts for all revenue received from campsite rentals. These receipts are to be returned to the District at the end of each year.
- Allow full access within the premises to the public at large who may wish to use the public tennis/pickleball courts situated thereon, even though such public may not be registered campers.
- Establish daily, weekly or special accommodation rates prior to the commencement of each annual season and to forward such rates to the Parks and Recreation Director and registration with Provincial guidebooks.
- Obtain proper registration with Canada Customs and Revenue Agency for purposes of collecting and remitting the Goods and Services Tax and employee source deductions from wages. Registration will also be made with the Workers' Compensation Board of B.C., and necessary remittances

on any wages paid to employees of the Contractor will be made. A copy of the notification of registration from these authorities will be provided to the Financial Officer prior to commencement of operations.

- Obtain the approval of the Recreation Manager for all major policies regarding the use of the Peach Orchard Campground.

### **8.3 Statement of Compliance**

Proponents must include a statement of compliance indicating that if they are the successful Proponent, they will have in place and maintain the following requirements throughout the term of the contract:

- a. hold a valid District of Summerland business licence;
- b. hold a current registration with the Workers' Compensation Board of British Columbia;
- b. a Certificate of Insurance in accordance with paragraph 6.6 of the document

## **9. Evaluation Criteria**

### **9.1 Mandatory Criteria**

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

- a) 1 copy of the proposal must be submitted;
- b) Proposal must be in English and must not be sent by facsimile;
- c) Proposals must be received at the closing location by the closing date;
- d) Proposals must be signed by an authorized person to sign on behalf of the Proponent;
- e) The proposal must include a statement of compliance that they have in place and will maintain those requirements listed in Section 8.3 throughout the term of the contract;

### **9.2 Desirable Criteria**

Proposals meeting the mandatory requirements will be further assessed against the following desirable criteria:

- a) Proponent's background: 40%
  - proponent's experience on programs of similar nature
  - qualifications and experience of employees
- b) Staffing: 10%
  - suitability of vehicles used to provide service
  - ability to maintain a reservation system

- communication system
  - dress code and staff identification
- c) Response times including: 10%
- reservations or request for information
  - ability to respond to public complaints
  - three references
- d) Pricing: 30%
- An outline of the revenue sharing arrangement being proposed for the term of the Agreement. (Percentage of all revenue collected as per section 4.2 (b) or 4.3 in Appendix 'B' of the Draft Agreement)

## 10. Proponent Response

In order to receive full consideration during evaluation, proposals should include the following:

- a) A company profile, including an overview of the organization, background experience and stating compliance with the mandatories referred to in Section 9.1. A description of the qualifications and experience of employees.
- b) A description of the training provided that maintains the proponent's professionalism, communications and performance skills. The proponent may include a copy of the company policy and procedures manual.
- c) A description of the staffing that will be operating the facilities. Suitability of any reservation system used to provide service. A description of the twenty-four-hour communication system (i.e. answering service, pagers, cell phones, etc.).
- d) A description of the proponent's response time once a reservation, complaint or request for information has been received. Provide three independent references, include name and phone number. These references may be contacted to verify corporate performance and experience.
- e) Pricing is to be provided in the following format:  
An outline of the revenue sharing arrangement to be entered into showing the amounts that the District will receive and the amount that the Proponent will receive.

## **11. Proposal Format**

Evaluation of proposals is made easier when Proponents respond in a similar manner. The following format and sequence should be followed in order to provide consistency in Proponent response and ensure each proposal receives full consideration. All pages should be consecutively numbered.

- a) Title Page, showing Request for Proposal number, Proponent's name and address, Proponent's telephone number, and a contact person.
- b) One-page letter of introduction signed by the person or persons authorized to sign on behalf of, and bind the Proponent to, statements made in the proposal.
- c) Table of contents including page numbers.
- d) A short (one or two page) summary of the key features of the proposal.
- e) The body of the proposal, including pricing, i.e. the "Proponent Response".
- f) Any additional information.

## **12. Proponent Checklist**

This checklist has been provided solely for the convenience of the Proponent. Its use is not mandatory and it does not have to be returned with the proposal. However, the Receipt Confirmation form should be returned upon receipt of the Request for Proposal.

- The requirements of the Request for Proposal have been read and understood by everyone involved in putting together the proposal.
- The Receipt of Confirmation Form has been completed and sent in.
- The proposal addresses everything asked for in the Request for Proposal.
- The proposal meets all the mandatory requirements of the Request for Proposal.
- The proposal clearly identifies the Proponent, the project, and the Request for Proposal number.
- The Proponent's name and the Request for Proposal number appear on the proposal envelope
- Every care has been taken to make sure the proposals are at the closing location in plenty of time, as late proposals will be rejected.
- The proposal is being delivered by hand, courier, or mail, as faxed proposals are not accepted.

## Appendix A - Proposal Covering Letter

*Letterhead or Proponent's name and address*

*Date*

*Corporate Officer  
District of Summerland  
P.O. Box 159  
Summerland, B.C.  
V0H 1Z0*

Dear Sir/Madam

Subject: **Request for Proposal name**

The enclosed proposal is submitted in response to the above-referenced Request for Proposal. Through submission of this proposal we agree to all of the terms and conditions of the Request for Proposal.

We have carefully read and examined the Request for Proposal 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 this proposal and to any agreement resulting from the proposal.

Yours truly

*signature*

Name:

Title:

Legal name of

Proponent:

Date:



# Appendix B – Draft Agreement

## PEACH ORCHARD CAMPGROUND OPERATING AGREEMENT

THIS AGREEMENT made the \_\_\_\_ day of \_\_\_\_\_, 2016 is

**BETWEEN:**

**THE CORPORATION OF THE DISTRICT OF SUMMERLAND**, a municipal corporation having its offices at 13211 Henry Avenue, Summerland, British Columbia, V0H 1Z0

(hereinafter referred to as the “**District**”)

**OF THE FIRST PART**

**AND:**

\_\_\_\_\_  
\_\_\_\_\_

(hereinafter referred to as the “**Contractor**”)

**OF THE SECOND PART**

**WHEREAS:**

- A. The District is the registered owner in fee simple of those lands located at 6321 Peach Orchard Road in Summerland, British Columbia, legally described as Parcel Identifier: 012-683-655, Block 10 District Lot 455 Osoyoos Division Yale District Plan 157 Except Plan 18857 (the “**Premises**”);
- B. There is located on the Premises a public campground facility known as Peach Orchard Campground (the “**Campground**”);
- C. The Contractor is prepared to manage and operate the Campground on behalf of the District in accordance with the terms and conditions contained in this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT IN** consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto mutually covenant and agree as follows:

### **1.0 Agreement to Provide Services**

- 1.1 The Contractor agrees to provide the services described in Schedule "A" (the “**Services**”) on the terms and conditions contained in this Agreement.
- 1.2 Subject to Article 11 below, the term of this Agreement is three (3) years (the “**Term**”), commencing on October 15, 2016 (the “**Commencement Date**”).

1.3 This Agreement may be renewed by mutual agreement of the parties. If either party wishes to renew this Agreement, that party will give the other party notice of its intention to renew at least sixty (60) days prior to the expiration of the Term.

## **2.0 Obligations of the District**

2.1 The District will, at its sole cost:

- (a) carry out any necessary spraying of trees, shrubs, grass, or other growth, or noxious pests, within the Premises;
- (b) ensure that all the District's equipment is in good working condition by the 15<sup>th</sup> day of May of each year and repair such equipment in the event of breakdown;
- (c) ensure that all the District's buildings are in good repair and grounds are in good condition within the Campground by the 15<sup>th</sup> day of May of each year;
- (d) give the Contractor prompt and sufficient notice of changes in priorities or programs likely to materially affect the Services;
- (e) examine all requests, reports or other documents presented by the Contractor relating to the Services and promptly provide written decisions or general instructions pertaining thereto so as to not delay the provision of the Services;
- (f) provide the Contractor with the use of the District's registration software used for taking campsite reservations at the Campground;
- (g) ensure the tennis courts are swept once a week during the Operating Season; and
- (h) winterize the Campground and secure all buildings and Campground Items.

## **3.0 Obligations of the Contractor**

3.1 The Contractor will, at its sole cost:

- (a) operate the Campground only for the purpose of a tent and recreational vehicle campground open to the public and, in connection therewith, the Contractor may operate a concession with goods for resale to Campground users (the "**Concession**") and coin-operated showers for the use of Campground users (the "**Coin Showers**");
- (b) operate the Campground only during the period from May 15<sup>th</sup> to September 15<sup>th</sup> (the "**Operating Season**"), or as otherwise agreed to by the Contractor and the District;

- (c) be responsible for starting up the Campground at the commencement of the Operating Season and shutting down the Campground at the end of the Operating Season, ensuring the buildings are in good repair and the grounds are in good condition.
- (d) use all reasonable efforts to provide the Services in a complete, efficient and tidy manner during the Term;
- (e) pay as they become due all charges for utilities including natural gas, telephone, internet, electricity, and water services on the Premises;
- (f) obtain and maintain during the Term insurance in accordance with the requirements of Schedule "B" and provide the District with certificates of insurance confirming the placement and maintenance of the required insurance prior to the Commencement Date and promptly upon the District's request from time to time thereafter. For clarity, the insurance requirements set out in Schedule "B" are minimum requirements and are not to be interpreted in a manner that limits the Contractor's obligations under this Agreement and the Contractor shall be responsible for obtaining and maintaining such additional insurance as would a prudent operator having similar obligations and interests to those of the Contractor under the terms of this Agreement;
- (g) not construct any buildings or structures on the Premises unless, prior to any such construction, the Contractor has obtained:
  - (i) a building permit from the District authorizing the construction or renovations of the buildings and structures set out in the permit and the plans and specifications attached to it; and
  - (ii) all required inspections as set out in the District's building bylaw;and all such work shall be carried out at the sole cost of the Contractor;
- (h) repair and maintain the Campground throughout the Operating Season in proper and safe order and condition as befits a municipal public campground, reasonable wear and tear and damage by any peril the risk of which has been insured against excepted;
- (i) give immediate notice to the District of any defect in water, gas or other pipes or fixtures, heating apparatus, electric or other wires or fixtures, or in any structure on the Premises;
- (j) keep and leave whole and in good repair all water, gas and electrical fixtures, glass, pipes, faucets, locks, fastenings, hinges, heating and cooling apparatus in, on or attached to the Premises, and including the specific Campground items listed in the attached Schedule "C";

- (k) perform minor repairs to all buildings and facilities located on the Premises and all appliances located therein, such as paint touch-ups, grouting repairs, adjustments to toilet and shower mechanical apparatus, replacement of tap washers and replacement of light bulbs and tubes, repairs to picnic tables, and the Contractor will leave the Premises in good repair at the end of the Term or any renewal term, reasonable wear and tear excepted;
- (l) take all reasonable precautions to ensure the safety of all persons using the Campground;
- (m) report immediately to the District any incidents or accidents that required emergency services by police, fire or ambulance, or hospitalization of any employee, user or customer of the Campground;
- (n) keep the Campground free of any litter, rubbish and debris;
- (o) employ and provide the services of such staff and personnel as are necessary to safely and efficiently carry out the responsibilities of the Contractor under this Agreement, and provide the District from time to time on request a list of names and positions of such staff and personnel;
- (p) not remove vegetation from the Premises, other than that which has been approved by the District;
- (q) allow the District access at any time to the landscaping, trees and the physical layout of the Premises;
- (r) not carry on or do or allow to be carried on or done on the Premises anything that:
  - (i) may be or become a nuisance to the District or the public, and ensure at all times that the public using the Campground facilities are not noisy or bothersome to residences in the surrounding area;
  - (ii) increases the hazard of fire or liability of any kind;
  - (iii) increases the premium rate of insurance against loss by fire or liability upon the Premises;
  - (iv) invalidates any policy of insurance for the Premises; or
  - (v) directly or indirectly causes damage to the Premises or to any improvements located thereon;
- (s) obtain permission from the District prior to making any physical changes to the Campground, including access to the facilities, and comply with all requirements of the District for any physical changes that the District may require to be made;

- (t) comply with any and all laws, statutes, enactments, bylaws, regulations and orders from time to time in force and to obtain all required approvals and permits thereunder, and not do or permit or omit to do anything in, on or from the Campground in contravention thereof;
  - (u) ensure that all workers' compensation regulations and requirements are adhered to in the operation of the Campground;
  - (v) comply with any charges registered against title to the Premises in the Kamloops Land Title Office, and the Contractor acknowledges that the District may grant further charges over the Premises and the Contractor agrees to use and permit the use of the Campground only in compliance with all such charges;
  - (w) provide their own on-site residence;
  - (x) not vacate or abandon the Campground during the Operating Season, or cease to use the Campground for the purposes permitted by this Agreement, for more than forty-eight (48) consecutive hours, without prior written approval of the District; and
  - (y) promptly discharge any builders' lien which may be filed against the title to the Premises relating to any improvements, work or construction that the Contractor undertakes on the Campground and to comply at all times with the *Builders Lien Act* (British Columbia) in respect of any improvements, work or construction undertaken on the Campground.
- 3.2 The Contractor acknowledges that the District, by its authorized representative, may, but is not obligated to, carry out inspections of the Campground for the purpose of determining whether the Contractor is complying with its obligations under this Agreement.
- 3.3 If the District considers the Contractor to be in breach of its obligation to repair and maintain the Campground in accordance with this Agreement, the District may give the Contractor a written notice requiring repair or maintenance within the time specified by the District.
- 3.4 The Contractor must promptly repair and maintain the Campground as described in 3.1 (k), according to notices received from the District under section 3.3 and, if the Contractor fails to do so, the District may, but is not obligated to, cause such repairs and maintenance to be undertaken at the Contractor's cost and may cause the District's representatives to enter the Campground for such purpose. In the event of an emergency, the District may undertake repairs and maintenance without prior notice to the Contractor. The Contractor shall pay to the District all such costs in respect of repair or maintenance as the District may incur on the Contractor's behalf under this Agreement within five (5) business days of receipt of the District's account.

- 3.5 Notwithstanding that the District may inspect the Campground and require repairs and maintenance in accordance with this Agreement, the Contractor agrees that it is responsible for minor repair and regular maintenance of the Campground as part of the Services and it is not relying on the District for determining the need for repair or maintenance of the Campground.
- 3.6 If the Contractor fails to obtain or maintain the required insurance coverage, the District may, but is not required to, with no notice to the Contractor, effect the insurance in the name and at the expense of the Contractor, for which purposes the Contractor hereby authorizes the District to act as its agent, and the Contractor shall promptly repay the District all costs reasonably incurred by the District in doing so.

#### **4.0 Reporting Requirements and Operating Fee**

- 4.1 The Contractor will, at all times during the Term:
- (a) collect and manage all revenues of every kind whatsoever derived from or otherwise associated with the operation of the Campground (the “**Revenues**”);
  - (b) by the 14<sup>th</sup> day of every month provide to the District a full monthly report on the operation of the Campground for the most recently ended month, in such form and with such details as may be reasonably required by the District, including a bank account reconciliation report, an aged receivables ledger, a detailed revenue report, and a detailed expenditures report;
  - (c) keep true and accurate records, accounts, invoices, cheques and other appropriate documents in accordance with generally accepted accounting principles (“**GAAP**”) regarding the management and operation of the Campground;
  - (d) engage a qualified accountant approved by the District to prepare and provide to the District within sixty (60) days of the end of the Term (and any renewal term) annual financial statements for the recently ended year and an audited statement of Revenues and expenses for that period for the Campground, all prepaid in accordance with GAAP;
  - (e) make full, frank and immediate disclosure to the District of all matters coming to the attention of the Contractor or any of its employees, agents, servants or consultants in relation to the Campground, including any damage caused to the Premises, the Campground, or to any existing improvements thereon or therein;
  - (f) permit the District and its auditors, at all reasonable times (and for up to one (1) year following expiry of the Term), to inspect and obtain copies of all records, accounts, invoices, cheques and other documents relating to the operation of the Campground;
  - (g) turn over to the District, forthwith upon the expiration or termination of the Term (or any renewal term), all records and accounts in respect of the matters under the above section 4.1(c).

- 4.2 In exchange for the Contractor providing the Services in accordance with this Agreement, the Contractor may retain a monthly operating fee (the “**Operating Fee**”) in the amount of:
- (a) 100% of all Revenues obtained from the operation of the Concession and the Coin Showers; plus
  - (b) \_\_\_\_% of all other Revenues collected in the previous month.
- 4.3 The Contractor shall, not later than fourteen (14) days after the end of every month, pay to the District \_\_\_\_% of all Revenues collected in the previous month (excluding Revenues obtained from the operation of the Concession and the Coin Showers).
- 4.4 The Operating Fee excludes GST, as applicable, and all similar taxes payable in respect of the Operating Fee.
- 4.5 The District will charge interest to the Contractor on any and all overdue amounts to be paid to the District at the rate of interest of 1.5% per month (equivalent to 19.6% per annum compounded monthly) payable on invoice.

## **5.0 Environmental Provisions**

- 5.1 In this Agreement:
- (a) “**Environmental Contaminants**” means any contaminants, pollutants, hazardous, corrosive or toxic substances, flammable, explosive or radioactive materials, noxious substances, mould, and any other substances or material the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release of which into the environment is prohibited, regulated, controlled or licensed under Environmental Laws;
  - (b) “**Environmental Laws**” means any laws, statutes, regulations, orders, bylaws, permits, or lawful requirements of any government authority with respect to environmental protection, or regulating, controlling, licensing or prohibiting Environmental Contaminants.
- 5.2 It is the sole responsibility of the Contractor to satisfy itself with respect to the environmental condition of the Premises and the Contractor covenants and agrees with the District to:
- (a) use and operate the Campground in strict compliance with all Environmental Laws;
  - (b) not store, manufacture, dispose, treat, generate, use, transport, remediate, or release, and not allow any other person to store, manufacture, dispose, treat, generate, use, transport, remediate, or release, any Environmental Contaminants on or from the Campground; and

- (c) promptly remove any Environmental Contaminants for which it is responsible from the Campground in a manner that conforms to Environmental Laws governing their removal.

## **6.0 Disclosure**

- 6.1 Except as provided by law or otherwise by this Agreement, the parties will treat as confidential and will not, without prior consent of the other, publish, release, disclose or permit to be disclosed to any person or corporation either before, during or after termination of this Agreement the information supplied to, obtained by, or which comes to the knowledge of the other party as a result of this Agreement and will use that information only for purposes of this Agreement.

## **7.0 Assignments and Sub-Contracts**

- 7.1 The Contractor may not assign any part of this Agreement or sub-contract all or part of the Services to any person or corporation without the written permission of the District.

## **8.0 Independence**

- 8.1 All employees and agents of the Contractor providing the Services to the District will remain at all times the employees or agents of the Contractor and not of the District. The Contractor, solely, will control manning and staffing, pay, discipline, insurance, workers' compensation and all other matters in connection with the employer-employee, or agency, relationship.
- 8.2 The Contractor, its employees and agents, will provide the Services with the care, skill and diligence.
- 8.3 The District may give the Contractor, and the Contractor will make a reasonable effort to carry out, those general instructions as the District deems necessary from time to time, but the Contractor, its employees or agents, will not be subject to the control of the District in respect of the manner in which such general instructions are carried out.
- 8.4 Nothing in this Agreement creates the relationship of principal and agent or of partnership, joint venture or business enterprise, or gives the Contractor any power or authority to bind the District in any way.

## **9.0 Release and Indemnity**

- 9.1 The Contractor hereby releases the District and its elected and appointed officials, officers, employees, agents, successors and assigns (the “**District’s Representatives**”) from any and all liabilities, actions, damages, claims, demands, losses, costs, expenses, remediation costs, and harm whatsoever that the Contractor may in any way have, directly or indirectly, in relation to this Agreement, the Premises, the Campground, or the occupation, activities or actions of the Contractor on or from the Premises and the Campground.



- 9.2 The Contractor will indemnify and save harmless the District and the District's Representatives from any and all liabilities, actions, damages, claims, demands, losses, costs, expenses, remediation costs, and harm whatsoever (including without limitation, the full amount of all consultant fees, costs, charges and expenses whatsoever) suffered by the District or any of the District's Representatives, whether related to death, bodily injury, property loss, property damage or consequential loss or damage, which may in any way, directly or indirectly, arise from or relate to:
- (a) this Agreement;
  - (b) any incident or occurrence in, on or from the Campground;
  - (c) any incident or occurrence in, on or from the Campground related to the actions or activities of the Contractor;
  - (d) any breach or default of the Contractor under this Agreement; and
  - (e) any wrongful act, omission or negligence of the Contractor or any member, director, officer, employee, agent, volunteer, invitee, or licensee of the Contractor or any other person for whom the Contractor is responsible in law.
- 9.3 The obligations of the Contractor under sections 9.1 and 9.2 will survive the expiry or earlier termination of this Agreement.

## **10.0 Force Majeure**

- 10.1 If as a result of any emergency or force beyond the reasonable control of either party herein or strike, lockout or other such disturbance of either party (the "**Force Majeure**"), either party is or was wholly or partly unable because of the Force Majeure, to perform an obligation arising from this Agreement and claims that a Force Majeure is occurring or has occurred and reasonably establishes that fact, then performance of the obligation will be deemed to be suspended provided always that:
- (a) the suspension will be of no greater scope and no longer duration than the Force Majeure;
  - (b) the non-performing party will make its best efforts to counter the Force Majeure or to otherwise remedy its inability to perform the obligation;
  - (c) a performance required at a time other than when the Force Majeure is occurring will not be excused by the Force Majeure; and
  - (d) an obligation to make payment when due will not be excused by the Force Majeure.

## **11.0 Termination**

- 11.1 Termination will be subject to the rights and remedies of both parties accruing to the date of termination and Sections 6.0 and 9.0 and the right of the Contractor to be paid for Services performed prior to the date of termination will survive such termination.
- 11.2 If the Contractor is in default in the performance of any of its obligations set forth in this Agreement then the District may, by written notice to the Contractor, require such default to be corrected. If within thirty (30) days after receipt of such notice such default shall not have been corrected or reasonable steps to correct such default shall not have been taken, the District may, without limiting any other right or remedy it may have, immediately terminate this Agreement.
- 11.3 If the Campground is damaged by fire or other casualty that renders all or a substantial part of the Campground unusable by the Contractor, and the District decides not to restore the same, then the District shall, within thirty (30) business days after the happening of such fire or other casualty, give to the Contractor a notice in writing of such decision and thereupon the Term (or any renewal term) will expire effective the thirtieth (30<sup>th</sup>) business day following the occurrence of the damage, and the Contractor will cease operating the Campground. If the District does decide to undertake such repair and the repair is not completed within forty-five (45) days from the time of the fire or other casualty causing the damage, the Contractor may, at its option, terminate this Agreement by giving notice in writing within five (5) days after the end of forty-five (45) days.
- 11.4 At the expiration of the Term (or any renewal term), or upon earlier termination of this Agreement, any improvements, extensions, installations, alterations, renovations or additions to the Campground, whether done by or on behalf of the Contractor, are forfeited to and become the permanent property of the District, without compensation to the Contractor, and the Contractor agrees that the Premises, the Campground, and all structures, fixtures and improvements belong at all times to the District.
- 11.5 At the expiration or earlier termination of this Agreement, the Contractor must, at its own cost and expense, leave the Campground in a safe, clean, proper, and well-maintained condition, excepting only reasonable wear and tear. If the Contractor fails leave the Campground in the condition required under this Agreement, the District may take such steps as necessary to do so on behalf of the Contractor and the Contractor must, on demand, compensate the District for all costs incurred by the District in connection therewith.

## **12.0 Contractor's Representations and Warranties**

- 12.1 The Contractor represents and warrants that the Contractor has the power and capacity to enter into and carry out its obligations under this Agreement.

**13.0 Acknowledgement and Agreements of the Contractor**

13.1 The Contractor acknowledges and agrees that:

- (a) the District has given no representations or warranties with respect to the Campground including, without limitation, with respect to the suitability of the Campground for the Contractor’s intended use, the size of the Premises, the feasibility of the Contractor’s operations, the structural stability or other condition of any improvements, or with respect to expected or projected income or profits that the Contractor could expect from the Campground; and
- (b) the Contractor operates the Campground on an “as-is where-is” basis and, by commencing operation of the Campground, the Contractor confirms that the Campground is suitable for its purposes.

**14.0 District’s Remedies Cumulative**

14.1 No reference to or exercise of any specific right or remedy by the District prejudices or precludes the District 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 may from time to time exercise any one or more of such remedies independently or in combination.

**15.0 Notices**

15.1 Any notice required to be given by either of the parties hereto to the other shall be well and sufficiently given if mailed by prepaid registered mail or delivered by hand as follows:

**To the Contractor:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**To the District:** The Corporation of the District of Summerland  
P.O. Box 159  
13211 Henry Avenue  
Summerland, B.C.  
VOH 1Z0

**16.0 No Effect on Laws or Powers**

16.1 Nothing contained or implied herein prejudices or affects the District’s rights and powers in the exercise of its functions pursuant to the *Local Government Act* or the *Community Charter*, or their successor enactments, or its rights and powers under any enactment to the extent the same are applicable to the Premises, all of which may be fully and effectively exercised in relation to the Campground as if this Agreement had not been fully executed and delivered

## **17.0 District Discretion**

- 17.1 Wherever in this Agreement the approval or consent of the District is required, some act or thing is to be done to the District's satisfaction, the District is entitled to form an opinion, or the District is given discretion:
- (a) the relevant provision is not deemed to have been fulfilled or waived unless the approval, consent, opinion or expression of satisfaction is in writing signed by the District's Recreation Manager, which approval, consent, opinion or expression of satisfaction is to be considered final;
  - (b) the approval, consent, opinion or satisfaction is in the sole discretion of the District's Recreation Manager, acting reasonably; and
  - (c) any discretion of the District's Recreation Manager is not subject to public law duties and the principles of procedural fairness and the rules of natural justice have no application.

## **18.0 Severability**

- 18.1 In the event that any provision or part of this Agreement will be deemed void or invalid by a court of competent jurisdiction, the invalid portion will be severed and the remaining provisions or parts will be and remain in full force and effect.

## **19.0 Entire Agreement**

- 19.1 This Agreement constitutes the entire agreement between the parties with respect to the Services and any and all previous agreements, written or oral, express or implied, between the parties or on their behalf, relating to the Services, are terminated and cancelled and each party releases and forever discharges the other of and from all manner of actions, causes of action, claims and demands whatsoever, under or in respect of any previous agreement.

## **20.0 Modification of Agreement**

- 20.1 Any modification to this Agreement must be in writing and signed by the parties or it will have no effect and will be void.

## **21.0 Waiver or Non-Action**

- 21.1 Waiver by the District of any breach of this Agreement by the Contractor must not be deemed to be a waiver of any subsequent breach by the Contractor. Failure by the District to take any action in respect of any breach of this Agreement by the Contractor must not be deemed to be a waiver of such breach. All waivers must be in writing.

## **22.0 Headings**

22.1 The headings used in this Agreement are for convenience only and are not to be construed in any way as additions to or limitations of the covenants and arrangements contained in it.

## **23.0 Governing Law**

23.1 This Agreement will be construed in accordance with the laws of the Province of British Columbia and the parties hereby irrevocably attorn to the jurisdiction of the courts of British Columbia.

## **24.0 Dispute Resolution**

24.1 The parties agree to attempt to resolve all disputes arising out of or in connection with this Agreement, or in respect of any defined legal relationship associated with it or from it, by mediated negotiation with the assistance of a neutral person appointed by the British Columbia International Commercial Arbitration Centre administered under its Mediation Rules. If the dispute cannot be settled within thirty (30) days after the mediator has been appointed, the dispute will be referred to and finally settled by arbitration administered by the British Columbia International Commercial Arbitration Centre, pursuant to its Rules.

## **25.0 Schedules**

25.1 The following are Schedules to this Agreement and form an integral part of this Agreement:

- (a) Schedule “A” – Services
- (b) Schedule “B” – Insurance Requirements
- (c) Schedule “C” – Campground Items

**IN WITNESS WHEREOF** the parties hereunto have executed this Agreement as of the date first written above.

The Corporate Seal of **THE CORPORATION OF THE DISTRICT OF SUMMERLAND** was hereunto affixed in the presence of:

\_\_\_\_\_  
Mayor: Peter Waterman

\_\_\_\_\_  
Corporate Officer: Jeremy Denegar

Signed and witnessed by the Contractor:

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Witness Address

## **Schedule "A"**

### **Description of Services**

The Services the Contractor will provide to the District are as follows:

1. Manage and operate a staffed public campground for tents and recreational vehicles including the maintenance of a reservation system for taking advance bookings of campsites;
2. Be responsible for all costs of labour and supplies and material used on the Premises for the normal day to day operation and maintenance during the Term of this agreement;
3. Provide commercial and recreational entertainment compatible for the guests of the Campground;
4. Provide each guest with a copy of the Campground regulations;
5. Properly maintain the Premises at all times to an excellent standard of maintenance, including:
  - (a) to irrigate all grass together with any hedges, trees and shrubs, pertaining to the Premises in accordance with the regulations of the District;
  - (b) to mow all grass and trim all trees and hedges when required;
  - (c) to clean and maintain the toilet and washroom facilities daily;
  - (d) to be responsible for gathering and removal of all garbage and refuse so as to maintain the premises in a neat, clean and tidy condition;
  - (e) to ensure no waste or other material is allowed to dirty or pollute the natural creek flowing through the Premises;
  - (f) to ensure no person will place obstructions in Eneas Creek so as to impede the flow of water; and

the Contractor acknowledges and agrees that all decisions relating to landscaping, trees and the physical layout of the Campground must have the final approval of the Summerland Parks and Recreation Department;

6. Supply and maintain all containers and equipment necessary to carry out the efficient operation of the public Campground;
7. Properly document all usage of the Campground facilities and prepare receipts for all Revenue received from campsite rentals and provide copies of those receipts to the District in accordance with the terms of the Agreement;

8. Allow full access within the Premises to the public at large who may wish to use the public tennis/pickleball courts situated at the south end, even though such public may not be registered campers;
9. Establish daily, weekly or special accommodation rates prior to the commencement of each annual Operating Season and forward such rates to the District's Recreation Manager for approval, with such new rates to be published in the Provincial guidebooks;
10. Obtain proper registration with Canada Revenue Agency for purposes of collecting and remitting the Goods and Services Tax and employee source deductions from any wages paid. Registration must also be made with the Workers' Compensation Board of BC and necessary remittances on any wages paid to employees of the Contractor will be made. A copy of the notification of registration from these authorities will be provided to the District's Director of Finance prior to the Commencement Date; and
11. Obtain the approval of the District's Recreation Manager for all major policies regarding the use of the Campground.



## **Schedule “B”**

### **Insurance Requirements**

The Contractor shall obtain and maintain:

- (a) comprehensive general liability insurance providing coverage for death, bodily injury, property loss and damage, and all other losses, arising out of or in connection with the Contractor’s use and operation of the Campground in an amount of not less than \$2,000,000.00 per occurrence (\$5,000,000.00 aggregate), or in such greater amount as may be required from time to time by the District;
- (b) “all risks” property insurance for replacement cost of all of the Contractor’s improvements, personal property and fixtures that are in the nature of trade fixtures; and
- (c) any other form or forms of insurance that the District may reasonably require from time to time in such amounts and for such perils against which a prudent operator acting reasonably would protect itself in similar circumstances.

All policies of insurance required to be taken out by the Contractor shall be with companies satisfactory to the District and shall, unless prior approval is received in writing by the District:

- (a) name the District as an additional insured;
- (b) include that the District is protected notwithstanding any act, neglect or misrepresentation by the Contractor which might otherwise result in the avoidance of a claim and that such policies are not affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the insureds;
- (c) be issued by an insurance company entitled to carry on the business of insurance under the laws of British Columbia;
- (d) be primary and non-contributing with respect to any policies carried by the District and that any coverage carried by the District is in excess coverage;
- (e) not be cancelled or materially modified without the insurer providing the District with 30 days written notice stating when such cancellation is to be effective or identifying the modification;
- (f) not include a deductible greater than \$5,000.00 per occurrence;
- (g) include a cross liability clause; and be on other terms acceptable to the District, acting reasonably.

## **Schedule "C"**

### **Campground Items**

1. Twelve (12) sprinklers
2. Six hundred (600) feet of garden hose
3. One hundred and twenty-three (123) picnic tables
4. Two (2) mop buckets
5. One (1) phone extension
6. Twelve (12) garbage cans

# Appendix C – Receipt Confirmation Form

## DISTRICT OF SUMMERLAND

### Management and Operation of Peach Orchard Campground Request for Proposal Due Date: August 31, 2016

To receive any further information about this Request for Proposal please return this form to:

Attention: Brenda Ingram  
Recreation Manager  
District of Summerland  
P.O. Box 159  
13211 Henry Avenue  
Summerland, B.C. V0H 1Z0  
Fax: (250) 494-3222

**COMPANY:** \_\_\_\_\_

**STREET ADDRESS:** \_\_\_\_\_

**CITY/PROVINCE:** \_\_\_\_\_ **POSTAL CODE:** \_\_\_\_\_

**MAILING ADDRESS IF DIFFERENT:** \_\_\_\_\_  
\_\_\_\_\_

**PHONE NUMBER:** \_\_\_\_\_ **FAX NUMBER:** \_\_\_\_\_

**CONTACT PERSON:** \_\_\_\_\_

**E-MAIL:** \_\_\_\_\_

**UNLESS IT CAN BE SENT BY FAX, FURTHER CORRESPONDENCE ABOUT THIS REQUEST FOR PROPOSAL SHOULD BE SENT BY:**

**COURIER COLLECT.**  
PROVIDE COURIER NAME AND ACCOUNT NO: \_\_\_\_\_

**MAIL**

**SIGNATURE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_