

DISTRICT OF ELKFORD



REQUEST FOR PROPOSAL NO. 2024.01

Downtown Mixed Use Buildings – Design Services

Closing Date & Time: February 9, 2024, 2:00 pm (Mountain Daylight Time)

Deliver To:

Jeremy Johnston, Director of Planning & Development Services

Telephone: 1.250.865.4000

Email: finance@elkford.ca

SECTION I

INVITATION

1. STATEMENT OF REQUEST FOR PROPOSAL

This document outlines the overall scope of the District, the basic requirements for the proposal document and provides the evaluation criteria to be used as the basis for awarding the assignment.

The District will not have any legal duty or obligation to anyone in connection with this RFP except under a performance Contract, if any, created by the parties according to the process described in this RFP. The District is under no obligation to enter into any contract or other agreement with anyone in connection with this RFP and proposals received. All evaluation criteria and other evaluation related processes in this document are non-binding guidelines only, notwithstanding any obligatory language used herein.

This RFP is a mere invitation to treat; it is a solicitation to vendors to come forward with competing offers regarding a Contract, and/or to compete for an opportunity to negotiate a Contract. This RFP itself does not constitute an offer in relation to the formation of any contract, including any bid contract, preliminary contract, collateral contract, or "contract A". No agreement of any kind (express or implied), including any contract A or implied terms (including any implied duty of fairness), should result upon submission of a proposal (whether or not such proposal is Non-Compliant). Nevertheless, proposals submitted to the District containing signature pages signed by Proponents in relation to the formation of a performance Contract are offers capable of acceptance by the District (whether or not the proposal is Non-Compliant), with or without negotiations, in order to form one or more performance Contracts, as described in Section III, paragraph 11 and elsewhere in this RFP. The District reserves the sole and exclusive right to accept a non-compliant proposal, despite any failure to comply with a mandatory term of this RFP. The District will not have any legal duty or obligation to anyone in connection with this RFP except under a performance Contract, if any, created by the parties according to the process described in this RFP. The District is under no obligation to enter into any contract or other agreement with anyone in connection with this RFP and proposals received. All evaluation criteria and other evaluation related processes in this document are non-binding guidelines only, notwithstanding any obligatory language used herein. Thus, the evaluation process under this RFP is structured to be flexible and forgiving. This flexible and forgiving process is a fair and transparent one, because Proponents are made aware of the nature of the process in advance, and because all Proponents stand to benefit from its flexible and forgiving nature from the outset. Competition and value-for-money are enhanced, because attractive Proposals need not be disqualified. The sole remedy for any Proponent who finds the nature of this RFP unacceptable is to refrain from submitting a proposal. This paragraph shall supersede and be operative notwithstanding any other term of this RFP.

2. TERMINOLOGY

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:

"Best Value" means the value placed upon quality, service, past performance and price.

"Contract" means the written agreement resulting from the Request for Proposal executed by the District and the Successful Proponent.

"District" means the District of Elkford.

"District Representative" means the Representative or appointee engaged by the District to supervise the work.

"Must", "mandatory" or "required" means a requirement that must be met in order for a PROPOSAL to receive consideration.

"Proposal" shall mean the proponent's submission in response to this RFP.

"Proponent" means a party submitting a proposal to this RFP.

"RFP" means this Request for Proposal.

"Request for RFP" (RFP) includes the documents listed in the index of the Request for RFP and any modifications thereof or additions thereto incorporated by addenda before the close of RFP's.

"Should" or "desirable" means a requirement having a significant degree of importance to the objectives of the Request for RFP.

"Special Conditions" means the special conditions, which are included in the RFP.

"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.

"Successful Proponent" means the proponent submitting the most advantageous RFP as determined by the District.

"Work" means any labour, duty and/or efforts to accomplish the purpose of this project.

3. REQUEST FOR PROPOSAL DOCUMENTS

Copies of the Request for Proposal may be obtained from the following locations:

- BC Bid website (www.bcbid.gov.bc.ca)

4. DISTRICT REPRESENTATIVE

The District's Representative will be:

Jeremy Johnston, Director of Planning & Development Services
District of Elkford
Telephone: 1.250.865.4000
Fax: 1.250.865.4001
Email: finance@elkford.ca

All inquiries relating to the RFP shall be directed to the District Representative.

5. Closing Date and Time

- RFP Closing Date: February 9, 2024
- RFP Closing Time: 2:00 PM (Mountain Daylight Time)

Proposals received after the Closing Date and Time for receipt of Proposals will be considered as "Late Proposals". Late proposals may, in the sole discretion of the District, be evaluated by the District, or may be rejected on that basis by the District.

SECTION II

TERMS OF REFERENCE

1. BACKGROUND

The District of Elkford is a community located at the “start of the road” on Highway 43 in the Elkford Valley in southeastern British Columbia and employs approximately 50 employees year-round. Elkford is a picturesque Rocky Mountain town founded in 1971 as a home to miners working at the local coal mining operations. The District has grown to a current population of nearly 3,000. The community largely based around mining or mining support businesses as its primary economic driver with four mine sites within the Elk Valley employing approximately 6,000 employees.

Over the past three years the District as undergone a master planning and infrastructure upgrade process for our downtown core. We have now unlocked seven development sites which are ready for development, including providing new services to property boundary, and completing off site works such as sidewalks, public realm enhancements, and road repaving.

The District continues to lead our downtown vision with this project to create designs for two building projects to be development-ready.

2. PROJECTS

The District is inviting proposals from qualified proponents to provide architectural and mixed-use land development design services for two projects as described below as Scope A and Scope B.

A proponent may choose to submit proposals for either or both of the following Scopes. Creative approaches are welcome and it is possible that the Scopes could be combined into a single building/project, however proponents should not assume that outcome. Note that these projects will be funded separately and expenses will be tracked separately.

Both Scopes are expected to include a programming/pre-design phase, schematic design phase, design development phase, and completion of construction drawings and specifications.

Scope A: Mixed-Use Commercial/Residential Building

Scope A includes the design of a multi-storey, mixed use building for our “flagship” downtown site located at the intersection of Boivin Road and Alpine Way. The District intends to use the product of this work to attract potential development partners and desires for the project move to a construction phase within 2-3 years of completion of the design work.

In concept, this building is desired to contain a mix of ground floor, pedestrian-oriented commercial uses (e.g. restaurant, retail, professional services, office), with 2-3 storeys of residential accommodation above the first floor. The District is seeking to add valuable commercial space on the ground floor of the building across more than one unit/tenancy. The building should also maximize residential units above the first floor.

The site is flat and serviced. Recent topographic survey is available from the infrastructure works.

The site is a collection of fee simple lots which the District has recently created and serviced. The District is prepared to consolidate lots if required. Underground servicing is in place. Vehicle access to the sites will be from laneway, allowing the buildings to front directly onto a sidewalks with little or no setbacks. The properties are zoned C-1 (Town Centre Commercial) and zoning permits a variety of typical commercial core and residential uses in a mixed configuration.

There is no density limit for the site and no on-site parking requirements. An off-street public parking lot is adjacent to the site, and off-site resident parking may be considered on other sites but the design of such a facility will be outside the scope of this project.



The desired buildings should be practical examples of the District's vision for this area, rooted in cost-effective construction methods and design choices. The projects will be designed to meet BC Building Code Standards, and subject to internal and guidance by the District's Commercial Form & Character, and Energy Efficiency and Water Conservation Development Permit guidelines as outlined in its Official Community Plan.

Scope B: Institutional Building

Scope B is for the design of an institutional building to eventually replace the existing clinic building in downtown Elkford. The details of this structure are to be determined in consultation with the regional health board and Interior Health Authority. It can be assumed that the required floor space will be approximately 10,000 square feet.

A site has not yet been identified for this building but any of the remaining District-owned parcels can be considered through the scoping discussions of this project. All sites are flat and serviced. Recent topographic survey is available from the infrastructure works.

3. Scope of Work

The District of Elkford has issued this RFP for the purpose of inviting proposals from qualified proponents to provide architectural and mixed-use land development design services for both Scope A and Scope B. The successful proponent will be responsible for meeting coordination, facilitation, and developing the design documents and cost estimates for the Scopes, as detailed in the proponent's proposal. Proponents should treat the Scopes separately for the purposes of proposing work plans and fees/schedules.

Please complete [Appendix A](#) and include it with your submission.

Detailed list of services anticipated is detailed below:

- Facilitation/coordination Services – For Scope A this will involve working with the District and any identified partners in developing the scope of the buildings in terms of commercial space size, number of residential units/bedrooms. For Scope B this will involve working with the District, the Kootenay Regional Hospital District representative, and Interior Health Authority representative in accommodating the needs and wants of the facility. For both Scope A and B, this work will include meeting coordination including setting of meeting schedules, agendas, and minute taking.
- Architectural Services – all services related to the architectural elements of the Work including evaluation of the Districts requirements, site evaluation, construction cost estimate, schematic design concepts and design documents, site plans, floor plans, building elevations and sections, preparation of construction documents, site finishing's, record drawings, etc. Both Scopes for this project are expected to include a programming/pre-design phase, schematic design phase, design development phase, and completion of construction drawings and specifications.
- Structural Consulting Engineering Services - all services related to the structural integrity of the Work including building foundations and superstructure and minor secondary supports such as loose masonry and steel lintels.
- Mechanical Consulting Engineering Services - all services related to mechanical systems and their controls including plumbing and drainage; heating, ventilating and air conditioning; fire protection; process piping and equipment; and other special systems.
- Electrical Consulting Engineering Services - all services related to electrical systems and their controls including normal and emergency power; lighting; communications; lightning protection; grounding; fire protection; access control; and other special systems.
- Civil Consulting Engineering Services – all services related to site preparation including servicing, site drainage and grading, site furnishings, landscaping, site safety, etc.

4. Additional Information & Supporting Documentation

The following information will benefit prospective proponents in their considerations and proposal development:

- [District of Elkford Zoning Bylaw No. 737, 2013](#)
- [Downtown Plan](#)
- Subdivision Plan – EPP121292
- Downtown Civil Drawings

5. Commencement, Prosecution and Completion of Work

Depending on the available funds to complete this project, the District reserves the right to negotiate the scope of work with the successful proponent prior to awarding the work. Any negotiations regarding the scope of work after a Contract is executed will be through a Change Order, mutually agreed to by both parties.

This work will only proceed subject to budget deliberations and approval.

If awarded the work, the successful proponent should be as soon as reasonably available to begin the project work.

The Proponent should provide a work schedule indicating the timeline to complete each major phase of the work.

6. Budget

Proponents are advised to provide their best pricing to successfully accomplish the scope of work and provide the deliverables as outlined in this Request for Proposal.

Proposed fees and schedules should address the Scopes separately. Note that these projects will be funded separately and expenses will be tracked separately.

Proponents should clearly identify fee estimates for each phase of each Scope.

7. Submission Format

The successful proponent shall be selected based on what is determined to be in the best interests of the District. The proponent's proposal should outline the expertise and full scope of services the proponent (and/or their subconsultants/subcontractors) are able to provide to the District and demonstrate their ability to provide innovative, timely, cost effective and flexible solutions to District's unique requirements. The proponent should outline their approach to this assignment to meet the needs of the District as identified in this RFP.

Items to be addressed in the RFP include, but are not limited to:

(a) Proposal Overview

The proposal should include a cover page referencing the RFP title, a table of contents, and a cover letter.

The cover letter:

- Shall be signed by an authorized person to legally bind the Proponent to the statements made in the Response to this RFP;
- Provide a summary of the services to be provided;
- Provides a general overview of the company, its structure, size and capability to perform the work required;
- Includes the name, telephone, fax and email address of the contact person for the Proposal, the contact person should have the authority to answer questions regarding the Proposal; and
- Includes the name and phone number of a contact person to be notified regarding contractual issues.

Appendix A should also be included to form part of the proponent's RFP submission.

To assist in receiving similar and relevant information, and to ensure your Proposal receives fair evaluation, the District asks that Proponents provide detailed information for the itemized list below and follow the same format.

Proponents are asked to provide a reply to each point throughout the RFP and the Proponent should identify any specific provisions with which it is unwilling or unable to comply.

Proponents must detail their proposed work plans and provide fee structures for each Scope separately.

A Proposal response submitted must be in enough detail to allow the District to determine the Proponent's position from the documents received. Every effort should be made to include complete details of services you or your company would provide.

(b) Project Understanding, Concept and Proposed Methodology

This section should specifically address the proponent's understanding of the District's needs and provide details of the proponent's methodology to the Work of the RFP including all items listed in Section 2. The

proponent should outline their project vision, processes and systems used for planning, scheduling, and budgeting to meet the project objectives.

This section must address the work effort and team member participation and role in delivering the work. The proposed methodology should also identify any potential options, or changes to the outlined approach that could be advantageous to the District. Any such optional work should be identified specifically or outlined in a separate section.

(c) Proponent Experience and References

This section should specifically highlight the proponent's past performance, experience and recent relevant projects (within the last three years), that demonstrate ability to provide the services as outlined in this RFP. This section should be no more than three (3) pages in length. This section should include the firm's name and address, year it was established, primary office that will be performing the work of the RFP and number of employees in the firm. For any subconsultants or subcontractors, the same information listed above must be provided as well as the length of the working relationship between the Proponent and their Subconsultant/Subcontractor.

The design costs and actual construction costs of relevant project examples should be provided.

(d) Work Schedule & Fee

A schedule and fee description for each Scope should be provided including:

- Work schedule and accompanying Gantt chart, itemizing key tasks, milestones, deliverables and timelines to complete the assignment.
- The fixed-price fee proposal breakdown per the work schedule key tasks including all fees, costs and disbursements (including travel costs), sub-consultant fees, and any other expenses as required under the Scope of Work. Prices quoted are to be in Canadian dollars.
- Proposals should clearly separate and identify costs related to each phase of each of the Scopes. These projects will be funded separately and expenses will be tracked separately, regardless of outcome.

SECTION III
REQUEST FOR PROPOSAL PROCESS

1. REVIEW AND INTERPRETATION OF PROPOSALS

Each Proponent will be solely responsible for examining all the RFP documents, including any Addenda and issues during the RFP period and for independently informing itself with respect to any and all information contained therein, and any and all conditions that may in any way affect the Proposal, before the Proposal is submitted.

Each Proponent will review all RFP documents and will promptly report and request clarification of any discrepancy, deficiency, ambiguity, error, inconsistency, or omission contained therein. Any such request must be submitted to the District's Representative in writing, electronically or otherwise, no later than 2:00 PM, five (5) days before the closing date.

Where such requests result in a change or a clarification to the requirements of the RFP, the District will prepare and issue an Addendum to this RFP.

2. 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.

3. ADDENDA

The District reserves the right to modify the terms of the RFP at any time at its sole discretion. Written addenda issued by the District will be the only means of varying, clarifying or otherwise changing any of the information contained in this RFP. The District reserves the right to issue Addenda up to the RFP Closing Date and Time. The date set for submitting Proposals may be changed if, in the District's opinion, more time is necessary to enable Proponents to revise their Proposals. Addenda will state any changes to the RFP Closing Date and Time. It is the Proponent's responsibility to ensure that they have all modifications. Proposals must acknowledge receipt of all addenda.

4. PREPARATION OF PROPOSALS

All proponents shall be solely liable for all costs incurred in the preparation of proposals in response to this RFP. This Request for Proposals does not commit the District to award a contract, to pay any costs incurred in the preparation of a proposal or to contract for the goods and/or services offered.

The Proposal submitted by each Proponent will be signed by an Authorized Representative of the Proponent. 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.

5. PROPOSAL SUBMISSIONS

The Proponent may submit a Proposal either by email or in a hard copy, as follows:

(a) Email

If the Proponent chooses to submit by email, the Proponent should submit the Proposal electronically in a single PDF file to the District by email at: finance@elkford.ca on or before the Closing Date and Time.

PDF emailed Proposals are preferred. Note that the maximum file size the District can receive is 10Mb. If sending large email attachments, Proponents should phone to confirm receipt. A Proponent bears all risk that the District's equipment functions properly so that the District receives the Proposal on time.

If delivered via email, proposals will not be opened or reviewed prior to the closing date and time.

(b) Hard Copy

If the Proponent chooses NOT to submit by email, the Proponent should submit 2 bound copies of the proposal which must be delivered to:

District of Elkford, Attention: Jeremy Johnston, Director of Planning & Development Services

on or before the Closing Date and Time.

6. MODIFICATION OF BIDS

Modifications to bids already submitted will only be allowed if submitted in writing prior to the Closing Date and Time unless requested by the District for purposes of clarification.

7. WITHDRAWAL

Proposals may be withdrawn by written notice provided such notice of withdrawal is received prior to the closing date and time.

8. INCOMPLETE PROPOSALS

No proposal should be altered, amended, or withdrawn after the closing date and time of the RFP. Negligence on the part of the Proponent in preparing the Proposal confers no right for withdrawal of the Proposal after it has been opened.

While the District has made considerable efforts to ensure an accurate representation of information in each respective RFP, the information contained in the RFP is supplied solely as a guideline for the Proponent and is not necessarily comprehensive or exhaustive. Nothing in this RFP is intended to relieve the Proponent from forming their own opinions and conclusions in respect of the matters addressed in the RFP.

The District expressly reserves the right to reject or accept any Proposal whether or not completed properly and whether or not it contains all required information. Without prejudice to this right, the District may request clarification where, in the opinion of the District, the Proponent's intent is unclear.

9. OPENING OF PROPOSALS

Proposals will NOT be opened in public. Proposals may be opened by the District at any time after the submission deadline. All proposals satisfying the requirements of this Request for Proposals will be evaluated to establish which of the offers best fulfills the needs of the District and this assignment.

In the event that only one proposal is received, the District reserves the right to return the proposal unopened or unread in the case of submission via email.

10. EVALUATION CRITERIA

The Proponents proposals will be evaluated using the following guidelines. The proponent receiving the highest score will not necessarily be invited to enter into a contract.

CATEGORY	Weight of Evaluation
Project Team Experience & Qualifications	20
Project Understanding, Methodology & Work Plan	20
Innovation and Value-Added Items	10
References	10
Project Fee & Schedule	20
Total	80

Suggest Proposal Content for Non-Price Criteria above:

Project Team Experience & Qualifications:

- a brief description of the proponent;
- a description of its knowledge, skills and experience relevant to the Deliverables;
- clearly outline the proposed Project lead, describe the roles and responsibilities the Project lead would undertake as part of this Project and provide a resume summarizing the applicable skill sets, credentials and project experience in delivering comparable projects that this individual possesses; and
- outline team composition - the roles and responsibilities of the proponent and any of its agents, employees and sub-contractors who will be involved in providing the Deliverables, together with the identity of those who will be performing those roles and their relevant respective expertise.

Project Understanding, Methodology & Work Plan:

- Proponents should demonstrate their understanding of the project scope and requirements, including technical capability, as outlined in the RFP.
- Outline your proposed methodology, indicating major steps and a description of activities (including sequence and time frame) to address the project objectives. Provide a detailed work plan that will ensure successful completion of the project.
- Identify major issues, challenges and risks associated with the project and schedule. Identify measures that will be taken to mitigate risks associated with the project and schedule.
- The proponent should clearly identify all services included in this proposal along with any optional, excluded services, or those services assumed to be provided by others.
- Proponents must identify their approach in relation to the separate Scopes.

Innovation and Value-Added Items:

- Cost reduction initiatives that could be implemented.
- Describe and provide up to three (3) examples where the proponent has employed innovative technology, management systems, and approaches that have provided additional value to clients in past projects.
- Describe any additional value-added services that the Proponent can offer to this project.

References:

- Provide three (3) references from clients who have obtained goods or services like those requested in this RFP from the proponent in the last three (3) years.

11. ACCEPTANCE OF PROPOSALS & CONTRACT

Each Proposal will be valid and irrevocable for a period of sixty (60) days from the Closing Date and Time for receipt of Proposals.

Proponents should demonstrate in their Proposal that they have a clear understanding of the RFP requirements. Proponents need to articulate their proposals, intentions and expectations indicating how they will fulfill the requirements of the RFP and what services they will provide. Proposals should include the names, positions, and qualifications of staff members and any other resource staff pertinent to this proposal.

The acceptance of the proposal by the District shall be made only by notice in writing to the Successful Proponent.

The District shall not be obligated in any manner to any Proponent whatsoever until a written agreement, with such modifications as may be negotiated, has been duly executed relating to an approved Proposal (the "performance Contract").

The District may choose to award each of the Scopes to separate Proponents.

Each Scope may form a separate contract even in the event that both Scopes are awarded to the same Proponent.

12. REJECTION OF PROPOSALS

The District reserves the right to accept or reject any and all proposals and to waive irregularities and informalities at its discretion, including acceptance of non-compliant proposals. By submitting a proposal, the Proponents waive any right to contest, in any proceedings or action, the right of the District to accept or reject any proposal in its sole and unfettered discretion.

The District also has the right to negotiate with all Proponents, qualified or not, or to cancel this Request for Proposals or accept the proposal that is deemed most advantageous to the District if it is in the best interests of the District to do so. The District reserves the right to award this Proposal in whole or part and retains sole discretion not to award at all. The decision of the District shall be final.

SECTION IV
GENERAL INSTRUCTIONS

1. 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:

- (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 should familiarize itself and comply with all applicable laws, bylaws, regulations, ordinances, codes, specifications and requirements of all regulatory authorities, and shall obtain all necessary licences, permits and registrations as may be required by law. Where there are two or more laws, ordinances, rules, regulations or codes applicable to the Services, 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 shall remain the property of the District.
- (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) Drawings; (5) 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) District policy as well as applicable Federal and Provincial laws govern method of payment.
- (h) The RFP, accepted submission, and District contract documents 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 documents may be amended only by written instrument agreed and executed by the Successful Proponent and the District.

2. PROPONENT'S RESPONSIBILITY

It is the responsibility of the Proponent to ensure that the terms of reference contained herein are fully understood and to obtain any further information required for this proposal call at their own initiative. The District reserves the Right to share, with all Proponents, all questions and answers related to this proposal call.

3. NO OBLIGATION TO PROCEED

Though the District fully intends at this time to proceed through the RFP, in order to select the services, the District is under no obligation to proceed to the Contract, or any other stage. The receipt by the District of any information (including 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, employers 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 goods or services.

4. NO COLLUSION

Except as otherwise specified or as arising by reason of the provision of the Contract Documents, 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 Request for Proposal 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.

5. DISTRICT RESPONSIBILITY

The District will provide the Successful Proponent with documents such as existing bylaws or plans that may be required to complete the scope of work and achieve the goals and objectives laid out herein.

6. CONFLICT OF INTEREST

At no time during the Proposal stage, evaluation stage, after award, or during the preparation of the Scope of Work shall a District employee or Council Member or appointed Authority, Committees or Commissions be in any way connected with the Proponent. Proponents are to include, with their initial Proposal, and at any subsequent time where requested to do so by the District, full details of any employee, person, firm or corporation that could be considered at conflict with the District.

7. CONFIDENTIALITY/FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Proponents are advised that parts or all of their Proposals may be subject to the provisions of British Columbia's Freedom of Information and Protection of Privacy Act. Proponents who wish to ensure that particular parts of their proposal are protected from disclosure under this Act should specifically identify any information or records provided with their Proposals that constitute trade secrets, that are supplied in confidence and the release of which could significantly harm their competitive position. Proponents are responsible to review the Freedom of Information and Protection of Privacy Act for further information. Any contract entered between the District and the successful proponent will be publicly available.

8. LIMITATION OF DAMAGES

the Proponent, by submitting a Proposal agrees that it will not claim damages, for whatever reason, relating to the RFP, by reason of submitting a Proposal, in respect of the competitive process, or in respect of any breach of any implied duty of fairness, including but not limited to any costs incurred by the Proponent in preparing its Proposal. Further, the Proponent acknowledges and agrees not to seek judicial review of any decision made by the District in relation to the selection of any Proponent. The Proponent, by submitting a Proposal, waives any and all such claims.

9. OWNERSHIP OF DOCUMENTS

All documents and materials submitted in response to this RFP shall become the property of the District.

10. 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 Chief Administrative Officer any attempt by District employees to obtain such favours.

11. INSURANCE & WORKSAFEBC

The Successful Proponent must indemnify the District and their employees, officers, directors and agents (each an "Indemnified Person") against all claims, actions, proceedings, damages, losses, costs, expenses and liabilities of any kind incurred that an Indemnified Person may sustain, incur, suffer or be put to, either before or after this Contract ends, which are based upon, arise out of or occur, directly or indirectly, by reason of, any act or omission by you or by any of your agents, employees, officers, directors, or Successful Proponents in providing the Services, except liability arising out of any independent negligent act by the District.

The Successful Proponent accepts responsibility for the acts and omissions of all Subcontractors it may engage in rendering the Service on the Project.

The Proponent shall obtain and continuously hold for the term of the Contract, insurance coverage with the District listed as "Additional Named Insured" the minimum limits of not less than those stated below:

- Commercial General Liability – not less than \$5,000,000 per occurrence
- Vehicle Third Party Liability – not less than \$2,000,000 per occurrence
- Error & Omissions Insurance – not less than \$500,000 per occurrence

The Proponent must comply with all applicable laws and bylaws within the jurisdiction of the work. The Proponent must further comply with all conditions and safety regulations of the Workers' Compensation Act of British Columbia and must be in good standing during the term of any Contract entered into from this process.

12. NEGOTIATION DELAY

If a written Contract cannot be negotiated within thirty (30) 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 another proponent or choose to terminate the RFP process and not enter into a Contract with any of the Proponents.

13. EXECUTION OF CONTRACT

If the offer contained in this proposal is accepted, upon being advised that the performance Contract is available, the Proponent will obtain the performance Contract, and will execute and identify the documents in a form and manner acceptable to the District and will deliver the same within Thirty (30) days from the time when the same are available, delivered or mailed to the Proponent.

14. 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.

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.

15. SUB-CONTRACTING

Using a Subcontractor (who should be clearly identified in the proposal) is acceptable. This includes a joint submission by two Proponents having no formal corporate links. However, in this case, one of these proponents should be prepared to take overall responsibility for successful interconnection of the two product or service lines and this should be defined in the proposal.

Subcontracting to any firm or individual, 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.

16. 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 Proponents. 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 Proponents from forming their own opinions and conclusions with respect to the matters addressed in this RFP.

17. AGREEMENT WITH TERMS

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

The successful proponent will be required to enter into an agreement with the District, utilizing the District's Agreement format, attached as Appendix B.

18. USE OF REQUEST FOR PROPOSAL

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

19. SPECIAL 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 District 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 reserves the right to cancel this RFP at any time.
- (e) If the item(s) supplied by the Consultant and/or the service(s) rendered by it are in any way incorrect or unsuitable, all correction costs shall be borne solely by the Consultant.
- (f) Protection of District Against Patent Claim - The Successful Proponent shall hold and save the District, its officers, agents, servants, and employees, harmless from liability of any nature or kind, including costs

and expenses for or on account of any copyrighted or un-copyrighted composition, secret or other process, patented or unpatented invention, articles or appliance manufactured or used in the performance of this contract, and/or used or to be used by the District before or after completion of the work unless otherwise stipulated in this contract, and if the Successful Proponent shall fail to save harmless the District, its officers, agents, servants, or employees in manner aforesaid, any money collected from the District, its officers, agents, servants, or employees by reason of such failure shall be charged to the Successful Proponent.

- (g) Any drawings, audio-visual materials, plans, models, designs, specifications, software, reports and other similar documents or products produced by the Consultant for the benefit of the District as a result of the provision of the Services (the "Material") may be used by the District as part of its operations associated with the Materials provided.

All Material shall be transferred and delivered by the Consultant to the District following the expiration or sooner termination of this Agreement, provided that the District may, at any time or times prior to the expiration or sooner termination of this Agreement, give written notice to the Consultant requesting delivery by the Consultant to the District of all or any part of the Material in which event the Consultant shall forthwith comply with such request. All materials created electronically must be provided in electronic format, in a format and in a medium acceptable to the District.

The Consultant agrees that the District will own all of the Material and the Consultant irrevocably assigns to the District all of the Consultant's title in the Material. The Consultant retains ownership of the "Embedded IP". The Material does not include intellectual property or confidential information that is proprietary to the Consultant and (a) used by the Consultant to prepare, produce or supply the Material, or (b) that is otherwise embedded within the Material ("Embedded IP").

APPENDIX A

PROPOSAL SUMMARY AND SIGNATORIES

I/We have read and understood, having carefully examined the Request for Proposal, including any and all Addenda, for the above stated project.

Proponents Business Name: _____

Address: _____

Authorized Signature(s):

<u>Signature</u>	<u>Name</u>	<u>Title</u>

Date: _____

Telephone Number/Facsimile: _____

Email Address: _____

APPENDIX B
RFP 2024.01
AGREEMENT

THIS AGREEMENT made the XXX day of XXX, 2024.

BETWEEN

DISTRICT OF ELKFORD
P.O. Box 340
744 Fording Drive
Elkford, British Columbia
V0B 1H0

(hereinafter referred to as the "District")

AND

CONSULTANT

(hereinafter referred to as the "Consultant")

WHEREAS:

- A. The District requested proposals for preparation of XXXX for the District of Elkford;
- B. The Consultant provided a proposal to the District to develop XXXX for the District of Elkford, acceptable to the District;

NOW THEREFORE THIS AGREEMENT WITNESSES that for an in consideration of the mutual promises, covenants and agreements as hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. THE WORK

- 1.1. The Consultant shall prepare XXXX in accordance with the Consultant's "Proposal for XXX" dated January 1, 1900 (the "Proposal"), a copy of which is attached hereto as Schedule "A" and is incorporated into and forms part of this Agreement (the "Work"). In the event that the District requests the Consultant perform additional work (the "Additional Work"), such Additional Work shall only be undertaken by the Consultant upon the District and the Consultant entering into an addendum to this Agreement, specifying the scope of the Additional Work, costs of the Additional Work, timing for completion of the Additional Work, and terms of payment for the Additional Work. All other terms of this Agreement shall apply, *mutatis mutanda*, to the Additional Work.
- 1.2. The Consultant shall carry out the Work and shall deliver to the District the Work as detailed in the Proposal on or before January 1, 1900, or such other time as may be mutually agreed by the District and the Consultant.

- 1.3. The District shall reasonably co-operate with the Consultant in provision of information, data and documentation in the possession of the District, which is not protected from disclosure pursuant to the *Freedom of Information and Privacy Act* or is otherwise of a confidential nature, in order to assist the Consultant in carrying out the Work.

2. PAYMENT

- 2.1. The District shall pay to the Consultant the maximum sum of \$XXX.00 to carry out the Work as detailed in XXXX of the Proposal, plus Goods and Services Tax, within 30 days of receipt of an invoice for such work. In no event shall the fees as set out in XXXX be exceeded, without the express written authorization of the District.
- 2.2. In the event that the Consultant performs work or services not detailed in the proposal, such shall be deemed to be included in the above payment, unless otherwise agreed in writing between the parties. The Consultant agrees to notify the District promptly of any factor, occurrence, or event coming to its attention that may affect the Consultant's ability to meet the requirements of this Agreement, or that is likely to occasion any material delay in delivery of the deliverables as set out in the Proposal, including, without limitation, any loss or reassignment of key employees, threat of strike, or major equipment failure.

3. STANDARD OF WORK

- 3.1. The District shall have the sole right to determine if the Work, or any component of the Work, has been satisfactorily completed and in the event that the Work or any component of the Work, is determined by the District to be unsatisfactory, the District shall be entitled to withhold payment from the Consultant of any payment until such Work is satisfactorily completed.
- 3.2. The Consultant shall perform the Services with the level of care, skill and diligence normally provided by consultants in the performance of comparable services in respect of projects of a similar nature.

4. INDEMNITY AND INSURANCE

- 4.1. Notwithstanding the provision of insurance coverage by the District, the Consultant hereby agrees to indemnify and save harmless the District, its successor(s), assign(s) and authorized representative(s) and each of them from and against losses, claims, damages, actions, and causes of action, (collectively referred to as "Claims") that the District may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, that arise out of errors, omissions or negligent acts of the Consultant or its Subconsultant(s), servant(s), agent(s) or employee(s) under this Agreement, excepting always that this Indemnity does not apply to the extent, if any, to which the Claims are caused by errors, omissions or the negligent acts of the District, its other consultant(s), assign(s), and authorized representative(s) or any other persons.
- 4.2. The Consultant shall provide the following insurance coverages, all such policies to be on a "claims arising" basis:
 - a) A Professional Liability insurance policy covering errors and omission with coverage of not less than \$2,000,000 per claim and a minimum \$5,000,000 aggregate per year; and
 - b) A Commercial General Liability insurance policy with coverage of not less than \$5,000,000 per claim and aggregate per year (hereinafter the CGL policy). The CGL policy shall include liability for Bodily Injury, Property Damage, and Non-Owned Vehicles, including Broad

Form products and completed operations, shall name the District as an additional named insured and contain a Cross Liability clause. The CGL policy shall remain in full force and effect at all times during the term of this Agreement; and

- c) The insurance policies shall be on the terms satisfactory to the District. Proof of the insurance policies, to the satisfaction of the District, and shall be delivered to the District prior to the commencement of the Work. Such proof shall confirm that the coverage is in effect, identify the District as an additional insured under the CGL policy, describe the type and amount of insurance, list major exclusions and agree to provide the District 30 days' prior written notice of cancellation of any insurance policy.

The above insurance policies listed shall have the right of subrogation waived as against the District and its respective employees, servants and agents.

Prior to commencement of any Work, the Consultant shall provide the District satisfactory evidence that the insurance required to be provided by the Consultant under this clause is in full force and effect.

The District makes no representation or warranty with respect to the extent or adequacy of the insurance protection afforded by the policies above. It shall be the full responsibility of the Consultant to determine their own additional insurance coverage's, that are necessary and advisable for its own protection or to fulfill its obligations under this Contract. Any such additional insurance shall be provided and maintained by the Consultant at the Consultant's own expense.

All policies referred to in this clause shall remain in full force and effect until the work has been completed.

- a) The Consultant shall provide satisfactory evidence of registration with the Workers Compensation Board and a clearance letter from Worksafe BC confirming that no assessments or payments are outstanding to Worksafe BC.
- b) The Consultant acknowledges and agrees that the District shall not be liable for any loss or damage to any materials or equipment supplied or owned by the Consultant.

5. OWNERSHIP AND RIGHTS

- 5.1. Except as set forth below, all elements of the Work shall be exclusively owned by the District and shall be considered works created by the District for The District. Except as set forth below and in paragraph 5.2, the District shall itself exclusively own all Canadian and international copyrights and all other intellectual property rights in the Deliverables.
- 5.2. With the sole exception of any Pre-existing Works identified in section 5.5 hereof, the Consultant agrees to assign, and upon creation of each element of each Deliverable automatically assigns, to the District, its successors and assigns, ownership of all Canadian, United States and international copyrights and all other intellectual property rights in each element of each Deliverable. This assignment shall be operative with respect to all intellectual property and moral rights in and to each element of each Deliverable. This assignment includes, without limitation, any and all rights to secure any renewals for extensions of copyrights in Canada, the United States and elsewhere and transfers to the District any and all rights of action and recovery, if any, possessed by the Consultant for past infringement by others. Furthermore, the Consultant hereby waives all moral rights in each element of each Deliverable on behalf of itself its employees, and those of its subcontractors engaged in creation of the Deliverables.

- 5.3. The Consultant shall obtain from each and every of its employees, agents, and subcontractors involved in creating each element of each Deliverable any agreement or assignment required to confirm ownership rights in the Deliverables in favour of the District as well as evidence to confirm waiver of all moral rights therein.
- 5.4. From time to time upon the District's request the Consultant and/or its personnel shall confirm such assignments by execution and delivery of such assignments, confirmations of assignments, or other written instruments as the District may request. The District, its successors and assigns shall have the right to obtain and hold in its own name all copyright registrations and other evidence of rights that may be available for the Deliverables and any portions thereof.
- 5.5. In the event that any portion of any Deliverables (including the entirety thereof constitutes a pre-existing work for which the Consultant cannot grant to the District the rights set forth in paragraphs 5.1 and 5.2 above, the Consultant shall specify below.
- a) the nature of such pre-existing work;
 - b) its owner;
 - c) any restrictions or royalty terms applicable to the Consultant's or the Consultant's use of such pre-existing work or the Consultant's exploitation of the Deliverable as a Derivative Work thereof; and
 - d) the source of the Consultant's authority to employ the pre-existing work in the preparation of the Deliverable.
- 5.6. The works set forth above will be referred to as "Pre-existing Works". The only pre-existing works that may be used in the construction of any Deliverable are the Pre-existing Works specified above and any Pre-existing Works that may be approved in writing by the District prior to their use. Further, before initiating the preparation of any Deliverable that contains one or more such Pre-existing Works, the Consultant shall, at the Consultant's sole expense, cause the District, its successors, and assigns, to have and obtain the perpetual, irrevocable, nonexclusive, worldwide, royalty free right and licence to:
- a) use, execute, reproduce, display, perform, distribute internally or externally, sell copies of and prepare Derivative Works based upon all Pre-existing Works and Derivative Works thereof and
 - b) authorize or sublicense others from time to time to do any or all of the foregoing.
- 5.7. In performing services under this Agreement, the Consultant agrees not to design, develop, or provide to the District any items that infringe one or more patents, copyrights, trademarks, or other intellectual property rights (including trade secrets), privacy or other rights of any person or entity. If the Consultant becomes aware of any such possible infringement in the course of performing any Work hereunder, the Consultant shall immediately so notify the District in writing. The Consultant agrees to indemnify, defend, and hold the District, its Families, employees, representatives, agents, and the like harmless for any such alleged or actual infringement and for any liability, debt, or other obligation arising out of or as a result of or relating to:
- a) the Agreement;
 - b) the performance of the Agreement; Or

- c) the Deliverables.

This indemnification shall include solicitors' fees and expenses, unless the Consultant defends against the allegations using counsel reasonably acceptable to the District.

6. AGREEMENTS WITH EMPLOYEES

- 6.1. No individuals or entities other than the Consultant and the Consultant's employees shall undertake any work in connection with this Agreement. The Consultant shall obtain and maintain in effect written agreements with each of its employees who participate in any of the Consultant's work hereunder. Such agreements shall contain terms sufficient for the Consultant to comply with all provisions of the Agreement and to support all grants and assignments of rights and ownership hereunder. Such agreements also shall impose an obligation of confidence on such employees with respect to the District's confidential information.

7. REPRESENTATIONS AND WARRANTIES

The Consultant makes the following representations and warranties for the benefit of the District, as a present and ongoing affirmation of facts in existence at all times when this Agreement is in effect:

- 7.1. The Consultant represents and warrants that it is under no obligation or restriction, nor will it assume any such obligation or restriction that does or would in any way interfere or conflict with, or that does or would present a conflict of interest concerning, the work to be performed by the Consultant under this Agreement. The Consultant understands that the Consultant is currently working on one or more similar projects for other clients. Provided that those projects do not interfere or conflict with the Consultant's obligations under this Agreement, those projects shall not constitute a violation of this provision of the Agreement.
- 7.2. The Consultant represents and warrants:
 - d) it is and will be the sole author of all works employed by the Consultant per in preparing any and all Deliverables other than Pre-existing Works;
 - e) it has and will have full and sufficient right to assign or grant the rights and/or licenses granted in the Deliverables pursuant to this Agreement;
 - f) all Deliverables other than Pre-existing Works have not been and will not be published under circumstances that would cause a loss of copyright therein; and
 - g) all Deliverables, including all Pre-existing Works, do not and will not infringe any patents, copyrights, trade marks, or other intellectual property rights (including trade secrets), privacy or similar rights of any person or entity, nor has any claim (whether or not embodied in an action, past or present) of such infringement been threatened or asserted, nor is such a claim pending against the Consultant (or, insofar as the Consultant is aware, against any entity from which the Consultant has obtained such rights).

8. DISPUTE RESOLUTION

- 8.1. The parties will endeavor to resolve any disputes by negotiations however, if a dispute is not resolved by negotiation within 10 days of commencing negotiations, the District and the Consultant will forthwith submit the dispute to a mediator who is acceptable to both parties and whose expenses will be shared equally by them. If they cannot agree on a mediator, a mediator will be appointed by the British Columbia International Arbitration Centre.

- 8.2. If mediation pursuant to paragraph 8.2 does not result in a resolution of the dispute within 10 days of the commencement of mediation, the parties will forthwith submit the dispute to arbitration by a single arbitrator who is acceptable to both parties and whose expenses will be shared equally by them. If they cannot agree on an arbitrator, an arbitrator will be appointed by the British Columbia International Arbitration Centre. The determination of the arbitrator will be conclusive and binding on the parties. The Commercial Arbitration Act of British Columbia or successor legislation will apply to the arbitration.

9. TIME OF THE ESSENCE

- 9.1. Time is of the essence of this Agreement provided that the time for doing or completing any matter provided for in this Agreement may be extended or abridged by an agreement in writing signed by the District and the Consultant.

10. NOTICES

- 10.1. Any notices to be given under this Agreement shall be given to either the District or the District in writing and mailed to or delivered to the other at the address shown on page 1 of this Agreement.
- 10.2. Any notice delivered by hand shall be deemed received that day or if by mail shall be deemed to have been received seven (7) calendar days after it has been posted in a pre-paid addressed envelope.

11. ENTIRE AGREEMENT

- 11.1. This Agreement shall constitute the entire Agreement between the District and the Consultant and there is no representation, warranty, collateral agreement or condition affecting this Agreement other than as expressed in writing in this Agreement.

12. GENERAL MATTERS

- 12.1. This agreement shall ensure to the benefit of and be binding upon District and the Consultant, their respective heirs, administrators, executors, successors and assigns.
- 12.2. This Agreement will be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of British Columbia, and shall not be strictly construed either for or against either party.
- 12.3. No modification of or amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by both of the parties and no waiver of any breach of any term or provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same, and unless otherwise provided, will be limited to the specific breach waived.
- 12.4. Personal information is collected by the District of Elkford pursuant to the Local Government Act, the Community Charter and other Provincial Acts and Statutes and District of Elkford By-Laws for the purpose of administering District operations. Information in this Agreement may routinely be made available to the public under freedom of information legislation.
- 12.5. This Agreement may be signed in counterparts and may be transmitted by facsimile or other electronic means and the reproduction of signatures by facsimile or other electronic means will be treated as binding as if originals and such counterparts together shall be but one and the same instrument.

THE DISTRICT OF ELKFORD

BY: _____
AUTHORIZED SIGNATORY

BY: _____
AUTHORIZED SIGNATORY

CONSULTANT

BY: _____
AUTHORIZED SIGNATORY