



**Village of Pemberton
Landscape Maintenance Services – Pemberton and
District Community Centre, Meadows Field and Gates
Lake Park**

Issue Date: Wednesday, October 30, 2019

Closing Date: Wednesday, November 27, 2019 @ 2:00 p.m.PST

Delivery Address for Proposals:

PO Box 104, 7390 Cottonwood Street
Pemberton, BC V0N 2L0
Phone: 604.894.2340
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www.pemberton.ca

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EXECUTIVE SUMMARY

The Village of Pemberton (VOP) is located 35 kms north of Whistler in the Pemberton Valley, and is part of the Sea to Sky corridor. Pemberton is one of the most desirable communities in BC and home to family farms, adventurous outdoor activities and stunning vistas. With over 2400 residents and just 30 km from Whistler, Pemberton prides itself on its creative and collaborative approach with the business community, local volunteer groups, neighbouring communities and key business and tourism partners, such as Tourism Pemberton and the Pemberton & District Chamber of Commerce. Pemberton's mild winters, warm summers and unique adventure culture provide an ideal place to enjoy arts, history, recreation, dining, shopping and comfortable lodging.

1. INTRODUCTION

The Village of Pemberton is requesting proposals from qualified individuals or companies for landscape services from qualified professionals possessing appropriate experience consistent with the services required to complete seasonal landscape maintenance for a number of properties managed by the Recreation Service.

Questions regarding this Request for Proposal, submission requirements, timing or similar contractual matters should be directed to:

Angela Belsham, Recreation Services Manager
Telephone: 604.894.2340
Email: abelsham@pemberton.ca

If the Proposal file is larger than 10 MB, please provide a hyperlink in the email to download the file from an online file host, such Dropbox, FTP, or your own system. Proposals received after the closing time will not be considered.

2. INSTRUCTIONS, TERMS AND CONDITIONS

The following terms and conditions will apply to this Request for Proposal. Submission of a Proposal indicates acceptance of all the terms that follow, and that are included in any addenda issued by the Village. Provisions submitted in Proposals that contradict any of the terms of this Request for Proposal will be as if not written and do not exist.

2.1 Definitions: "Village", or "the Village", shall mean the Municipality of the Village of Pemberton. "Proponent" shall mean the entity submitting a proposal. "Contractor" or "Consultant" shall mean the successful Proponent.

2.2 Sealed Proposals must be submitted in an envelope clearly marked:

"CONFIDENTIAL RFP (Landscape Maintenance – Recreation Service)"

Village of Pemberton, Box 104, 7390 Cottonwood Street, Pemberton BC, V0N2L0

And must be received by: Wednesday, November 27, 2019 @ 2:00 pm

- 2.3 Proposals must be executed by an authorized signatory of the Proponent utilizing the Proponent Commitment contained in Appendix "A" of this Request for Proposal.
- 2.4 All Proposals and subsequent information or material received shall become the property of the Village of Pemberton and will not be returned. The Proposals will be held in confidence by the Village subject to the provisions of the *Freedom of Information and Protection of Privacy Act*.
- 2.5 Proposals may be withdrawn, by written request only to the Chief Administrative Officer (CAO), at any time prior to the scheduled closing time.
- 2.6 Proposals remain valid, and may not be withdrawn, for a period of sixty (60) days following the date for submission of the Proposals.
- 2.7 Prior to the date for submission of Proposals, Proponents should not contact any other representative of the Village regarding this Request for Proposal, other than the representatives identified in Section 1.2, without that representative's permission. Unauthorized contact with any Village representatives, including members of Village Council, may be cause for the rejection of the proponent's proposal.
- 2.8 Proponents are cautioned to carefully read and follow the Instructions, Terms and Conditions required by this Request for Proposal, as any deviation, omission, as well as any inaccuracies or misstatements may be cause for rejection. However, the Village reserves the right, at its sole discretion, to waive minor irregularities and defects in a proposal, and proceed with that Proponent.
- 2.9 Submission of a Proposal by a Proponent and its subsequent receipt by the Village does not represent a commitment on the part of the Village to proceed further with any Proponent or project. The Village is under no obligation to award a contract as a result of this Request for Proposal and reserves the right to terminate this Request for Proposal process at any time.
- 2.10 Except as expressly and specifically permitted in these Instructions, Terms and Conditions, no Proponent shall have any claim for any compensation of any kind whatsoever, as a result of participating in this Request For Proposal and by submitting a proposal each proponent shall be deemed to have agreed it has no claim.
- 2.11 The Village and its representatives, agents, consultants and advisors will not be liable to any proponent, or any firm, corporation or individual member of a proponent, for claims, whether for costs, expenses, loss or damages, or loss of anticipated profits, or any matter whatsoever, suffered or incurred by the proponent, or any firm, corporation, or individual member of a proponent, in preparing and submitting a proposal, or participating in the Request for Proposal process or negotiations for the agreement, or any activity related to or arising out of this Request for Proposal.

- 2.12** This Request for Proposal and the successful proponent's response may form part of any contract entered into.
- 2.13** Any information acquired about the Village by a Proponent during this process must not be disclosed unless authorized by the Village, and this obligation will survive the termination of the Request for Proposal process.
- 2.14** The Proponent, including all firms, corporations or individual members of a Proponent, will promptly disclose to the Village any potential conflict of interest and existing business relationships they may have with the Village or evaluation committee. The Village reserves the right to disqualify any Proponent that, in its opinion, has a conflict of interest, whether such conflict exists now or is likely to arise in the future.
- 2.15** Pricing will be firm for the contract period, unless this Request for Proposal states otherwise. All prices quoted are to be in Canadian funds exclusive of any applicable taxes.
- 2.16** All amendments or further information will be published on the Village of Pemberton website at www.pemberton.ca. It is the responsibility of the Proponent to monitor this website to check for updates. Any dispute arising from this Request for Proposal, or subsequent agreement, will be resolved according to the laws of the Province of British Columbia.
- 2.17** After the date for submission of Proposals, a Proponent may make a change to the make-up of the Proponent's team membership only with express written approval of the Village. The Village may refuse to permit changes of members who in the judgment of the Village have qualifications that were unique and essential to the Proponent.

3 PROJECT DESCRIPTION

The Village of Pemberton Recreation Service manages three properties utilized by the community for recreation purposes including:

- Pemberton and District Community Centre (7390 Cottonwood Street);
- Meadows Fields (Lot A, District Lot 164, Pemberton Meadows Road); and
- Gates Lake Park (9184 Portage Road).

The term for services would be for a one (1) year period. The Village has, in its sole discretion, the option to renew for one (1) additional two (2) year term as per contract terms.

By submitting a Proposal to the Village, the Proponents are deemed to have:

- Investigated and satisfied themselves of every condition affecting the work; and

- Based their investigation on their own examination, knowledge, information, and judgement, and not upon any statement, representation, or information made or given by or on behalf of the Village.

Scope of Work

The scope of work is for general landscape maintenance for the specified Village locations (Pemberton and District Community Centre, Meadows Field, and Gates Lake Park).

This includes but is not limited to maintenance of grass turf, groundcovers, annuals, perennials, shrubs and trees. This maintenance shall include but not be limited to application of fertilizers, herbicides, and pesticides, watering, pruning, weeding, deadheading, replacement planting, loose trash removal, leaf removal, tree removal, fall clean-up, with spring clean-up commencing in 2020.

Note: Use of fertilizer, herbicide and pesticide must comply with the regulations set by both federal and provincial governments regarding the permissible use and limits.

The Village shall determine the schedule for work performed by order of preference for each specified location.

3.1 Pemberton and District Community Centre

Eight (8) month maintenance for the Pemberton and District Community Centre consisting of:

- a) Mowing – all turf shall be mowed, on average, every 7-10 days during the growing season to a height of 3 to 3.5 inches. During periods of excessive rain or drought, the mowing frequency may be adjusted as to avoid turf damage. Mowing direction shall be alternated to provide a uniform look to the turf (where accessible).
- b) Trimming – trimming around trees, landscape beds and other obstacles in the turf shall be performed with each mowing. Trimming around sidewalks and curbs shall be performed as needed to maintain a sharp edge between the concrete areas and the turf. Any damage to plant materials or other items due to trimming shall be reported by the contractor to the Village within 2 days and repaired/replaced by the contractor, at the contractor's own expense within 10 days.
- c) Clean-Up – removal of all trash prior to mowing each time. Removal of grass clippings from all hard surfaces prior to contractor's departure each time. Removal of all trash, debris and clippings from the property prior to the contractor's departure each time.
- d) Plant and Bed Care – landscaped beds shall be edged in spring. Removal of excess soil/turf from the premises and not allowed back into the landscaped bed.
- e) Weeding – weeding in bed areas around trees, buildings, grass maze pathway, interlockings brick patios (including library) etc. shall be performed at least once a week

or more frequently as needed to maintain a neat appearance. Physical weeding shall be the preferred method of unwanted plants in beds (care taken to remove the root of these plants). Weeds in seams and cracks of sidewalks and curbs shall be removed as needed. Chemical control only as needed and with products in compliance with federal and provincial regulations.

- f) Replacement Plant Materials – The contractor shall report any plant materials not exhibiting normal growth and vigor to the Village. If the contractor determines that the material is beyond reviving, it will provide a report to the Village recommending replacement. This report shall: (a) identify the location, size and type of plant, (b) identify the reason for decline (c) cost of replacement. No replacement planting is to be done without written consent of the Village.
- g) Pruning – all trees shall be pruned to their intended growth form and remove dead, broken, and/or crossing over branches. Shrubs are to be kept pruned to their intended form. Hedges shall be trimmed frequently to keep pace with growth rate of the plantings. All winter damage is to be removed from the trees and shrubs in spring as weather permits. Early to mid-summer flowering plants shall be pruned during their dormant season. Early flowering trees and shrubs shall be pruned immediately after flowering to encourage next year flower bud development. Annuals shall have dead flowers removed whenever necessary to enhance the appearance of the bed.
- h) Leaf Removal – leaves shall be removed from the turf as required.
- i) Spring / Fall Clean-up – dates will be at the discretion of the Village with one site visit in the spring and one in late fall. The site visits shall entail the removal and disposal of all debris that has accumulated in the bed areas. This debris shall include but not be limited to: leaves, paper, trash, dead plant debris, gravel etc. All collected debris is to be removed from the site at no additional charge to the Village and disposed of by an environmentally sound practice. Spring clean-up to include fertilizing of turf, perennials and shrubs; aeration of turf; clean-up of walkways and entrance areas of debris.

3.2 Pemberton Meadows Field

Eight (8) month maintenance for the Pemberton Meadows Field consisting of:

- a) Mowing – all turf shall be mowed, on average, two times per week during the growing season to a height of 3 to 3.5 inches. During periods of excessive rain or drought, the mowing frequency may be allowed to change as to avoid turf damage. Mowing direction shall be alternated to provide a uniform look to the turf (where accessible).
- b) Trimming - trimming around bleachers, trees, fence lines, and obstacles in the turf shall be performed with each mowing. Any damage to any items due to trimming shall be reported by the contractor to the Village within 2 days and repaired/replaced by the contractor, at the contractor's own expense within 10 days

- c) Fertilizing – fertilizing shall be performed two times during the season.
- d) Spring / Fall Clean-Up – aeration to be completed once in April.

3.3 Gates Lake Park

Eight (8) month maintenance for Gates Lake Park consisting of:

- a) Mowing – all turf shall be mowed, on average, every 7-14 days during the growing season to a height of 3 to 3.5 inches. During periods of excessive rain or drought, the mowing frequency may be allowed to change as to avoid turf damage. Mowing direction shall be alternated to provide a uniform look to the turf (where accessible).
- b) Clean-Up – removal of all trash prior to mowing each time. Removal of grass clippings from all hard surfaces prior to contractor’s departure each time. Removal of all trash, debris and clippings from the property prior to the contractor’s departure each time.
- c) Spring / Fall Clean-up – dates will be at the discretion of the Village with one site visit in the spring and one in late fall. The site visits shall entail the removal and disposal of all debris that has accumulated in the bed areas. This debris shall include but not be limited to: burdock, leaves, paper, trash, dead plant debris, gravel etc. All collected debris is to be removed from the site at no additional charge to the Village and disposed of by an environmentally sound practice and adhere to invasive species regulations.
- d) Reporting of any damage or site needs to Village staff.

3.4 Project Activities

Potential Weekly Tasks All Locations:

- a) Inspect flowers, shrubs and trees for needed water, fertilizer and pest control.
- b) Inspect planting beds for weeding, trash removal and mulching. Provide weeding, trash removal and mulching as needed.
- c) Inspect trees for damage and needed pruning. Provide as needed.
- d) Replace any flowers or plants as needed upon consultation with the Village.
- e) Inspect lawn areas for any bare spots. Reseed as necessary.
- f) Inspect sidewalks for weed control.

4 CONTRACTOR DELIVERABLES

The contractor will deliver the following:

- Commence maintenance starting spring 2020.

- Maintain the Meadows Field for the duration of the playing season (April – October/November) to a safe and reasonable level as outlined.
- Ensure the grounds of the Pemberton and District Community Centre are maintained during the months outlined within the scope of work ensuring quality care and aesthetics.
- Maintain the grassy area of Gates Lake Park as outlined in the scope of work.
- Check in weekly with the Facility Maintenance Coordinator to ensure all landscape needs are being met.

5 PROPOSAL REQUIREMENTS

Proposal Format

The following format, sequence, and instructions should be followed in order to provide consistency in proponent responses and ensure each proposal receives full consideration. All proposals must adhere to the requirements:

- a) Proposal must be received at the Closing Location before the specified Closing Time;
- b) Proposal must be in English;
- c) Proposal must include one unaltered, Request for Proposals cover page, including an executed copy of the proponent commitment from appendix A; and
- d) All pages consecutively numbered.

Mandatory Criteria

Proposals must include the following:

- a) A description of the Proponent's company, including years in business, form of ownership, number of employees, services provided and core competencies;
- b) A description of the Proponent's experience, including a list of projects most relevant to this work;
- c) Identification of the key individual who would be responsible for assigning and supervising services as well as acting as the primary liaison with Village staff;
- d) A description of the services to be performed by the Proponent and the intended approach that will be used to fulfil the necessary requirements provided in this RFP;
- e) In a spreadsheet format, provide a detailed breakdown of costs for each specified location to carry out the scope of work. Proponents are asked to divide the price of spring, fall and seasonal maintenance into separate components. Proposals should be inclusive of all fees and disbursements;

- f) A description of any additional potential services the Proponent recommends, if any, over and above what has been outlined in the RFP, along with associated costs;
- g) A monthly payment schedule outlining the contract price which will consist of all fees and disbursements. Applicable taxes are added to the contract price;
- h) Any additional information that the Proponent wishes the Village to consider in the evaluation of its proposal;
- i) A list of three current or past clients, to whom the Proponent has supplied similar services, and who may be contacted as references, including contact name, email address and telephone number for each client;
- j) Confirmation of insurance requirements (Certificate of Insurance); and
- k) Confirmation of WorksafeBC coverage.

6 EVALUATION AND AWARD

All submissions shall become the property of the Village. The Village reserves the right to neither select any proposal nor to be bound to select the lowest priced proposal.

Proponent selection will be made based upon the following criteria, which will include but not be limited to:

- Completeness and thoroughness of proposal submitted in response to this RFP;
- Experience, including but not limited to the number and size of previous projects of a similar type, projects located in this region, and extent of experience in project management;
- Work performance, including but not limited to past projects completed on schedule, managing projects within budgetary constraints, and quality of work product;
- Capacity to perform, including but not limited to staffing level and experience of staff and adequacy of resources; and
- Price and Cost Control – identification of cost control by providing a total budget, including basis for billing of services and disbursements. Provide total price including costs and disbursements. Evaluation emphasis is on the value of service for the total price.

Contract Award

Depending on the Proposals submitted in response to this RFP, a contract will normally be negotiated and executed with the leading Proponent (the “front-runner”) selected in accordance with the Proposal Evaluation Criteria contained in this RFP. The lowest price or any Proposal will not necessarily be accepted.

The Village may negotiate the final scope of work with the selected Proponent and, if the parties are not successful, may attempt to negotiate an agreement with its next preferred Proponent. The Village reserves the right to reject all proposals and re-issue the RFP or abandon it altogether.

Clarification

Notwithstanding that a presentation/interview process has not been indicated in the Proposal Evaluation Form, at the Village’s sole discretion, one or more Proponents may be asked to provide additional clarification respecting their Proposals, or to address areas where the Village clarifies its needs. If these clarifications do not meet the Village’s satisfaction, the Village may, in its sole discretion, decide to reject the Proposal(s).

Suitability of Proponent

The Proponent may be interviewed and/or the Village may conduct such independent reference checks or verifications as are deemed necessary by it, to clarify, test, or verify information contained in the Proposal and to confirm the suitability of the Proponent. If the Proponent is deemed unsuitable by the Village, or if the Proposal is found to contain errors, omissions or misrepresentations of a serious nature, the originally selected Proponent may be rejected and another Proponent selected according to the evaluation format, or the Village may choose to terminate the RFP process and not enter into a contract with any of the Proponents.

The Village may interview key persons to determine if they would be adequate for the proper performance of the proposed contract.

Negotiation with Proponent

Negotiations may be held with the front-runner Proponent including, but not limited to, matters such as:

- Price, insofar as a change in price is directly associated with a change in the Proposal as a result of negotiations;
- Contract details;
- Contract payment details; and
- Expectations of the parties applicable to the service requirements.

If a written agreement cannot be negotiated within fourteen workdays of notification to the front-runner, the Village may terminate negotiations with that Proponent and negotiate a contract agreement with another Proponent selected as the front-runner according to the evaluation procedure, or may choose to terminate the RFP process and not enter into an agreement with any of the Proponents.

The Village shall not be obligated in any manner to any Proponent whatsoever until a written agreement has been duly executed relating to an approved Proposal. The Village reserves the right to modify the project scope or Contractor deliverables as set out herein, or both, at any time during the negotiation phase without notification to other Proponents.

Disqualification

If any Proposal contains a deficiency or fails in some way to comply with any requirement of the RFP, which in the opinion of the Village is not material, the Village may waive the defect and accept the Proposal. The determination of whether or not to disqualify or otherwise remove any Proposal from the evaluation process will be made at the sole discretion of the Village.

7 AUTHORIZED REPRESENTATIVES

The authorized representative for this RFP is the Recreation Services Manager. Proponents should address all correspondence to Authorized Village Representative Angela Belsham.

8 CONTRACT

The Contractor will enter into a contract with the Village, substantially similar to the contract included in Appendix B, based on the information contained in this RFP and the Contractor's submission and the Village's supplementary conditions.

9 INSURANCE

The Contractor will have: (1) commercial general liability insurance coverage in the minimum amount of \$5 million per occurrence and in the aggregate; (2) workers compensation insurance; (3) automobile liability coverage in the minimum amount of \$5 million; and (4) appropriate contractor's equipment insurance, as per the contract terms in Appendix B.

10 INDEMNIFICATION OF THE VILLAGE

The Contractor shall indemnify, protect and save harmless the Village, its officers, agents, servants and employees from and against all actions, causes of actions, claims and demands of every kind, description and nature whatsoever arising out of or in any way connected with fulfillment of this contract, and all such actions, causes of action, claims and demands recoverable from the Village or the property of the Village, shall be paid by the Contractor, and, if recovered from the Village, or the property of the Village, shall together with any costs and expenses incurred therewith be charged to the Contractor.

APPENDIX A - Proponent Commitment

The Request for Proposals may be delivered by hand, courier, Canada Post or email to:

Village of Pemberton
Box 104, 7390 Cottonwood Street
Pemberton, BC V0N2L0
abelsham@pemberton.ca

**"CONFIDENTIAL RFP (Landscape Maintenance – Recreation Service)" no later than
Wednesday, November 27, 2019 @ 2:00 pm PST**

This section to be completed by Proponent: Provided that this Proposal is accepted within thirty (30) calendar days from the closing date, the undersigned agrees, on behalf of the company named below, to supply the goods and services listed at the prices quoted, under the Instructions, Terms and Conditions set forth in this Request for Proposal document, the Proponent's Proposal, any and all addendum, which shall together form the Agreement. This Proposal is valid and enforceable for a period of not less than thirty (30) days following the closing date. In accordance with the Terms, Conditions, Instructions, and specifications the undersigned agrees to supply products and services at the prices quoted.

Company Name _____
Company Address _____
Postal Code _____ Phone Number _____
Email _____
Signature of Signing Officer/Date _____
Name/Title of Signing Officer _____

APPENDIX B – Services Agreement

Contractor Services Agreement

THIS AGREEMENT dated _____, 2020 is

BETWEEN:

VILLAGE OF PEMBERTON
7400 Prospect Street, P.O Box 100
Pemberton, B.Cl.
VON 2LO

(the "Village")

AND:

(the "Contractor")

GIVEN THAT the Village wishes to engage the Contractor to provide _____ to undertake a scope of work consisting of _____, and the Contractor wishes to provide such services to the Village in accordance with the terms and conditions of the agreement;

This Agreement is evidence that in consideration of the promises exchanged below, the Village and the Contractor agree with each other as follows:

Definitions

1. In this Agreement, in addition to the words defined above,
 - a. "Terms of Reference" means the terms of reference for performance of the Services attached as Schedule "A"
 - b. "Services" means the acts, services and work described in the Terms of Reference and all acts, services and work necessary to achieve the objectives set out in the Terms of Reference.

Services to be Performed by the Contractor

2. The Contractor agrees to perform the Services during the Term, in accordance with the Terms of Reference, on the terms and conditions of this Agreement.

Term and Renewal

3. The term of this Agreement commences on _____, 2020 and ends on the earlier of the completion of the Services or _____, 201_ (the "Term"), unless terminated earlier in accordance with this Agreement.
4. The term of this agreement may be renewed at the Village's sole discretion for one (1) additional two (2) year term, subject to satisfactory performance reviews, on the same terms and conditions contained in this agreement. The Village shall advise the Contractor no later than 60 calendar days before the term of the agreement expires if the Village shall be exercising its right to renew the agreement. The Village shall not incur any liability should it choose not to exercise its exclusive option to renew the agreement.

Warranty as to Quality of Services

5. The Contractor represents and warrants to the Village that:
 - a. it will perform the Services with that degree of care, skill, and diligence normally applied in the performance of services of a similar nature and magnitude to those contemplated by this agreement at the time and place the Services are rendered;
 - b. it will perform the Services in accordance with sound current professional practices;
 - c. the Contractor and any of its employees which undertake the Services have the education, training, skill, experience and resources necessary to perform the Services;
 - d. the Services will be performed in accordance with all applicable enactments and laws and in compliance with all relevant codes, rules, regulations and standards of any relevant professional or industry organization or association,

and the Contractor acknowledges and agrees that the Village has entered into this Agreement relying on the representations and warranties in this section.

Remuneration and Reimbursement

6. The Village must pay the Contractor for the Services in the amount provided in the Terms of Reference in accordance with this Agreement.
7. The Village reserves the right at its sole discretion to reduce the scope of the Services and/or the number of work sites at any time during the Term. There shall be no penalty or additional cost to the Village for any reduction in the scope of the Services and/or work sites and the contract price will decrease accordingly for such reduction.

Invoices

8. Not more than once each month, the Contractor may deliver an invoice to the Village, in respect of the immediately preceding month, setting out the aggregate amount of fees and disbursements claimed for Services performed in that preceding month.

Payment by the Village

9. The Village must, to the extent it is satisfied the fees are for Services reasonably and necessarily performed by the Contractor and subject to section 8 and subject to any right of set-off that the Village may have, pay the Contractor the fees claimed in the invoice delivered in accordance with section 8, within 30 days after delivery of the invoice to the Village.

Termination or Suspension at the Discretion of the Village

10. Despite any other section of this Agreement, the Village may, in its sole discretion, terminate or suspend all or any part of the Services by giving the Contractor notice of termination or suspension, as the case may be, with such effective date of termination or suspension so noted thereon. If the Village terminates or suspends all or part of the Services under this section, then the Contractor is entitled to deliver an invoice to the Village for the period between the end of the time period for which the last invoice was delivered by the Contractor under section 6 and the effective date of termination or suspension. The Village must, to the extent that it is satisfied the fees and disbursements are for Services reasonably and necessarily performed by the Contractor, pay the Contractor the fees and disbursements claimed in such invoice, within 30 days after delivery of such invoice to the Village. The Contractor is not entitled to, and irrevocably waives and releases, damages or compensation for costs incurred, loss of profit, or loss of opportunity, directly or indirectly arising out of termination or suspension of all or any part of the Services.

Termination for Breach

11. The Village may, by giving the Contractor notice of termination, immediately terminate all or any part of the Services, if the Contractor:
- a. is in breach of this Agreement and within 5 days of receiving notice of such breach from the Village, the Contractor has not cured the breach or is not, to the satisfaction of the Village in its sole discretion, diligently pursuing a cure for the breach; or
 - b. becomes bankrupt or insolvent, a receiving order is made against the Contractor, an assignment is made for the benefit of the Contractor's creditors, or the Contractor takes the benefit of any enactment relating to bankrupt or insolvent debtors.

Without limiting any other right or remedy available to the Village, if the Village terminates all or any part of the Services under this section, the Village may arrange, upon such terms and conditions and in such manner as it considers appropriate, for performance of any part of the Services remaining to be completed, and the Contractor is liable to the Village for any expenses reasonably and necessarily incurred by the Village in engaging the services of another person to perform those Services. The Village may set off against and withhold from amounts due to the Contractor such amounts as the Village determines, acting reasonably, are necessary to compensate and reimburse the Village for the expenses described in this section.

Confidential Information

12. Except as required by law, the Contractor must not, during or after the Term, divulge or disclose any secret or confidential information, or divulge or disclose any information that the Contractor receives or observes in connection with this Agreement and the performance of the Services which in good faith or good conservice ought not to be disclosed.

Records

13. The Contractor must:

- a. keep proper accounts and records of its performance of the Services, including invoices, receipts and vouchers, which must at all reasonable times be open to audit and inspection by the Village, which may make copies and take extracts from the accounts and records;
- b. keep reasonably detailed records of performance of the Services by the Contractor, which must at all reasonable times be open to inspection by the Village, which may make copies and take extracts from the records;
- c. afford facilities and access to accounts and records for audit and inspection by the Village and must furnish the Village with such information as the Village may from time to time require regarding those documents; and
- d. preserve and keep available for audit and inspection, all records described in section 13(a) through (c) for at least two years after completion of the Services or termination of this Agreement, whichever applies.

Delivery of Records

14. If the Village terminates all or part of the Services under this Agreement, the Contractor must immediately deliver to the Village, without request, all Services-related documents in the Contractor's possession or under its control as well as all keys issued to the Contractor by the Village.

Ownership of Intellectual Property

15. By this section, the Contractor irrevocably grants to the Village the unrestricted license for the Village to use all technical information and intellectual property, including inventions, conceived or developed, or first actually reduced to practice, in performing the Services. The Contractor agrees that the license granted by this section includes the right for the Village, at any time, to adapt, use and modify all such technical information and intellectual property for the Village's uses set out above.

Agreement for Services

16. This is an Agreement for the performance of services and the Contractor is engaged under the Agreement as an independent contractor for the sole purpose of providing the Services. Except as is otherwise expressly prescribed in this Agreement, neither the Contractor nor any of its employees, contractors and representatives is engaged by the Village as an employee or agent of the Village. The Contractor is solely responsible for any and all remuneration and benefits payable to its employees, contractors and representatives, and all payments or deductions required to be made by any enactment, including those required for Canada Pension Plan, employment insurance, workers' compensation and income tax. This Agreement does not create a joint venture or partnership, and the Contractor has no authority to represent or bind the Village in any way.

Assignment of Agreement/Subcontracting of Services

17. The Contractor must not assign this Agreement (or any part thereof) or subcontract any or all of the Services to be performed under this Agreement without the prior written consent of the Village, such consent may be unreasonably withheld. The Village may refuse its consent if, among other reasons, it is not satisfied that the proposed assignee or proposed subcontractor, as the case may be, has the education, training, skill, experience or resources necessary to perform the Services. Any assignment or subcontract duly consented to by the Village does not relieve the Contractor from any obligation already incurred or accrued under this Agreement or impose any liability upon the Village.

Time of the Essence

18. Time is of the essence of this Agreement.

Release and Indemnification

19. Except to the extent arising out of the negligent acts or omissions of the Village and its directors, officers, employees, agents, successors and assigns, as determined by a court of competent jurisdiction, the Contractor shall release, indemnify and save harmless the Village and its directors, officers, employees, agents, successors and assigns from and against any and all liabilities, actions, damages, claims, losses, costs and expenses whatsoever (including, without limitation, the full amount of all legal fees and disbursements) in any way directly or indirectly arising out of or caused, in whole or in part, by the Contractor, its employees, agents, or assigns in the performance of the Services herein, as determined by a court of competent jurisdiction.
20. The indemnity provided in section 19 by the Contractor to the Village will not in any way be limited or restricted by the insurance set out in section 22 or by limitations on the amount or type of damages, compensation or benefits payable under the *Workers' Compensation Act* or any other similar statute.
21. The indemnity provided in section 19 by the Contractor to the Village will survive notwithstanding the completion of all Services and the obligations and duties under this Agreement; for clarity, the release and indemnity shall survive the expiry or the termination of this Agreement for any reason.

Insurance Requirements

22. The Contractor shall obtain and maintain throughout the Term commercial 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 provision of the Services in an amount not less than \$5,000,000 per occurrence and in the aggregate and shall meet the following requirements:
- a. Name the Village and Squamish-Lillooet Regional District (as to the Pemberton and District Community Centre, Meadows Field and Gates Lake Park), and School District No. 48 (Sea to Sky) (as to the Meadows Field) as additional insureds;
 - b. include that the Squamish-Lillooet Regional District, Village and School District No. 48 (Sea to Sky) are 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 Squamish-Lillooet Regional District, the Village and School District No. 48 (Sea to Sky) and will provide that any coverage carried by the Squamish-Lillooet Regional District, the Village and School District No. 48 (Sea to Sky) is in excess coverage;
 - e. not be cancelled or materially changed without the insurer providing the Village with thirty (30) days written notice stating when such cancellation or change is to be effective;
 - f. be maintained for a period of twelve (12) months per occurrence;

- g. include a deductible not greater than \$5,000 per occurrence;
- h. include a cross liability clause; and
- i. be on other reasonable terms acceptable to the Village.

The Contractor shall provide the Village with certificates of insurance confirming the placement and maintenance of such insurance at the signing of the Agreement and thereafter as requested to do so from time to time by the Village. If the Contractor's insurance shall expire or terminate before the end of the Term, the Contractor shall deliver a new certificate of insurance evidencing the new policies of insurance not less than ten (10) days before the new policies go into effect.

The above insurance requirements do not in any way reduce the Contractor's obligations to release and indemnify the Village as set out in section 19 of this Agreement.

WorkSafeBC

23. The Contractor shall
- a. provide proof of WorkSafeBC coverage (or if applicable, proof that WorkSafeBC coverage is not required) within 5 days of signing this Agreement and as may be required by the Village from time to time throughout the Term;
 - b. remain current with all assessment reporting and payments due thereunder and shall comply in every respect with the requirements of the Workers Compensation Act and Regulations; and
 - c. be responsible for all fines, levies, penalties and assessments made or imposed under the Workers Compensation Act and regulations relating in any way to the Services.
24. The Contractor must take all precautions reasonably necessary to ensure the safety of the Contractor's personnel and all persons employed, contracted or subcontracted by the Contractor to perform the Services.
25. The Contractor is designated as the prime contractor on site.

Compliance

26. The Contractor shall comply with all laws, rules and regulations applicable to the performance of the Services under this Agreement.

Business License

27. The Contractor shall obtain and maintain throughout the Term of this Agreement a valid Village of Pemberton business license.

Severability

28. If any term or provision of this Agreement is illegal or invalid for any reason whatsoever as determined by a competent court of law, such term or provision shall be severable and the same shall not affect the validity of the remainder of this Agreement.

Notice

29. Any notice, direction, demand, approval, certificate or waiver which may be or is required to be given under this Agreement must be in writing and delivered personally or by courier or sent by fax or e-mail, addressed as follows:

To the Village:

Village of Pemberton
7400 Prospect Street, Box 100
Pemberton, B.C. V0N 2L0
Fax Number: (604) 894-2320
E-mail Address: abelsham@pemberton.ca
Attention: Angela Belsham, Recreation Services Manager

To the Contractor:

or to such other address, e-mail address or fax number of which notice has been given as provided in this section.

Any notice, direction, demand, approval or waiver delivered is to be considered given on the next business day after it is dispatched for delivery. Any notice, direction, demand, approval or waiver sent by fax or e-mail is to be considered given on the day it is sent, if that day is a business day and if that day is not a business day, it is to be considered given on the next business day after the date it is sent.

Interpretation and Governing Law

30. In this Agreement:

- a. reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- b. reference to a particular numbered section or Schedule is a reference to the correspondingly numbered section or Schedule of this Agreement;
- c. the word "enactment" has the meaning given to it in the *Interpretation Act* (British Columbia) on the reference date of this Agreement;
- d. reference to any enactment is a reference to that enactment as amended, unless otherwise expressly provided;
- e. reference to a month is a reference to a calendar month;
- f. and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement.

31. This Agreement is governed by, and is to be interpreted according to, the laws of British Columbia.

Binding on Successors

32. This Agreement enures to the benefit of and is binding upon the parties and their respective executors, successors, trustees, administrators and receivers, despite any rule of law or equity to the contrary.

Entire Agreement

33. This Agreement is the entire agreement between the parties and it terminates and supersedes all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of this Agreement.

Waiver

34. Waiver of any breach by a party must be express and in writing to be binding on that party, and a waiver of a particular breach does not operate as a waiver any future breach, whether of a like or different character.

Freedom of Information and Protection of Privacy Act

35. The Contractor understands that the Village is subject to the Freedom of Information and Protection of Privacy Act, RSBC 1996, c. 165 and agrees that this Agreement and the information it contains, and any information supplied by the Consultant to the Village in connection with this Agreement, is not implicitly confidential for the purposes of that enactment.
36. The Contractor understands that this Agreement, and the information it contains, may be the subject of an access to information request made to the Village under the Freedom of Information and Protection of Privacy Act and the Village may be obliged by that enactment to disclose all or part of this Agreement and the information it contains and all or part of any information the Contractor supplied to the Village in connection with this Agreement, whether or not the Contractor has expressly stipulated that the information in question is confidential for the purposes of that enactment.

Counterparts

37. This Agreement may be signed in as many counterparts as may be necessary, each of which so signed will be deemed to be an original and each copy sent by email or electronic facsimile transmissions will be deemed to be an original, and such counterparts together will constitute one and the same instrument and notwithstanding the date or dates of execution will be deemed to bear the date as set forth below.

As evidence of their agreement to be bound by the above terms and conditions of this Agreement, the parties have executed this Agreement below, on the respective dates written below.

VILLAGE OF PEMBERTON by its
authorized signatory:

_____ Date

Nikki Gilmore
Chief Administrative Officer

Signed on _____, 2020 in the)
presence of:)

_____)
Witness:)

_____)
Address:)

_____)
Occupation:)

Name of Contractor

**Schedule “A” to the Landscape Maintenance Services – Pemberton and District Community Centre,
Meadows Field and Gates Lake Park Services Agreement**

TERMS OF REFERENCE

[Contractor’s Proposal (as accepted by the Village) to be attached.]