

2015 SERVICE AGREEMENT
(the "Agreement")

THIS AGREEMENT is dated _____

BETWEEN:

Capital Region District (the "**CRD**")
625 Fisgard Street
PO Box 1000
Victoria, British Columbia, V8W 2S6

- and -

Public Health,
Vancouver Island Health Authority ("**VIHA**")
#430 - 1900 Richmond Avenue
Victoria, BC V8R 4R2

WHEREAS the mandate of VIHA is to oversee a wide variety of initiatives designed to promote, protect and improve the population's health and wellbeing through: health promotion; reducing inequalities in health status; prevention of disease, injury, disability, and premature death; and, protection from environmental and other hazards to health;

WHEREAS the CRD (acting also as the Capital Regional Hospital District) has the statutory authority for a range of responsibilities that directly and indirectly address community health in the CRD, such as enacting and enforcing public health bylaws;

WHEREAS the CRD desires to contract with VIHA to provide a specific set of community health activities and initiatives for the term of this Agreement;

AND WHEREAS, VIHA, having the up-to-date medical knowledge and epidemiologic expertise and skills in identifying healthy public policy options, agrees to provide the services described herein to support the improvement of health of the population within the Capital Regional District, all in consideration and upon the terms and conditions contained herein;

NOW THEREFORE it is hereby agreed as follows:

1. Services

- (a) The CRD agrees to fund VIHA for the Term to provide the services described in the attached Schedule "A" (the "Services").
- (b) The Services will be subject to review over the course of the Term by CRD and VIHA staff to ensure the Services are consistent with CRD priorities, address emergent public health issues and support the development of exemplary public health policy responses. Following review, the parties may agree to implement changes to the scope of the Services. Any such changes to the scope of the Services must be authorized by the CRD by written notice to VIHA. Notwithstanding the foregoing, if the changes to the scope of the Services will result in an increase or decrease in the Fees to be paid for the Services, the parties will enter into a written agreement amending the scope of Services and the Fees.

2. Performance of Services

In performing the Services, VIHA will collaborate and coordinate its activities with the CRD to ensure that resources are used most effectively and efficiently. This includes coordinating with the CRD's Health and Capital Planning Strategies Division, engaging in discussions with CRD member municipalities on public health matters, and contracting back to the CRD for public health bylaw enforcement when needed.

3. Reporting

VIHA will:

- (a) At the request of the CRD, report to the CRD Planning, Transportation and Protective Services (PTPS) Committee how VIHA has met, or intends to meet, the outcomes and deliverables outlined in the attached Schedule "A";
- (b) At the request of the CRD, report to the CRD PTPS Committee on CRD Public Health Bylaw violations (as available within the Healthspace database); and
- (c) Provide the CRD a copy of VIHA's annual strategic plan and annual business plan within sixty (60) of approval by VIHA.

4. Term

This Agreement shall be in effect for one year, commencing on April 1, 2015 and ending on March 31, 2016 and may be renewed for an additional period of time through the mutual consent of the parties (the "Term").

5. Fees

- (a) The CRD agrees to provide funding to VIHA in the amount of one hundred seventy-six thousand seven hundred and fifty dollars (\$176,750) to enable it to provide the Services under the Agreement (the "Fees").
- (b) The CRD will provide the Fees to VIHA in arrears in twelve (12) equal monthly installments. If this Agreement is executed after April 30, 2015 there will be a reconciliation for past services followed by equal monthly instalments for the balance of the Term.
- (c) Where this Agreement has been terminated by the CRD in accordance with Section 12(a), it is agreed that the payment for the month where notice was given will be prorated and shall be the final payment payable under this Agreement.

- (d) The Fees paid to VIHA under this Agreement constitute the entire amount of funding and will not be increased to take into account any applicable goods and services taxes or other sales or value added taxes payable in respect of such fees. The CRD will not remit amounts related to Workers' Compensation in respect to VIHA's services.
- (e) The Fees will constitute the equivalent of a full time equivalent (FTE) staff person, and may be used to sub-contract for Bylaw enforcement through the CRD's Bylaw Enforcement Division.

6. Expenses

The CRD shall not pay for or reimburse any additional expenses that VIHA incurs in the course of performing the Services. VIHA will keep and maintain proper accounts and an accurate record of all expenditures in connection with the Services performed under this Agreement, and these shall at all times be open to audit and inspection by an authorized representative of the CRD.

7. Independent Contractor

VIHA's relationship with the CRD as created by this Agreement is that of an independent contractor for the purposes of the Income Tax Act (Canada) and any similar provincial taxing legislation. It is intended VIHA shall have general control and direction over the manner in which its Services are to be provided to the CRD under this Agreement. Nothing contained in this Agreement shall be regarded or construed as creating any relationship (whether by way of employer/employee, agency, joint venture, association or partnership) between the parties other than as an independent contractor as set forth herein.

8. Time and Effort

VIHA shall be free to devote such portion of its time, energy, effort and skill as it sees fit, and to perform duties when and where it sees fit, so long as VIHA performs the Services set out in this Agreement in a timely and professional fashion.

9. Compliance

VIHA shall comply with all applicable federal, provincial and municipal laws, rules and regulations arising out of or connected with the performance of the Services under this Agreement by VIHA or its employees.

10. Confidential Information

- (a) VIHA acknowledges that a certain amount of the material and information made available to VIHA by the CRD in the performance of the Services (the "Confidential Information") will be of a confidential nature. VIHA recognizes that the Confidential Information is the sole and exclusive property of the CRD, and the VIHA shall use its best efforts and exercise utmost diligence to protect and maintain the confidentiality of the Confidential Information. The VIHA shall not, directly or indirectly, use the Confidential Information for its own benefit, or to disclose to another any Confidential Information, whether or not acquired, learned, obtained or developed by the VIHA alone or in conjunction with others, except as such disclosure or use may be required in connection with the performance of the Services or as may be consented to in writing by the CRD.
- (b) The Confidential Information is and shall remain the sole and exclusive property of the CRD regardless of whether such information was generated by VIHA or by others, and VIHA agrees that upon termination of this Agreement it shall deliver promptly to the CRD all such

tangible parts of the Confidential Information including records, data, notes, reports, proposals, CRD lists, correspondence, materials, marketing or sales information, computer programs, equipment, or other documents or property which are in the possession or under the control of VIHA without retaining copies thereof.

- (c) Each of the foregoing obligations of VIHA in this section shall also apply to any confidential information of CRD members, customers, joint venture parties, contractors and other entities, of any nature whatsoever, with whom the CRD or any associate or affiliate of the CRD has business relations.
- (d) Notwithstanding the foregoing provisions of this section, VIHA shall not be liable for the disclosure or use of any of the Confidential Information to the extent that:
 - (i) the Confidential Information is or becomes available to the public from a source other than VIHA and through no fault of VIHA; or
 - (ii) the Confidential Information is lawfully obtained by VIHA from a third party or a source outside of this Agreement.
- (e) The covenants and agreements contained in this clause shall survive the termination of this Agreement.

11. Other Services

VIHA will be free to perform services to other clients during the term of this Agreement provided the CRD is satisfied that:

- (a) VIHA is able to perform the functions and duties pursuant to this Agreement in a timely and professional fashion; and,
- (b) Such other services do not create a conflict of interest or generally interfere VIHA's obligations pursuant to this Agreement.

12. Termination

- (a) If VIHA is in breach of any of the terms of this Agreement, the CRD shall notify VIHA of the breach in person or by registered mail. Where possible, VIHA will then have 10 days to correct the breach. If the breach is not corrected in that time, the CRD may terminate this Agreement immediately.
- (b) Either party may terminate this Agreement at any time, without cause or reason by giving six (6) months' notice to the other party.
- (c) Upon termination of this Agreement:
 - (i) the CRD's obligations to VIHA under this Agreement shall terminate except for the CRD's obligation to pay any fees in accordance with the terms of this Agreement, to the date of termination; and
 - (ii) VIHA's obligations to the CRD under this Agreement shall terminate except those obligations which are specifically expressed to survive the termination of this Agreement.

13. Dispute Resolution

(a) Process

A dispute between the parties shall be resolved in accordance with the dispute resolution process set out in this section. The steps in the process must be followed in the order set out below unless both parties agree otherwise in writing:

- (i) Step 1--Negotiate with the Senior Manager, CRD Health and Capital Planning Strategies
- (ii) Step 2--Deliver dispute notice
- (iii) Step 3--Negotiate with General Manager, Planning and Protective Services, CRD
- (iv) Step 4--Submit dispute to CRD Chief Administrative Officer
- (v) Step 5--If both parties agree, proceed to arbitration; otherwise proceed to litigation

(b) No Delay

VIHA shall not delay the work or any portion of the work on account of any dispute, or any proceeding taken under this section.

(c) Step 1 - Negotiation

VIHA and the CRD shall make all reasonable efforts to resolve a dispute by amicable negotiations.

(d) Step 2 - Dispute Notice

If the matter in question is not resolved, then:

- (i) A dispute notice shall be given by separate written notice delivered to the other party and mention of a dispute in minutes of meetings or similar documents, even if received by the other party, shall not qualify as a dispute notice.
- (ii) The dispute notice shall include particulars of the dispute reasonably available to the disputing party, including any claimed adjustments to the Agreement time or payment and the provisions of this Agreement on which the disputing party relies.

(e) Step 3 - Negotiation

VIHA and the CRD shall make all reasonable efforts to resolve a dispute by amicable negotiations and shall provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.

For the purpose of negotiating a dispute, each of the parties shall consider appointing new representatives, where possible, who have not been directly involved in the work, although neither party shall be obligated to do so.

(f) Step 4 - Chief Administrative Officer

If the dispute is not resolved under Step 3, then both parties shall, within five (5) working days of the breakdown of negotiations, submit to the Chief Administrative Officer of the CRD, copies of all written material so far produced with respect to the dispute, including the dispute notice, minutes and reports. The parties may also prepare and submit to the Chief Administrative Officer further written material in their respective cases.

The Chief Administrative Officer shall, within five (5) working days of receiving at least one party's materials, and as practicable call a meeting of the parties to hear the facts. The meeting shall be held within 10 working days of calling the meeting, as practicable, unless otherwise agreed by both parties.

The Chief Administrative Officer shall hold the meeting with both parties to hear the facts and arguments and shall render his written opinion within five (5) working days of the meeting, as practicable.

The Chief Administrative Officer may involve other senior CRD staff in the process above.

(g) Step 5 - Arbitration

If the dispute is not resolved in Step 4, then all matters in dispute under this Agreement may, with the concurrence of both the CRD and VIHA, be submitted to arbitration pursuant to the *Commercial Arbitration Act* to a single arbitrator appointed jointly by them.

No one shall be nominated to act as an arbitrator who is in any way financially interested in the conduct of the Project or in the business affairs of either the CRD or VIHA.

If the parties cannot agree on the choice of an arbitrator, each party shall select a nominee and the nominees shall jointly appoint an arbitrator.

The laws of the province of British Columbia shall govern this Agreement and any arbitration or litigation in respect thereof.

The award of the arbitrator shall be final and binding upon the parties.

Unless otherwise agreed or decided by the arbitrator, costs shall be shared equally.

14. Indemnification

Notwithstanding any insurance coverage by the CRD, VIHA hereby agrees to indemnify and save harmless the CRD and its directors, officers, employees, agents, and contractors against any and all claims, demands, complaints (including, without limitation, complaints pursuant to human rights legislation), actions (including, without limitation, wrongful dismissal actions), suits, damages, liabilities and/or costs (including, without limitation, actual legal fees and disbursements), arising from or caused by any errors, omissions or negligent acts of VIHA, its directors, officers, employees, agents and/or contractors in relation to this Agreement, unless such claim, demand, complaint, action, suit, damage, liability and/or cost is the result of errors, omissions or negligent acts of the CRD and/or its directors, officers, employees, agents, subsidiaries and contractors. This covenant will survive the expiry or earlier termination of this Agreement.

15. Workers Compensation

VIHA will, at its own expense, procure and carry full Workers' Compensation Board coverage for itself and all workers, employees, servants and others engaged in the supply of the Services. VIHA will ensure compliance with and conform to all health and safety laws, by-laws or regulations of the Province of British Columbia, including without limitation the *Workers Compensation Act* and Regulations pursuant thereto. VIHA agrees that it is the prime contractor for the Services for the purposes of the *Workers Compensation Act*.

16. Governing Law

This Agreement shall be governed by the laws of the Province of British Columbia and the federal laws of Canada applicable therein.

17. Severability

If any provision of this Agreement, or the application of such provision to any person or in any circumstance, shall be determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement, and the application of such provision to any person or in any circumstance other than that to which it is held to be invalid, illegal or unenforceable, shall not be affected thereby.

18. Amendments

Any amendment to this Agreement must be in writing and signed by both parties hereto.

19. Time of Essence

Time shall be of the essence in this Agreement.

20. Entire Agreement

This is the entire Agreement between the CRD and VIHA with respect to the Services to be provided by VIHA to the CRD and supersedes any prior Agreements with respect to such services whether written or oral and may not be modified except by subsequent Agreement in writing executed by the CRD and VIHA.

Notices

Notices hereunder shall be in writing and must be either personally delivered or sent by Priority mail (signature required) to the address(es) set forth below. A party may change the address set forth above by proper notice to the other.

CRD: Health and Capital Planning Strategies Division
Capital Regional District
Attention: Maurice Rachwalski, Senior Manager
Box 1000, 625 Fisgard Street
Victoria, BC V8W 2S6

VIHA: Public Health,
Vancouver Island Health Authority ("**VIHA**")
#430 - 1900 Richmond Avenue
Victoria, BC V8R 4R2

21. Waiver

The failure of any party to insist upon the strict performance of a covenant or obligation hereunder, irrespective of the length of time for which such failure continues, shall not be a waiver of such party's right to demand strict performance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any covenant or obligation hereunder shall constitute a consent or waiver to or of any other breach or default in the performance of the same or of any other obligation hereunder.

22. Assignment

This Agreement may not be assigned by either party hereto.

23. Enurement

This Agreement shall be binding upon and shall enure to the benefit of each of the parties hereto and their respective employees and permitted receivers, successors and assigns.

IN WITNESS WHEREOF the parties hereto have signed this Agreement as of the day and year first above written.

Per:

Nils Jensen
Chair
Capital Regional District

c/o Dr. Richard Stanwick
Chief Medical Health Officer
Vancouver Island Health Authority

SCHEDULE "A"
2015-2016 Scope of Services
Between the Vancouver Island Health Authority (VIHA), Public Health
and
The Capital Regional District [CRD]

Clean Air Bylaw No. 3962

ENFORCEMENT

- VIHA staff will expand enforcement activities to all areas included in the amended Bylaw.
- VIHA will be responsible for developing and circulating to the CRD and community stakeholders' enforcement protocols that emphasize an educational approach.

EDUCATION & AWARENESS

- Island Health staff will, with the assistance of stakeholders, develop education kits to support implementation of the amended Clean Air Bylaw, including: the effective date; enforcement procedures; the Smoke-Free website; FAQs; signage; how to report violations; and, Cessation Resources.
- Continue to implement the expanded bylaw with CRD staff and stakeholders through an Education/Awareness Campaign.
- Provide consultation and education on the Bylaw to stakeholders including BC Transit, retailers, and Parks.
- Provide information to the public through the Island Health website and attendance at community events.

Idling Control Bylaw No. 1, 2008 and Tanning Facility Bylaw No. 1, 2010

- Provide complaint follow-up and investigation by Environmental Health Officers related to the Idling Control and Tanning Facility Bylaws.
- Document complaint and results of investigation.
- Implement a progressive enforcement approach starting with education and consultation.
- Refer to CRD if fines, tickets or legal action is recommended.
- Reimburse CRD for bylaw enforcement activities resulting from referrals.

Tattoo Facilities Bylaw No. 1, 2006

- Approve tattooing premises prior to commencement of operations.
- Inspect premise to ascertain that regulations in the bylaw are being followed.
- Document results of premise approvals and inspections.
- Initiate the appropriate enforcement action to address non-compliance.