



# Construction Service Agreement

## GENERAL TERMS AND CONDITIONS

**FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS CONFIRMED, THE RDCK AND THE CONTRACTOR AGREE AS FOLLOWS:**

- 1 SCHEDULES** - The Schedules to this Agreement (including any appendices or documents incorporated by reference into those Schedules) are part of this Agreement.
- 2 INTERPRETATION** - For the purposes of this Agreement, except as otherwise expressly provided words importing the singular include the plural and vice versa and the headings inserted in this Agreement are for convenience of reference only and in no way define, limit or enlarge the scope or meaning of any of the provisions of this Agreement.
- 3 CONTRACTOR'S OBLIGATIONS** - The Contractor shall:
  - (a) **SCOPE OF SERVICES** - Provide the Services detailed in Schedule "A" of this Agreement (the "**Services**") so as to achieve both substantial completion as that term is defined in the Builders Lien Act ("**Substantial Completion**") and total completion (which is defined as total and satisfactory completion of the Services in accordance with this Agreement) by the contract end date identified in section 1 of Schedule A of this Agreement.
  - (b) **SERVICE DELIVERY TERM** - Provide the Services during the Term identified in section 1 of Schedule A (the "**Term**"), regardless of the date of execution or delivery of this Agreement;
  - (c) **RDCK BEST INTEREST** - In performing the Services, at all times, act in the best interests of the Regional District of Central Kootenay (herein after called the "**RDCK**");
  - (d) **STANDARD OF CARE** - At all times, exercise the standard of care, skill and diligence normally exercised and observed by persons engaged in the performance of services similar to the Services;
  - (e) **LEGAL AND REGULATORY COMPLIANCE** - Comply with all applicable municipal, provincial and federal legislation and regulations;
  - (f) **PERMITS AND LICENSING REQUIREMENTS** - Unless otherwise specified in Schedule C, at its own expense, obtain all permits and licenses necessary for the performance of the Services, and on request provide the RDCK with proof of having obtained such licenses or permits;
  - (g) **SITE CONDITIONS** - Inspect the Site where the Services are to be performed and become familiar with all conditions pertaining thereto prior to commencement of the Services;
  - (h) **AUTHORIZATION TO ACCESS** - Ascertain the boundaries within which the supply of Services must be confined. The Contractor shall not enter upon lands other than those provided by the RDCK for any purpose without obtaining prior written permission of the land-owners and occupiers. A copy of the written permission is to be provided to the RDCK prior to entry upon private lands. It shall be the Contractor's responsibility to ascertain the conditions on which rights-of-entry have been granted on private lands and to abide by these conditions throughout;
  - (i) **APPROVAL TO ALTER RDCK PROPERTY** - Not alter any RDCK-owned structures and or the Site grounds in any way without the prior approval or consent of the RDCK;
  - (j) **REPORTING AND ACCESS TO RECORDS** - Upon the request of the RDCK, fully inform the RDCK of the work done by the Contractor in connection with the provision of the Services and permit the RDCK at all reasonable times to inspect, review and copy all works, productions, buildings, accounting records, findings, data, specifications, drawings, working papers, reports, documents and materials, whether complete or otherwise, that have been produced, received or acquired by the Contractor as a result of this Agreement;
  - (k) **OBLIGATION TO NOTIFY RDCK** - Give the RDCK reasonable notice of anything the Contractor considers likely to materially affect the provision of the Services;
  - (l) **SITE CLEANLINESS** - Keep the Site free of accumulated waste material and rubbish caused by it or the Services and, on the completion of the Services, leave the Site in a safe, clean and sanitary condition;
  - (m) **ENVIRONMENTAL PROTECTION** - Have due regard for the protection of the environment in the performance of the Services and shall not place any materials, or dispose of any materials, including but not limited to any contaminants, contrary to environmental laws, and further the Contractor shall not perform any Services in a manner contrary to environmental laws, either at the site of the Services, or at any other place or property where any part of the Services are undertaken;
  - (n) **STAFFING REQUIREMENTS** - Engage the services of staff, subconsultants and subcontractors who have the education, training, skill and experience necessary to perform the Services, make available a sufficient number of staff to complete the supply of the Services and cause them to perform the Services on behalf of the Contractor. Failure or delay in the performance of the Contract due to the Contractor's inability to obtain personnel of the number and skill required shall constitute a default of the Contract;
  - (o) **PAYMENT OF WORKERS** - Promptly pay all persons employed by it;
  - (p) **NO AUTHORITY TO BIND RDCK** - Not in any manner whatsoever commit or purport to commit the RDCK to the payment of any money;

- (q) **BUILDERS LIENS** - Throughout the performance of the Services, keep the lands upon which the Services occur free of any builders liens. In the event that a claim of lien is filed in regard to work done, or labour or materials supplied at the lands in connection with the Services provided or so claimed or alleged, the Contractor shall take all necessary steps to discharge the lien within fifteen (15) days after a request is made by RDCK. Without limiting any other provision of this Agreement, the Contractor shall indemnify and save harmless the RDCK from and against all costs, damages, and expenses, including legal costs on a solicitor and own client basis, arising from or relating to any builders liens filed or registered or made or claimed against the RDCK or against any holdback funds held by the RDCK in connection with the provision of the Services;
- (r) **WARRANTY** - Guarantee to maintain the Services and materials against any defects arising from faulty installation, faulty materials supplied under the Contract, or faulty workmanship, which may appear within one (1) year from the date of acceptance of the Services by the RDCK. Faulty or damaged materials shall be replaced, and any defects discovered or failures which occur during the guarantee period, shall be rectified to the satisfaction of the RDCK on-site within 2 weeks of notification. This shall be at no cost to the RDCK. This is in addition to and does not limit the Contractor's other obligations and responsibilities under this Agreement. This section of the Agreement will, notwithstanding the expiration or earlier termination of the Term, remain and continue in full force and effect;
- (s) **RDCK LOGO** - Not use the RDCK logo or imprint of the RDCK in any way without written permission of the RDCK;
- (t) **CONFIDENTIALITY OBLIGATIONS** - At all times, treat as confidential all information and material supplied to or obtained by the Contractor or subcontractor as a result of this Agreement and not permit the publication, release or disclosure of the same without the prior written consent of the RDCK;
- (u) **FOIPPA AND PERSONAL INFORMATION PROTECTION** - Ensure that Personal Information as defined in the Freedom of Information and Protection of Privacy Act (FOIPPA) provided by the RDCK under this Agreement is stored and used in compliance with FOIPPA requirements. The Contractor agrees that Personal Information provided under this Agreement is only for the Contractor's use solely in providing Services under this Agreement and shall not be used for any other purpose. The Contractor shall not share Personal Information with any third party except with the written permission with the RDCK;
- (v) **PUBLIC ACCESS OBLIGATIONS UNDER FOIPPA** - Acknowledge that the RDCK is subject to the provisions of FOIPPA providing for public access to information held by the RDCK, which may include information pertaining to the Services and that in performing the Services the Contractor may be subject to the provisions of FOIPPA with respect to records created pursuant this Agreement.

**SUBCONTRACTORS**

- 4 The Contractor shall:
  - (a) Not subcontract any of its obligations under this Agreement to any person, firm or corporation unless agreed to by the

RDCK in this Agreement or by way of an Agreement Amendment;

- (b) Preserve and protect the rights of the RDCK with respect to any supply of Services or work performed under the Agreement and shall:
  - (i) Enter into Contracts or written Agreements with the subcontractors requiring them to supply Services and perform work in accordance with and subject to the terms and conditions of this Agreement; and
  - (ii) Be as fully responsible to the RDCK for acts and omissions of the subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Contractor.
- 5 Nothing contained in this Agreement shall create a contractual obligation between any subcontractor and the RDCK.

**6 RDCK OBLIGATIONS** - The RDCK shall:

- (a) **REVIEW AND DECISION-MAKING RESPONSIBILITIES** - Examine all studies, reports, sketches, proposals and documents provided by the Contractor under this Agreement and render decisions pertaining thereto within a reasonable time.
- (b) **ACCEPTANCE OF WORK** - Be the sole judge of the work, material and the standards of workmanship in respect of both quality and quantity of the Services, and has sole decision authority on all questions in dispute with regard thereto, or as to the meaning and intentions of this Agreement, and as to the meaning or interpretation of the plans, drawings and specifications, shall be final, and no Services shall be deemed to have been performed as to entitle the Contractor to payment therefrom, until the RDCK is satisfied therewith.
- (c) **PAYMENT OBLIGATIONS** - Subject to the provisions of this Agreement, pay the Contractor in full for the Services in accordance with the payment terms set out in Schedule D of this Agreement (herein called "**Contract Payment Terms**"), and the Contractor shall accept such payment as full payment for the Services.

**SUBSTANTIAL COMPLETION**

- 7 **CERTIFICATE OF SUBSTANTIAL PERFORMANCE** - The RDCK shall, no later than ten (10) days after the receipt of a written application from the Contractor for a Certificate of Substantial Performance, make an inspection and assessment of the Services to verify the validity of the application and either:
  - (a) Issue the Certificate of Substantial Performance; or
  - (b) If the RDCK decides that Substantial Performance has not been achieved, advise the Contractor of the work required to achieve Substantial Performance.

**8 APPLICATION REQUIREMENTS FOR SUBSTANTIAL PERFORMANCE** - The Contractor's application for Substantial Performance must be submitted using the RDCK's Application for Substantial Performance Form.

**TOTAL COMPLETION**

- 9 **CERTIFICATE OF TOTAL PERFORMANCE** - The RDCK shall, no later than ten (10) days after the receipt of a written application from the Contractor for a Certificate of Total Performance, make an

inspection and assessment of the Services to verify the validity of the application and either:

- (a) Issue the Certificate of Total Performance; or
- (b) If the RDCK decides that Total Performance has not been achieved, advise the Contractor of the work required to achieve Total Performance.

**10 APPLICATION REQUIREMENTS FOR TOTAL PERFORMANCE** - The Contractor's Application for Total Performance must be submitted using the RDCK's Application for Total Performance Form, which must include:

- (a) A sworn declaration, in a form acceptable to the RDCK;
- (b) Documentation satisfactory to the RDCK demonstrating the Contractor's compliance with all requirements under the *Workers' Compensation Act* and applicable regulations.

**INDEMNIFICATION AND INSURANCE**

**11 RESPONSIBILITY FOR INJURY AND DAMAGE** - The Contractor shall use due care that no person or property is injured and no rights infringed in the performance of the Services, and shall be solely responsible for all losses, damages, costs and expenses in respect to any damage or injury, including death, to persons or property incurred in providing the Services or in any other respect whatsoever.

**12 INDEMNIFICATION** - Notwithstanding the provision of any insurance coverage by the RDCK, the Contractor shall indemnify and save harmless the RDCK, its elected officials, officers, employees and agents and their successor(s), assign(s) and authorized representative(s) and each of them (collectively the "**RDCK People**") from and against losses, claims, damages, actions, and causes of action (collectively referred to as "**Claims**"), that the RDCK or RDCK People, or any one of them, 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 the Services provided by the Contractor under this Agreement, by any breach of this Agreement by the Contractor, or by any errors, omissions or negligent acts of the Contractor or its subcontractor(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 wrongful or negligent acts of the RDCK its other contractor(s), assign(s) and authorized representative(s).

**13 LIMITATION OF LIABILITY** - Except as otherwise provided, neither Party will be liable to the other Party for any indirect, consequential, incidental, exemplary, special or punitive damages, arising, directly or indirectly, under this Agreement.

**14 INSURANCE** - The Contractor shall maintain, at its own expense, the insurance coverages set out in Schedule E throughout the Term of this Agreement and for any additional period specified therein.

**DISPUTE RESOLUTION**

**15 DISPUTE PROCEDURE** - Any disputes between the RDCK and the Contractor arising out of or relating to this Agreement including with respect to any claim, or the performance of the Services, or the interpretation of this Contract, or any failure by the RDCK and the Contractor to agree where this Contract calls for agreement (each a "**Dispute**"), will be settled in accordance with the provisions of this section 15. In the event of a Dispute:

- (a) The disputing party will give the other party Notice of the

Dispute in a timely manner briefly setting out the pertinent facts, the remedy or relief sought and the grounds on which such remedy or relief is sought;

- (b) The Contractor and the RDCK will meet within 5 Business Days after the Notice of Dispute is given and will attempt in good faith, and using reasonable efforts, to resolve the matter equitably to the satisfaction of both parties;
- (c) If the parties cannot resolve the Dispute within 10 Business Days after they first meet, or if the parties fail to meet within 10 Business Days of the first request for a meeting, then either party may refer the Dispute to a mediator that is agreeable to both parties;
- (d) If the parties cannot resolve the Dispute within 10 Business Days of completing a mediation or if the parties cannot agree upon a mediator within a reasonable period of time, then, with consent of the other party, either party may refer the Dispute to a single arbitrator for final determination. The arbitrator will be chosen by mutual agreement between the parties. The cost of arbitration will be apportioned against the parties hereto or against any one of them as the arbitrator may decide; and
- (e) In the event that both parties cannot agree upon an arbitrator or do not consent to arbitration then either party may commence litigation to have the Dispute settled.

**16 CONTINUED PERFORMANCE DURING DISPUTE** - Unless expressly directed otherwise by the RDCK, the Contractor will continue timely performance of the Services in accordance with this Agreement and comply with any instructions or decisions from the RDCK during a Dispute with the RDCK. The parties acknowledge and agree that the Contractor's compliance with this section not a waiver of any claim that the Contractor may have in relation to any Dispute.

**CHANGES IN SERVICES**

**17 CHANGE MECHANISM** - For the purposes of sections 17 to 20 a "**Change Order**" is a written document that modifies the Services, the Specifications, the Maximum Contract Price, or the Contract Time. Change Orders do not modify other terms of the Agreement unless expressly stated. An "**Agreement Amendment**" is a written document that modifies any term or condition of the Agreement other than the Services, Specifications, Maximum Contract Price, or Contract Time. No modification of this Agreement shall be valid or enforceable unless documented in a written Change Order or Agreement Amendment signed by both the RDCK and the Contractor.

**18 CHANGE PROCEDURE** - Either party may propose a Change Order or Agreement Amendment by notifying the other in writing, describing the proposed change and the reason(s). The parties agree that:

- (a) If a change results in additional costs, delays, or savings, the Maximum Contract Price and/or Contract Time shall be adjusted accordingly;
- (b) Cost adjustments shall include labor, materials, equipment, overhead, and profit, calculated in accordance with industry standards or as otherwise agreed;
- (c) The Contractor shall provide detailed supporting documentation, including time sheets, equipment rates, subcontractor or supplier quotations, and other records reasonably required by the RDCK.

**19 CHANGE APPROVAL** - The party receiving the change notification shall review and consider the proposal for change and shall as soon as is reasonably possible and no longer than within five (5) working days, advise in writing the party proposing the change whether it agrees to the change. Failure to respond does not constitute approval. If the parties agree to the change, such agreement will form part of this Agreement and be formalized by means of a Change Order or Agreement Amendment as is appropriate according to definitions included in section 17. If the parties cannot agree on the impact of a change, the RDCK may direct the Contractor to proceed with the change, with the dispute resolved under the contract's dispute resolution provisions.

**20 EMERGENCY WORK** - In an emergency where immediate action is required to protect life, property, or the Services, the Contractor may proceed without prior approval. The Contractor shall:

- (a) Immediately notify the RDCK of the circumstances and actions taken;
- (b) Submit a written Change Proposal as soon as reasonably possible; and
- (c) Provide full supporting documentation for review and approval.

#### **NOTICES, DEFAULT AND TERMINATION OF AGREEMENT**

**21 DELIVERY OF NOTICE** - Any notice required to be given hereunder shall be delivered by registered mail and email addressed to the Agreement Administrators and any such notice shall be deemed to be received 72 hours after mailing.

**22 BANKRUPTCY** - If the Contractor should be judged bankrupt, or make a general assignment for the benefit of creditors, or if a Receiver is appointed, the RDCK may, without prejudice to any other of the RDCK's rights or remedies, terminate this Agreement by giving the Contractor or Receiver or Trustee in Bankruptcy written notice of termination.

**23 NOTICE OF DEFAULT** - If the Contractor should refuse or fail to supply adequate workmanship, products, or machinery and equipment for the scheduled supply of the Services, or neglects to supply the Services properly, or fails to perform any of the provisions of the Agreement, then the RDCK, without prejudice to any of its other rights under the Agreement, may notify the Contractor in writing, that the Contractor is in default of their contractual obligations, and instruct it to correct the default within forty-eight (48) hours.

**24 CORRECTION OF DEFAULT** - If the correction of the default cannot reasonably be completed within forty-eight (48) hours as specified, the Contractor shall be considered to be in compliance with the RDCK's instruction if it commences the correction of the default within the specified time, and in addition provides the RDCK with a schedule that is acceptable to the RDCK in its sole discretion for such correction, and completes the corrections in accordance with such schedule.

**25 FAILURE TO PERFORM** - If the Contractor fails to comply with section 23 and 24, or if the RDCK determines that, in its reasonable discretion, completion of the Services will not occur on or before the date specified for completion due to the Contractor's non-compliance with one or more of its obligations under this Agreement, the RDCK may, without prejudice to any other right or remedy it may have, obtain the supply of Services

from another supplier and may deduct the cost thereof from the payment then or thereafter due the Contractor, or if applicable, may without notice to the Contractor:

- (a) Deduct the cost from the amount secured under the Performance Security;
- (b) Deduct any portion of the outstanding Services from this Agreement; or
- (c) Terminate this Agreement.

**26 TERMINATION** - The RDCK may, at its sole discretion, terminate this Agreement on ten (10) days' notice, and the payment of funds required to be made pursuant to Section 27 shall discharge the RDCK of all of its liability to the Contractor under this Agreement.

**27 PAYMENT ON TERMINATION** - Where this Agreement expires or is terminated before 100% completion of the Services, the RDCK shall pay to the Contractor that portion of the Maximum Contract Price, which is equal to the portion of the Services completed to the satisfaction of the RDCK prior to expiration or termination. For certainty, the RDCK shall not pay for Services that have not been completed to its satisfaction.

**28 REMEDIES OF DEFAULT** - Where the Contractor fails to perform or comply with the provisions of this Agreement the RDCK may, in addition to terminating this Agreement, pursue such remedies as are permitted by law.

#### **GENERAL**

**29 LAW** - This Agreement shall be governed by the laws of the Province of British Columbia and the parties agree to attorn to the exclusive jurisdiction of the Courts of the Province of British Columbia.

**30 ENUREMENT** - This Agreement shall be binding upon the parties and their respective successors, heirs and permitted assigns.

**31 ASSIGNMENT** - The Contractor shall not assign this Agreement without the prior written consent of the RDCK, which can be withheld in its absolute discretion.

**32 SEVERANCE** - If any portion of this Agreement is held to be illegal or invalid by a court of competent jurisdiction, the illegal or invalid portion shall be severed and the decision that it is illegal or invalid does not affect the validity of this Agreement.

**33 NATURE OF INTEREST** - The Contractor shall be an independent Contractor and not the servant, employee or agent of the RDCK; The Contractor and the RDCK acknowledge and agree that this Agreement does not create a partnership or joint venture between them.

**34 TIME OF ESSENCE** - Time shall be of the essence of this Agreement.

**35 FORCE MAJEURE** - In the event that either party is rendered wholly or partly unable to perform its obligations hereunder as a result of an event of Force Majeure, then subject to the RDCK's right of termination under sections 25, 26, 27, and 28, that party will be excused from whatever performance is affected by the event of Force Majeure, to the extent so affected, provided that:

- (a) The non-performing party promptly after the occurrence of the event of Force Majeure gives the other party notice describing the particulars of the occurrence;

- (b) The suspension of performance is of no greater scope and of no longer duration than is required by the event of Force Majeure;
- (c) The non-performing party uses reasonable commercial efforts to remedy its inability to perform; and
- (d) When the non-performing party is able to resume performance of its obligations hereunder, that party will give the other party written notice thereof.

For the purposes of this section 35, "Force Majeure" means a circumstance beyond the reasonable control of the party trying to perform (such as, for example, acts of God, war or other strict or governmental action), but in the case of the Contractor expressly excludes any and all delay caused by the Contractor's lack of financial resources or insolvency, strikes, lockouts or other withdrawals of services arising out of a labour dispute of the Contractor's employees or subcontractor's employees, or governmental actions taken in the enforcement of law specifically against the Contractor or its subcontractors.

- 36 NO WAIVER** - No waiver of any obligation or any breach of any 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 obligation or breach waived.
- 37 WORK PRODUCT OWNERSHIP** - Everything produced, received or acquired by the Contractor or subcontractor as a result of this Agreement, including any property provided by the RDCK to the Contractor or subcontractor, shall:
- (a) Be the exclusive property of the RDCK; and
  - (b) Be delivered by the Contractor to the RDCK immediately upon the RDCK giving notice of such request to the Contractor;
  - (c) The copyright in the Material belongs to the RDCK.
- 38 LEGAL STATUS** - Where the Contractor is a corporation, it does hereby covenant that the signatory hereto has been duly authorized by the requisite proceedings to enter into and

execute this Agreement on behalf of the Contractor.

- 39 SURVIVAL OF TERMS**- Sections 3(q), (r), (v), 12, 14 and 37 of this Agreement will, notwithstanding the expiration or earlier termination of the Term, remain and continue in full force and effect.
- 40 NO DEROGATION** - Except as expressly set out in this Agreement, nothing herein shall prejudice or affect the rights and powers of the RDCK in the exercise of its powers, duties or functions under the *Community Charter* or the *Local Government Act* or any of its bylaws, all of which may be fully and effectively exercised as if this Agreement had not been executed and delivered.
- 41 COVENANTS AND CONDITIONS** - There are no covenants, representations, warranties, agreements or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Agreement, save as expressly set out in this Agreement and that this Agreement constitutes the entire agreement between the parties and may not be modified except by subsequent agreement in writing executed by the parties.
- 42 ORDER OF PRECEDENCE** - The terms and conditions of any proposal, quote or other document issued by the Contractor in respect of its obligations in this Agreement, are subject to and superseded by and do not in any way amend or vary the terms and conditions of this Agreement, notwithstanding that such proposal, quote or other document, or an acknowledgement copy thereof, is executed by or on behalf of the RDCK. In the event of any difference, conflict or inconsistency whatsoever between the terms and conditions of this Agreement and the terms and conditions of any such proposal, quote or other document, the terms and conditions of this Agreement shall govern, regardless of which document was first executed.
- 43 EXECUTED ELECTRONIC COUNTERPARTS** - This Agreement may be executed and delivered by the RDCK and the Contractor in any number of counterparts, each of which shall be deemed an original, and each of which may be delivered by email or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.

## SCHEDULES