



Consulting and Professional 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**") and undertake all work and supply all materials necessary to perform the Services, unless stipulated otherwise in 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) **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;
 - (h) **OBLIGATION TO NOTIFY RDCK** - Give the RDCK reasonable notice of anything the Contractor considers likely to materially affect the provision of the Services;
 - (i) **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;
 - (j) **PAYMENT OF WORKERS** - Promptly pay all persons employed by it;
 - (k) **NO AUTHORITY TO BIND RDCK** - Not in any manner whatsoever commit or purport to commit the RDCK to the payment of any money;
 - (l) **RDCK LOGO** - Not use the RDCK logo or imprint of the RDCK in any way without written permission of the RDCK;
 - (m) **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;
 - (n) **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;
 - (o) **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.

INDEMNIFICATION AND INSURANCE

7 **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.

8 **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).

9 **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.

10 **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

11 **PROCEDURES** - All claims, disputes or issues in dispute between the RDCK and the Contractor shall be decided by mediation or arbitration if the parties agree, or failing agreement, in a court of competent jurisdiction within the Province of British Columbia. All procedures for the resolution of disputes arising in relation to the Agreement shall be governed by the laws of British Columbia, Canada.

12 **ARBITRATION** - In the event that the parties agree to arbitration, the arbitration shall be governed by the rules of the British Columbia International Arbitration Centre, except that the Arbitrator(s) shall be agreed upon by the parties, and failing agreement by the parties, shall be appointed by a court of competent jurisdiction within the Province of British Columbia, Canada.

13 **ARBITRATION LOCATION** - Arbitration will take place in the Southern Interior of British Columbia.

NOTICES, DEFAULT AND TERMINATION OF AGREEMENT

14 **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.

15 **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.

16 **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.

17 **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.

18 FAILURE TO PERFORM - If the Contractor fails to comply with section 16 and 17, 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 any portion of the outstanding Services from this Agreement; or
- (b) Terminate this Agreement.

19 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 20 shall discharge the RDCK of all of its liability to the Contractor under this Agreement.

20 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 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.

21 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

22 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.

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

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

25 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.

26 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.

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

28 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 18, 19, 20, and 21,

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 28, "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.

29 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.

30 AMENDMENT - No modification of this Agreement is effective unless it is in writing and signed by, or on behalf of, the parties.

31 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.

32 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.

33 SURVIVAL OF TERMS- Sections 3 (o), 8, 10 and 31 of this Agreement will, notwithstanding the expiration or earlier termination of the Term, remain and continue in full force and effect.

34 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.

35 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.

36 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.

37 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