

A. ENGAGEMENT AND PERFORMANCE

1. **Agreement.** Any request, proposal, purchase order, quote, contract or other document describing the Services (herein defined) attached hereto forms part of and is included in the agreement between the Consultant and the Owner with respect to the Services (collectively, the or this "Agreement").
2. **Engagement.** The Owner hereby engages the Consultant to provide the services specified in this Agreement (the "**Services**").
3. **Commencement and Completion.** The Consultant will carry out the Services in accordance with any commencement and completion dates set out in this Agreement.
4. **Consultant's Performance.** The Consultant will perform all Services specified in the Agreement as follows:
 - (a) as the Owner may direct, in accordance with the standards set by the Owner, and to the satisfaction of the Owner;
 - (b) with that degree of care, skill, and diligence normally applied in the performance of services of a similar nature; and
 - (c) in conformance with the latest practices, standards, codes, and criteria outlined in the Owner's bylaws and in all pertinent laws, rules, regulations, policies, procedures, and practices applicable at the time of performance.
5. **Additional Duties.** While providing the Services hereunder, the Consultant agrees:
 - (a) to faithfully, industriously, and to the best of its skill, ability, expertise, and knowledge, perform its duties and responsibilities in a manner which is in the best interests of the Owner and in accordance with the Owner's objectives and procedures;
 - (b) not to act in any manner or matter which places it in a conflict of interest with the Owner, and promptly advise the Owner if it becomes aware of any such conflict of interest;
 - (c) not to do or suffer to be done anything in violation of any laws, regulations, rules, policies, procedures, practices, requirements, or instructions of any government or governing body; and if the attention of the Consultant is called to any such violation on the part of the Consultant, its employees, agents or sub-contractors, to immediately desist from and correct such violation, and report the particulars of such violation and correction to Owner;
 - (d) not do or permit to be done anything in or upon any Owner land or premises or bring to or keep anything therein or thereon which may in any way conflict with the conditions of any insurance policy upon Owner land or premises or any part thereof, or in any way increase the rate of insurance upon Owner land or premises or any property kept thereon, or in any way increase hazards or liability of any kind on or at Owner land or premises;
 - (e) keep regular and accurate records of Services provided under this Agreement for the purposes of invoicing; and
 - (f) provide regular updates to the Owner on the status of all Services provided.
6. **Liens.** The Consultant will take all necessary and proper steps to ensure that no claims or lien(s) are filed against any Owner property or assets as a result of any Services provided under this Agreement. The Consultant agrees that it will, at its own expense, cause any such lien(s) or claim to forthwith be released and discharged.
7. **Qualified Individuals.** The Consultant will furnish all personnel required to perform the Services, and all personnel will be competent and qualified to perform the Services.
8. **Sub-contractors.** The Consultant may only engage those sub-contractors for the performance of those specific tasks forming part of the Services, as specified in this Agreement. The sub-contractors may not be replaced without the prior written consent of the Owner. The Consultant will administer, coordinate, and manage all Services performed by sub-contractors, and is

responsible for all work performed by the sub-contractors in relation to the Services, and will pay all fees and disbursements of all sub-contractors.

9. **Specified Personnel.** Where specific personnel have been proposed by the Consultant and/or sub-contractors for the performance of the Services, and have been accepted by the Owner, those “**Specified Personnel**” may not be replaced without the prior written consent of the Owner. Those Specified Personnel accepted by the Owner are set out in this Agreement, if applicable.

B. CONSULTANT FEES AND EXPENSES

10. **Fees and Expenses.** In consideration of the Services performed by the Consultant to the satisfaction of the Owner, the Owner will pay the Consultant the fees and reimbursable expenses specified in this Agreement.
11. **Taxes.** The Consultant agrees to remit and remain responsible for all withholding taxes, income taxes, Canada Pension Plan contributions, Employment Insurance deductions, and any other deductions required by statute.
12. **Deductions and Set-off.** The Consultant acknowledges and agrees that amounts paid under this Agreement will be subject to such deductions as the Owner is from time to time required to make pursuant to any federal, provincial or local enactment, or by consent of the Consultant.
13. **Extra Work.** The Owner will only pay the Consultant for extra work that is pre-approved in writing by the Owner.
14. **Invoicing and Payment.** The Consultant will submit to the Owner invoices for all Services and reimbursable expenses incurred as specified in this Agreement. If the Owner approves the amount of an invoice, the invoice review and payment process may take up to 30 calendar days, and the Owner will not be liable for any interest or penalties attributable to this processing period.
15. **Records.** The Consultant will keep proper accounts and records of all costs and expenditures forming the basis of any billing to the Owner including, without limitation, Consultant time, costs, details of all

reimbursable expenses and other disbursements, and extras.

16. **Owner Verification.** The Owner is entitled to verify the accuracy and validity of all invoices submitted and payments made by auditing the Consultant’s books and records. The Consultant will co-operate with the Owner in this regard, and provide access to all books and records necessary for the Owner’s verification within forty-eight (48) hours of receiving the Owner’s written request.
17. **No Liability for Interest Charges.** If the Owner does not approve of or wishes to further review, audit, or otherwise seeks clarification concerning the Consultant’s invoices, the Owner will not be liable for any interest or penalty charges in respect of the invoice from the date of issuance until the date the invoice is paid.

C. TERM AND EXTENSION

18. **Term.** The Agreement will remain valid and in force until: the Services are completed; the last payment required by the Owner is made hereunder; or the Agreement is otherwise terminated in accordance with Part F of this Agreement (the “**Term**”).
19. **Extension.** This Agreement may be extended with the written consent of both parties.

D. WARRANTY, INSURANCE AND INDEMNIFICATION

20. **Insurance.** At all times throughout the duration of this Agreement, the Consultant will supply the following insurance coverage, unless otherwise specified by the Owner in writing, at its own cost:
- (a) *Commercial General Liability Insurance* against any and all claims for bodily injury, death, or property damage whatsoever arising out of the Consultant’s fulfillment of its duties and responsibilities under this Agreement; and such Insurance will name the Owner as an ADDITIONAL INSURED but not as an ADDITIONAL NAMED INSURED and will cover for not less than \$2,000,000 million dollars per occurrence;

- (b) *Professional Liability (Errors & Omissions (E&O)) Insurance* against any and all claims for inadequate work or negligent actions whatsoever arising out of the Consultant's fulfillment of its duties and responsibilities under this Agreement, and will cover for not less than \$1,000,000 million dollars per claim, and \$1,000,000 million dollars in the aggregate;
- (c) Automobile, Public Liability Insurance in an amount of not less than \$2,000,000 per owned, non-owned or hired vehicle; (collectively, the "**Insurance**"). The Consultant will be responsible for the full amount of all deductibles on all Insurance policies.
21. **Certificate of Insurance.** The Consultant will promptly forward a certificate of insurance for each policy of Insurance required under section 20 (collectively, the "**Certificates**"), including insuring agreements acceptable to the Owner. Should the policy of Insurance under which any of the Certificates are drawn expire during the term of this Agreement or any extension or renewal thereof, the Consultant will promptly forward a renewal Certificate to the Owner in a form satisfactory to the Owner. All required policies of Insurance must be issued by insurers duly authorized by law to do business in the Province of British Columbia and must include a provision that coverage will not be cancelled or amended in any way unless thirty (30) days written notice has been given to the Owner.
22. **Consultant's Indemnification.** The Consultant agrees to **INDEMNIFY AND HOLD HARMLESS** the Owner, its agents, servants, employees, trustees, officers, and representatives (collectively, the "**Released Parties**") **FROM ANY OR ALL DAMAGES, LOSSES, SETTLEMENTS, SUITS, CLAIMS, DEMANDS, LIENS, EXPENSES AND FEES** (including legal fees and disbursements), to the extent arising out of:
- (a) the Services provided under this Agreement;
- (b) the negligent or otherwise wrongful acts of the Consultant, its employees, servants, sub-contractors and/or agents; and/or
- (c) without in any way limiting the foregoing, any breach, violation or non-performance of any covenant, regulation, condition, representation or agreement, set forth in this Agreement, to be fulfilled, kept, observed or performed by the Consultant.
23. **WorkSafe.** The Consultant will maintain WorkSafe BC coverage in compliance with the laws of the Province of British Columbia. The Consultant acknowledges and agrees that it is responsible for all WorkSafe BC assessments and claims relating to the Services provided under this Agreement and the work of its sub-contractors. Without limiting the Consultant's general indemnity above, the Consultant will **INDEMNIFY, DEFEND, AND HOLD HARMLESS** the Released Parties from any liability, loss, or damage which the Owner may suffer as a result of any claims, demands, costs, actions, causes of actions, or judgments, including legal fees and disbursements, associated with any WorkSafe BC claims or assessments relating to the Services provided under this Agreement.
24. Any release or indemnification included under this Part D will survive termination or expiration of this Agreement.
- E. CONFIDENTIALITY AND DISCLOSURE**
25. **Duty of Confidentiality.** While engaged by the Owner or anytime thereafter, the Consultant will preserve and will not directly or indirectly disclose, divulge, or disseminate any confidential information of the Owner (the "**Confidential Information**") to any person or entity, except as may be required by law or as determined by professional obligations. The Consultant acknowledges and agrees that all Confidential Information belongs exclusively to the Owner. The Consultant will not use the Confidential Information for its own purposes, or for any purposes other than those of the Owner. Upon the expiration or earlier termination of this Agreement, the Consultant will promptly deliver to the Owner all Confidential Information in the Consultant's possession or under its control, except for Confidential Information that the Consultant must retain by law or to fulfil professional obligations. For the purposes of

this Agreement, the Confidential Information includes but is not limited to:

- (a) proprietary, financial, and personal information of or belonging to the Owner;
- (b) Council closed-meeting/in-camera information and deliberations;
- (c) confidential reports, plans, proposals, ideas and know-how; and
- (d) other confidential matter relating to the Owner's activities and operations,

whether developed by the Owner at any time, or by the Consultant under the provisions of this Agreement.

26. **Disclosure.** As a public body, the Owner is subject to the BC *Freedom of Information and Protection of Privacy Act*. The parties agree and consent to the disclosure of this Agreement as a matter of public record and acknowledge that applicable laws may require disclosure of information provided by one party to the other party pursuant to, or in connection with this Agreement.

F. SUSPENSION AND TERMINATION

27. **Suspension of Services.** The Owner, for any reason, in its sole discretion, and at any time, may suspend the Consultant's performance of the Services for a specified or unspecified period of time by providing written notice to the Consultant. Upon receiving such notice, the Consultant will immediately suspend all Services hereunder.

28. **Termination.** This Agreement may be terminated by the Owner prior to the expiry of the Term as follows:

- (a) for any breach or default under this Agreement on the part of the Consultant, by giving the Consultant twenty-four (24) hours prior written notice; or
- (b) at its sole discretion and for any reason whatsoever, by giving the Consultant thirty (30) days prior written notice.

29. **Payment upon Suspension or Termination.** If the Owner suspends or terminates this Agreement for any reason, it will pay the Consultant the fees and reimbursable expenses prescribed for all Services properly performed to the date of the delivery of the notice according to the

terms of this Agreement, subject to any set off for amounts owed to the Owner or any governmental authority.

G. DATA EXCHANGE AND WORK PRODUCT OWNERSHIP

30. **Data Terms.** All data provided to the Consultant to support the Services being carried out under this Agreement are provided on and subject to the following terms and conditions:

- (a) Copyright - the Consultant acknowledges and agrees that copyright for all data transferred from the Owner to the Consultant belongs to the Owner. The Owner will retain title to all data provided and any copies made of the data.
- (b) Conditions of Use – the Consultant is entitled to use the data only to provide the Services and support the Project. The Consultant may not use the data for purposes not directly related to the provision of the Services or the Project without first receiving written consent from the Owner.
- (c) Outside Agencies – the Consultant acknowledges that data sourced from outside agencies may require a separate data sharing agreement with said agency. The Consultant will acknowledge the source for any data utilized, and agrees that the copyright for any data shared by other agencies belongs to said agencies.
- (d) Transfer of Data – the Consultant will transfer all data related to this Project, including without limitation, all photographs, excel tables, drawings, and other requested data, immediately upon receiving a request from the Owner. The Consultant may not sell, transfer, copy, loan, or gift any of the data to another party for any reason without first receiving written consent from the Owner.
- (e) Conditions of Data Retention – the Consultant may keep the data used to support the Project in its files where: (i) required by law; (ii) required by professional obligations; or (iii) required by best management practices, with the

proviso that both the data and the Consultant are bound by and subject to the terms and conditions of this Agreement. This clause will survive expiry or sooner termination of this Agreement.

(f) Confidentiality – without limiting the Consultant’s confidentiality obligations set about above, the Consultant will maintain confidentiality of all information, documentation, and data provided by the Owner during the course of carrying out the Project unless written consent from the Owner is provided, or as required by law or by an authority having jurisdiction.

(g) No Warranty – the Consultant understands that all data, whether digital, hardcopy, or in any other format, is provided by the Owner “as is” and the Owner provides no warranty of any kind, either express or implied, nor guarantees whatsoever the accuracy and completeness of the data or their fitness for any purpose. It is the Consultant’s responsibility to ask for updated data where required. In no event will the Owner be liable to the Consultant or any other party for losses or damages, including any loss of profits, lost savings, or other incidental or consequential damages arising out of the data, or the Consultant’s use or inability to use the data, even if the Owner has been advised of the possibility of such damages. The Consultant hereby releases the Released Parties from all losses or damages associated with the data, and agrees not to sue or make any claim against the Released Parties in respect of the data.

31. **Work Product Ownership.** For the purposes of this Agreement, “**Work Product**” means the Services provided hereunder together with any and all deliverables associated therewith, including without limitation, any and all drawings, plans, models, designs, specifications, reports, tables, and other documents produced under this Agreement, but specifically excludes:

(a) any and all information that is developed independently by the Consultant at no cost to Owner; and

(b) any and all information that is owned by a third party or exists in the public realm, prior to the commencement of the Services.

Notwithstanding any other provision in this Agreement, the Owner owns all right, title, and interest in and to Work Product, and the Owner will have the right to utilize the Work Product for its benefit in any way it sees fit without limitation. For greater certainty, and without in any way limiting the foregoing, the Consultant hereby assigns and transfers to the Owner all right, title, and interest in and to the Work Product, whether vested or contingent, including, without limitation, any and all copyright, free and clear of all liens, encumbrances and interests of third parties. The Consultant hereby waives all moral rights in and to the Work Product. If required by the Owner, the Consultant will execute all documents necessary to transfer and assign any interest in the Work Product, and will obtain similar assignments from the sub-contractors, all in a form and with content acceptable to the Owner. In the event of any conflict, contradiction or inconsistency between this provision and any other provision in this Agreement, this provision will prevail.

32. **Limitation of Liability.** The Consultant will have no liability for any use that the Owner may make of the Work Product or other information provided by the Consultant under this Agreement beyond the intended purpose. Any report prepared is for the sole use of the Owner. No representations of any kind are made by the Consultant or its employees to any party with whom the Consultant does not have a contract.

H. General Terms

33. **Notice.** All notices, demands or requests required or permitted to be given by either party to the other shall be in writing and shall either be hand delivered or delivered via registered mail to the parties at the addresses provided in this Agreement or at such other address as the parties may designate. Any notice when given as provided will be deemed delivered on the date personally served or five (5) calendar days subsequent to the date said notice was deposited with Canada Post. The parties may

otherwise consent in writing to the receipt of notice by electronic means.

34. **Change of Notice.** Either party may, from time to time, advise the other by notice in writing of any change of address (including email address), and after the giving of such notice the address specified will be conclusively deemed to be the address of the party giving such notice.
35. **Dispute Resolution.** All matters in dispute with respect to this Agreement between the parties shall be resolved firstly, by negotiation between the parties using good faith efforts to settle the dispute by mutual agreeance. Failing such agreeance, the parties may proceed to arbitration by mutual agreement, or to a court of competent jurisdiction in the event that no such agreement can be reached.
36. **Entire Agreement and Amendment.** This is the entire Agreement between the Owner and the Consultant regarding its subject, and there are no oral or other written agreements between the parties regarding its subject. No amendment of or departure from the terms and conditions of this Agreement will become

effective unless evidenced in writing and signed by both parties.

37. **Severance.** In the event that any provision of this Agreement is deemed void, invalid, or unenforceable by a court of competent jurisdiction, the remaining provisions or parts thereof, will be and remain in full force and effect.
38. **Waiver.** No failure on the part of the Owner to exercise any right or remedy in respect of this Agreement will operate as a waiver thereof, unless it is in writing and signed by the Owner.
39. **Jurisdiction.** This Agreement is governed by the laws of the Province of British Columbia.
40. **Time.** In this Agreement, time is of the essence.
41. **Counterparts.** This Agreement may be executed in any number of counterparts and all such counterparts will for all purposes constitute one Agreement binding on the parties.