



SKIDEGATE BAND COUNCIL

PO BOX 1301, SKIDEGATE, BC V0T 1S1

SCHEDULE "F" - *DRAFT* SERVICES AGREEMENT

THIS AGREEMENT dated for reference _____ is

BETWEEN:

SKIDEGATE BAND COUNCIL, having an office at 848 Highway 16, Skidegate, BC V0T 1S1

(the "SBC")

AND:

****, having an office at *****)

(the "Contractor")

GIVEN THAT the Skidegate Band Council wishes to engage the Contractor to complete services as described in the Request for Proposals issued by the Skidegate Band Council on **date** for the demolition and construction of boardwalks located on the Spirit Lake trail in Skidegate, BC, and the Contractor wishes to provide such services to the Skidegate Band Council in accordance with the terms and conditions of this Agreement;

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

Definitions

1. In this Agreement,
 - a) The terms and conditions stipulated in the bid documents will apply to the Request for Proposals for performance of the Services. Submission of a Proposal in response to this Request for Proposals indicates acceptance of all the terms. Provisions in Proposals that contradict any of the terms will be as if not written and do not exist.
 - b) "Services" means the acts, services and work described in the bid documents and all acts, services and work necessary to achieve the objectives set out therein.

Services to be Performed by the Contractor

2. The Contractor agrees to perform the Services during the Term, in accordance with the terms and conditions of this Agreement.
3. In completing the Services the Contractor shall have complete control of it and shall effectively direct and supervise the Services so as to ensure that the Services is completed to the standards and specifications set out in this Agreement.
4. The Contractor shall:
 - a) Supervise the Services using the Contractor's best skill and attention;
 - b) Perform all Services skillfully and diligently and in a manner that complies with the obligations on the Contractor set out in this Agreement and in accordance with the best practices of the industry;
 - c) Be the Prime Contractor (within the meaning set out in Part 3 of the *Workers Compensation Act*) for the Project and agrees to carry out the obligations of a prime contractor as set out in that act, in that act's regulations and in any other acts or regulations binding on a prime contractor.
 - d) Ensure that all persons employed in connection with the timely completion of the Services are competent to perform the Services, adequately trained, fully instructed and properly supervised;
 - e) Ensure all Services performed and materials supplied meet or exceed the requirements specified in this Agreement; and
 - f) Rectify any defective or deficient Services at the Contractor's own expense to the satisfaction of the Project Manager, acting reasonably, from the Commencement Date to the Completion Date and for a warranty period of 365 calendar days after the Completion Date.

5. The Contractor shall:
 - a) Comply with all laws, ordinances, bylaws and regulations in any manner applicable to the Services or affecting those engaged or employed in the completion of the Services;
 - b) Obtain and provide all licenses, certificates and permits required in order to complete the Services;
 - c) Comply with the British Columbia Regulation 296/97, Occupational Health and Safety Regulations, and shall
 - i. Have an occupational health and safety program in place during the Term,
 - ii. Provide adequate training, instruction, and direction to all workers on Site; and
 - iii. Pay all required assessments pursuant to the *Workers Compensation Act* and the Occupational Health and Safety Regulation;
 - iv. Keep the Province and Skidegate Band Council indemnified against all penalties and liabilities of every kind for the Contractor's breach of subsection 5.a) and
6. The Contractor shall provide and employ, in connection with the completion of the Services, only such technical assistants as are skilled and experienced in their respective callings, and such foremen as are competent to give proper supervision to the portion of the Services they are required to supervise, and such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely completion of the Services.
7. Total completion occurs when the Contractor submits a written final progress report when:
 - a) The Contractor has completed all Services, including correction of all deficiencies, to the satisfaction of the Project Manager, acting reasonably;
 - b) The work site or other property occupied by the Contractor in performing the Services are clean of rubbish, equipment, surplus materials, and temporary structures and the Site is left in a neat, tidy, and presentable condition;
 - c) Any gravel, base, or surfacing operations, the roadway, ditches, slopes and culverts are cleaned of accumulations and reconditioned and maintained;
 - d) Any areas from which material is removed or where stripping takes place are left in a condition suitable for routine maintenance in accordance with industry standards.
8. The Contractor shall pay all accounts for labour, service, materials, and supplies used by it to complete the Services as and when those accounts become due and payable, and the Contractor shall furnish SBC with proof of payment of those accounts on request. Should payments of those accounts not be made when due, SBC, after notifying the Contractor,

may pay the accounts and deduct all amounts so paid from the monies then due or to become due to the Contractor under this Agreement and such payments shall be regarded as payments made by SBC to the Contractor on account of this Agreement and shall operate as a discharge to that extent of the monies due or to become due to the Contractor and such payments may be recovered from the Contractor by the SBC.

9. Unless otherwise contemplated in this Agreement, the Contractor shall supply all labour, materials, equipment, machinery, power, water, light, transportation and all other things necessary for the Contractor to complete the Services.
10. During the Term, the Contractor shall be fully responsible for the care of the Services and any temporary works of the Contractor and if the Services or any temporary works of the Contractor are subject to any loss or damage arising from any cause whatsoever (except that caused by an act or omission of the SBC or an error in the Contract Documents) the Contractor shall, at its own expense, repair and make good that loss or damage to the satisfaction of the SBC.
11. An inspection by the Project Manager does not relieve the Contractor of responsibility for the quality of the Services, or from any obligation to perform the Services in accordance with the requirements of this Agreement.

Term

12. The term of this Agreement commences on ****date**** and ends on ****date****, (the "Term"), unless terminated earlier in accordance with this Agreement. The term of this Agreement may be extended in the sole discretion of the Skidegate Band Council.

Remuneration and Reimbursement

13. The Skidegate Band Council must pay the Contractor for the Services in the amount provided in the Terms of Reference in accordance with this Agreement. For greater clarity, the maximum value of this Agreement is ****total**** plus GST.

Invoices

14. Not more than once each month, the Contractor may deliver an invoice to the Skidegate Band Council, in respect of the immediately preceding month, setting out the aggregate amount of fees claimed for Services performed in that preceding month.

Payment by the Skidegate Band Council

15. The Skidegate Band Council must, to the extent it is satisfied the fees are for Services reasonably and necessarily performed by the Contractor and subject to section 16, pay the Contractor the fees claimed in the invoice, subject to 10% holdback, delivered in accordance with section 14, within 30 days after delivery of the invoice to the Project Manager.

Termination or Suspension at the Discretion of the Skidegate Band Council

16. Despite any other section of this Agreement, the Skidegate Band Council 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 Skidegate Band Council terminates or suspends all or part of the Services under this section, then the Contractor is entitled to deliver an invoice to the Skidegate Band Council for the period between the end of the time period for which the last invoice was delivered by the Contractor under section 14 and the effective date of termination or suspension. The Skidegate Band Council 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 Skidegate Band Council. 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

17. The Skidegate Band Council 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 Skidegate Band Council, the Contractor has not cured the breach or is not, to the satisfaction of the Skidegate Band Council 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 Skidegate Band Council, if the Skidegate Band Council terminates all or any part of the Services under this section, the Skidegate Band Council 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 Skidegate Band Council for any expenses reasonably and necessarily incurred by the Skidegate Band Council in engaging the services of another person to perform those Services. The Skidegate Band Council may set off against and withhold from amounts due to the Contractor such amounts as the Skidegate Band Council determines, acting reasonably, are necessary to compensate and reimburse the Skidegate Band Council for the expenses described in this section.

Confidential Information

18. Except as required by law, the Contractor must not, during or after the Term, divulge or disclose any secret or confidential information, or any information that the Contractor receives in connection with this Agreement which in good faith ought not be disclosed.

Records

19. 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 Skidegate Band Council, 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 Skidegate Band Council, 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 Skidegate Band Council and must furnish the Skidegate Band Council with such information as the Skidegate Band Council may from time to time require regarding those documents; and
- d) preserve and keep available for audit and inspection, all records described in section 11(a) through (c) for at least two years after completion of the Services or termination of this Agreement, whichever applies.

Delivery of Records

20. If the Skidegate Band Council terminates all or part of the Services under this Agreement, the Contractor must immediately deliver to the Skidegate Band Council, without request, all Services-related documents in the Contractor's possession or under its control.

Ownership of Intellectual Property

21. By this section, the Contractor irrevocably grants to the Skidegate Band Council the unrestricted licence for the Skidegate Band Council 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 licence granted by this section includes the right for the Skidegate Band Council, at any time, to adapt, use and modify all such technical information and intellectual property for the Skidegate Band Council's uses, including but not limited to, for record and maintenance purposes and for any future renovation, repair, modification and extension work undertaken.

Agreement for Services

22. 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 Skidegate Band Council as an employee or agent of the Skidegate Band Council. 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 Skidegate Band Council in any way.

Conflict of Interest

23. The Contractor must not perform, for gain, any services for any person other than the Skidegate Band Council, or have an interest in any contract other than this Agreement, if the Skidegate Band Council determines, acting reasonably, that performance of the services, or the Contractor's interest in the contract, creates a conflict of interest between the obligations of the Contractor to the Skidegate Band Council under this Agreement and the obligations of the Contractor to the other person or between the obligations of the Contractor to the Skidegate Band Council under this Agreement and the Contractor's pecuniary interest.

Assignment of Agreement / Subcontracting of Services

24. 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 Skidegate Band Council, such consent may be unreasonably withheld. The Skidegate Band Council 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 corporate resources necessary to perform the Services. Any assignment or subcontract duly consented to by the Skidegate Band Council does not relieve the Contractor from any obligation already incurred or accrued under this agreement or impose any liability upon the Skidegate Band Council.

Time of the Essence

25. Time is of the essence of this Agreement, and project construction work must be substantially completed by December 31, 2021.

Release and Indemnification

26. Except to the extent arising out of the negligent acts or omissions of the Skidegate Band Council and its directors, officers, employees, agents, successors and assigns, as determined by a court of competent jurisdiction, the Consultant shall release, indemnify and save harmless the Skidegate Band Council 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, subcontractors or assigns in the performance of the Services herein, as determined by a court of competent jurisdiction. This release and indemnity shall survive notwithstanding the completion of the Services under this Agreement and/or the expiry or termination of this Agreement.

27. The indemnity provided in section 26 by the Contractor to the Skidegate Band Council will not in any way be limited or restricted by the insurance set out in section 28 or by limitations on the amount or type of damages, compensation or benefits payable under the Workers' Compensation Act or any other similar statute.

Insurance Requirements

28. The Contractor shall obtain and maintain:

- a) Commercial general liability insurance throughout the Term 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 \$2,000,000 per occurrence and shall meet the following responsibilities:
 - i) name the Skidegate Band Council and Province of BC as additional insureds;
 - ii) include that the Skidegate Band Council and Province of BC is 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;
 - iii) be issued by an insurance company entitled to carry on the business of insurance under the laws of British Columbia;
 - iv) be primary and non-contributing with respect to any policies carried by the Skidegate Band Council and will provide that any coverage carried by the Skidegate Band Council is in excess coverage;
 - v) not be cancelled or materially changed without the insurer providing the Skidegate Band Council with 30 days written notice stating when such cancellation or change is to be effective;
 - vi) include a cross liability clause; and
 - vii) be on other reasonable terms acceptable to the Skidegate Band Council;
- b) automobile liability insurance on all vehicles owned, operated or licensed in the name of the Contractor in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, death and damage to property; and
- c) Contractors' equipment insurance in an all-risks form covering machinery and equipment used for the performance of the Services.

The Contractor shall provide the Skidegate Band Council 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 Skidegate Band Council. 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.

WorkSafeBC

29. The Contractor shall 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 Skidegate Band Council from time to time throughout the Term. The Contractor is 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.
30. The Contractor is designated and assumes responsibility as the prime contractor per WorkSafeBC legislation and regulations and will ensure compliance with and conform to all laws, by-laws or regulations of the local government, applicable regulatory agencies, and the Province of British Columbia.

Severability

31. 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

32. 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 e-mail, addressed as follows:

- a) To the Skidegate Band Council:
Skidegate Band Council
848 Highway 16, PO Box 1301
Skidegate, BC V0T 1S1
E-mail Address: shelley.sansome@gmail.com
Attention: Shelley Sansome, Project Manager
- b) To the Contractor:
Company Name
Fax Number: **
Email: **
Attention: **representative**

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 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

33. 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; and
- f) section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement.

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

Binding on Successors

35. This Agreement ensures 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

36. 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

37. 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 alike or different character.

Counterparts

38. 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 transmission 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.

