

## SERVICES AGREEMENT

This Agreement made as of \_\_\_\_\_, 202\_\_.

BETWEEN:

**Tsawwassen First Nation** of 1926 Tsawwassen Drive, Tsawwassen, B.C., V4M 4G2

(“TFN”)

and

[legal name of company], [Incorporation Number], with a business address at [address]

(“Contractor”)

**WHEREAS** TFN requires certain services and the Contractor has offered to supply those services;

**THEREFORE**, TFN and the Contractor agree as follows:

### ARTICLE 1 - PERFORMANCE OF THE SERVICES

**1.1** The Contractor shall perform the services (the “**Services**”) described in Schedule A to this Agreement in accordance with the directions provided from time to time by the Manager of Communications and Engagement (the “**Manager**”) and according to the policies of TFN in place from time to time, and shall report on the progress thereof to the Manager, as requested.

**1.2** Subject to earlier termination as herein provided or as otherwise agreed by the Contractor and TFN, the Contractor shall provide the Services within the following time period: [date] – [date] (the “**Term**”).

**1.3** The Contractor shall perform the Services in a confidential, efficient, prompt, economical, skillful and careful manner, and all Services shall be performed in the best interests of TFN and in accordance with all applicable laws, including TFN laws.

### ARTICLE 2 – TERMINATION

**2.1** Subject to Section 2.4, either party may terminate this Agreement at any time during the Term by giving not less than 30 days’ notice in writing to the other party.

**2.2** If TFN terminates this Agreement under section 2.1:

- (a) TFN shall, within 30 days after such termination, pay to the Contractor any unpaid portion of the fees and expenses described in Article 3 which corresponds with the portion of the Services that was completed to TFN’s satisfaction before termination of this Agreement; and

- (b) the Contractor must, within 30 days after such termination, repay to TFN any paid portion of the fees and expenses described in Article 3 which corresponds with the portion of the Services that TFN has notified the Contractor in writing was not completed to TFN's satisfaction before termination of this Agreement.

**2.3** Payment by TFN of the amount described in section 2.2(a) discharges TFN from all liability to make payments to the Contractor under this Agreement.

**2.4** The following events of default will justify immediate termination of this Agreement without any notice or payment in lieu of notice:

- (a) an order is made for winding up the Contractor or the Contractor is dissolved;
- (b) the Contractor ceases to operate;
- (c) the Contractor is in breach of any term of this Agreement;
- (d) the Contractor has made materially false or misleading representations or statements, or provided materially false or misleading information to TFN;
- (e) in the opinion of TFN, the Contractor has failed to proceed diligently with the Services, including, but not limited to, failure to meet timelines stipulated in this Agreement, except where such failure is due to causes which, in the opinion of TFN, are beyond the control of the Contractor; or
- (f) in the opinion of TFN, there is a material adverse change in the Contractor's ability to perform the Services.

### **ARTICLE 3 – COMPENSATION**

**3.1** TFN agrees to compensate the Contractor for the Services [in the amount of \$[amount] [specify whether tax is included or not]/OR [as set out in Schedule B to this Agreement], payable when the Services have been completed to the satisfaction of the Manager.

**3.2** Upon completion of the Services, the Contractor shall provide an invoice for the Services to the Manager, containing sufficient details to describe the Services covered by the invoice, instructions for electronic payment, and such other information as the Manager may reasonably require.

### **ARTICLE 4– CONFIDENTIALITY AND PROPRIETARY RIGHTS**

**4.1** All information relating to the provision of the Services, all data, designs and other information furnished by TFN and all other information relating to or in any way

connected to TFN's affairs or the provision of Services which is not in the public domain shall be considered "Confidential Information".

**4.2** During and after the Term of this Agreement, the Contractor shall not disclose the Confidential Information of TFN to any person, except to those of its directors, officers, employees and contractors as is necessary in order to perform the Services, and provided such persons are bound by confidentiality obligations no less stringent than those contained herein, without the prior written consent of TFN's Chief Administrative Officer. The Contractor will be liable for any breaches of this Section 4.2 by its directors, officers, employees and contractors.

**4.3** TFN holds every proprietary right in and to all documents prepared by the Contractor in connection with the Services. The Contractor acknowledges that all information obtained during the Term of this Agreement, including raw data, is the property of TFN, shall be returned to TFN upon demand, and shall not be disclosed to any third party.

**4.4** This Article 4 survives the termination of this Agreement.

#### **ARTICLE 5 – INDEPENDENT CONTRACTOR/ INDEMNITY**

**5.1** The relationship between TFN and the Contractor is intended to be, and is to be construed as, that of independent contracting parties only and not that of employment, partnership, joint venture, agency or any other relationship whatsoever.

**5.2** The Contractor shall pay all required taxes and other remittances to governmental agencies including WorkSafe BC and, on demand by TFN, shall produce proof of such payment.

**5.3** The Contractor shall indemnify and save TFN, its elected and appointed officials, representatives, agents and employees, its subsidiaries, and its subsidiaries' directors, officers, representatives, agents and employees harmless from and against all claims, losses, damages, liabilities, fines or expenses (including reasonable legal fees) arising out of or resulting from the performance of the Services. This Section 5.3 survives the termination of this Agreement.

#### **ARTICLE 6 – INSURANCE**

**6.1** The Contractor shall provide, maintain and pay for and require any subcontractors to provide, maintain and pay for the following insurance until all of the Contractor's obligations under this Agreement have been fulfilled:

- (a) Comprehensive General Liability insurance protecting the Contractor and their respective representatives, servants, agents or employees against damages arising from bodily injury (including death) and claims for property damage (including damage to property of TFN and loss of use) which may arise directly or indirectly out of the operations of the

Contractor, its subcontractors, representatives, servants, agents or employees under this Agreement. Such insurance shall be for an adequate amount which shall be not less than two million dollars (\$2,000,000) inclusive of any one occurrence and shall name TFN, its elected and appointed officials, officers, employees, volunteers, agents, subsidiaries and the directors, officers, employees, volunteers and agents of its subsidiaries as additional insureds with respect to the Services.

This Comprehensive General Liability policy shall expressly state that it is primary as to any other insurance available to TFN (solely with respect to liability arising in connection with the Services) and non-contributory. This insurance shall include a cross liability clause and shall cover: liability for premises and operations; all liability arising out of products, whether manufactured or supplied by the Contractor and completed operations; broad form property damage; blanket written contractual liability; unlicensed mobile equipment; operation and use of machinery attached to licensed vehicles; non-owned automobile liability; contingent employers' liability; employees of others hired or on loan by the Contractor or on loan to the Contractor as insured; sudden and accidental pollution; and all liability assumed by the Contractor under this Agreement.

This insurance shall contain a waiver of subrogation against TFN, its elected and appointed officials, officers, employees, volunteers, agents and subsidiaries and the directors, officers, employees, volunteers and agents of its subsidiaries.

- (b) Automobile Liability insurance on all licensed vehicles owned by or leased to the Contractor protecting the Contractor against damages arising from bodily injury (including death) and from claims for property damage arising out of their use in the operations of the Contractor, its servants, agents or employees under this Agreement. Such insurance shall be for an adequate amount which shall be not less than two million dollars (\$2,000,000) inclusive of any one accident.
- (c) Contractor's Equipment insurance covering all equipment owned or rented by the Contractor, its servants, agents or employees against all risks of loss or damage with coverage sufficient to allow for the immediate replacement of such equipment as is damaged or destroyed. This insurance shall contain a waiver of subrogation against TFN, its elected and appointed officials, officers, employees, volunteers, agents, subsidiaries and the directors, officers, employees, volunteers and agents of its subsidiaries.
- (d) Cyber Liability insurance covering first and third party privacy and data breaches, such insurance policy to be in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) for any one claim, and in the

annual aggregate, or other such amount as agreed by TFN and the Contractor and confirmed in writing. This insurance shall contain a waiver of subrogation against TFN, its elected and appointed officials, officers, employees, volunteers, agents, subsidiaries and the directors, officers, employees, volunteers and agents of its subsidiaries.

**6.2** All insurance required under this Agreement shall be placed with insurers which are satisfactory to TFN, licensed and approved by the Province of British Columbia, and of current investment grade. All such insurance shall provide that the coverage may not be cancelled without the insurer giving at least thirty (30) days' prior written notice to TFN. Before commencing any work and thereafter from time to time as reasonably required by TFN, the Contractor shall provide TFN with insurance certificates or other similar evidence satisfactory to TFN that the insurance required under this Agreement is in force.

**6.3** The Contractor shall ensure that all its subcontractors carry insurance in the form and limits described above.

**6.4** The Contractor, and not TFN, shall be responsible for any deductible that may apply in respect of any of the insurance policies described above.

**6.5** If, at any time, the Contractor becomes aware of a claim or potential claim in connection with the Services against any insurance policy described above, then the Contractor will immediately advise TFN in writing of such claim, including particulars.

**6.6** The limits of insurance specified in this Agreement in no way define or limit the obligation of the Contractor to indemnify TFN in the event of a loss.

## **ARTICLE 7 – TFN BUSINESS LICENSE**

**7.1** The Contractor shall obtain a business licence, at its own expense, as required by the Tsawwassen First Nation Business Licence Regulation.

## **ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

**8.1** The Contractor represents and warrants that:

- (a) it has the skill, expertise and experience to perform the Services;
- (b) it is a duly formed, validly subsisting company, in good standing under the laws of British Columbia;
- (c) it has the power and authority to enter into this Agreement and to perform all its obligations under this Agreement, and has taken or obtained all the necessary or appropriate actions, authorizations or permissions to do so;

- (d) it has not knowingly entered into any contract, arrangement or understanding with any other entity or person, and will not do so during the Term, that does or may impair or diminish its ability to fully perform, be responsible for, and meet all obligations and liabilities set forth in this Agreement;
- (e) it has no pending or anticipated litigation, action or proceeding before any court, tribunal or person relating to any matter or thing that may affect its ability to perform all its obligations under this Agreement; and
- (f) it has, and will fully maintain at its own cost, all the necessary and appropriate authorizations and permissions, including any licenses, assignments, copyrights, patents and technical data, to perform all its obligations under this Agreement.

## **ARTICLE 9- GENERAL**

**9.1** This Agreement constitutes the entire agreement between the parties with respect to the Services, and any and all previous agreements, whether written, oral, expressed, or implied, made between the parties or on their behalf relating to the Services, are hereby terminated and cancelled and each of the parties releases and forever discharges the other of and from all manner of actions, claims and demands whatsoever, under or in respect of any such agreement.

**9.2** The Contractor shall not assign or subcontract this Agreement or any part thereof without prior written consent of TFN. If TFN consents to any assignment or subcontracting, the Contractor shall cause the assignee or subcontractor to comply with all of the terms and conditions set forth in this Agreement. Notwithstanding that TFN may in writing consent to any such assignment or subcontracting, the Contractor will remain liable for the performance of its duties and obligations under this Agreement and all of the representations, warranties, covenants and indemnities given and set forth in this Agreement as if no such assignment or subcontracting had been made.

**9.3** This Agreement shall bind the parties, and their respective successors, administrators, and permitted assigns.

**9.4** A Party's failure or delay in exercising any right or remedy under this Agreement is not a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or any other.

**9.5** All notices under this Agreement must be in writing and delivered or emailed in accordance with this Section 9.5. The addresses for delivery are provided on the first page of this Agreement and the addresses for email are as follows, in each case, unless and until a party gives notice of another address for delivery or email:

- (a) to TFN: **crobinson@tsawwassenfirstnation.com**, with a copy to: **contractnotices@tsawwassenfirstnation.com**; and
- (b) to the Contractor: **[Insert Contractor's email address]**.

A notice will be deemed to be received: (i) if delivered on a business day, on receipt; (ii) if sent by email before 3:00 p.m. (Pacific time) on a business day, on that business day; or (iii) if sent by email on or after 3:00 p.m. (Pacific time) on a business day or on a day that is not a business day, on the next business day.

**9.6** Any modification to this Agreement must be in writing and signed by the parties or it shall have no effect and shall be void.

**9.7** Time is of the essence in this Agreement.

**9.8** If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall not affect the other provisions of this Agreement, but such invalid or unenforceable provision shall be modified to the extent necessary to render it valid and enforceable, preserving to the fullest extent permissible the intent of the parties set forth in this Agreement.

**9.9** The headings used in this Agreement are for convenience only and are not to be construed in any ways as additions or limitations of the covenants contained in it.

**9.10** This Agreement may be executed in any number of counterparts and transmitted electronically and if so executed will be as effective as if the parties had delivered an executed original agreement.

**9.11** This Agreement shall be construed in accordance with the laws of British Columbia.

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the date first written above.

**The Contractor:**

\_\_\_\_\_  
Per: Authorized Signatory

Name:

Title:

**Tsawwassen First Nation:**

\_\_\_\_\_  
Per: Callum Robinson

Manager of Communications and Engagement

\_\_\_\_\_  
Per: Kim Baird

Chief Administrative Officer

**SCHEDULE A**

**DESCRIPTION OF SERVICES**

**[TO BE COMPLETED UPON AWARD]**

**SCHEDULE B**  
**COMPENSATION**

**[TO BE COMPLETED UPON AWARD]**