

DRAFT SERVICES AGREEMENT

Project Lead for Tempest (Land Management Software) Implementation with CentralSquare

THIS AGREEMENT dated for reference _____ 2020 is

BETWEEN:

SQUAMISH-LILLOOET REGIONAL DISTRICT, a regional district created by letters patent through provincial legislation

(the "Regional District")

AND:

(the "Contractor")

GIVEN THAT:

- A. The Regional District wishes to engage the Contractor for the provision of services as described in the Request for Quotations – Project Lead Tempest Implementation, issued by the Regional District on Nov 20, 2020 (the “RFQ”); and
- B. The Contractor wishes to provide such services to the Regional District in accordance with the terms and conditions of this Agreement;

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

Definitions

1. In this Agreement, in addition to the words defined above,

(a) "Terms of Reference" means:

- (i) the Project and the Contractor Responsibilities as set out in the RFQ; and
- (ii) Contractor’s Proposal dated _____, 2020 submitted in response to the RFQ and as accepted by the Regional District and attached here as Schedule “A”,

both of which form part of this Agreement. In the event of an inconsistency between this Agreement and the Terms of Reference, this Agreement shall prevail and in the event of an inconsistency between subsection 1(a)(i) and subsection 1(a)(ii), subsection 1(a)(i) shall prevail; and

(b) "Services" means the acts, services and work described in the Terms of Reference and all acts, services and work necessary to achieve the objectives set out in the Terms of Reference.

Services to be Performed by the Contractor

2. The Contractor agrees to perform the Services during the Term, in accordance with the Terms of Reference, on the terms and conditions of this Agreement.

Term

3. The term of this Agreement commences on _____ and ends on _____ (the "Term"), unless terminated earlier in accordance with this Agreement. The term of this Agreement may be extended in the sole discretion of the Regional District.

Warranty as to Quality of Services

4. The Contractor represents and warrants to the Regional District that it will perform the Services:

- (a) with that degree of care, skill, diligence normally applied in the performance of services of a similar nature and magnitude to those contemplated by this Agreement at the time and place the Services are rendered;
- (b) in accordance with sound current professional practices;
- (c) in compliance with all applicable enactments and laws and in compliance with all codes, rules, regulations and standards of any relevant professional or industry organization or association;
- (d) with personnel who have the education, training, skill, and experience necessary to perform the Services and such personnel as noted in the Terms of Reference will perform the Services under this Agreement;

and the Contractor acknowledges and agrees that the Regional District has entered into this Agreement relying on the representations and warranties in this section.

Remuneration

5. In consideration of the Services performed by the Contractor to the satisfaction of the Regional District and in strict conformance with the terms hereof, the Regional District must pay the Contractor the fees prescribed on page ___ of Schedule A, plus applicable taxes, and in accordance with this Agreement. For clarity, the maximum contract value for fees hereunder shall be \$_____ plus applicable taxes.

Invoices

6. Not more than once each month, the Contractor may deliver an invoice to the Regional District, 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 Regional District

7. The Regional District must, to the extent it is satisfied the fees are for Services reasonably and necessarily performed by the Contractor and subject to section 9 and subject to any right of set-off that the Regional District may have, pay the Contractor the fees claimed in the invoice delivered in accordance with section 6, within 30 days after delivery of the invoice to the Regional District.

Termination or Suspension at the Discretion of the Regional District

8. Despite any other section of this Agreement, the Regional District 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 Regional District terminates or suspends all or part of the Services under this section, then the Contractor is entitled to deliver an invoice to the Regional District for the period between the end of the time period for which the last invoice was delivered by the Contractor under section 6 and the effective date of termination or suspension. The Regional District must, to the extent that it is satisfied the fees are for Services reasonably and necessarily performed by the Contractor, pay the Contractor the fees claimed in such invoice, within 30 days after delivery of such invoice to the Regional District. 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

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

Confidential Information

10. 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 or good conscience ought not be disclosed.

Records

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

Delivery of Records

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

Ownership of Intellectual Property

13. By this section, the Contractor irrevocably grants to the Regional District the unrestricted licence for the Regional District 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 shall exist in perpetuity notwithstanding the expiry or early termination of this Agreement and includes the right for the Regional District, at any time, to adapt, use and modify all such technical information and intellectual property for the Regional District's uses and unlimited distribution by the Regional District, as well as posting the report and other information specific to the Services on the Regional District's website.

Agreement for Services

14. 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 Regional District as an employee or agent of the Regional District. 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 Regional District in any way.

Conflict of Interest

15. The Contractor must not perform, for gain, any services for any person other than the Regional District, or have an interest in any contract other than this Agreement, if the Regional District 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 Regional District under this Agreement and the obligations of the Contractor to the other person or between the obligations of the Contractor to the Regional District under this Agreement and the Contractor's pecuniary interest.

Assignment of Agreement/Subcontracting of Services

16. 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 Regional District, such consent may be unreasonably withheld. The Regional District 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 Regional District does not relieve the Contractor from any obligation already incurred or accrued under this Agreement or impose any liability upon the Regional District.

Time of the Essence

17. Time is of the essence of this Agreement.

Release and Indemnification

18. Except to the extent arising out of the negligent acts or omissions of the SLRD and its directors, officers, employees, volunteers, contractors, agents, successors and assigns, as determined by a court of competent jurisdiction, the Contractor shall release, indemnify and save harmless the SLRD and its directors, officers, employees, volunteers, contractors, 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 and its directors, officers, employees, volunteers, agents, successors and 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.

Insurance Requirements

19. The Contractor must obtain and maintain:

- (a) Automobile liability insurance coverage throughout the Term in an amount not less than \$2,000,000;
- (b) 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 an amount not less than two million dollars (\$2,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate and shall meet the following requirements:
 - (i) name the Regional District as additional insured;
 - (ii) include blanket contractual liability coverage, cross liability, and severability of interest;
 - (iii) be issued by an insurance company entitled to carry on the business of insurance under the laws of British Columbia;
 - (iv) be primary without right of contribution from any insurance carried by the Regional District, and will stipulate that it shall not be cancelled or materially changed without first providing thirty (30) days written notice to the Regional District.
 - (v) stipulate that it not be cancelled or materially changed without the insurer providing the Regional District with 30 days written notice stating when such cancellation or change is to be effective;
 - (vi) include a deductible not greater than \$5,000.00 per occurrence;
 - (vii) be on other reasonable terms acceptable to the Regional District.

The Contractor must provide the Regional District 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 Regional District. If the Contractor's insurance expires or terminates before the end of the Term, the Contractor must 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.

The above insurance requirements do not in any way reduce the Contractor's obligations to release and indemnify the Regional District as set out in section 18 of this Agreement.

WorkSafeBC

20. The Contractor must 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 Regional District 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.

21. The Contractor must take all precautions reasonably necessary to ensure the safety of the Contractor's personnel and all persons employed, contracted or subcontracted by the Contractor to perform the Services.

22. This clause has been deleted.

Severability

23. 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

24. 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 sent by fax or e-mail, addressed as follows:

To the Regional District:

Squamish-Lillooet Regional District
1350 Aster Street, Box 219
Pemberton, B.C. V0N 2L0
Fax Number: (604) 894-6526
E-mail Address: _____
Attention: _____

To the Contractor:

Fax Number: _____
E-mail Address: _____
Attention: _____

or to such other address, e-mail address or fax number of which notice has been given as provided in this section.

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 fax or 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

25. 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.

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

Binding on Successors

27. This Agreement enures 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

28. 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

29. 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 a like or different character.

Freedom of Information and Protection of Privacy Act

30. The Contractor understands that the Regional District is subject to the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165 and agrees that this Agreement and the information it contains, and any information supplied by the Contractor to the Regional District in connection with this Agreement, is not implicitly confidential for the purposes of that enactment.

31. The Contractor understands that this Agreement, and the information it contains, may be the subject of an access to information request made to the Regional District under the *Freedom of Information and Protection of Privacy Act* and the Regional District may be obliged by that enactment to disclose all or part of this Agreement and the information it contains and all or part of any information the Contractor supplied to the Regional District in connection with this Agreement, whether or not the Contractor has expressly stipulated that the information in question is confidential for the purposes of that enactment

Counterparts

32. 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 or electronic facsimile transmissions 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.

As evidence of their agreement to be bound by the above terms and conditions of this Agreement, the parties have executed this Agreement below, on the respective dates written below.

SQUAMISH-LILLOOET REGIONAL DISTRICT by its authorized signatory:

Chief Administrative Officer

Date

[Name of Contractor]
by its authorized signatory:

[Name]
[Title]

Date

Schedule "A"
TERMS OF REFERENCE