

# REQUEST FOR PROPOSAL

RMOW Energy Advisor

Climate and Environment / Building Department

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RFP # P07908 - 2024

The Resort Municipality of Whistler | January 2024

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Issued:	January 8, 2024
Closing Date Time:	4:00 pm January 26, 2024
Closing Location:	RMOW Municipal Hall 4325 Blackcomb Way, Whistler BC, V8E0X5

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THE PREMIER MOUNTAIN RESORT COMMUNITY  
MOVING TOWARD A SUSTAINABLE FUTURE



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## 1 Introduction

The Resort Municipality of Whistler (RMOW) is inviting qualified Proponents to submit proposals to provide energy advisor services for the RMOW until March 2026. In December 2020, Whistler Council adopted the Big Moves Climate Action Strategy, with a commitment to at least a 50% reduction in emissions across various sectors by 2030. This includes the goal that, by 2030, all new buildings in Whistler will achieve the top step (Step 5) of the BC Energy Step Code and use of only low carbon heating systems.

The RMOW is taking a phased approach, with associated timelines, to adopt progressively higher steps of the BC Energy Step Code and to regulate GHG emissions from new buildings by adopting the Zero Carbon Step Code (formerly the Carbon Pollution Standard) developed by the Province of BC. In 2019, the RMOW voluntarily adopted the BC Energy Step Code for simple, detached buildings (Part 9 buildings). In May 2023, the RMOW adopted higher steps of the BC Energy Step Code and the Zero Carbon Step code for all building types, effective January 1, 2024 (Table 1).

Table 1. Whistler BC Energy Step Code and Zero Carbon Step Code Roadmap

Building type		January 2024	2027 onward
Part 9	Single Family Dwelling, duplex, or townhomes	Step 4 with <b>Strong</b> Carbon Performance (EL-3)*	Step 4 with <b>Zero</b> Carbon Performance (EL-4)
	SFD or duplex with in-ground basement floor area exclusion	Step 5 with <b>Strong</b> Carbon Performance (EL-3)	Step 5 with <b>Zero</b> Carbon Performance (EL-4)
Part 3	Residential	Step 3 with <b>Strong</b> Carbon Performance (EL-3)	Step 3 with <b>Zero</b> Carbon Performance (EL-4)
	Commercial	Step 2 with <b>Strong</b> Carbon Performance (EL-3)	Step 3 with <b>Zero</b> Carbon Performance (EL-4)

\*EL – emissions level

## 2 Specific Project Requirements

### 2.1 Scope of Work

The Resort Municipality of Whistler (RMOW) is inviting qualified Proponents to provide energy advisor services for the Building Department and Climate and Environment Department. The role of the energy advisor will be to support these departments with the successful implementation of BC Energy Step Code and Zero Carbon Step Code in Whistler. The scope of work includes:

- Task 1: Build internal capacity within RMOW Building and Planning departments to implement accelerated BC Energy Step Code and Zero Carbon Step Code adoption and timeline.
- Task 2: Develop and implement an external engagement plan focused on increasing technical capacity related to the BC Energy Step Code and Zero Carbon Step Code within the local building sector.
- Task 3: Collaborate with the Province of BC to leverage their technical expertise and understand their timeline for provincial Step Code adoption.
- Task 4: Identify financial incentives to support compliance with the Zero Carbon Step Code and BC Energy Step Code.
- Task 5: Identify tools to shift away from carbon-based outdoor heating and appliances in new buildings.
- Task 6: Identify tools and methods to incentivize energy efficiency measures that support the successful implementation of the Zero Carbon Step Code.
- Task 7: Identify pathways to the top step of the BC Energy Step Code and Zero Carbon Step Code including the cost burden to contractors and supply chain implications.
- Task 8: Develop and implement compliance measures for the adoption of the higher steps of the BC Energy Step Code and Zero Carbon Step Code.

### 2.2 Project Deliverables

The project deliverables are:

- Task 1:
  - Streamlined RMOW permitting process and compliance monitoring tools/systems
  - Internal training for updated permitting/compliance monitoring systems
- Task 2:
  - Building sector engagement plan on BC Energy Step Code and Zero Carbon Step Code including:
    - Technical capacity topics list for learning sessions
    - Quarterly in person “builder breakfast” learning sessions
    - Outreach campaigns through municipal communication channels

- Task 3:
  - Summarize Province of BC plans and timeline for Step Code adoption
  - Regular meetings and email correspondence with established contacts at the Province of BC
- Task 4:
  - Identify best practices for rebate/incentive programs
- Task 5:
  - Research and engagement on existing uses of carbon-based outdoor heating and appliances
  - Recommendation for the implementation of a minimum of one method/tool for shifting from carbon-based outdoor heating and appliances in new buildings
- Task 6:
  - “One Pager” summarizing energy efficiency measures and resources for building sector
  - Summarize tools/methods to incentivize enhancing energy saving measures in new buildings with recommended implementation
- Task 7:
  - Internal cost management plan
  - Roadmap for adoption of the highest steps of BC Energy Step Code and Zero Carbon Step Code
  - Research on cost burden and feasibility of higher steps of BC Energy Step Code and Zero Carbon Step Code
- Task 8:
  - Internal monitoring checklist
  - Onsite monitoring indicators
  - Metrics to track compliance
  - Adaptive management strategy

## 2.3 Project Timeline

The project will commence once the Consulting Agreement has been signed, around February 16, 2024, and will conclude on March 31, 2026.

## 2.4 Available Resources

The RMOW Building and Climate and Action Departments will work collaboratively with the successful Proponent to provide the necessary documentation and resources to complete the project deliverables.

The RMOW will also provide the following information:

- All prepared documentation for the RMOW’s Step Code Implementation plan
- RMOW building permit application and compliance documents and tools
- Past communication materials related to Step Code implementation

## 3 Proponent Response

### 3.1 Proposal Format

The following format, sequence, and instructions should be followed in order to provide consistency in Proponent response, and ensure each proposal receives full consideration:

- Total electronic individual file size shall be less than 9MB.
- All pages should be consecutively numbered;
- An unaltered and completed Form of Proposal as the cover page;
- Table of contents;
- The proposal sections as detailed below.

### 3.2 Executive Summary

Should be a high level, concise summary of project understanding and overall proposal contents.

### 3.3 Proposed Work Plan

Proposals should include a Work Breakdown Structure (WBS) or similar breakdown that will be used to define the work plan. The work plan will detail an approach/strategy and methodology to meet the objectives and will demonstrate the strength and ability to perform the Services requested. The work plan should indicate what team members will be performing each task.

### 3.4 Timeline

Proposals must include a proposed project timeline based on the work plan for completion of all work and submission of all required deliverables and milestone dates. Provide a proposed start date, the total number of days required to complete each deliverable or stage of work, and a completion date.

- Gantt chart timeline or Excel spreadsheet is preferred.

### 3.5 Proposed Costs

Proposals shall provide a lump sum price to complete the work effort including a cost breakdown of the lump sum price for each of the components described in the Specific Project Requirements in Section 2.

Proponents should submit a rate sheet for all machinery, mobilization costs and active positions that are relevant for the Specific Project Requirements, Section 2.

If the submitting Proponent has an existing executed master services agreement with the RMOW, the hourly rates should match the rates agreed upon in the executed master services agreement.



### 3.6 Proponent Qualifications

Proposals should include a description of the Proponent (The Firm/Company) and the Proponent's team member's qualifications that demonstrate the ability to undertake the proposed project. Resumes should be included for the Proponent's team leaders and all personnel to be used in carrying out the various components of the project, including sub-contractors and sub-consultants. Resumes should emphasize skills that are relevant to the Specific Project Requirements (SPR) of the project. Previous project work should include completion dates. Note that prior to any Proponent member being changed during the evaluation or post bid process, resumes must be submitted for approval to the RMOW.

#### Summary of Related Experience

The proposal shall contain at least two (2) specific project examples that the Proponent has completed that demonstrate the Proponent and the Proponent's team member's ability to undertake the proposed project. Descriptions of previous projects should be relevant and related to the proposed project and dated. Descriptions of previous projects should include at a minimum:

- 1) Name of the project;
- 2) Start and completion dates;
- 3) Key individuals involved; and
- 4) One client references.

### 3.7 Addenda

The proposal shall acknowledge that they have read and understood all addendum posted by indicating so in the Form of Proposal.

## 4 Project Brief

This is a Request for Proposal (RFP) and is not a contract tender call. No contractual, tort or other legal obligations are created or imposed on the RMOW by this RFP or by submission of any proposal or by consideration of, or failure or refusal to, consider any proposal by the RMOW. Further, the Contract, when executed, is the sole source of any contractual obligation on the RMOW with respect to the project.

Throughout this document reference is made to the "Proponent" as the entity preparing the response to the RFP. The term "Contractor" is used to represent the Proponent after the Contract is signed.

## 5 Evaluation and Selection

The "Preferred Proponent" is the Proponent judged to have the "best overall proposal" based on the evaluation score outlined in section 7 and which will be selected to enter into negotiations leading to a Contract with the RMOW. If negotiations are unsuccessful, the next highest rated Proponent may be deemed to be the Preferred Proponent and negotiations would be commenced with them.

## 5.1 Submission & Award

The Proposal can be submitted via email to the RMOW at:

Name: Maria Thorlakson, Climate Action Coordinator

Email: [climatechange@whistler.ca](mailto:climatechange@whistler.ca)

The proposal should be submitted with the price quoted in \$CDN for the SPR defined in section 2 on or before: January 26, 2024 at 4:00 p.m.

Following the closing date, the RMOW intends to provide the Notification of Award of the contract to the preferred Proponent on or before: February 16, 2024.

## 5.2 Inquiries

All inquiries related to this RFP should be directed in writing (by email) to:

Name: Maria Thorlakson, Climate Action Coordinator

Email: [climatechange@whistler.ca](mailto:climatechange@whistler.ca)

Please clearly identify the RFP number and title when submitting a question.

## 5.3 Addenda

The final day for questions is 5 business days before the closing date. If the RMOW determines that an amendment is required to this RFP, the RMOW will post the amendment on the RMOW and BC Bid web sites no less than 3 calendar days prior to closing.

## 5.4 Duration of Proposal

The Proposal will be irrevocable and open for acceptance by the RMOW for a period of 60 calendar days from the day following the closing date, even if the Proposal of another Proponent is accepted by the owner.

## 5.5 No Contract

This RFP is an invitation for Proposals (including prices and terms) for the convenience of all parties. It is not a tender and no obligation of any kind will arise from this RFP or the submission of a Proposal. The RMOW may negotiate changes to any terms of a Proposal, including prices; and may negotiate with one or more Proponents, or may at any time invite or permit the submission of a Proposal (including prices and terms) from other parties who have not submitted Proposals before the closing date.

## 5.6 Acceptance

A Proposal will be an offer to the RMOW which the RMOW may accept within 60 days by sending a Notice of Award to the Proponent. Note that the RMOW will select the proposal that it deems, in its sole

and absolute discretion, demonstrates the best combination of corporate qualifications, technical capability, project understanding, proposed approach to achieving the specified goals, and estimated total costs.

### 5.7 Right to Reject

The RMOW is not bound to accept the lowest price proposal, nor is the RMOW in any way bound to award the project to any of the Proponent proposals. The RMOW reserves the right to reject any or all proposals for any reason whatsoever.

### 5.8 Liability for Errors

The information contained in this RFP is supplied solely as a guideline for Proponents. The information is not guaranteed or warranted to be accurate by the RMOW, nor is it necessarily comprehensive.

### 5.9 Responsibility

The Proponent shall not transfer responsibility to meet the obligations of this contract to a third party without the consent, in writing, of the RMOW project manager.

### 5.10 No Collusion

Proponents shall not directly or indirectly communicate with any other Proponent regarding the preparation or presentation of their proposals, or in connection with the Proposal engage in any collusion, fraud or unfair competition.

### 5.11 Conflict of Interest

A Proponent must disclose in its Proposal any actual or potential conflicts of interest and existing business relationships it may have with the RMOW, its elected or appointed officials or employees. The RMOW may rely on such disclosure.

### 5.12 Solicitation of Council Members and RMOW Staff

Proponents and their agents will not contact any member of the RMOW Council or RMOW staff with respect to this RFP, other than the contact person named in Section 5.2 at any time prior to the award of a contract or the cancellation of this RFP.

### 5.13 Confidentiality

All Proposals become the property of the RMOW and will not be returned to the Proponent. All Proposals will be held in confidence by the RMOW unless otherwise required by law. Proponents should be aware the RMOW is a "public body" defined by and subject to the Freedom of Information and Protection of Privacy Act of British Columbia.

## 5.14 Proponents Expenses

Proponents are solely responsible for their own expenses in preparing and submitting Proposals, and for any meetings, negotiations or discussions with the RMOW or its representatives and contractors, relating to or arising from the RFP. The RMOW will not be liable to any Proponent for any claims, whether for costs, expenses, losses or damages, or loss of anticipated profits incurred by the Proponent in preparing and submitting a Proposal, or participating in negotiations for a contract, or other activity related to or arising out of this RFP.

## 5.15 Proponents Qualifications

By submitting a Proposal, a Proponent represents that it has the expertise, qualifications, resources, and relevant experience to supply the services requested.

## 5.16 Contract Terms and Conditions

The successful Proponent, prior to Notice to Proceed, will sign the Terms and Conditions as outlined in the RMOW Professional Services agreement attached in Section 10.

## 5.17 Insurance

At its' own expense and prior to the commencement of the term of the Contract, the Proponent shall obtain and maintain or cause to be obtained and maintained in force during the term of the Contract, insurance acceptable to the RMOW where the RMOW is named as additional insured with limits not less than those shown for each respective item as follows:

<b>Insurance</b>	<b>Contractor</b>
<i>Commercial General Liability (CGL)</i>	\$2 million per occurrence
<i>Professional Liability</i>	\$2 million per claim

## 5.18 Subcontracting

Proposed subcontractors must be listed with attached resumes. A joint proposal submission must indicate which Proponent has overall responsibility of the project.

## 5.19 Signature

The legal name of the person or firm submitting the Proposal should be inserted in the Form of Proposal (Section 9). The Proposal should be signed by a person authorized to sign on behalf of the Proponent and include the following:

- If the Proponent is a corporation then the full name of the corporation should be included, together with the names of authorized signatories. The Proposal should be executed by all of the authorized signatories or by one or more of them provided that a copy of the corporate resolution authorizing those persons to execute the Proposal on behalf of the corporation is submitted;
- If the Proponent is a partnership or joint venture then the name of the partnership or joint venture and the name of each partner or joint venture should be included, and each partner or joint venture should sign personally (or, if one or more person(s) have signing authority for the partnership or joint venture, the partnership or joint venture should provide evidence to the satisfaction of the RMOW that the person(s) signing have signing authority for the partnership or joint venture). If a partner or joint venture is a corporation then such corporation should sign as indicated in subsection (a) above; or
- If the Proponent is an individual, including a sole proprietorship, the name of the individual should be included.

## 6 The RMOW's Commitment to Sustainability

The Whistler community understands that sustainability is not just about the environment; that three concepts (ecological integrity, fiscal viability, and social justice) point to a larger and integrated strategy, and that these three concepts lead to better decisions when considered together.

Working within the framework of the Official Community Plan, the community has aimed to steadily integrate the sustainability objectives broadly into all aspects of community planning and development strategies –from climate, energy and transportation strategies, to economic and visitor experience strategies. Through the consistent application of the sustainability objectives, our community is striving to integrate [climate change mitigation](#) into all community policies and practices. Whistler understands that we will have to find a way to do things more efficiently in order to progress towards our sustainability goals.

The RMOW is looking for proposals that clearly understand our community's values and measurably move our community further along the journey toward success and sustainability as articulated within our Official Community Plan vision. More information is available at [Whistler's Vision and OCP | Resort Municipality of Whistler](#) for reference in the proposal process.

## 8 Evaluation and Selection

### 8.1 Evaluation Team

The evaluation of Proposals will be undertaken by the Evaluation Team on behalf of the RMOW. The evaluation team may consist of one or more persons at the Evaluation Team's discretion. The Evaluation Team may consult with other RMOW staff, or third party individuals at their discretion.

## 8.2 Mandatory Criteria

Any Proposal that does not satisfy all mandatory criteria will be rejected.

Required (Mandatory) Criteria	Check -✓
1. The proposal must be received by the specified closing date and time.	
2. Proposals must be in English.	

## 8.3 Weighted Criteria Benchmarks

### Evaluation Matrix

The Evaluation Team intends to evaluate all proposals according to the evaluation matrix criteria categories outlined below. If minimum required points are not met in one or more of the evaluation criteria, the Proposal will not be considered for award.

Criteria	Available Points	Minimum Required Points
Project Understanding	20	10
Technical Capabilities	25	10
Qualifications and Experience	20	15
Timeline	10	5
Cost	25	No Minimum Required
TOTAL	100	40

### Scoring Table

The Evaluation Team intends to use the scoring table below as a guideline for determining criterion score. Prompts are provided to give the Proponents an idea as to how each criterion will be examined and scored. The weighting of the prompts in determining the criterion score is up to the discretion of the Evaluation Team unless otherwise stated.

Scoring Table		
Points Awarded (% of available)	Quality	Criteria
100%	Exceptional	Exceptional; far exceeds requirements with no added risk.
80%	Very Good	Exceeds expectations; risk deemed acceptable or no added risk.
60%	Acceptable	Meets expectations and all minimum requirements.
40%	Below	Does not meet expectations or minimum requirements.
20%	Well Below Requirements	Fails to meet minimum requirements; proposes a solution or provides explanations that is not acceptable or relevant.
0%	Unacceptable	Proposed solution deemed unacceptable in every aspect.

### 8.3.1 Project Understanding

The Proponents will be scored on their understanding of the Proposal as described in the Scope of Work as described in Section 2.1. As a part of the Proposal, include a narrative that illustrates an understanding of the Request for Proposal requirements. The Evaluation Team will take the entire Proposal submission into consideration when evaluating the Project Understanding section.

#### Scoring

The following prompts will be used to determine the criterion score:

Prompts
Is the overall approach tailored to the needs of the RMOW as described in the RFP?
Is the Proposal easy to read and concise?
Does the submitted Proposal acknowledge all required criteria of the SPR accurately?

### 8.3.2 Technical

The Proponent will be scored on their work plan to perform the project, and should express high level solution to the tasks in the SPR. The Evaluation Team will take the entire Proposal submission into consideration when evaluating the Technical section.

#### Scoring

The following prompts will be used to determine the criterion score:

Prompts
Is the WBS/work plan plausible and tailored to the needs of the RMOW?
Is the proposed prescription development process to be used sufficient for the work and flexible to address RMOW input?
Have the methods described in the work plan previously been used in past projects and were they successful? Is there evidence that this is the optimal solution?

### 8.3.3 Qualifications and Experience

Qualifications of the Proponent and Proponents team are to be submitted according to section 3.6 and 0. Only qualifications that are relevant to the SPR will be considered when evaluating this section. References may or may not be contacted.

#### Scoring

The following prompts will be used to determine the criterion score:

Prompts
Qualifications of the personnel and how they relate to the tasks they are responsible for as described in the Proponents Proposal.
Proponent's team's experience with similar projects within the last 5 years. Submitted experience beyond the previous five (5) years will not have weight on the scoring.
Work performed for submitted references is by the proposed team members and is within the last five (5) years and is relevant to the SPR of the project.
Proponent's team experience working with the RMOW on previous projects within the last five (5) years.



### 8.3.4 Timeline

Timelines and schedules are to be clear and concise and highlight all milestone dates. Timelines that are ahead of the milestone dates may or may not receive more marks than timelines that meet the milestone dates and is up to the discretion of the evaluation team.

#### Scoring

The following prompts will be used to determine the criterion score:

Prompts
Tasks are based on the work plan with start and end dates for each task.
Start and end dates for each tasks are realistic with reasonable lead times.

### 8.3.5 Cost

#### Scoring

Prompts
The rate sheet is detailed and clear
The proposed cost is within RMOW budget
The tasks are scheduled for efficient use of funds

## 8.4 Interviews

If final tabulated scores are within 5 points, the Evaluation Team may, at its discretion, invite some or all of the Proponents to appear before the Evaluation Team to provide either clarifications of their Proposals or a request to present on specified criteria and scoring. In such event, the Evaluation Team will be entitled to consider the answers received in evaluating Proposals. Interview questions and scoring may or may not be provided to the Proponent before the interview.

## 8.5 Litigation

In addition to any other provision of this RFP, the RMOW may, in its absolute discretion, reject a Proposal if the Proponent, or any officer or director of the Proponent submitting the Proposal, is or has been engaged directly or indirectly in a legal action against the RMOW, its elected or appointed officers, representatives or employees in relation to any matter.

In determining whether or not to reject a Proposal under this section, the RMOW will consider whether the litigation is likely to affect the Proponent's ability to work with the RMOW, its Contractors and representatives, and whether the RMOW's experience with the Proponent indicates that there is a risk the RMOW will incur increased staff or legal costs in the administration of the Contract if it is awarded to the Proponent.

## 8.6 Consideration of Relevant Factors

The RMOW reserves the right to decline to select any Proponent which the RMOW, acting reasonably and fairly, determines would, if selected, result in greater overall cost or material risk to RMOW as compared to another Proponent, considering any relevant factors, including a Proponent's financial resources, safety record, claims and litigation history, work history and environmental record.

## 8.7 Additional Information

The RMOW reserves the right to select the Proponent best suited for the project and intends to evaluate the proposal(s) as fairly as possible. The RMOW reserves the right to make changes to the evaluation process prior to the proposal submission date.

The RMOW has disclaimed any intention to assume contractual or other obligations to Proponents during the RFP process partly to ensure that it retains maximum flexibility in regard to whether it proceeds with one of the Proponents, or how it will evaluate proposals.

If a proposal is determined to be unclear or deficient in some aspects, but these deficiencies are capable of being clarified or rectified, the RMOW may prepare a list of questions for the Proponent, to clarify or remedy the deficiencies. If, in the opinion of the RMOW, these clarifications and rectifications do not overcome the deficiencies, the RMOW, at its sole and absolute discretion, may decide to reject the proposal. The RMOW may contact any or all of the Proponents to seek further clarification and information before awarding the contract.

## 9 Form of Proposal

RFP Project Title: 2024 – 2026 Energy Advisor

RFP Reference No: RFP – P07908 – 2024

Legal Name of Proponent:

Contact Person and Title:

Business Address:

Telephone:

E-Mail Address:

Dear Sir/Madam:

I/We, the undersigned duly authorized representative of the contractor, having received and carefully reviewed all of the Proposal documents, including the RFP and the following addenda:

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*(addenda, if any)*

and having full knowledge of the Site(s), and having fully informed ourselves as to the intent, difficulties, facilities and local conditions attendant to performing the Services, submit this Proposal in response to the RFP.

I/We confirm that this proposal is accurate and true to best of my/our knowledge.

I/We confirm that, if I/we am/are awarded the Agreement, I/we will at all times be the “prime contractor” as provided by the Worker's Compensation Act (British Columbia) with respect to the Services. I/we further confirm that if I/we become aware that another contractor/contractor at the place(s) of the Services has been designated as the “prime contractor/contractor”, I/we will notify the RMOW immediately, and I/we will indemnify and hold the RMOW harmless against any claims, demands, losses, damages, costs, liabilities or expenses suffered by the RMOW in connection with any failure to so notify the RMOW.

This Proposal is submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2024

I/We have the authority to bind the Proponent.

\_\_\_\_\_  
(Name of Proponent)

\_\_\_\_\_  
(Name of Proponent)

\_\_\_\_\_  
(Signature of Authorized Signatory)

\_\_\_\_\_  
(Signature of Authorized Signatory)

\_\_\_\_\_  
(Print Name and Position of Authorized Signatory)

\_\_\_\_\_  
(Print Name and Position of Authorized Signatory)

## 10 RMOW Consulting Services Agreement Contract Terms and Conditions Template

**CONSULTING AGREEMENT****[PROJECT NAME or TYPE OF SERVICES]**

**THIS AGREEMENT** is effective as of the **XX<sup>th</sup> day of XXXXXXXX, 2024.**

BETWEEN:

**The Resort Municipality of Whistler**, having an address at 4325  
Blackcomb Way, Whistler, B.C.V8E 0X5  
(the “RMOW”)

AND:

**[Contractor Firm Name]** having an address at **[Contractor’s full  
address]**  
(the “Contractor”)

**WHEREAS:**

- A. Pursuant to a **[Request for Proposals/Invitation to Tender...]** entitled **[insert title of the RFP/ITT]**  
**[Contractor/Firm Name]** has been selected as the preferred Proponent to complete the  
“**Services**” outlined in Schedule A and;
  - A.
- B. RMOW wishes to engage the Contractor for provision of the Services on the terms and conditions  
herein set forth;

**NOW THEREFORE THIS AGREEMENT WITNESSES** for good and valuable consideration, the receipt  
and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as  
follows:

**INTERPRETATION****Definitions**

In this Contract unless something in the subject matter or context is inconsistent therewith, the capitalized  
terms herein will have the meanings set out below:

“**Business Day**” has the meaning given in Section 16.1 of this Contract;

“**Change Order**” means a change within the general scope of Services which may alter the Services,  
Contract Price or Contract Time.

“**Confidential Information**” means:

any information, in whatever form (including written, oral or stored in any computer or other electronic, magnetic or optical storage system), which is non-public, confidential or proprietary in nature, whether marked as such or not, obtained directly or indirectly from RMOW and whether obtained by the Contractor before or after the date of this Contract, including without limitation, corporate records and employee records;

any information, in whatever form, designated by the RMOW in writing as confidential or proprietary or marked with words of like import when provided to the Contractor or any other Person;

information orally conveyed to any director, officer, employee or other representative of the Contractor, if RMOW states at the time of the oral conveyance or promptly thereafter that such information is confidential, and provides specific written confirmation thereof to the Contractor within ten (10) days of the oral conveyance; and

all Work Product as defined in this Contract, except as may be agreed in writing by the parties as falling outside the definition of Confidential Information;

but does not include information:

which was in the possession of the Contractor prior to disclosure by the RMOW;

which is already in the public domain or which subsequently becomes part of the public domain other than through disclosure by the Contractor;

which is independently developed or learned by the Contractor without use of any Confidential Information; and

which the Contractor receives from a third Person who was free to make such disclosure without breach of any legal obligation,

provided that the Contractor can demonstrate to the satisfaction of RMOW that such information falls within the scope of the exclusions set forth above.

**“Contractor’s Representative”** has the meaning given in Section 18.1 of this Contract;

**“Contract”** means this agreement including the Schedules to this agreement as amended from time to time with the written approval of the parties;

**“Contract Price”** has the meaning given in Schedule B of this Contract;

**“Dispute”** means any difference between the RMOW and the Contractor, of any claim, or any dispute, relating to or arising out of the Services or the interpretation of the Contract, or any failure by the RMOW and the Contractor to agree where the Contract call for agreement;

**“Person”** means any individual, corporation, limited-liability company, partnership, firm, joint venture, association, trust, or other entity or organization, including a government or an agency or instrumentality thereof;

**"Procurement Documents"** means the procurement documents attached hereto as Schedule F (if any);

**"Records"** has the meaning set out in Section 5.1 of this Contract;

**"RMOW Representative"** has the meaning given in Section 18.1 of this Contract;

**"Services"** has the meaning given in Schedule A to this Contract;

**"Work Product"** means all that which is prepared, produced or developed by the Contractor as a result of this Contract, whether in written or electronic form and all copies of same. Work Product includes but is not limited to reports, data (including recorded "personal information" about an identifiable individual), information, calculations, logs, working papers or finished copy documents or information of any kind prepared or acquired by the Contractor in connection with this Contract.

**"Term"** has the meaning given in Section 2.1 of this Contract

### **Headings**

The division of this Contract into articles and sections and the insertion of the recitals and headings are for convenience of reference only and shall not affect the construction or interpretation of the Contract.

### **Use of the Word "Including"**

The word "including" when following any general term or statement will not be construed as limiting the general term or statement to the specific matter immediately following the word "including" or to similar matters, and the general term or statement will be construed as referring to all matters that reasonably could fall within the broadest possible scope of the general term or statement.

### **Currency**

All transactions referred to in this Contract will be made in lawful currency of Canada.

### **Singular, Plural, Gender and Person**

Wherever in this Contract the context so requires the singular number shall include the plural number and vice versa and any gender used shall be deemed to include the feminine, masculine or neuter gender.

### **Statutes**

Each reference to a statute is deemed to be reference to that statute and to the regulations made under that statute as amended or re-enacted from time to time.

### **Schedules**

The following attached schedules (the "Schedules") are incorporated in this Contract and are deemed to be part of this Contract:



Schedule A	-	Services to be Provided
Schedule B	-	Payment and Fees Schedule
Schedule C	-	Insurance
Schedule D	-	Approved Subcontractors
Schedule E	-	Contractor's Submission
Schedule F	-	RMOW Procurement Documents

### Order of Priority

If there is a conflict between a provision in a Schedule to this Contract and any other provision of this Contract, the other provision of this Contract will prevail unless the provision in a Schedule expressly states that it will prevail over a conflicting provision of the Contract. If this Contract is a result of a competitive procurement process, the order of priority of documents from highest to lowest will be:

this Contract;

Schedules A, B, C, D, E and F;

the RMOW's purchase order for the Services (if any);

extracts from the Contractor's Submission respecting the Services , that are attached as a Schedule (if any); and

extracts from RMOW's Procurement Documents respecting the Services , that are attached as a Schedule (if any).

### TERM OF CONTRACT

#### Term

The term of this Contract (the "Term") will commence on [Month... Day 20XX (year) and continue until Month, day, year 20XX], subject to the following:

earlier termination in accordance with the terms of this Contract; and

renewal or extension of the Term on such terms as the parties agree to in writing. If the parties agree to an extension of the Term, then the following will apply:

the parties will mutually agree on a new Schedule B – Payment and Fees Schedule;

all other terms and conditions of this Contract not mutually amended will remain the same; and

the Term will be extended for the period(s) agreed to by the parties.

## **SERVICES PROVIDED**

### **Services**

The Contractor shall provide the Services described in Schedule A in accordance with this Contract.

### **Approvals**

The Contractor shall procure and pay for all approvals necessary or advisable to perform its obligations under this Contract.

### **Service Standards**

The Contractor will at all times during the Term of this Contract perform the Services using standards, practices, methods and procedures to a good commercial standard, in accordance with and conforming to all applicable law and exercising that degree of care, skill and diligence which would reasonably and ordinarily be expected from a qualified, skilled and experienced person in British Columbia providing Services similar in scope, nature and complexity to the Services.

### **Supervision**

The Contractor shall ensure all persons employed or retained by the Contractor to provide the Services are competent to perform them, meet all professional qualifications, and are properly trained, instructed and supervised.

### **RMOW Instructions**

RMOW may from time to time give the Contractor reasonable instructions (in writing or otherwise) as to the Services required to be provided. The Contractor shall comply with those instructions; however, the Contractor shall determine the manner in which the instructions are carried out.

### **RMOW Facilities**

The RMOW may, but is not required, to provide any facilities (including but not limited to work space, office equipment, computer equipment, telephone or other communication devices, or secretarial support) or other technical, accounting, transportation or other support services to the Contractor. Any instruments or tools necessary to provide the Services are the responsibility of the Contractor and are provided at the sole risk and expense of the Contractor. For certainty, the RMOW's provision of any facilities shall be for the convenience of the parties only and shall not create or be deemed to create an employment, partnership, joint venture or agency relationship between the parties.

### **Security Requirements**

Only the employees of the Contractor specifically assigned to provide the Services and will be allowed on site at any of RMOW's facilities. The Contractor will inform RMOW in advance of the names of the

employees that will attend RMOW’s facilities in order to provide the Services. RMOW will inform the Contractor of all applicable procedures related to security. The Contractor will comply with all applicable RMOW procedures relating to security that the Contractor has been thereby informed of.

### **RMOW Procedures and Policies**

The Contractor and any of its employees providing the Services will comply with all RMOW policies or procedures, including with regard to security, fire and safety, conflict of interest, standards of business conduct, human rights, harassment, workplace conduct and other policies or procedures of a like nature, that it has been provided copies of or otherwise been made reasonably aware of.

### **Representations and Warranties**

The Contractor covenants, represents and warrants to the RMOW that:

the Contractor is legally entitled to carry on its business in British Columbia and is in good standing with respect to filings of annual reports according to the records of the Registrar of Companies of British Columbia;

the Contractor has the power and capacity to enter into this Contract and to comply with every term and condition of this Contract;

all necessary proceedings have been taken to authorize the Contractor to enter into this Contract and to execute and deliver this Contract;

this Contract has been properly executed by the Contractor and is enforceable against the Contractor in accordance with its terms;

any statement, representation or information, whether oral or written, made, furnished or given by the Contractor, its principals, partners, directors, officers or anyone acting on behalf of the Contractor, to the RMOW in connection with this Contract is materially correct and accurate;

the Contractor has no knowledge of any fact that materially adversely affects or, so far as can be foreseen, might materially adversely affect either its financial condition or its ability to fulfill its obligations under this Contract;

the Contractor has no knowledge of any claims against it that in either case would materially adversely affect either its financial condition or its ability to fulfill its obligations under this Contract;

the Contractor is in compliance with all tax, Workers’ Compensation and other legislation, regulations and laws to which it is subject, and holds all permits, licences, consents and authorities required by law to conduct its business;

the Contractor’s employees specifically assigned to provide the Services are suitably qualified to enable full and proper provision of the Services and ;

the Contractor accepts all risks within this Contract identified as being borne by the Contractor;

the Contractor will comply with all the requirements of this Contract and will perform all its obligations hereunder;

no partnership, joint venture or agency involving the RMOW is created by this Contract; and

all personnel hired, retained or engaged by the Contractor to provide the Services and are not the employees of the RMOW. The Contractor is solely responsible for arranging all matters arising out of the relationship of employer and employee between the Contractor and its employees specifically assigned to provide the Services and .

## **TERMS OF PAYMENT**

### **Payment**

RMOW will pay the Contractor, in full payment and reimbursement for providing the Services, the Contract Price and expenses set out in Schedule B and the Contractor hereby accepts the same as payment in full for all Services provided by the Contractor, including all profit and all costs of supervisions, labour, overhead, financing incurred in providing the Services. The Contractor will be responsible for determining whether the Services provided are subject to any applicable taxes.

### **Invoices**

Payments will be made on receipt of the Contractor's monthly itemized account or for such other periods as may be mutually agreed subject to verification by the RMOW that the Services have been satisfactorily performed. The Contractor's itemized account shall show the period the billing pertains to, specific time worked in the billing period, and work completed, and shall itemize all taxes as separate line items. Where required by the RMOW, the Contractor will deliver to the RMOW a written statement of any goods and services taxation and or business identification numbers in addition to any other billing information reasonably required by the RMOW.

### **Disbursements**

RMOW is not obliged to pay the Contractor any monies other than the Contract Price described in Schedule B. The Contractor is not entitled to reimbursement for any other expenses or disbursements of any kind except those that are necessarily and reasonably incurred due to a change in scope and have been approved in advance in writing by the RMOW or such other expenses or disbursements that have been approved in advance by the RMOW. Reimbursement is subject to submission of evidence of actual expenditures satisfactory to the RMOW and to applicable expenditure policies and procedures.

### **Non Resident of Canada**

If the Contractor is not a resident of Canada, RMOW may be required by law to withhold income tax from the fees described in Schedule B and then to remit that tax to the Receiver General of Canada on the Contractor's behalf.

**Services Provided after Expiry of the Term**

No payment will be made for Services provided after the Term of this Contract, unless the Term has been renewed or extended in accordance with this Contract.

**Withholding of Payments**

In the event that the Contractor fails to perform its obligations pursuant to the Contract on a timely basis the RMOW may at its discretion withhold any payments otherwise owed to the Contractor, pending performance of such obligations. No interest will be paid to the Contractor as a result of any such withholding. Any withholding of payments are in addition to and will not prejudice RMOW's other rights and remedies under this Contract.

**Payment Due Date and Method of Payment**

Payment by the RMOW shall be net thirty (30) days from the receipt of invoices provided by the Contractor in accordance with the terms of the Contract. Payment by the RMOW will be made by direct deposit, Contractor to fill out and submit RMOW Direct Deposit Form.

**RECORDS****Records**

The Contractor will keep complete books and records (the “**Records**”) relating to the provision of the Services including all performance and other reports, time records and books of account, invoices, receipts, vouchers of all expenses incurred in the form and content satisfactory to the RMOW acting reasonably and shall retain all such Records for two years following termination of the Contract, or for any longer period required by law.

**Inform RMOW**

Upon the RMOW's request, the Contractor shall fully inform the RMOW of all work done by the Contractor or an approved subcontractor in connection with providing the Services under this Contract.

**Inspection**

The Contractor shall permit the RMOW at all reasonable times during the Term of this Contract and for a period of two (2) years thereafter (the “**Access Period**”), to inspect, review and copy all Work Product and other material that has been produced or received by the Contractor and any approved subcontractor as a result of this Contract including without limitation accounting records, findings, software, data, specifications, drawings, reports and documents whether complete or not (the “**Documentation**”). The RMOW may make a request for access to the Documentation beyond the Access Period in which case the Contractor will, to the extent that it (a) deems the access commercially reasonable in its sole discretion and (b) has copies of the requested Documentation in its possession or reasonably accessible, provide the RMOW with copies of, or access to, the requested Documentation.

**Audit**

The RMOW shall have the right to audit the work performed by the Contractor during the Term of this Contract and for two (2) years following expiry of the Term or any extension thereof.

**INDEPENDENT CONTRACTOR****Independent Contractor**

The Contractor is at all times an independent Contractor with control over the manner and means of the Contractor's performance. The Contractor is not an employee, servant or agent of RMOW and nothing herein shall create or be deemed to create a partnership, joint venture or agency relationship between the parties. The Contractor is primarily responsible for provision of the Services and may not delegate or assign any services or work to any other person without the prior written consent of RMOW. The Contractor will be solely liable for the wages, fringe benefits, work schedules and work conditions of any directors, officers, servants, agents and employees.

**No Entitlement to Benefits**

As an independent Contractor, the Contractor is not entitled to any benefits or payments whatsoever over and above those specifically provided for in this Contract. Specifically the Contractor will not be entitled to any rights or privileges as are available from time to time to employees of RMOW including without limitation insurance benefits, health benefits, holidays and paid vacation.

**Control and Direction of Employees**

The Contractor acknowledges that the Contractor is responsible for the control and direction of the Services and the control and direction of the Contractor's employees.

**Statutory and Other Payments**

The Contractor shall be liable and responsible for payment to the proper authorities of all income tax payments, employment insurance premiums, Canada Pension Plan contributions and assessments, and all other employment expenses, statutory or otherwise in relation to the Services provided under this Contract.

**Workers Compensation**

The Contractor will, at its own expense, procure and carry full Workers' Compensation Board coverage for the Contractor and employees of the Contractor engaged in the Services;

The Contractor shall comply with and ensure that any Subcontractors comply with and conform to all health and safety laws, by-laws or regulations of the Province of British Columbia, including without limitation the *Workers' Compensation Act* and Regulations pursuant thereto. The Contractor agrees that it is the "Prime Contractor" for the Services and pursuant to Section 118 of the *Workers' Compensation Act*.

The RMOW may, on twenty-four (24) hours written notice to the Contractor, but without notice in the event of an emergency, install devices or rectify any conditions creating an immediate hazard existing that would be likely to result in injury to any person. However, in no case will the RMOW be responsible for ascertaining or discovering, through inspections or review of the operations of the Contractor or otherwise, any deficiency or immediate hazard.

### **Termination**

If at any time Canada Revenue Agency or any other competent authority determines that the Contractor is an employee of RMOW then this Contract shall automatically terminate as of the date of such determination.

### **Contractor's Costs of Tax Compliance**

It is clearly understood and agreed that the costs to the Contractor in complying with the preceding provisions are not subject to additional reimbursement over and above the amount provided for under the terms of this Contract.

### **Risk of Liability**

The Contractor assumes all risk and liability for personal injury or damage to personal property caused by the Contractor's mishap, negligence or willful misconduct in carrying out the terms of this Contract and for which adequate levels of insurance coverage shall be obtained by the Contractor.

### **No Agency**

The Contractor will not commit or purport to commit the RMOW to pay any money unless specifically authorized by this Contract.

## **BUSINESS PREMISES/LICENCE**

### **Place of business**

Unless the RMOW will be providing facilities under Section 3.6 of this Contract, the Contractor, at its own expense, will establish and maintain during the Term, a proper place of business at a lawful place that allows for reasonable commute or accessibility to the Project site from which the business and supervision of this Contract will be carried out.

### **Business Licence**

If the Contractor maintains a place of business within the municipal boundaries of the RMOW, or generates revenue from business activity within the municipal boundaries of the RMOW, the Contractor will at all times during the Term be in possession of a valid and subsisting business licence issued to it by the RMOW and authorizing it to carry out and perform the Services required to be performed under this Contract.

## **OWNERSHIP**

**Work Product**

The Work Product, any Confidential RMOW Information and any property provided by the RMOW to the Contractor is RMOW's exclusive property. The copyright in the Work Product belongs exclusively to the RMOW and the Contractor hereby waives any moral rights in such Work Product and confirms the vesting of copyright in such Work Product in RMOW.

**Assignment of Rights in Work Product**

The Contractor hereby irrevocably assigns to the RMOW all right, title and interest worldwide in and to all Work Product. In the event the Contractor has any rights in the Work Product which cannot be assigned, the Contractor agrees to waive enforcement worldwide of such rights against RMOW and, at the request of RMOW, to grant RMOW an exclusive perpetual, fully paid up license without royalty in and to such Work Product worldwide with the right to sublicense. The Contractor shall take all actions and execute all documents as may be requested by the RMOW from time to time to fully vest in RMOW all right, title and interest worldwide in and to such Work Product. RMOW agrees, to the fullest extent permitted by law, to indemnify and hold the Contractor harmless from any claim, liability or cost directly attributable to the negligent misuse or incorrect use of the Work Product by the RMOW.

**Copyright Infringement**

The Contractor agrees that it will not infringe any third party's intellectual property rights in creating Work Product pursuant to this Contract. The Contractor agrees to indemnify RMOW from and against any loss, damage or liability for the infringement of any patent, trade mark, trade secret or copyright by RMOW arising from or in connection with RMOW's usage of the Work Product. The Contractor agrees it shall defend, settle or compromise at its own expense any action for patent, trade mark, trade secret or copyright infringement brought against RMOW or the Contractor. The Contractor warrants and represents that all Work Product provided to RMOW pursuant to this Contract do not infringe any existing patent, trade mark, trade secret or copyright registered or recognized in Canada or elsewhere.

**Surrender of Documents and Materials**

The Contractor shall not at any time or in any manner unless otherwise agreed to in writing by the RMOW, make or cause to be made copies, pictures, duplicates, facsimiles or other reproductions or recordings of any type, or any abstracts or summaries of any Work Product, reports, studies, memoranda, correspondence, manuals, records, plans or other written, printed or otherwise recorded documents, papers or materials of RMOW, or which relate in any manner to the present or prospective operations of RMOW, except as may be necessary in the provision of the Services under this Contract. The Contractor shall have no interest in any of these materials and agrees, subject to its professional obligations, to surrender any of these materials which may be in the Contractor's possession to the RMOW immediately upon termination of this Contract at the request of RMOW or at any time prior to termination at the request of RMOW.



## **CONFIDENTIALITY**

### **Confidentiality**

The Contractor will at all times during the Term and thereafter treat as confidential all Confidential Information and other reports, studies, memoranda, correspondence, manuals, records, plans or other written, printed or otherwise recorded documents, papers, materials and documents supplied to or obtained by the Contractor as a result of this Contract. The Contractor shall not at any time during the Term or thereafter permit the publication, release or disclosure of the same without the prior written consent of RMOW except as required by applicable law.

The RMOW will at times during the Term and thereafter treat as confidential and maintain the confidentiality on all information, reports, studies, memoranda, correspondence, manuals, records, plans or other written, printed or otherwise recorded documents, papers, materials and documents provided by the Contractor, orally or in writing as confidential in nature. Except as required by law, including under the *Freedom of Information and Protection of Privacy Act*, as amended, or unless the Contractor provides its written consent, the RMOW shall not at any time during the Term or thereafter permit the publication, release or disclosure of such confidential information to any third parties.

### **Non-Disclosure**

The Contractor will not, at any time either during the Term or thereafter, disclose to or discuss with anyone other than an authorized RMOW employee or representative, any Confidential Information of RMOW or its elected officials, officers or employees. The Contractor will use such Confidential Information and knowledge only for RMOW purposes unless the Contractor has obtained RMOW's prior express written authorization to do otherwise.

### **No Use of Information**

The Contractor shall not use Confidential Information or any other information relating to the affairs of RMOW for the Contractor's own benefit or purposes or for the benefit or purpose of any other Person whether before or during the Term or after the expiry of the Term.

### **Survival**

The provisions of this confidentiality clause shall survive termination of the Contract.

## **CONFLICT OF INTEREST**

### **No Conflict of Interest**

The Contractor represents and warrants to the RMOW that the Contractor does not have an interest, directly or indirectly either individually or in conjunction with another entity in any firm, association, syndicate, company, corporation or other business enterprise which could benefit or otherwise be affected by any decision likely to be made by the RMOW in reliance on or as a result of the Services

provided by the Contractor under this Contract. RMOW shall provide to the Contractor its conflict of interest and standards of business conduct procedures. The Contractor shall comply with RMOW's conflict of interest and standards of business conduct procedures as provided notwithstanding the Contractor is an independent Contractor and not an employee of RMOW.

#### **No Conflict with Other Relationships**

The Contractor will not, during the Term, perform a service for or provide advice to any person, firm or corporation if in the reasonable opinion of RMOW, such performance will give rise to a conflict of interest between the Contractor and RMOW, and the Contractor shall take all steps to ensure the avoidance of all direct or indirect conflicts of interest (either actual or potential) between the interests of the Contractor and its directors, officers, servants, agents and employees, and those of RMOW.

#### **Disclosure of Conflict of Interest**

The Contractor will immediately disclose all conflicts of interest and potential conflicts of interest to the RMOW as soon as any real or perceived conflict of interest arises.

#### **Good Faith**

The Contractor will discharge the Contractor's obligations to the RMOW in all dealings and transactions relating to the Services in the utmost good faith.

### **INDEMNIFICATION**

#### **General Indemnity**

The Contractor shall indemnify and save harmless the RMOW, its elected officials, officers, employees, servants and agents from and against any and all losses, claims, demands, damages, actions, causes of action, fines, penalties, liens, costs and expenses the RMOW may sustain or incur at any time, either before or after the expiration or termination of this Contract, arising directly or indirectly by reason of negligent acts, errors, or omissions or wilful misconduct of the Contractor or any agent, employee, director or officer of the Contractor in connection with this Contract including any injury to or death of any person or any damage to any and all persons or property, whether deliberate, accidental or through negligence except to the extent that any such claim arises solely from the negligence of RMOW, its other Contractor(s), assigns(s) or authorized representatives.

#### **Survival**

The provisions of this indemnity clause will survive termination of the Contract.

### **TERMINATION**

#### **Default of Contractor**

Notwithstanding any other provision of this Contract, if the Contractor is not performing the Services to the satisfaction of the RMOW or fails to perform the Services as and when reasonably requested by RMOW, or is in breach of any provision of this Contract, the RMOW may, at its option, either:

issue written notice to the Contractor requiring that such default be corrected. If within 5 Business Days after receipt of such notice such default shall not have been corrected or reasonable steps taken to correct such default, then at the sole discretion of the RMOW, the RMOW may give a further written notice to the Contractor immediately terminating this Contract, or:

terminate this Contract giving 5 Business Days' notice of termination to the Contractor.

In the event the RMOW exercises its option to terminate, the RMOW may withhold payment of any amount owing to the Contractor under this Contract for the provision of the Services, set-off any damages suffered by the RMOW against any amounts owing to the Contractor under this Contract for provision of the Services and pursue other remedies to recover damages from the Contractor for any losses caused to the RMOW as a result of the Contractor's performance under this Contract.

#### **Termination Without Cause**

Notwithstanding any other provision of this Contract, the RMOW or the Contractor may terminate this Contract for any reason upon giving not less than ten (10) days written notice of termination to the other party. The Contract may also be terminated in a shorter period of time as may be mutually agreed upon in writing by the parties. In the event that notice of termination is given pursuant to this section, the RMOW will pay the Contractor that portion of the fees and expenses described in this Contract which equals the portion of the Service that was completed to the RMOW's satisfaction before termination. Such payment will discharge the RMOW from all further liability under this Contract. Concurrently with termination by the RMOW pursuant to this Section, all obligations of the Contractor to perform the Services will terminate, excepting those performance obligations set out at Section 12.5 herein.

#### **Default of RMOW**

If the RMOW fails to make payment to the Contractor in accordance with this Contract, then the Contractor may, by written notice to the RMOW, require that such default be corrected. If within 5 Business Days after receipt of such notice such default shall not have been corrected, or reasonable steps taken to correct such default, the Contractor may, without limiting any other right or remedy it may have, give a further written notice to the RMOW to immediately terminate this Contract. In such event, in addition to any other rights or remedies the Contractor may have, the Contractor shall be paid by the RMOW for all Services performed pursuant to this Contract and remaining unpaid as of the effective date of such termination.

#### **Limitation of Liability**

The Contractor agrees that notwithstanding anything herein or any duty, principle, term or rule of law to the contrary, whether express or implied, RMOW shall not be liable to the Contractor for any loss or damage of any nature whatsoever flowing from early termination of this Contract, including without limitation any special, incidental, direct, indirect or consequential damages arising out of such early termination nor shall RMOW be under any obligation to the Contractor save and except for the payment for such Services as may have been performed in accordance with the terms of this Contract up to the date of termination.

### **Warranties to continue**

If for any reason the whole or any part of this Contract is terminated, the Contractor's obligations in this Contract as to quality, correction and warranty will continue in force after such termination with respect to the Services performed by the Contractor up to the time of termination.

## **CHANGES**

### **Right to Make Changes**

The RMOW reserves the right to request changes at any time as a result of requirements, site conditions, emergencies, government regulations or any other reasonable cause and:

The RMOW will notify the Contractor in writing as soon as reasonably possible when a change in the Services is proposed or required.

Where a proposed change in Services requires an adjustment to the Contract Price and or Contract Time, agreement to the adjustment between both parties must be recorded in a Change Order.

The RMOW shall make payment of a Change Order within 30 days of execution of the Change Order by the RMOW and completion of the change in services.

The Contractor shall not perform any changes without written authorization from the RMOW.

The RMOW will not make any payment for changes not agreed to in an executed Change Order.

## **INSURANCE**

### **Maintain Insurance**

The Contractor agrees that they shall maintain and pay for insurance on the terms, including coverage, amounts and deductibles outlined in Schedule C.

The Contractor acknowledges that any requirements of the RMOW as to the amount of coverage under any policy of insurance will not constitute a representation by the RMOW that the amount required is adequate and the Contractor acknowledges and agrees that the Contractor is solely responsible for obtaining and maintaining policies of insurance in adequate amounts. The insurance policy coverage

limits will not be construed as relieving the Contractor from responsibility for any amounts for which the Contractor may be legally liable which may exceed these limits.

#### **Evidence of Insurance**

Upon the request of RMOW, the Contractor shall provide the RMOW with evidence of insurance in a form satisfactory to the RMOW.

#### **Waiver of subrogation**

The Contractor hereby waives all rights of recourse against the RMOW for loss or damage to the Contractor's property.

#### **Notice of Claims**

If at any time during the provision of the Services or the Contractor becomes aware of a claim or potential claim against any insurance policy that the Contractor has, pursuant to this Contract, indicated to the RMOW may apply to the Services then the Contractor will immediately advise the RMOW in writing of such claim, including particulars.

### **ASSIGNMENT AND SUBCONTRACTING**

#### **Consent Required**

The Contractor will not assign this Contract or any part thereof without the prior written consent of the RMOW. The Contractor will not subcontract any of the Contractor's obligations under this Contract to any Person other than the Persons listed in Schedule D (if any) without the prior written consent of the RMOW. No assignment or subcontract, whether approved or not, shall relieve the Contractor of its obligations under this Contract except to the extent those obligations are in fact properly performed. In the event the RMOW approves a subcontractor, the Contractor shall secure compliance and enforce at its own expense for the benefit of the RMOW, each of the Contractor's contracts with subcontractors. Nothing contained in this Contract shall create any contractual relationship between the subcontractor and the RMOW. The Contractor agrees to bind every subcontractor to the terms and conditions of this Contract which are appropriate and applicable to the services to be provided by the subcontractor and the Contractor shall be fully responsible to the RMOW for the acts and omissions and errors of all subcontractors and of persons directly employed or contracted by them.

### **NOTICES**

#### **Notices**

All notices, requests, demands and other communications required or permitted to be given under this Contract shall be in writing and delivered by hand, facsimile transmission, e-mail or prepaid registered mail (return receipt requested) to the party to which it is to be given as follows:

If to the RMOW:

Name of RMOW Representative

4325 Blackcomb Way, Whistler, BC, V8E0X5

[XXXXXXXX@whistler.ca](mailto:XXXXXXXX@whistler.ca)

If to the Contractor:

Contractor Primary Contact/Delegate

Contractor Address

Contractor Email.com

or at such other address as the party to whom the notice is sent may specify by notice given in accordance with the provisions of this section. Any such notice, request, demand or other communication given as aforesaid will be deemed to have been given, in the case of delivery by hand, when delivered, in the case of facsimile transmission or e-mail, when a legible facsimile or e-mail is received by the recipient if received before 5:00 p.m. on a day other than a Saturday, Sunday or statutory holiday in the Province of British Columbia or Canada (a “**Business Day**”), or on the next Business Day if such facsimile or e-mail is received on a day which is not a Business Day or after 5:00 p.m. on a Business Day, and in the case of delivery by prepaid registered mail, as aforesaid, on the date received. In the event of discontinuance of postal service due to strike, lockout, labour disturbance or otherwise, notice, demands, requests and other communications shall be delivered by hand or facsimile transmission or e-mail.

## **DISPUTE RESOLUTION**

### **Order of proceedings**

If there is any Dispute regarding the interpretation, performance or an alleged breach of this Contract, either party may give written notice of Dispute to the other party and the Contractor and the RMOW will meet within three (3) Business Days after the notice of Dispute is given and will attempt in good faith, and using reasonable efforts, to resolve the matter equitably to the satisfaction of both parties. If the parties cannot resolve the Dispute within ten (10) Business Days after they first meet, or if the parties fail to meet within 10 (ten) Business Days of the first request for a meeting, then with the consent of both parties the matter shall be submitted to mediation. Both parties agree not to make a request for arbitration or to commence litigation without first seeking agreement through the mediation process. The mediator shall be appointed by agreement of the parties. If the parties cannot resolve the dispute within 30 calendar Days following the mediation, then with the consent of both parties, the Dispute may be referred for determination through arbitration under the Arbitration Act (British Columbia), and in the event that both parties do not so consent then either party may commence litigation to have the Dispute settled. If a Dispute is submitted for arbitration, the arbitration will be governed by the British Columbia International Commercial Arbitration Centre in accordance with its Domestic Commercial Arbitrations Rules of

Procedure (“BCIAC Rules”). The arbitration shall be conducted by a single arbitrator appointed in accordance with BCIAC Rules in Vancouver, British Columbia and the award of the arbitrator including any award as to costs will be final and binding on the parties. The reference to arbitration will not preclude a party from applying to a British Columbia court of competent jurisdiction for interlocutory or interim relief.

### **Performance to continue during dispute**

The Contractor will continue performance of this Contract during all Disputes with the RMOW, and notwithstanding any dispute the Contractor will comply with all written directions from the RMOW Representative relating to the provisions of the Services without prejudice to the Contractor’s right. The timely provision of the Services may not be delayed or postponed pending resolution of any Dispute.

## **COMMUNICATION**

### **Representatives**

Each party will maintain communication with the other party in accordance with their respective obligations under this Contract. In particular:

the Contractor will appoint a representative (the “**Contractor’s Representative**”) who will have the duty of instituting and maintaining communication with the RMOW as to the requirements of this Contract, plus an alternative representative to so act in the absence or inability to act of the Contractor’s Representative; and

the RMOW will appoint a representative (the “**RMOW Representative**”) who will have the duty of instituting and maintaining communication with the Contractor as to the requirements of this Contract, plus an alternative representative to so act in the absence or inability to act of the RMOW Representative.

### **Representative's Authority**

Each party's representative will have the full power and authority to act on behalf of and to bind such party in all administrative issues and to carry out such party's obligations hereunder and each party's representative may be relied upon by the other party as the official representative of such party. Meetings between the Contractor’s Representative and the RMOW Representative may be held by telephone with the consent of all parties participating in such meetings.

### **Change of Representation**

The Contractor shall obtain written approval from the RMOW prior to changing a representative(s) or any team members by submitting a written request with resumes of each newly requested individual. The RMOW is required to approve any costs for any such un-approved Contractors or sub-contractors or other representatives. The RMOW may change its representative or alternative representative by written notice to the Contractor at any time it deems necessary.

## **DELAYS IN PERFORMANCE**

### **Force Majeure**

A party is excused from performing its obligations under this Contract if, to the extent that, and for so long as:

such party's performance is prevented or delayed by an act or event (other than economic hardship, changes in market conditions, insufficiency of funds, or unavailability of equipment and supplies) that is beyond its reasonable control and could not have been prevented or avoided by its exercise of due diligence; and

such party gives written notice to the other party, as soon as practicable under the circumstances, of the act or event that so prevents such Party from performing its obligations.

By way of illustration, and not by limitation, acts or events that may prevent or delay performance (as contemplated by this Section) include: acts of God or the public enemy, acts of civil or military authority, acts of terrorism, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods and abnormal weather conditions where the Services are being provided (as determined by comparison to the ten (10) year average conditions indicated by Environment Canada for the area in which the Services are being provided).

## **GENERAL**

### **Right of Set Off**

In addition to any other set-off provisions in this Contract, RMOW shall be entitled to set off against a reasonable amount due or owing to the Contractor by the RMOW and for which RMOW is liable by virtue of the Contractor's failure to comply with any statutory or regulatory requirement, duty or obligation arising out of the Services under this Contract, an amount sufficient to satisfy any indemnity obligations of the Contractor in relation to such obligation as set out herein. RMOW shall also have the right to withhold any payment which relates to that portion of the Services which have not been provided by the Contractor in accordance with the terms of the Contract. When RMOW is satisfied that the Services has been performed in accordance with the terms and conditions of this Contract, RMOW will cause to be paid to the Contractor, any amount held back by the RMOW.

### **Successors and Assigns**

This Contract enures to the benefit of and binds the parties and their respective successors and permitted assigns.

### **Written Waivers**



No indulgence or forbearance by either party shall be deemed to constitute a waiver of its rights to insist on performance in full and in a timely manner of all covenants of the other party; and any such waiver must be in writing and signed by the waiving party and then such waiver shall only be effective in a specific instance and for the specific purpose for which it is given.

**Further Assurances**

Each party will execute and deliver promptly all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions of this Contract.

**Remedies Cumulative**

The rights and remedies under the Contract are cumulative and are not in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

**Amendment**

This Contract may not be amended except by a written instrument signed by the RMOW and the Contractor.

**Entire Contract**

This Contract and all documents contemplated by or delivered under or in connection with this Contract constitute the entire agreement between the parties and supersede all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings whether written or oral, express or implied, or otherwise.

**Governing Law**

This Contract and any dispute arising out of or in connection with this Contract shall be governed exclusively by and shall be enforced, construed and interpreted exclusively in accordance with the laws of British Columbia and the laws of Canada applicable in British Columbia which will be deemed to be the proper law of this Contract.

**Attornment**

The parties agree to submit to and hereby attorn to the exclusive jurisdiction of the courts of the Province of British Columbia for any action arising out of or in connection with this Contract.

**Independent Legal Advice**

The Contractor confirms it has had an opportunity to obtain independent legal advice in entering into this Contract.

**Severability**

Each provision of this Contract is intended to be severable and if any provision is determined by a court of competent jurisdiction to be illegal or invalid or unenforceable for any reason whatsoever such provision

shall be severed from this Contract and will not affect the legality, validity or enforceability of the remainder of or any other provision of this Contract.

**Time of Essence**

Time shall be of the essence of this Contract.

**No derogation.**

The parties acknowledge and agree that nothing contained or implied in this Contract will be construed as limiting or prejudicing the rights and powers of RMOW in the exercise of its functions pursuant to the *Local Government Act* and the *Community Charter*, or any other right or power under any public or private statutes, bylaws, orders or regulations, all of which may be fully exercised as if this Contract had not been entered into.

**Counterparts**

This Contract may be executed by the parties in counterparts and may be executed and delivered by e-mail or fax and all such counterparts and e-mails and faxes together constitute one and the same agreement.

**Survival**

All obligations of each of the parties which expressly or by their nature survive termination or expiration of this Contract, will continue in full force and effect subsequent to and notwithstanding such termination or expiration or assignment and until they are satisfied or by their nature expire.

**IN WITNESS WHEREOF** this Contract has been executed and delivered by the parties as of the day and year first above written.

**RESORT MUNICIPALITY OF WHISTLER**

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

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

**NAME OF CONTRACTOR**

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

**SCHEDULE “A”****SERVICES TO BE PROVIDED**

“**Services**” means the Services, tasks, labour, materials, responsibilities, functions, duties and obligations of the Contractor to be supplied or performed as set forth in this Contract, including those matters described in this Schedule A, and excluding only those items which are expressly identified as Services or tasks to be performed by or obligations owed by the RMOW.

See Schedules F: EXTRACTS OF RMOW PROCUREMENT DOCUMENTS, and SCHEDULE E: EXTRACTS OF CONTRACTOR’S SUBMISSION.

The RMOW shall provide the Contractor with unrestricted access to all locations the Contractor requires for the provision of the Services.

RMOW acknowledges and agrees that certain parts of the Services cannot be performed in poor weather conditions and the Contractor shall be temporarily excused from the provision of the Services during such conditions. Contractor shall notify RMOW in such an event and the schedule of completion shall be adjusted as necessary to account for any such weather-related delays.

**SCHEDULE “B”****PAYMENT AND FEES FOR SERVICES**Contract Price

In consideration of the Contractor satisfactorily performing the Services , the RMOW will pay the Contractor the following sums plus goods and services tax (the “**Contract Price**”):

**\$ [XX CAD] Exclusive of GST.**

The Contractor may invoice periodically for completed portions of the Services in accordance with in the invoicing procedures set out in the Contract.

The RMOW will reimburse the Contractor for expenses that are necessarily and reasonably incurred due to a change in scope and have been approved in advance by the RMOW. Reimbursement is subject to the submission of evidence of actual expenditures satisfactory to the RMOW and in accordance with applicable expenditure policies and procedures.

The pricing set out in this Schedule is inclusive of:

All Living-Out-Allowances

All travel charges and mileage

All Equipment charges

All document materials

Contractor to fill out and submit RMOW Direct Deposit Form.

## **SCHEDULE “C”**

### **INSURANCE**

The Contractor shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances:

#### **Commercial General Liability**

Commercial General Liability in an amount not less than \$2million inclusive per occurrence against bodily injury, personal injury and property damage and including liability assumed under this Agreement.

#### **Professional Liability**

Professional Liability for licenced professionals performing work pursuant to this Agreement in an amount not less than \$1 million per claim covering the licenced professionals’ errors and omissions.

#### **Worker’s Compensation**

The Contractor must, at its sole cost and expense, maintain Statutory Workers’ Compensation Insurance and Employer’s Liability Insurance for any and all persons employed directly or indirectly by the Contractor and provide the RMOW with evidence of compliance in the form of a confirmation letter from WorkSafe BC.

In the alternative, the Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the British Columbia Employment Standards Act (the “Act”). Determination of whether a self-insurance program meets the standards of the Act shall be solely in the discretion of the RMOW.

#### **Auto Liability**

The Contractor must obtain and maintain while this Agreement is in force, Automobile Insurance providing coverage for not less than \$2 million all-inclusive on owned, non-owned, or hired vehicles used in performing the services.

#### **General**

The foregoing insurance shall be primary and not require the sharing of any loss by any coverage provider and/or insurer of RMOW.

The CGL insurance policy must be extended to cover the Contractor’s Blanket Contractual liability and contain a cross liability naming the RMOW and its officials, officers, employees, servants and agents as “Additional Insured.”

All required insurance shall provide RMOW with 30 days advance written notice of cancellation on a best efforts basis.

The Contractor hereby waives all rights of recourse against RMOW with regard to damage to the Contractor's property.

Maintenance of such insurance shall not relieve the Contractor of liability under the indemnity provisions set forth in this Contract.

Any deductible amounts in the foregoing insurance which are payable by the policyholder shall be in an amount acceptable to the RMOW.

**SCHEDULE “D”**

**APPROVED SUBCONTRACTORS**

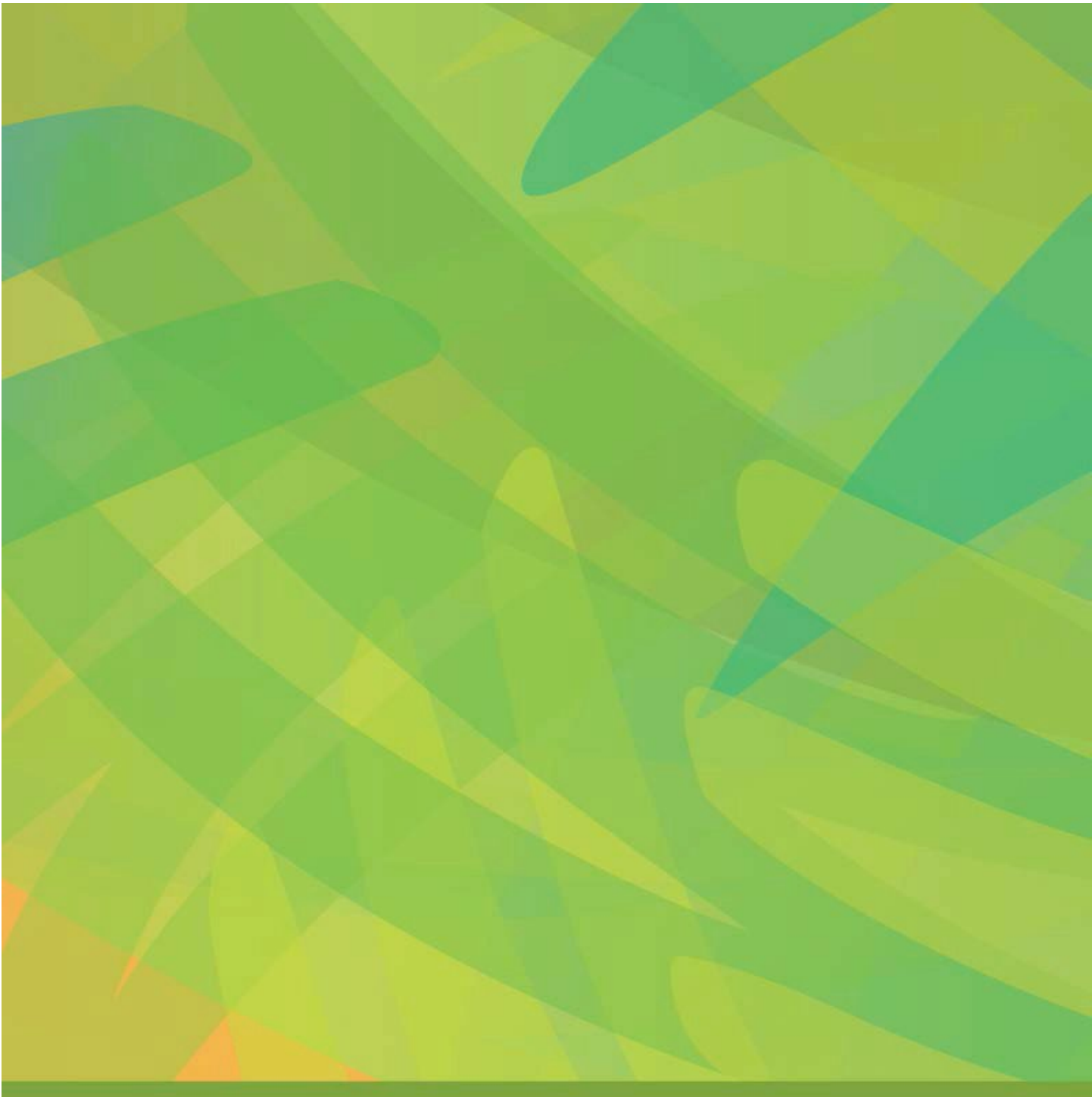


**SCHEDULE “E”**

**CONTRACTOR’S SUBMISSION**

**SCHEDULE “F”**

**RMOW PROCUREMENT DOCUMENTS**



**The Resort Municipality of Whistler**

**Host Mountain Resort**  
2010 Olympic and Paralympic  
Winter Games

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