

MASTER CONTRACTING SERVICES AGREEMENT 2024 - 2025

Provision for Spruce Grove Field 3 Lighting Replacement.

THIS AGREEMENT is effective as of the 1ST day of May 2024.

BETWEEN:

The Resort Municipality of Whistler, having an address at 4325
Blackcomb Way, Whistler, B.C.V0N 1B4

(the "RMOW")

AND:

(Contractor)

WHEREAS:

- (a) The RMOW has accepted a proposal from the Contractor to carry out the removal of the existing 2- Ply roofing system and flashing works as highlighted within the RFQ Ref 5330-02-1030 and install with a new 2- Ply SBS Modified Bitumen system. Sea to Sky Highway Fire Station No 3,
- (b) The Contractor is in the business of providing the services contemplated by this Contract;
- (c) RMOW wishes to engage the Contractor to provide 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:

2. INTERPRETATION

2.1 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:

- (a) "**Business Day**" has the meaning given in Section 16.1 of this Contract;
- (b) "**Change Order**" means a change within the general scope of Work which may alter the Work, Contract Price or Contract Time.
- (c) "**Confidential Information**" means:
 - (i) 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;
 - (ii) 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;

- (iii) 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
 - (iv) 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;
- (d) **“Confidential Information”** does not mean:
- (i) which was in the possession of the Contractor prior to disclosure by the RMOW;
 - (ii) which is already in the public domain or which subsequently becomes part of the public domain other than through disclosure by the Contractor;
 - (iii) which is independently developed or learned by the Contractor without use of any Confidential Information; and
 - (iv) which the Contractor receives from a third Person who was free to make such disclosure without breach of any legal obligation,
 - (v) provided that the Contractor can demonstrate to the satisfaction of RMOW that such information falls within the scope of the exclusions set forth above.
- (e) **“Contractor’s Representative”** has the meaning given in Section 18.1 of this Contract;
- (f) **“Contract”** means this agreement including the Schedules to this agreement as amended from time to time with the written approval of the parties;
- (g) **“Contract Price”** has the meaning given in Schedule B of this Contract;
- (h) **"Dispute"** means any difference between the RMOW and the Contractor, of any claim, or any dispute, relating to or arising out of the Work or the interpretation of the Contract, or any failure by the RMOW and the Contractor to agree where the Contract call for agreement;
- (i) **“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;
- (j) **"Procurement Documents"** means the procurement documents attached hereto as Schedule F (if any);
- (k) **"Records"** has the meaning set out in Section 5.1 of this Contract;
- (l) **“RMOW Representative”** has the meaning given in Section 18.1 of this Contract;
- (m) **“Work”** has the meaning given in Schedule A to this Contract;
- (n) **“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.
- (o) **“Term”** has the meaning given in Section 2.1 of this Contract

2.2 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.

2.3 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.

2.4 Currency

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

2.5 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.

2.6 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.

2.7 Schedules

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

Schedule A	-	Work to be Performed
Schedule B	-	Payment and Fees Schedule
Schedule C	-	Insurance
Schedule D	-	Approved Subcontractors
Schedule E	-	Contractor’s Submission
Schedule F	-	RMOW Procurement Documents

2.8 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:

- (a) this Contract;
- (b) Schedules A, B, C, D, E and F;
- (c) the RMOW's purchase order for the Work (if any);
- (d) extracts from the Contractor’s Submission respecting the Work , that are attached as a Schedule (if any); and
- (e) extracts from RMOW's Procurement Documents respecting the Work, that are attached as a Schedule (if any).

3. TERM OF CONTRACT

3.1 Term

The term of this Contract (the "Term") will commence on 04/01/2024 and continue until December 31, 2025, 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.

4. WORK TO BE PERFORMED

4.1 Performance of the Work

The Contractor shall perform the Work described in Schedule A in accordance with this Contract.

4.2 Approvals

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

4.3 Service Standards

The Contractor will at all times during the Term of this Contract perform the Work 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 Work similar in scope, nature and complexity to the Work.

4.4 Supervision

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

4.5 RMOW Instructions

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

4.6 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 perform the Work 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.

4.7 Security Requirements

Only the employees of the Contractor specifically assigned to perform the Work 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 perform the Work. 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.

4.8 RMOW Procedures and Policies

The Contractor and any of its employees performing the Work 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.

4.9 Representations and Warranties

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

- (a) 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;
- (b) the Contractor has the power and capacity to enter into this Contract and to comply with every term and condition of this Contract;
- (c) all necessary proceedings have been taken to authorize the Contractor to enter into this Contract and to execute and deliver this Contract;
- (d) this Contract has been properly executed by the Contractor and is enforceable against the Contractor in accordance with its terms;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) 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;
- (i) the Contractor's employees specifically assigned to perform the Work are suitably qualified to enable full and proper performance of the Work and ;
- (j) the Contractor accepts all risks within this Contract identified as being borne by the Contractor;
- (k) the Contractor will comply with all the requirements of this Contract and will perform all its obligations hereunder;
- (l) no partnership, joint venture or agency involving the RMOW is created by this Contract; and

- (m) all personnel hired, retained or engaged by the Contractor to provide the Work 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 perform the Work

5. TERMS OF PAYMENT

5.1 Payment

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

5.2 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 Work has 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.

5.3 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.

5.4 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.

5.5 Work Performed after Expiry of the Term

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

5.6 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.

5.7 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.

6. RECORDS

6.1 Records

The Contractor will keep complete books and records (the “**Records**”) relating to the performance of the Work 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.

6.2 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 Work under this Contract.

6.3 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.

6.4 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.

7. INDEPENDENT CONTRACTOR

7.1 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 performance of the Work and may not delegate or assign any 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.

7.2 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.

7.3 Control and Direction of Employees

The Contractor acknowledges that the Contractor is responsible for the control and direction of the Work and the control and direction of the Contractor’s employees.

7.4 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 Work provided under this Contract.

7.5 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 Work;

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 Work 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.

7.6 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.

7.7 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.

7.8 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.

7.9 No Agency

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

8. BUSINESS PREMISES/LICENCE

8.1 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.

8.2 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 Work required to be performed under this Contract.

9. OWNERSHIP

9.1 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.

9.2 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.

9.3 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, trademark, 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, trademark, 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, trademark, trade secret or copyright registered or recognized in Canada or elsewhere.

9.4 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 performance of the Work 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.

10. CONFIDENTIALITY

10.1 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.

10.2 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.

10.3 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.

10.4 Survival

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

11. CONFLICT OF INTEREST

11.1 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 Work 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.

11.2 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.

11.3 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.

11.4 Good Faith

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

12. INDEMNIFICATION

12.1 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.

12.2 Survival

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

13. TERMINATION

13.1 Default of Contractor

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

- (a) 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:
- (b) 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 performance of the Work, set-off any damages suffered by the RMOW against any amounts owing to the Contractor under this Contract for performance of the Work 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.

13.2 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 Work will terminate, excepting those performance obligations set out at Section 12.5 herein.

13.3 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 Work performed pursuant to this Contract and remaining unpaid as of the effective date of such termination.

13.4 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 Work as may have been performed in accordance with the terms of this Contract up to the date of termination.

13.5 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 Work performed by the Contractor up to the time of termination.

14. CHANGES IN THE WORK

14.1 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:

- (a) The RMOW will notify the Contractor in writing as soon as reasonably possible when a change in the Work is proposed or required.
- (b) Where a proposed change in Work 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.
- (c) 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 changed Work.
- (d) The Contractor shall not perform any changes in the Work without written authorization from the RMOW.
- (e) The RMOW will not make any payment for changes not agreed to in an executed Change Order.

15. INSURANCE

15.1 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.

15.2 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.

15.3 Waiver of subrogation

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

15.4 Notice of Claims

If at any time during the performance of the Work 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 Work then the Contractor will immediately advise the RMOW in writing of such claim, including particulars.

16. ASSIGNMENT AND SUBCONTRACTING

16.1 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 work to be performed 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.

17. NOTICES

17.1 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:

Marc Freno
4325 Blackcomb Way, Whistler, BC, V0N1B4
mfreno@whistler.ca
Tel 604 935 8373

If to the Contractor:

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.

18. DISPUTE RESOLUTION

18.1 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.

18.2 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 performance of the Work without prejudice to the Contractor's right. The timely performance of the Work may not be delayed or postponed pending resolution of any Dispute.

19. COMMUNICATION

19.1 Representatives

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

- (a) 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
- (b) 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.

19.2 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.

19.3 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.

20. DELAYS IN PERFORMANCE

20.1 Force Majeure

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

- (a) 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
- (b) 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 Work is being performed (as determined by comparison to the ten (10) year average conditions indicated by Environment Canada for the area in which the Work is being performed).

21. GENERAL

21.1 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 Work 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 Work which have not been provided by the Contractor in accordance with the terms of the Contract. When RMOW is satisfied that the Work 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.

21.2 Successors and Assigns

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

21.3 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.

21.4 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.

21.5 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.

21.6 Amendment

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

21.7 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.

21.8 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.

21.9 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.

21.10 Independent Legal Advice

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

21.11 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.

21.12 Time of Essence

Time shall be of the essence of this Contract.

21.13 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.

21.14 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.

21.15 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"

WORK TO BE PERFORMED

1. **"Work"** means the work, tasks, labour, materials, responsibilities, functions, duties and obligations of the Contractor such as "Set out in the Request of Quotation Document Ref 533-02-1032
2. to be supplied or performed as set forth in this Contract, including those matters described in this Schedule A and Schedule E, and excluding only those items which are expressly identified as work or tasks to be performed by or obligations owed by the RMOW.
3. See Schedules F: EXTRACTS OF RMOW PROCUREMENT DOCUMENTS, and SCHEDULE E: EXTRACTS OF CONTRACTOR'S SUBMISSION.
4. The RMOW shall provide the Contractor with unrestricted access to all locations the Contractor requires for the performance of the Work.
5. RMOW acknowledges and agrees that certain parts of the Work cannot be performed in poor weather conditions and the Contractor shall be temporarily excused from the performance of the work or Work 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 WORK

Contract Price

1. In consideration of the Contractor satisfactorily performing the Work, the RMOW will pay the Contractor the following sums plus goods and services tax (the \$00,000.00):

Canadian funds as stated in each individual proposal with rates as per the accepted Schedule of Fees shown below. Exclusive of GST.

The Contractor may invoice monthly for completed portions of the Work in accordance within the invoicing procedures set out in the Contract.

2. 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.
3. The pricing set out in this Schedule is exclusive of:
 - (a) All Living-Out-Allowances
 - (b) All travel charges and mileage
 - (c) All Equipment charges
 - (d) All document materials
4. Coordinates and site elevation shall be provided by RMOW at no cost to the Contractor.
5. Contractor to fill out and submit RMOW Direct Deposit Form.
6. Contractor Name Schedule of Fees below for YEAR as per below table. Labour escalation rates for future years will be 2% per year.

SCHEDULE "C"

INSURANCE

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

Type of Insurance	Contractor
<i>Commercial General Liability (CGL)</i>	\$5 million per occurrence

General

1. The foregoing insurance shall be primary and not require the sharing of any loss by any coverage provider and/or insurer of RMOW.
2. The CGL insurance policy must be extended to cover the Contractor/Contractor's Blanket Contractual liability and contain a cross liability naming the RMOW and its officials, officers, employees, servants and agents as "Additional Insured."
3. All required insurance shall provide RMOW with 30 days advance written notice of cancellation on a best-efforts basis.
4. The Contractor hereby waives all rights of recourse against RMOW with regard to damage to the Contractor's property.
5. Maintenance of such insurance shall not relieve the Contractor of liability under the indemnity provisions set forth in this Contract.
6. 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

(as per each individual approved proposal)

SCHEDULE "E"

CONTRACTOR'S SUBMISSION

(Individual proposals will be submitted by Contractor for each project)

SCHEDULE "F"

RMOW PROCUREMENT DOCUMENTS

(Relevant procurement documents or email correspondence accepting proposals)