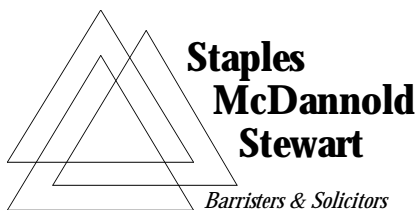


## Introduction to Drafting Agreements

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Presented To  
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## A. Hallmarks of a well drafted document

Clear and concise;

Well thought out and organized, with headings and "white space" for ease of reading;

Logical numbering system to assist later when discussing parts of the agreement;

Readable and understandable by the parties;

Internally consistent – Don't be afraid to use the same word throughout the document when you are referring to something specific. This is not prose, where variety is desirable. When drafting agreements you are aiming for certainty of meaning;

As simple as possible while still expressing the intention of the parties and protecting each party's interests;

Achieves all parties' reasonable expectations and accurately reflects the agreement the parties have reached.

## B. Getting started – what do you need to know?

### 1. Generally

- a. Above all, you must know **what you expect to achieve** with any agreement.
- b. Who are the parties? Is there a stakeholder who has been overlooked or anyone else who must agree or approve in order to give effect to the agreement?
- c. What is the overall subject matter or nature of the agreement? Is information required from various professionals with regard to terms of art, technical specifications and requirements or parameters of what is possible for the parties to agree to? Ascertain the relevant facts and issues from the outset whenever possible.
- d. When is the agreement to take effect? Give yourself plenty of time for multiple drafts of agreements to be discussed and vetted by all parties if possible to avoid arguments later that the contract should not be enforceable because there was not a "meeting of the minds" as to what was being agreed upon.
- e. What does the other party reasonably expect to have included in the agreement? Although the first draft of an agreement might well favour the author somewhat, is the document basically fair or will it give rise to feelings that the drafter is not acting in good faith?
- f. Contra proferendum - if a court ever has to interpret an ambiguity in your document, it is usually construed in favour of the party who did **not** draft it, as there is an assumption that the drafting party is at somewhat of an advantage. Avoid the temptation to press that advantage too much, especially where there is a power imbalance between the parties.

### 2. Legal Issues

The legal prerequisites for a binding agreement to be created are **Offer and Acceptance**. Where one party proposes a bargain, business deal or other arrangement to a second party this is considered to be the manifestation of the first party's willingness to be bound by his or her offer. The second party then has

to indicate assent to the terms of the offer, either through words or conduct, in order for an agreement to arise. Where there is no offer or acceptance, there is no agreement by both parties to be bound by their mutual promises.

Assuming offer and acceptance are achieved, in order for the promises to be worth anything they must be enforceable if not fulfilled. **Consideration** is what makes a contract enforceable at law and removes the contract from the realm of being merely a gratuitous promise.

In historic times, consideration could be anything that indicated the motive of a party to make the promise, however, since the 1800s the meaning of the term has evolved to mean something of value given or promised in exchange for the promise sought to be enforced (usually money). Therefore, it is through the exchange of "good and valuable consideration" that an agreement becomes enforceable

### **Capacity**

An important factor to be considered is capacity to contract. Do you have the legal authority to enter into the agreement being contemplated? Does the other party? What is the source of that authority? If one party is a corporation, a society or a partnership, for example, who in that organization has authority to make agreements that bind the organization? What about if the other party is an individual - is he/she elderly, sickly, mentally infirm, under age? What about Indian Bands. Has the agreement been approved by Band Council Resolution? Is a quorum of Councillors prepared to sign it?

### **Certainty of subject matter and terms**

An agreement may well be unenforceable in spite of offer, acceptance and consideration if the subject matter or important terms of the agreement are vague or ambiguous, giving rise to disagreement between the parties as to what was actually agreed upon.

### **Due Diligence**

Have you conducted the necessary investigations such as Land Title Office searches, Corporate Registry searches, Personal Property Registry searches, Court Registry searches, appraisals, inspections, environmental assessments, structural assessments, reference checks, personal interviews and so on as may be appropriate or necessary?

## **C. Starting to write up the Agreement – where do you start?**

The first decision will be with regard to what format to use. Is a letter agreement sufficient, or is a full length contract called for? Are any side agreements going to be necessary? Is a very formal tone appropriate, or is the agreement more "friendly"?

Have you got copies of any similar agreements with other parties that could form a starting point in developing the **outline of the agreement** and help you to brainstorm about what your agreement may need to include?

### **A word about precedents:**

Don't follow precedents or example documents slavishly. Be open to tailoring your agreement to fit the needs, relationship and intention of the parties.

However, also be aware that what may sound like "legalese" or seem archaic, repetitive or unnecessarily complex boilerplate contract language in a document you are using as a precedent may actually have been developed as a result of litigation where the courts have ruled on the validity or enforceability of certain types of clauses or entire contracts based on the presence or absence of certain wording.

As well, precedents may be outdated and may not reflect the current state of the law. Be sure you check any references to legislation carefully and ensure that the legislation applies to you or your particular situation. New developments in case law may require specific wording to be added or deleted from your precedent document, as the courts may have ruled on certain language and found it vague, unenforceable or otherwise lacking.

As the drafter, you should be aware of not only your own needs and expectations, but those of the other party. Any needs or requirements of the other party that are not adverse to your party's interests or for any other reason problematic should be included in the first draft when you know about them. This is a matter of good faith that will assist you when negotiating and will likely help the parties come to a final agreement more quickly. Try to put yourself in the shoes of the other party. If you were being presented with the agreement as you have drafted it, what would your reaction be?

When you must take a hard line to protect your party's interests, be prepared to be able to discuss the rationale for this stance - you will almost certainly be asked to do so during negotiations and it is helpful to be able to articulate a thoughtful, logical and well-reasoned position from the outset. It may help the other party realize that this is not a point you can concede.

That being said, if part of your position is totally unacceptable to the other party, be open to the possibility that there may be another way to meet both parties' needs before the deal simply collapses.

A win-win agreement is less likely to be the subject of problems down the road, requiring costly enforcement measures.

Be sure to consider as many areas as possible where things could go wrong. You need to be able to anticipate problems and to build in dispute resolution mechanisms and/or remedies for breaches of the agreement where appropriate. Although one always hopes that things will go exactly as planned, there is a vast body of litigation evidencing the multitudinous ways agreements can break down.

#### **D. What are the basic parts of an agreement?**

##### **a. Title**

Assists with quick identification. As a matter of style, upper case letters are generally used for titles as they are considered to be more formal. Titles may be quite generic (e.g. "Agreement") but are more useful if they are more descriptive (e.g. "Joint Use Agreement - ABC Facility").

##### **b. Date**

Usual format:

This Agreement made (or entered into) this \_\_\_\_day of \_\_\_\_\_, 2001.

The date inserted should be the same date as the agreement was executed.

If you intend an effective date other than the date the agreement was executed, another format could be:

This Agreement dated for reference this \_\_\_ day of \_\_\_, 2001, to take effect as of the \_\_\_ day of \_\_\_, 2001.

Some drafters merely use the format:

This Agreement made as of the \_\_\_ day of \_\_\_, 2001.

The reader is supposed to realize that the words "as of" mean the agreement is to take effect on a date other than the execution date. While acceptable, this format is less clear than the more explicit one above.

**c. Parties**

There may be any number of parties to an agreement. No matter how many parties there are, it is correct in Canada to preface the list of parties with the word "**Between**". Often drafters use "Among", however, this is not technically correct.

The parties should be identified clearly. It is good practice to include the addresses of all the parties and the incorporation numbers of corporations. This is particularly helpful when it is necessary to give notice under the agreement, to send payment to another party or to do searches in the corporate registry, for example, to determine a party's legal capacity to enter into the contract. A contract may NOT be entered into with a corporation prior to its incorporation and it is therefore necessary to ensure the company is duly registered. Further, the party may be insolvent, or not in good standing due to failure to file its annual reports.

Parties are often referred to as being "OF THE FIRST PART" and so on. This is a carryover from days gone by and is not strictly necessary. However, it can be useful if you are grouping several parties. For example, if there are three owners of land being developed all acting together to provide one set of services these could all be parties OF THE FIRST PART and the municipality could then be the party of the second part. This helps to clarify roles where there are multiple parties.

**d. Recitals**

Recitals are the "WHEREAS" statements in the agreement that set out the legal relationship between the parties as well as background facts or context for the agreement.

Recitals are generally not considered to form an operative part of the agreement unless there is ambiguity in the body of the agreement that makes it necessary to look to the Recitals for clarification of the parties' intentions. In order to prevent any question as to the accuracy of the Recitals (in case the drafter is concerned they may need to be relied upon), it is useful to insert wording at the end of the Recitals to the effect that:

The parties hereby acknowledge and agree that the foregoing Recitals are true and correct.

**e. Consideration**

As discussed above, every contract requires consideration. Without it your contract may be considered to be merely a gratuitous promise and not be enforceable. Most agreements have a clause setting out the consideration immediately following the Recitals.

If there is a specific payment to be made, such as \$10,000 for a piece of land, this clause should contain that information. Other agreements don't involve this type of payment . Mutual promises between parties can form the consideration for a contract, however, most drafters err on the side of caution and in order to ensure the requirement for consideration is met, a nominal value may be included. An example of a consideration clause for nominal value might be:

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein and the sum of Ten Dollars (\$10.00) of lawful money of Canada paid by Party A to Party B and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

If you have an actual payment, such as in the land example above, the amount to be paid would be inserted where the \$10.00 is included in the above example.

Usually one party pays consideration to the other, but in some cases each party pays to the other (such as in Mutual Aid Agreements, where everyone has benefits and obligations). In that case the consideration clause should contain additional wording such as:

... paid by each of the parties hereto to each of the other parties hereto ...

**f. Definitions**

Many agreements begin with a definitions section at the beginning of the body of the document. It is useful to set out terms so that a shorter version of a lengthy name or description can be used throughout the body of the document while retaining clarity.

Definitions do not necessarily have to go in a separate section. Terms may be defined at the first incidence where they occur in the agreement itself in shorter agreements. This is done as follows:

XYZ Municipality (the"Owner") wishes to enter into ...

Once terms are defined, they should be capitalized throughout the agreement to indicate this fact.

**g. Body of agreement**

In addition to dealing with the actual subject matter of the agreement, whatever that may be, there are a number of other matters that are typically dealt with in the body of the agreement. Sample contracts have been provided to illustrate what sorts of boilerplate clauses are often found in the body of an agreement.

Organization is the key principle to bear in mind when setting out the clauses that form the body of the agreement. Whether you employ a chronological framework, or organize under headings such as "Fees", "Indemnity" and so on, it is very

important for ease of reading and later reference that the material be organized logically and coherently.

**h. Interpretation provisions**

There are a number of clauses that are generally included in agreements to assist third parties (or the Court) in determining how to interpret it. Be sure that the interpretation clauses you use are relevant and reflect the parties' intentions.

Examples of common interpretation clauses include:

**Headings**

The headings in this Agreement are inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.

**Language**

Wherever the singular, masculine and neuter are used throughout this Agreement, the same shall be construed as meaning the plural, the feminine or the body corporate or politic as the context or the parties may require.

**Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the Province of British Columbia.

**i. Testimonials and Attestations**

Testimonials are the IN WITNESS WHEREOF statements in an agreement where the parties declare the agreement to be signed, sealed and delivered. By doing these things, the party is evidencing its intention to be bound by the agreement.

Attestations are the witnessing provisions of the agreement, where the witness declares that the document has been signed, sealed in delivered in his or her presence.

In these portions of the agreement it is only the words " signed sealed and delivered" and in the presence of" that are crucial. The rest is a matter of style and any number of precedents may be followed.

**j. Signatures and seals (if applicable)**

Every agreement must, of course have signature lines following the testimonials and attestations. Care should be taken to ensure the proper parties are signing - particularly where only certain corporate officers or elected officials may have the capacity to bind one of the parties.

On the matter of the seal, it is debatable as to whether it is necessary any longer to affix a corporate seal to agreements. The *Company Act* (British Columbia) has recently dispensed with the requirement for companies to obtain seals at all on incorporation. Land Title documents no longer need to be under seal, as the scanning equipment at the LTO can not read and record seals.

In general, if the corporation has a seal it is good practice to continue using it until this area of the law is more settled, as seals do have legal significance. Where no seal is actually affixed, the language of the agreement should be such that the court may construe an intention to affix a seal. The letters "c/s" are typed onto the agreement where the seal will (or would) be impressed.

**k. Schedules**

Any documents to be appended to the agreement go into the Schedules. If applicable, the agreement should state within it that the Schedules form part of the agreement and are binding on the parties in the same manner as the body of the agreement.

**E. You have a basic draft – Now what?**

At this point, and particularly if you have been working on the document alone, circulate it to people within your organization who are in a position to comment on it and suggest revisions or point out gaps, editing problems, leaps of logic, lack of clarity and so on. Often the drafter gets so close to the document that it is difficult to see areas where improvement is required. You understand what you are trying to convey - but does your reader?

Look critically at

- a. the wording you have chosen. Are the terms you have chosen likely to lead to problems of interpretation?
- b. whether your document is open to questions as to its validity for any reason;
- c. whether you have left yourself some room to get out of the deal if things don't go as planned. For example, how have you dealt with the possible need for early termination?
- d. whether the remedies you have selected are adequate, legal and enforceable;
- e. how or whether you have allocated the risk. Have you included (or do you need) an indemnity clause to protect you from the actions of the other party or others in relation to the subject matter of the agreement;
- f. whether you should perhaps require the other party to take out and maintain insurance to protect you from a loss, whether or not you are insured;

**A few final points to consider**

- What are the formal requirements for the execution of the contract?
- Does the agreement need to be filed somewhere, such as at the Land Title Office?
- Should you include maps, diagrams or other illustrative material?

**When do you need to consult a lawyer?**

This presentation has covered only the most basic aspects of contract drafting. It is certainly possible for anyone to draft an enforceable contract. However, solicitors spend their entire careers developing a host of skills and a body of experience that allows them to avoid many drafting pitfalls unknown to a lay person. The complex body of statute and case law that governs contract formation and the subject matter of the contract itself may not be readily accessible to someone who does not work with them regularly.

It is advisable to have any contract you prepare reviewed by your solicitors. Doing the bulk of the drafting yourself can be a cost saving, but review by a solicitor for the problems a solicitor is equipped to help you prevent can be tremendously cost-effective as well. A solicitor can look at your draft agreement and advise you as to the legal consequences of entering into a particular agreement and suggest alternative wording, additional clauses or other refinements that protect your interests more thoroughly.

You can find this paper on our website at:  
[http:// www.sms.bc.ca/handbooks/ncmoa/contract.html](http://www.sms.bc.ca/handbooks/ncmoa/contract.html)

**THIS CONSULTANTS AGREEMENT IS DATED THE \_\_\_ DAY OF \_\_\_\_\_, 2001**

**BETWEEN:**

**District of Wherever**  
Box 1000  
Wherever, British Columbia  
W3R 3V1

**(hereinafter called the "Client")**

**OF THE FIRST PART**

**AND:**

\*

**(hereinafter called the "Consultant")**

**OF THE SECOND PART**

**WHEREAS:**

- A. The Client intends to engage the professional services of the Consultant in connection with the Project for the term of this Agreement;
- B. The Client called for proposals for:
- C. The Consultant in reply to the proposal call submitted a proposal dated the \_\_\_\_\_ day of \_\_\_\_\_ 2001 (the "Proposal") which the client has accepted under the terms set out herein;
- D. The Client has agreed to engage the Consultant, and the Consultant has agreed to be engaged by the Client in respect of the Proposal on the terms and subject to the conditions set out in this Agreement.

**NOW THEREFORE** the Client and the Consultant, in consideration of their mutual duties and responsibilities to one another as set out in this Agreement, agree as follows:

**ARTICLE 1 - DEFINITIONS**

- 1.1 "Agreement" means this Agreement for professional services, the Consultant's Proposal, and all other schedules attached to this Agreement.
- 1.2 "Consultant's Proposal" means the proposal submitted by the Consultant to the Client, and which is attached to and forms part of this Agreement as Schedule "A".

- 1.3 "Disbursements" means the reimbursable expenses detailed in Article 4.
- 1.4 "Notice" means a notice required to be given under this Agreement.
- 1.5 "Project" shall refer to the Project described in paragraph 1.0 of Schedule "B".
- 1.6 "Project Coordinator" means The General Manager of \_\_\_\_\_ appointed by the Client and designated as Project Co-ordinator.
- 1.7 "Services" means the Consultant's duties and responsibilities to the Client as described in Schedule "B".
- 1.8 "Schedule" when referred to by letter in this Agreement means the corresponding schedule attached to this Agreement.
- 1.9 "Sub-Consultant" means any registered professional engineer, scientist, architect or other specialist engaged by the Consultant in connection with the Project.

## **ARTICLE 2 - CONSULTANT'S DUTIES AND RESPONSIBILITIES TO THE CLIENT**

### THE CONSULTANT MUST:

- 2.1 Render the Services to the Client under this Agreement with that degree of care, skill and diligence normally provided by Consultants having similar qualifications in the performance of duties of a similar nature to the Services.
- 2.2 Charge for the performance of all of the Services only the fees and disbursements authorized under this Agreement.
- 2.3 Perform the Services to be provided this Agreement in the agreed upon work program schedule within the time limits specified in Schedule "B" or, if no time limit is specified for the project or for a particular component of the project, the Consultant must perform the Services promptly.
- 2.4 Obtain and maintain the insurance required under Schedule "C".

## **ARTICLE 3 - CLIENT'S DUTIES AND RESPONSIBILITIES TO THE CONSULTANT**

### THE CLIENT MUST:

- 3.1 Make available to the Consultant all relevant information or data in the possession of the Client which is pertinent to the Project and required by the Consultant, and instruct the Consultant to the extent of the Client's ability as to the Client's total requirements in connection with the project.
- 3.2 Authorize the Consultant to act as its agent when necessary for the Consultant to provide the Services.
- 3.3 Give reasonably prompt consideration to all Project-related draft reports, drawings, proposals and other documents provided to the Client by the Consultant, and, whenever prompt action is necessary, inform the Consultant where possible of the Client's decision in reasonably sufficient time not to

delay the Services of the Consultant.

- 3.4 Pay to the Consultant the fee determined in accordance with Schedule "B" for the Services rendered.

#### **ARTICLE 4 - REIMBURSABLE EXPENSES**

- 4.1 The Client must pay to the Consultant, within 30 days of receipt of invoice, the following Disbursements incurred by the Consultant in rendering the Services, which shall be included in the maximum fee set out in Schedule "B", Clause 6.1 not to exceed the total estimated expenses of \$\_\_\_\_\_:
- (a) the expense of necessary and reasonable transport, subsistence and lodging in connection with the Project where the Consultant is required or requested by the Client to travel to a location more than 5 kilometres from the Consultant's ordinary place of business;
  - (b) the expense of Sub-Consultants as per their invoices, at cost;
  - (c) all other reasonable and necessary disbursements made by the Consultant in rendering the Services, other than those listed above; and
  - (d) all the Consultant's direct costs of reasonable office photocopying, printing, reproductions, mailing, packaging, shipping, deliveries, and duties, long distance telephone charges, telecopies and sales tax and goods and services tax and other normal disbursements necessarily incurred by the Consultant in connection with the performance of this Agreement.
- 4.2 Except as otherwise agreed in writing, the Client shall not be liable to pay or reimburse the Consultant for any other costs incurred or expenditures made on behalf of the Client.
- 4.3 The Consultant must keep and maintain accurate time sheets, proper accounts and records of all expenditures in connection with the Services performed under this Agreement, and these shall at all times be open to audit and inspection by the authorized representative of the Client.
- 4.4 The Consultant must submit monthly statements and vouchers to the Client to verify all Disbursements.

#### **ARTICLE 5 - TERMINATION AND SUSPENSION**

##### **BY THE CLIENT:**

- 5.1 If the Consultant defaults in the performance of any of its material obligations under this Agreement, then the client may, by written Notice to the Consultant require the default to be corrected. If, within thirty (30) days after receipt of the Notice, the default has not been corrected or reasonable steps to correct the

default have not been taken, the Client, without limiting any other right he may have, may immediately terminate this Agreement. In that event, the Client must pay the Consultant for the services rendered and disbursements incurred by the Consultant to the date of termination, less any amounts necessary to compensate the Client for damages or costs incurred by the Client or by any person employed by or on behalf of the Client arising from the Consultant's default.

- 5.2 If the Client is unwilling or unable to proceed with the Project, the Client may terminate this Agreement by giving fifteen (15) days prior written notice to the Consultant. Upon receipt of such written Notice, the Consultant must perform no further Services other than those reasonably necessary to close out his Services. In that event the Client must pay the Consultant for all Services performed and for all Disbursements incurred and remaining unpaid as of the effective date of the termination, up to the amount of the maximum fee.

**BY THE CONSULTANT:**

- 5.3 If the Consultant's Services are suspended by the Client at any time for more than thirty (30) days and the suspension is not related to an act or default of the Consultant, then the Consultant has the right at any time until the suspension is lifted by the Client, to terminate this Agreement upon giving written Notice of termination to the Client. In that event the Client must pay the Consultant for all Services performed and for all Disbursements incurred and remaining unpaid as of the effective date of the suspension, unless the parties in writing agree otherwise.

**ARTICLE 6 - ARBITRATION**

- 6.1 All matters in dispute under this Agreement may, with the concurrence of both the Client and the Consultant, be submitted to arbitration pursuant to the *Commercial Arbitration Act* (British Columbia) to a single arbitrator appointed jointly by them.
- 6.2 No one shall be nominated to act as an arbitrator who is in any way financially interested in the conduct of the Project or in the business affairs of either the Client or the Consultant.
- 6.3 If the parties cannot agree on the choice of an arbitrator each party shall select a nominee and the nominees shall jointly appoint an arbitrator.
- 6.4 The laws of the Province of British Columbia shall govern this Agreement and any arbitration or litigation in respect of it.
- 6.5 The award of the arbitrator shall be final and binding upon the parties.
- 6.6 Costs of the arbitration must be divided equally between the parties.

## **ARTICLE 7 - CONFIDENTIALITY AND OWNERSHIP**

- 7.1 The Consultant must not disclose any information, data or secret of the Client to any person other than representatives of the Client duly designated for that purpose in writing by the Client. The Consultant must not use for the Consultant's own purposes or for any purpose other than those of the Client any information, data or secret the Consultant may acquire as a result of being engaged pursuant to this Agreement.
- 7.2 The Consultant must not, during the term of this Agreement perform a service for, or provide advice to any person, firm or corporation, which gives rise to a conflict of interest between the obligations of the Consultant under this Agreement and the obligation of the Consultant to such other person, firm or corporation.
- 7.3 All plans, maps, reports, specifications, manuals, preliminary drafts, copies, data and information and all other property and materials which are produced under this Agreement are and will remain the property of the Client even though the Consultant or another party has physical possession of them. Until the termination of this Agreement, the Consultant may retain copies, including reproducible copies, of maps, reports, manuals, data or information in connection with the Services. The Consultant must not use the maps, reports, manuals, plans, specifications, preliminary drafts, copies, data, information or other property and materials which are produced under this Agreement on other projects or for other clients except with written consent from the Client.
- 7.4 Upon termination of this Agreement, the Consultant must turn over to the Client all maps, reports, plans, specifications, manuals, preliminary drafts, copies, data and information and all other property and materials produced under this Agreement.
- 7.5 The parties to this Agreement recognize that a breach by the Consultant of any of the requirements contained in paragraphs 7.1 to 7.4 hereof would result in damages to the Client and that the Client could not adequately be compensated for such damages by monetary award. Accordingly, the Consultant agrees that, in the event of any such breach, in addition to all other remedies available to the Client at law or in equity, the Client shall be entitled as a matter of right to apply to a court of competent equitable jurisdiction for such relief by way of restraining order, injunction, decree or otherwise as may be appropriate to ensure compliance with this article.
- 7.6 It is understood and agreed that the agreements contained in paragraphs 7.1 to 7.5, 13.1 and 13.2 subsist, even if the rest of this Agreement is terminated for any reason whatsoever, and that those paragraphs are severable for the purpose of subsisting in the event of termination of this Agreement.

## **ARTICLE 8 - DESIGNATED REPRESENTATIVES**

- 8.1 The Client has designated the \_\_\_\_\_ as Project Coordinator to act on the Client's behalf with respect to the performance of this Agreement. The Client may, at any time or from time to time or afterwards, by notice in writing to the Consultant, designate another person to act in the place and stead of any person previously so designated.
- 8.2 The Consultant has designated \_\_\_\_\_ as representative to act on the Consultant's behalf with respect to the performance of this Agreement (herein referred to as the "Project Manager"). The Consultant may, at any time or from time to time or afterwards, upon written approval from the Client, designate another person to act as the Project Manager in the place and stead of any person previously so designated.

## **ARTICLE 9 - NOTICES**

- 9.1 Unless otherwise specified herein, any Notice required to be given under this Agreement by any party shall be deemed to have been well and sufficiently given if mailed by prepaid registered mail, telexed or sent by facsimile to or delivered at the address of the other party shown on the first page of this Agreement or other address the other party may from time to time direct in writing. A Notice will be deemed to have been received 72 hours after the time of mailing, telexing or faxing and, if delivered, upon the date of delivery. If normal mail service, telex or facsimile is interrupted by strike, slow down, force majeure or other cause, then a Notice sent by the impaired means of communication will not be deemed to be received until actually received. In that event, the party sending the notice shall utilize a communication service that have not been interrupted or shall deliver the Notice in order to ensure prompt receipt.

## **ARTICLE 10 - ENTIRE AGREEMENT**

- 10.1 This Agreement constitutes the entire Agreement between the Client and the Consultant and supersedes all previous expectations, understandings, communications, representations and agreements, whether verbal or written, between the Client and the Consultant with respect to the Services and may not be modified except by subsequent agreement in writing signed by both parties
- 10.2 The Client may issue to the Consultant a Change Notice to make changes to the work, omit part of the work, or require additional work. A Change Notice shall form a schedule to this Agreement. The terms of the Change Notice shall prevail over any other provision of the Agreement, in the event of an inconsistency between them. The Client and the Consultant shall appraise the value of the changes to the work specified by the Change Notice, and within 60 days of receipt of the Change Notice, agree on the new price to be paid for the work or the reduction in the fee payable to the Consultant.

## **ARTICLE 11 - NO DUTY OF CARE**

11.1 The Consultant acknowledges that the Client, in the preparation of the contract documents, supply of oral or written information to consultants, review of proposals or the carrying out of the Client's responsibilities under this Agreement, does not owe a duty of care to the Consultant. The Consultant waives for itself, its successors and assigns, the right to sue the Client in tort for any loss, including economic loss, damage, cost or expense arising from or connected with any error, omission or misrepresentation occurring in the preparation of this Agreement, the Request for Proposals, the supply of oral or written information to proponents, review of proposals, or the carrying out of the Client's responsibilities under this Agreement.

## **ARTICLE 12 - WAIVER**

12.1 Except as may be specifically agreed in writing, no action or failure to act by the Client or the Consultant shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach of this Agreement.

## **ARTICLE 13 - INDEMNIFICATION**

13.1 The Consultant shall release, indemnify, keep indemnified and save harmless the Client, its officers, employees, servants, agents and contractors, from and against all claims, losses, costs, damages, suits, proceedings, causes of action or actions arising out of or related to the activities of the Consultant or a Sub-Consultant in providing the Services, including any of their errors, omissions, delays, improper or negligent acts, or arising from the breach of this Agreement by the Consultant or a Sub-Consultant, except to the extent that the Client was contributorily or solely negligent

13.2 The Consultant shall compensate the Client for any loss or any damage to the Client's premises or property, arising out of the performance of the Services.

## **ARTICLE 14 - RELATIONSHIP**

14.1 The legal relationship between the Consultant and the Client arising pursuant to this Agreement is that of an independent contractor providing the Services and the purchaser of the Services. In particular and without limiting the generality of the foregoing, nothing in this Agreement shall be construed so as to render the relationship between the Consultant and the Client to be that of employee and employer.

## **ARTICLE 15 - VALIDITY**

15.1 If any part of this Agreement is or is declared invalid, the remainder shall continue in full force and effect and be construed as if this Agreement had been executed without the invalid portion.

## **ARTICLE 16 - LAW**

16.1 This Agreement shall be governed by and construed in accordance with the laws in force from time to time in the Province of British Columbia.

## **ARTICLE 17 - HEADINGS**

17.1 The captions or headings appearing in this Agreement are inserted for convenience.

## **ARTICLE 18 - MISCELLANEOUS**

18.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns. Neither party may assign, subcontract or transfer any interest in this Agreement without the prior written consent of the other.

18.2 Whenever the singular or masculine is used herein, it shall be deemed to include the plural or the feminine or the body politic or corporate where the context of the parties so requires.

**IN WITNESS WHEREOF** the Client and the Consultant have executed this Agreement as of the day, month and year first above written and hereto have set their hands and seals as of the day and year first above written.

The Corporate Seal of **District of Wherever** )  
was hereto affixed in the presence of: ) (seal)  
 )  
 )  
\_\_\_\_\_)  
Mayor )  
 )  
\_\_\_\_\_)  
Clerk )

The Corporate Seal of )  
 )  
was hereto affixed in the presence of: ) (seal)  
 )  
\_\_\_\_\_)  
Authorized Signatory )  
 )  
\_\_\_\_\_)  
Authorized Signatory )

**SCHEDULE "A"**  
**CONSULTANT'S PROPOSAL**

## **SCHEDULE "B"**

### **CONSULTANT'S SERVICES, SCHEDULE AND FEES**

#### **1.0 THE PROJECT**

1.1 The Project is

#### **2.0 THE SERVICES**

2.1 The Services consist of all work necessary to complete the Project in accordance with the Consultant's Proposal.

#### **3.0 TERM AND SCHEDULE**

3.1 The Services shall be provided commencing \_\_\_\_\_ and must be completed, including the delivery of all deliverables, by \_\_\_\_\_.

3.2 The schedule for performance of the Services shall be as follows:

3.3 Despite paragraphs 3.1 and 3.2, the Client and the Consultant may amend the Schedule by written agreement.

#### **4.0 ADDITIONAL WORK**

4.1 The Client may, in its discretion, request the Consultant to provide additional services beyond the scope of Services contained in the Proposal if additional funding is available.

#### **5.0 DELIVERABLES**

5.1 The Consultant shall provide written and oral reports at the following times:

#### **6.0 PAYMENT**

6.1 The maximum amount payable by the Client to the Consultant for fees and disbursements under this Agreement, is \$\_\_\_\_\_.

6.2 The Consultant will be paid on a monthly basis for Services performed,

including fees and disbursements. The Client's payment policy is a minimum of thirty (30) days from receipt of invoice.

- 6.3 Despite any provision of this Agreement no more than 90% of the total fee plus disbursements will be paid prior to submission by the Consultant and acceptance by the Project Supervisor of a satisfactory draft report on the work.
- 6.4 Final payment will be made upon the submission of completed works including reports, contract documents, drawings, etc. The invoices submitted shall indicate the total person hours expended on the project in each category (including employee's names), and other costs shall be detailed as appropriate. Final billing must be received within 30 days of the completion of the Project.

A completed invoice in a form satisfactory to the Client must be submitted with each billing.

## **SCHEDULE "C"**

### **INSURANCE**

1. The Consultant must, at his own expense, provide and maintain until the completion of the Project the following insurance in a form acceptable to the Client with an insurer licensed to operate in British Columbia:

(a) Comprehensive Public Liability and Property Damage	\$2,000,000.00
(b) Professional Liability	\$1,000,000.00
(c) Automobile Insurance (owned and non-owned)	\$1,000,000.00

In all policies of insurance called for by this clause (except professional liability and automobile insurance on vehicles owned by the Consultant) the Client must be named as an additional insured. All such policies shall contain a provision that the insurance will apply as though a separate policy had been issued to each named insured. All such policies must provide that no cancellation or lapse of or material alteration in the policy will become effective until 30 days after written notice of such cancellation, lapse or alteration has been given to the Client.

The Consultant must require that each of his Sub-Consultants provide evidence of comparable insurance in the name of the Sub-Consultant to that required under this Agreement.

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

2. The Consultant must provide the Client with a certificate or certificates of insurance as evidence that such insurance is in force, including evidence of any insurance renewal or policy or policies. Every certificate or certificates of insurance must include certification by the insurer that the certificate of insurance specifically conforms to all of the provisions required herein.
3. Maintenance of such insurance and the performance by the Consultant of his obligation under this Agreement shall not relieve the Consultant of his liability under the indemnity provisions in this Agreement.