

**Kamloops Airport Site Civil Works  
Design, Tender and Inspection Services**

Agreement KAL-002-22

The Kamloops Airport Authority Society, hereinafter called "OWNER", having its permanent address at

101-3035 Airport Road  
Kamloops, British Columbia  
V2BC 7X1

does hereby enter into an agreement to retain \_\_\_\_\_, hereinafter called "Consultant", having its permanent address at

to furnish certain professional services and Consultant agrees to furnish the services under the terms and conditions as set out herein.

**1. AGREEMENT DOCUMENTS/DEFINITIONS/GENERAL**

1.1 The following documents and any amendments relating thereto form the Agreement between the Owner and Consultant:

- (a) these Articles of Agreement;
- (b) the document attached hereto as Schedule A and entitled "Description of the Project and Services", and incorporating Consultant's Proposal received and dated January \_\_\_\_, 2023;
- (c) the document attached hereto as Schedule B and entitled "Compensation";
- (d) the document attached hereto as Schedule C and entitled "Term, Completion Schedule, Status Reports";
- (e) the document attached hereto as Schedule D and entitled "Miscellaneous Provisions";
- (f) the document attached hereto as Schedule F and entitled "Insurance".

FOR VALUE RECEIVED, the receipt whereof is hereby acknowledged by Consultant, the Owner and Consultant agree as follows:

**2. DEFINITIONS AND GENERAL**

2.1 In this Agreement:

- (a) "Agreement" includes all schedules hereto and all amendments and renewals if any from time to time;
- (b) "OWNER" and "Owner" means The Kamloops Airport Authority Society;
- (c) "OWNER Contract Administrator" and "Owner Contract Administrator" means the Manager responsible for administration of this Agreement, as designated by the OWNER from time to time, and, unless otherwise specified in Schedule D, initially the OWNER Contract Administrator shall be: .
- (d) "Compensation" means the fees, reimbursement (if any), and other compensation set out in Schedule B, and includes any compensation for Extra Work, if any, as contemplated in Schedule B;
- (e) "Consultant" means the undersigned consultant;
- (f) "Contract Services Suppliers" means, collectively, all Personnel, Subcontractors, and Material Suppliers involved, utilized or engaged in connection with providing the Services under this Agreement;
- (g) "Event of Default" has the meaning assigned in paragraph 10.3;
- (h) "Extra Work", if any, means additional work or services as contemplated in Schedule A;
- (i) "GST" means the goods and services tax administered under the Excise Tax Act (Canada)

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and any successor tax or levy therefore in force from time to time;

- (j) "Material Suppliers" means any person furnishing materials or supplies to Consultant in connection with the Services;
- (k) "Personnel" means employees and personnel of Consultant involved in providing the Services under this Agreement;
- (l) "Project" means the project described in Schedule A hereto;
- (m) "PST" means British Columbia provincial sales tax and any successor tax or levy therefore in force from time to time;
- (n) "Services" means the services described in Schedule A hereto;
- (o) "Site" means the Kamloops Airport lands and premises owned by the OWNER and vicinity.
- (p) "Standard" means the higher of: (i) the standard implied or imposed by law; (ii) the standard prescribed by the professional and regulatory bodies in the applicable profession, field or discipline; (iii) the standard prescribed or contemplated by this Agreement;
- (q) "Subcontractors" means subcontractors, agents or third parties engaged by Consultant in connection with providing or supplying the Services;
- (r) "Term" means the term specified in Schedule C, subject to extension or earlier termination in accordance with the provisions hereof;
- (s) "Work Product" means all drawings, plans, models, designs, reports, specifications, calculations and other documents and electronic media, and all concepts, products, prototypes and processes prepared, produced or developed by or at the direction of Consultant or any Contract Services Supplier directly or indirectly in connection with the Project or the performance of the Services;

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

2.3 All references to any party, whether a party to this Agreement or not, shall be read with such changes in number and gender as the context or reference reasonably requires.

2.4 Unless otherwise indicated, all dollar amounts referred to in this Agreement are in lawful money of Canada, and shall be payable at Kamloops, British Columbia.

2.5 If Consultant is comprised of more than one person, then all liabilities and obligations shall be joint and several.

2.6 The proper law of this Agreement is the law of the Province of British Columbia. Consultant hereby submits and attorns to the jurisdiction of the Courts of the Province of British Columbia. The OWNER may require that any action or proceeding concerning this Agreement or anything connected with this Agreement shall be initiated in the courts of British Columbia.

2.7 This Agreement, the schedules to this Agreement, and any documents expressly contemplated by this Agreement, constitute the entire agreement between the parties and supersede all previous communications, representations and agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement.

2.8 Each party shall execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement.

2.9 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**3. SERVICES**

3.1 Consultant shall provide and perform the Services to and for the benefit of the OWNER. Consultant shall provide the Services to the Standard and shall at all times comply with and perform to the Standard. The duties and obligations of Consultant set out in this Agreement are in addition to and shall not be construed so as to limit or derogate from Consultant's duties or obligations at law or in equity. Consultant shall act with utmost good faith towards the OWNER and shall observe and

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perform the obligations of a fiduciary, in connection with performance of the Services hereunder.

- 3.2 Consultant shall provide all equipment, supplies and materials necessary in connection with providing and carrying out the Services.

**4. COMPENSATION**

- 4.1 In consideration of the performance of the Services by Consultant in accordance with this Agreement, the OWNER shall pay to Consultant the Compensation in accordance with Schedule B. Payment of the Compensation will be subject to any adjustment provided for in this Agreement. The OWNER shall have the right to set off against payment of the Compensation any charge, liability or indebtedness owed by Consultant to the OWNER.

**5. CONTRACT SERVICES SUPPLIERS**

- 5.1 Consultant represents to the OWNER that it and all Contract Services Suppliers are competent and have the qualifications, designation, experience and capabilities necessary to carry out the Services to the Standard.
- 5.2 Consultant shall ensure that all Contract Services Suppliers comply with the provisions and stipulations of this Agreement.

**6. SECURITY AND SAFETY MEASURES; ENVIRONMENTAL; POLICIES, RULES AND REGULATIONS**

- 6.1 The OWNER may prescribe rules, regulations, policies and procedures from time to time for: (a) matters pertaining to security and safety, including issuance of passes, keys, badges, and like devices, and the OWNER may charge reasonable fees for the issuance thereof; (b) environmental matters; (c) archaeological matters; and (d) such other matters as the OWNER may from time to time prescribe. Consultant shall be responsible to ensure that all Contract Services Suppliers comply with such rules, regulations, policies and procedures in effect from time to time. Such rules, regulations, policies and procedures may be changed by the OWNER from time to time. The OWNER may at any time prescribe specific stipulations applicable to Consultant and Contract Services Suppliers.

**7. INSURANCE AND INDEMNIFICATION**

- 7.1 Consultant shall comply with and abide by the stipulations regarding insurance as set out in Schedule "F", until notified in writing that the OWNER has placed Airport Construction Liability Insurance, from which time the Consultant shall comply with and abide by the stipulations regarding insurance as set out in Schedule "F-1".
- 7.2 The OWNER shall comply with and abide by the stipulations regarding insurance as set out in Schedule "F", until the OWNER has notified the Consultant in writing that the OWNER has placed Airport Construction Liability Insurance, from which time the OWNER shall comply with and abide by the stipulations regarding insurance as set out in Schedule "F-1"
- 7.3 The OWNER acknowledges and agrees that the liability of Consultant shall be strictly limited to the terms, coverage and limits of the policies as set out in Schedule "F or Schedule "F-1", as applicable. Consultant shall ensure that it remains eligible at all times for coverage for the applicable profession, field or discipline.
- 7.4 Consultant shall defend, indemnify and hold harmless the OWNER and all directors, officers, agents, servants and employees of the OWNER from and against any claim, demand, expense (including legal fees and disbursements), lien, award or liability in connection with;
  - (a) arising from the supply and provision of the Services under this Agreement and all related matters, including injury or death to anyone including Contract Service Suppliers, loss or damage to property whether belonging to Consultant or anyone else, any claim or matter in dispute between Consultant and any Contract Service Supplier, and any failure or deficiency by Consultant in supplying and providing the Services; and
  - (b) any claim on account of infringement of any copyright, patent, trademark, industrial design, trade secret or other intellectual property rights, or of any obligation of confidentiality, in connection with the Services or Work Product or parts or materials supplied by Consultant.
- 7.5 Insurance proceeds will be available to Consultant, to extent provided for in paragraph 7.1, 7.2 and 7.3 hereto and Schedule "F" or Schedule "F-1" as applicable and elsewhere in this

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Agreement.

**8. WORK PRODUCT**

- 8.1 Unless otherwise agreed in writing between Consultant and the OWNER, all Work Product and copyright and other intellectual property or rights present and future in Work Product shall be jointly owned by the Consultant and the OWNER. Where appropriate Work Product shall contain the form of notice prescribed by the Universal Copyright Convention indicating the OWNER and Consultant as joint owner. Mutual consent by both the Consultant and the OWNER to reuse Work Product, copyright and other intellectual property is required.
- 8.2 Consultant shall obtain releases, licenses, permissions and other authorizations in connection with any copyright, patent, trademark, industrial design, trade secret or other intellectual property rights held by third parties, as may be required.
- 8.3 Consultant shall deliver to the OWNER on request copies of all Work Product and all files and correspondence pertaining to performance of this Agreement including Work Product and files and correspondence of Contract Services Suppliers.
- 8.4 Risk of loss, theft or damage to Work Product shall rest with Consultant.

**9. CONFIDENTIALITY**

- 9.1 Subject to paragraph 8.2, Consultant shall not disclose any information, plans or designs to which Consultant may have access by virtue of its connection with the Project (unless such information, plans or designs are already publicly available or were disclosed to Consultant by a third party in a non-confidential capacity), or any Work Product or information developed by Consultant in connection with the Project, to any person not expressly authorized by the OWNER to receive such information, plans, designs or Work Product. Consultant shall ensure that all Contract Services Suppliers comply with the foregoing confidentiality requirements. The OWNER may make the following directions to safeguard the confidentiality of all such information, plans, designs and Work Product:
  - (a) restrictions upon personnel to be permitted access to information, plans, designs or Work Product;
  - (b) restrictions upon time and place of access and method of reproduction;
  - (c) restrictions upon uses to which such information, plans, designs or Work Product may be put by Consultant; and
  - (d) the imposition of other procedures necessary in the reasonable opinion of the OWNER to protect and safeguard confidentiality, both before and after the termination of this Agreement.

The OWNER may require, and in such event Consultant shall require, any Contract Services Supplier to execute an agreement with the OWNER regarding the confidentiality of all information, plans, designs and Work Product.

- 9.2 At any time before the termination of this Agreement, Consultant may disclose information, plans, designs or Work Product respecting the Project to certain persons without the express authorization of the OWNER provided that such disclosure is:
  - (a) strictly limited to information, plans or designs which Consultant, exercising its best professional judgement, deems to be essential to the performance of the Services and for the benefit of the OWNER, and
  - (b) made only to governmental or regulatory agencies or other third parties acting in an official or professional capacity relating to the Project.
- 9.3 Consultant acknowledges that in the event of breach by Consultant of its obligations of confidentiality, damages would be an inadequate remedy. Consultant agrees that the OWNER, in addition to and without limiting any other right or remedy it may have, will have the right to an immediate injunction or other available equitable relief in any court of competent jurisdiction enjoining any threatened or actual breach of such obligations.

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**10. ACCOUNTS AND RECORDS**

- 10.1 Consultant shall keep proper accounts and records of all expenditures made in connection with the Services and all invoices, receipts and vouchers relating thereto.
- 10.2 The OWNER shall have the right at any time and from time to time during the Term and for a period of 12 months after termination of the Term to audit the books and records of Consultant relevant to this Agreement. Consultant shall retain all such records for at least this period.

**11. TERMINATION OF SERVICES OR AGREEMENT**

- 11.1 This Agreement will remain in effect until expiry of the Term or termination as provided for herein.
- 11.2 The OWNER may terminate this Agreement before completion of the Services or expiry of the Term, anything to the contrary herein notwithstanding, as follows:
- (a) upon 30 days' notice to Consultant; or
  - (b) at the option of the OWNER, at any time after the happening of an Event of Default.
- 11.3 For the purposes of this Agreement, an "Event of Default" shall be deemed to occur if:
- (a) Consultant is in breach of any covenant, obligation or representation hereunder and such breach is material;
  - (b) the OWNER, acting reasonably, considers that it is likely that Consultant will not complete the Services, or any part of the Services, in accordance with the scheduled completion dates or performance schedule set out herein and such failure to meet the scheduled completion dates or performance schedule is, in the opinion of the OWNER, not due to events or circumstances beyond Consultant's control or which were reasonably foreseeable at the time this Agreement was entered into;
  - (c) the OWNER, acting reasonably, considers that Consultant, or any agent or employee of Consultant, has acted or is acting in a manner detrimental to the OWNER or the Project;
  - (d) Consultant becomes insolvent or unable to discharge its liabilities as they become due or makes an assignment for the benefit of its creditors or a petition of bankruptcy is made against it;
  - (e) any Contract Services Supplier becomes insolvent or unable to discharge its liabilities as they become due or makes an assignment for the benefit of its creditors or a petition of bankruptcy is made against it, and the OWNER acting reasonably is concerned with regard to potential adverse impact on the Project.
- 11.4 Where the Agreement is terminated under paragraph 11.2(a), the OWNER shall pay to Consultant such part of the Compensation as can reasonably be considered to have been earned by Consultant to the date of termination and recognition shall be given for reasonable costs for shutdown and start-up provided that Consultant shall make reasonable efforts to mitigate. Upon the termination of this Agreement and payment as required under this Agreement, the OWNER shall have no further obligation or liability to Consultant in connection with this Agreement or its termination and may as a condition of final payment under this Agreement require Consultant to execute and deliver a release and discharge in favour of the OWNER.
- 11.5 In the case of an Event of Default or if Consultant fails to supply and provide the Services or any part thereof in accordance with this Agreement the OWNER may remedy any deficiency and may engage others to do so, and may charge against Consultant all costs and expenses in doing so. The OWNER will be under no obligation to remedy any failure or deficiency on the part of Consultant and will not incur any liability to Consultant for any action or omission in the course of its remedying or attempting to remedy any such failure or deficiency.
- 11.6 Termination for any reason of this Agreement shall not prejudice, limit or affect any claim or matter outstanding prior to termination or obligations consequent upon termination as provided for herein. Without limiting the foregoing, for clarity, this will record that it is understood that the provisions of Articles 7, 8, 9, 10 and 14 the Schedules shall survive termination.
- 11.7 The remedies of the OWNER in this Agreement are cumulative and are in addition to any remedies available to the OWNER at law or in equity. No remedy will be deemed to exclude or to restrict the right of the OWNER to any remedies against Consultant and the OWNER may from time to time

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have recourse to one or more of the remedies specified in this Agreement or at law or in equity notwithstanding the termination of this Agreement.

- 11.8 The OWNER retains the right, whether or not Consultant is in default hereunder, to carry out and perform any Services and to engage others in doing so; but the OWNER will be entitled to claim over and charge Consultant, as provided for in 11.5, only if Consultant is in breach or default of its obligations hereunder.
- 11.9 The OWNER may, at any time and from time to time by delivery of notice in writing to Consultant, suspend the performance of the Services for the period of time specified in such notice. In that event the OWNER shall pay to Consultant such part of the Compensation as can reasonably be considered to have been earned by Consultant to the date of the suspension, and recognition shall be given for reasonable costs for shutdown and start-up provided that Consultant shall make reasonable efforts to mitigate.
- 11.10 If the work remains suspended for six months, then the Consultant may terminate the Agreement upon seven days' written notice to the OWNER.

**12. COOPERATION AND COORDINATION**

- 12.1 Consultant shall cooperate and coordinate the performance of the Services with OWNER's personnel and OWNER's contractors, subcontractors, suppliers, and other consultants.
- 12.2 The OWNER is a customer and service-driven organization. The OWNER and Consultant agree to work cooperatively in carrying out the Project and the Services, with a view to optimizing efficiency, achieving cost reductions, ensuring safety, and minimizing inconvenience to users of the Airport.

**13. ASSIGNMENT**

- 13.1 Consultant shall not be entitled to assign this Agreement or any portion of this Agreement either voluntarily, involuntarily or by operation of law, and Consultant shall not have any right, power or authority to subcontract or delegate the supply or provision of the Services to be performed hereunder, or any portion thereof, without the OWNER's written approval, which approval may be arbitrarily withheld.
- 13.2 If Consultant is a company, then any change in the shareholdings or control of the company shall be deemed to constitute an assignment for the purposes of paragraph 13.1.

**14. COMPLIANCE WITH LAWS**

- 14.1 In carrying out its obligations hereunder Consultant shall comply with all laws, regulations and statutory requirements of every competent federal, provincial, municipal, regional and other statutory authority applicable to the Project and the Services.
- 14.2 Consultant shall obtain all requisite permits and licenses for supplying and providing the Services under this Agreement.

**15. CONSULTANT NOT AGENT OR EMPLOYEE**

- 15.1 Consultant is acting as independent contractor in performing the Services hereunder. Consultant is not the employee or agent of the OWNER and shall not enter or purport to enter into any contract or subcontract on behalf of the OWNER. All persons employed by or subcontracted to Consultant to perform Services hereunder shall be employees or subcontractors, as the case may be, of Consultant and shall not be agents or employees of the OWNER.

**16. NO JOINT VENTURE, PARTNERSHIP, OR PRINCIPAL AGENT RELATIONSHIP**

- 16.1 Consultant and the OWNER acknowledge that no joint venture, partnership, or principal-and-agent relationship exists between them in connection with this Agreement or otherwise, and covenant that they will not assert otherwise.

**17. MEMBERS OF HOUSE OF COMMONS NOT TO BENEFIT**

- 17.1 As required by the Parliament of Canada Act (Canada) it is an express condition of this Agreement that no Member of the House of Commons shall be admitted to any share or part this Agreement or to any benefit to arise therefrom.

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**18. SECRET BENEFIT**

18.1 Consultant, its agents and employees shall not give or offer to give to any director, officer, employee or agent of the OWNER or to the OWNER any gratuity, reward, advantage or benefit of any kind as consideration for doing or forbearing to do, or for having done or forborne to do, any act in connection with this Agreement or the Services. Contravention of this provision will permit the OWNER to terminate this Agreement.

**19. MISCELLANEOUS**

19.1 (a) Consultant shall not display any signs or advertising on Site without the prior approval of the OWNER.

(b) Consultant shall not distribute any literature or otherwise promote the engagement by the OWNER without the prior approval of the OWNER, provided that the OWNER will not withhold such approval unless the OWNER has a valid business reason for doing so.

19.2 Consultant shall not without the prior consent of the OWNER contract with or provide services on Site to any person other than the OWNER. Such consent shall not be unreasonably withheld. The OWNER may, as a condition of giving consent, stipulate reasonable conditions.

19.3 Consultant shall comply with all applicable taxation, health and safety, immigration, custom and duties, workers compensation, human rights, and labour and employment laws, rules, notices, directives, standards, orders and regulations. Consultant shall upon request by the OWNER provide certificates of compliance from regulatory bodies or other evidence of compliance. Consultant accepts full and exclusive responsibility and liability for payment of federal and provincial payroll taxes and for contributions for unemployment insurance, old age pensions, annuities retirement, workers' compensation, health hospitalization plans and other benefits expressed under any provision of any law, measured by wages, salaries, or other remuneration paid or payable by Consultant to or on behalf of Contract Services Suppliers engaged in connection with the Services. Consultant shall cause each Subcontractor or Material Supplier who performs any part of the work hereunder to accept the same responsibility and liability.

19.4 The OWNER shall be liable for GST as may be applicable. Unless otherwise specified in this Agreement, Consultant is responsible for payment of PST, and all Compensation is inclusive of PST. Consultant shall be responsible for and shall pay any other applicable taxes, rates, custom charges, duties, imposts and levies. The OWNER shall comply with withholding tax requirements as may be applicable.

19.5 Consultant declares that Consultant has no financial interest, affinity or association in the business of any third party that would cause a conflict of interest or be seen to cause a conflict of interest in carrying out the Services. Should such an interest be acquired during the term of this Agreement, Consultant shall declare it immediately in writing to the OWNER's Contract Administrator. Consultant warrants that it has no predisposition, affinity, or association with any third party that would impair or qualify the provision of the Services or any related work on the Project.

19.6 The OWNER's Conflict of Interest guidelines, available to Consultant on request, are expressly incorporated as part of this Agreement. Consultant shall comply with the purpose and intent of these guidelines.

**20. TIME OF THE ESSENCE**

20.1 Time shall be of the essence.

IN WITNESS WHEREOF the parties have executed this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

THE OWNER

Per: \_\_\_\_\_

Per: \_\_\_\_\_

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Where Consultant is a Corporation:

Print name:

Per: \_\_\_\_\_

Per: \_\_\_\_\_

DRAFT