

S A M P L E of Contract Agreement: #2014-4

THIS AGREEMENT dated for reference

is between:

ALBERNI VALLEY COMMUNITY FOREST CORPORATION

7500 Airport Road
Port Alberni BC V9Y 8Y9

(herein called the Corporation)

(herein called the Contractor)

1. BACKGROUND

The Parties wish to enter into this Agreement for the provision of the Services (as set out in Schedule A1 and Schedule A2) by the Contractor to the Alberni Valley Community Forest Corporation (AVCFC) in respect of the public forest lands described in Schedule A1 and A2 and in Appendix 4 (Links for Maps and Documents).

2. AGREEMENTS

The Parties agree as follows:

Definitions. Capitalized terms not otherwise defined in the Agreement have the meanings given them as follows:

- a) "Agreement" means the Contractor Agreement;
- b) "Arbitration Notice" has the meaning set out at Article 10.1c) herein;
- c) "Arbitrator" has the meaning as set out at article 10.0c) herein;
- d) "Board" means Board of Directors of Alberni Valley Community Forest Corporation (AVCFC);
- e) "Contract Regulation" means the Timber Harvesting Contract and Subcontract Regulations, B.C. Reg 22/96, and all amendments thereto;
- f) "Forest Act" means the Forest Act, RSBC 1996, ch 157 and all amendments thereto;
- g) "Mediation" has the meaning set out at Article 10.1b)i) herein;
- h) "Mediation Notice" has the meaning as set out at Article 10.1b)l) herein;
- i) "Mediation Period" has the meaning as set out at Article 10.b)ii) herein;
- j) "Venue" has the meaning as set out at Article 10.1b)iv) herein.

2.1 Agreement Documents

This Agreement comprises the following documents:

- a) this Contract Agreement;
 - i. Schedule A1 Services Total Chance Plan
 - ii. Schedule A2 Services Multiphase Engineering, Silviculture and Timber Development
 - iii. Schedule B Contract Payment
 - iv. Schedule C Subcontracting
 - v. Schedule D Insurance Requirements
 - vi. Schedule E Digital Use Agreement
 - vii. Schedule F Safety Conditions
 - viii. Schedule G Prime Contractor Agreement
 - ix. Schedule H SAFE Certification Requirements
 - x. Appendix 1: Final Submission Checklist
 - xi. Appendix 2: Standards for Digital Map Production and Data Capture
 - xii. Appendix 3: Stream Crossing Guidelines and Data sheets
 - xiii. Appendix 4: Links for Maps and Documents

- b) Special Conditions, if any.

AVCFC may, from time to time, by written notice to the Contractor and subject to this Agreement, make reasonable changes to Schedule A1 and A2 to accommodate changing practices or unforeseen circumstances. Any other changes to the Agreement are to be in writing and agreed to by both parties.

2.2 Conflict or Inconsistency

In the event of any ambiguity, conflict or inconsistency between or among the documents referenced in Section 2.1, the documents shall be construed, interpreted and applied so as to give effect to their express terms in the following order of precedence so that the first mentioned document shall prevail notwithstanding any term or aspect of a later mentioned document:

- a) this Contract;

- b) the Special Conditions,

3. TERM

The term of this Agreement commences on _____ 2014 and will end upon _____ (“the Term”). The Contract is not a Replaceable Contract. The term may be extended due to unforeseen circumstances beyond the control of the Contractor.

4. SERVICES

The Contractor will perform the Services in accordance with this Agreement.

5. PAYMENT

The AVCFC will pay the Contractor for the performance of the Services in the amounts and in the manner specified by this Agreement.

6. TERMINATION

a) Termination for "Cause"

The Corporation shall have the right to terminate the Contractor immediately for "cause". "Cause" as used in the article shall mean any one or more of the following:

- i. Any act, event, circumstance, matter or omission that would constitute just cause for dismissal at law; or
- ii. A material and continuing refusal or failure to perform responsibilities assigned in accordance with the terms of the Agreement, if such refusal or failure shall continue for more than thirty (30) days after specific written notice thereof has been given by or under the authority of the Board to the Contractor, subject to a dispute of such notification by the Contractor, brought in good faith in accordance with Schedule A attached hereto.

b) Contractor's Right to Terminate

The Contractor shall have the right to terminate the Term:

- i. Immediately for any material breach by the Corporation under this Agreement, or
- ii. Upon 1 months notice provided by the Contractor to the Corporation.

c) Obligations Cease

Upon the termination of the Contractor's engagement in accordance with the provisions of this article, all obligations of the Contractor and the Corporation hereunder shall be terminated except to the extent that other provisions of the Agreement provide to the contrary.

7. BUSINESS DISCLOSURES; CONFIDENTIALITY

Except to the extent specifically authorized or to the extent impliedly authorized by virtue of the nature of its responsibilities hereunder, and except as such disclosures may be made in the ordinary course of business, or by court order, the Contractor shall not directly or indirectly disclose or divulge during its tenure, and thereafter, to any person, firm or corporation not affiliated with:

- a) the Corporation, or any of its corporate affiliates, or
- b) the Contractor, or its affiliates,

without the prior written consent of the Corporation, any confidential information as to the Corporation, including, without limitation, any information relating to the Business, customers, trade or marketing practices or trade secrets, and on termination of the Operations Term for any reason, the Contractor shall not disseminate any confidential figures, letters, papers, or copies thereof, or other confidential information of any type or description, and shall make such material available for the Corporation to collect upon three (3) days notice.

8. INDEMNITY

8.1 The contractor shall indemnify and save harmless the AVCFC, its employees, agents and authorized representatives and each of them from and against losses, claims, damages, actions, causes of action, costs and expenses (collectively referred to as "Claims"), that the AVCFC or any of its employees, agents, or authorized representatives may sustain, incur, suffer or be put to at any time, either before or after this agreement ends, that arises out of or occur, directly or indirectly, by reason of errors, omissions, or negligent acts of the contractor or its subcontractor(s), servant(s), or employee(s), under this agreement, excepting always that this indemnity does not apply to the extent, if any, to which the Claims are caused by errors, omissions, or negligent acts of the AVCFC, its other contractor(s), authorized representative(s) or any other persons.

8.2 None of the AVCFC Representatives in charge, their agents, authorized representatives, or employees are personally liable for any act performed in the discharge of any duty imposed or in the exercise of any power or authority conferred upon them by, or within the scope of, the Agreement if it can be demonstrated that all reasonable care was exercised in the conduct of the operations; in all such matters these persons act solely as agents and representatives of the AVCFC.

9. CONTRACTOR NOT LIABLE

Notwithstanding anything to the contrary herein, the Contractor shall not be liable to the Corporation for any costs, loss or damage to the Corporation caused by the Contractor in performing its duties as set out in this agreement, provided that:

- a) The Contractor acted honestly and in good faith with a view to the best interest of the Corporation;
- b) In the case of any criminal or administrative action or proceeding that is enforced by a monetary penalty, the Contractor had reasonable grounds for believing that its conduct was lawful.

10. DISPUTE RESOLUTION

10.1 Resolution Process

All disputes between the parties arising out of this Agreement shall be resolved as follows:

- a) The Alberni Valley Community Forest Corporation Board Chair, or his designate, and the Contractor shall first attempt in good faith to resolve any dispute within 30 days ("Discussion Period") of written request by either party;
- b) Failing such dispute being fully and finally resolved as per 10.1 herein,
 - i. Either party may, within a further 14 days after the expiry of the Discussion Period, by written notification delivered to the other party (the "Mediation Notice"), require that such dispute be referred to non-binding mediation (the "Mediation");
 - ii. The Mediation shall be completed within 30 days of the date of delivery of the Mediation Notice, or such greater time period as agreed to between the parties (the "Mediation Period");
 - iii. The Mediator shall be as agreed to between the parties within seven (7) days of the receipt of the Mediation Notice. If the parties are unable to agree on a Mediator, then both parties shall forthwith submit their nominee for Mediator to the last auditor for the Corporation, and the auditor shall draw the name of such Mediator randomly.
 - iv. The venue for the Mediation (the "Venue") shall be at such location as agreed to between the parties within seven (7) days of the receipt of the Mediation Notice. If the parties are unable to agree to a Venue, then both parties shall submit their choice of a neutral Venue to the last auditor for the Corporation, or if no auditor has been appointed, then the last external accountant for the Corporation, and such person shall draw such Venue randomly; and
 - v. The costs of the Mediator and the Venue shall be borne equally between the parties, unless otherwise agreed to in writing.

c) Failing such dispute being fully and finally resolved as per 10.1b) herein, within 10 days following the expiration of:

- i. the said 14 day period set out in 10.1b) herein,
- ii. the conclusion of the Mediation, or
- iii. the conclusion of the Mediation Period,

whichever is later, either party may refer the matter to arbitration by delivering notice of such to the other party (the "Arbitration Notice"). Such arbitration shall be by a single arbiter (the "Arbitrator") and shall be governed by the terms of the *Commercial Arbitration Act (RSBC 1996, ch. 55)*, and such arbitration shall be final and binding upon the parties. The parties agree that upon service of an Arbitration Notice, the parties will be bound to resolve such dispute through arbitration, unless both parties agree in writing to withdraw the Arbitration Notice.

10.2 No Court Action

The Parties shall not take any steps to resolve a dispute in Court before such time as the notice periods set out in 10.1 herein have expired, or by written agreement of the parties.

11. NOTICES

11.1 Delivery

All notices under this Agreement will be in writing, and will be deemed to be given if delivered or sent by email:

to the Corporation:

Jim Sears
Alberni Valley Community Forest
Corporation Board Chair
7500 Airport Road
Port Alberni, B.C. V9Y 8Y9
c/o manager@communityforest.ca
Phone: (250) 731-7377

to the Contractor

phone: _____
fax: _____

or to such other address as a Party may notify the other Party in the manner provided for in this paragraph. Delivered notices will be deemed to have been received upon delivery. Email and fax notices are to be deemed received on the same day if transmitted before 4:30 pm on a Business Day. If transmitted after 4:30 pm on a Business Day then it is to be deemed received on the next Business Day.

11.2 Change of Address

Any party may at any time change its address for service, electronic mail address, and facsimile phone number from time to time by giving notice to the other parties in accordance with the terms herein.

11.3 Email Delivery

Any notice sent by electronic mail must have been acknowledged by the recipient as having been received before the notice is deemed to have been given.

12. CONSTRUCTION OF AGREEMENT

12.1 Governing Law

This Agreement shall be considered for all purposes a British Columbia document and shall be construed pursuant to the laws of the Province of British Columbia and all of its provisions shall be administered according to same and its validity shall be determined under the laws of the Province of British Columbia.

12.2 Number, Gender and Persons

In this Agreement, words importing the singular number only shall include the plural and vice versa, words importing gender shall include all genders and words importing persons shall include individuals, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies and other legal or business entities of any kind whatsoever.

12.3 Captions

Paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and/or reference, and they shall in no way be construed as limiting, extending, defining or describing either the scope or intent of this Agreement or of any provision hereof.

12.4 Counterparts

This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument. A party's transmission by facsimile or electronic mail transmission of a scanned copy of this Agreement bearing that party's signature shall constitute an effective execution and delivery of the Agreement by that party to the party receiving the transmission.

12.5 Severability

The invalidity or unenforceability of any provision hereunder (or any portion of such a provision) shall not affect the validity or enforceability of the remaining provisions (or remaining portions of such provisions) of this Agreement.

12.6 Currency

All references to monetary amounts herein are expressed in Canadian dollars.

12.7 Entire Document

This Agreement (including all other documents executed simultaneously herewith or pursuant hereto) constitutes the entire agreement among the parties pertaining to the subject matter hereof, and supersedes and revokes any and all prior to existing agreement, written or oral, relating to the subject matter hereof, and this Agreement shall be solely determinative of the subject matter hereof.

12.8 Waiver

The Corporation or the Contractor may, at any time or times, waive (in whole or in part) any rights or privileges to which either or both of them may be entitled hereunder. However, no waiver by any party of any condition, or of the breach of any term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach in other instances, or as a waiver of any other condition or of any breach of any other terms, covenants, representations or warranties contained in this Agreement, and no waiver shall be effective unless it is in writing and signed by the waiving party.

12.9 Legal Costs

In the event that either party shall be required to retain the services of legal council to enforce any of their rights hereunder, the prevailing party shall be entitled to receive from the other party all costs and expenses including (but not limited to) court costs and legal fees (whether in a court of original jurisdiction or one or more courts of appellate jurisdiction) incurred by it in connection herewith.

12.10 Jurisdiction

Subject to Article 10 herein, any proceeding arising hereunder shall be instituted only in the Vancouver Registry of the Province of British Columbia and all parties hereto agree that venue shall be proper for all such legal or equitable proceedings.

12.11 Successors and Assigns

The rights and obligations of the parties under this Agreement shall ensure to the benefit of and shall be binding upon their successors and assigns and other legal representatives. This Agreement shall not be assignable by the Corporation or the Contractor without the expressed written consent of both parties, which consent may be arbitrarily withheld.

12.12 Agreement or Modification

This Agreement may not be amended, modified, superseded, cancelled, or terminated, and any of the matters, covenants, representations, warranties or conditions hereof may not be waived, except by a written instrument executed by the Corporation and the Contractor, or, in the case of a waiver, by the party to be charged with such waiver.

**TO EVIDENCE THEIR AGREEMENT EACH OF THE PARTIES HAS EXECUTED THIS AGREEMENT
ON THE DATE APPEARING BELOW:**

**ALBERNI VALLEY COMMUNITY
FOREST CORPORATION**

Contractor

Per: _____ Per: _____

Per: _____ Date: _____

Date _____