



Operational Services Contract

CONTRACT ADMIN./FILE NO:	THIS AGREEMENT DATED FOR REFERENCE THE xxth DAY OF MONTH, 2010.
FOR: LOCATION: (Activity / Treatment and Location)	

BETWEEN:

Forsite Consultants Ltd.

**#330-42 Street SW, P.O. Box 2079
Salmon Arm, BC V1E 4R1**

Phone Number: (250) 832-3366.....FAX Number: (250) 832-3811

E-mail Address: _____@forsite.ca

(the "Company")

AND:

Company Name

**Address
City, Province
Postal Code**

Phone Number:

FAX Number:

E-mail Address:

Workers' Compensation Board Number: XXXXXX

(the "Contractor")

both of whom are sometimes referred herein to as "the Parties" and each of whom is a "Party" to this Agreement.

WHEREAS:

- A. The Company requires the Work described in this Agreement to be carried out for its benefit.
- B. The Contractor is prepared to do the Work.
- C. The Company and the Contractor have agreed that the Work shall be carried out in accordance with certain Contract Documents as hereinafter set out.

Accordingly, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

1.01 In this document, the following words have the following meanings:

- (a) "**Agreement**" means the agreement between the Parties as set out in the Contract Documents;
- (b) "**Amending Document**" means a Contract Amendment form, a Change of Work Order Form, or another standard form of similar nature specified by the Company;
- (c) "**Assessment**" means a pre-estimate of damages incurred by the Company as a result of the Contractor's failure to perform, unsatisfactory performance or other non-compliance with the provisions of this Agreement;
- (d) "**Changed Condition**" means a materially changed physical condition at the Work Area which was not foreseen by the Contractor and which would not have been reasonably foreseen by a reasonable contractor who, before submitting its tender, conducted a thorough investigation of the work to be done to complete the Work, including a thorough inspection of the Work Area and review of all information available from the Company to persons wishing to submit tenders, but does not include any weather conditions or natural events;
- (e) "**Contract Documents**" means those documents described in section 2.01 and the Work Progress Plan;
- (f) "**Contract Price**" means the total amount payable to the contractor for satisfactory performance of the Work, as set out in Schedule 'B';
- (g) "**Contractor Representative**" means a person designated pursuant to section 5.05;
- (h) "**Environmental Damage**" means:
 - i. slumping or sliding of land;
 - ii. inordinate soil disturbance; or
 - iii. other significant damage to the environment.
- (i) "**Equitable Adjustment**" means a fair and reasonable adjustment of either, or both of:
 - i. the Contract Price; or
 - ii. the time within which the Work is to be performed;
- (j) "**Fiscal Year**" means the period from April 1 to the next March 31 inclusive;
- (k) "**Company Representative**" means a person appointed pursuant to section 5.01;
- (l) "**Occupied Area**" means any Work Area, camp or rest area, or any other area occupied by the Contractor for the purposes of this Agreement;
- (m) "**Payment Area**" means a portion of a Work Area as specified in the Work Progress Plan which contains a specified amount of scheduled Work;
- (n) "**Performance Security**" means money or equivalent to money collected from the Contractor by the Company as described in Article 4;
- (o) "**Subcontractor**" means a person, firm or corporation contracting with the Contractor to perform a part or parts of the Work, or to supply products worked to a special design according to the Agreement, but does not include one who merely supplies products not so worked;
- (p) "**Shortfall**" means the difference between total Contract Price and the amount paid to the Contractor for Work satisfactorily completed;
- (q) "**Term**" means the period of time this Agreement in force pursuant to Article 3;
- (r) "**Work**" means all labour, supervision, administration, materials, transportation, supplies, tools, equipment and such other services and materials, necessary or desirable to perform the services described in the Contract Documents, and includes any services which are not expressly described, but which are nevertheless necessary for the proper execution of the work;
- (s) "**Work Area**" means the area shown outlined on the attached maps;

- (t) "Work Day" means every day of the week except Saturday, Sunday and statutory holidays; and
- (u) "Work Progress Plan" means the plan developed pursuant to Article 6.

- 1.02 If any of the words in section 1.01 are used in any other Contract Document, they have the same meaning as in this document unless the context dictates otherwise.
- 1.03 Words or abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with those recognized meanings.
- 1.04 The headings of the clauses of this Agreement have been inserted for reference only and do not define, limit, alter or enlarge the meaning of any provision of this Agreement.

ARTICLE 2 CONTRACT DOCUMENTS AND AMENDMENTS

Contract Documents

- 2.01 The attached schedules, marked in the appropriate square below, are applicable to and form part of this Agreement:

Schedule/TitleForm No.

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Amending Documents

- 2.02 No change to the Agreement is effective unless the change is in writing, is signed by both Parties, and is in the form of an Amending Document.

Interpretation

- 2.03 Any reference in the Contract Documents to a manual or a form means a manual or form published by or for the Company and includes every amendment to them and any manual or form published from time to time in substitution for them or replacement of them.
- 2.04 In the event of a conflict between the Contract Documents the terms of this Document supersede all other Documents. In the event of conflicts between alike Contract Documents of different dates, the Document of later date prevails.

ARTICLE 3 TERM OF CONTRACT AND COMMENCEMENT OF WORK

- 3.01 The Term of this Agreement is from the date of this Agreement to and including **MONTH DAY, 2009**, unless otherwise provided in the Work Progress Plan.
- 3.02 The Contractor shall not conduct any Work until the Company notifies the Contractor to commence work.
- 3.03 Contract commencement is subject to the provision of approved FFT Funding.
- 3.04 The Contractor shall commence Work within **20** calendar days from the date specified in the notice to commence work.

- 3.05 Time is material and of the essence in this Agreement.
- 3.06 Upon expiration of the Term, the Company may, at its discretion, extend the Term.

ARTICLE 4 PERFORMANCE SECURITIES

- 4.01 Upon request of the Company, the Contractor shall furnish Performance Securities in the amount specified by and in a form and manner acceptable to the Company as security for the faithful performance by the Contractor of all Work. "Performance Security waived" for this contract.
- 4.02 The Company may retain any Performance Security until all Work has been completed in accordance with this Agreement and is subject to forfeiture, at the discretion of the Company, if termination of the Agreement is caused by the Contractor's failure to perform or to comply with this Agreement.
- 4.03 If the Contractor fails to perform or comply with this Agreement, the Company may, in addition to terminating the Agreement and claiming the Performance Security, pursue any other remedies available to it under this Agreement or the laws of the Province of British Columbia.

ARTICLE 5 PARTY REPRESENTATIVES

Company Representative

- 5.01 The Company shall appoint a Company Representative who shall have full authority to act on behalf of the Company in connection with this Agreement.
- 5.02 Upon entering into this Agreement, the Company shall notify the Contractor of the name of the Company Representative.
- 5.03 The Company may substitute a Company Representative at any time, and shall immediately notify the Contractor of the change.
- 5.04 The Company Representative may require the Contractor to do anything necessary to satisfy the Company Representative that the Work is being performed in accordance with the Contract Documents.

Contractor Representative

- 5.05 The Contractor shall designate a Contractor Representative, who shall:
 - (a) have full authority to act on behalf of the Contractor in connection with the Work and the Agreement;
 - (b) speak English and understand spoken and written English, to the reasonable satisfaction of the Ministry Representative; and
 - (c) be available to the Company Representative, when requested, and is present at all times at any site where the Work is carried out.
- 5.06 Upon entering into this Agreement, the Contractor shall notify the Company of the name, address and telephone number of the Contractor Representative designated pursuant to section 5.05.
- 5.07 The Contractor shall not substitute a Contractor Representative without the written consent of the Ministry Representative.
- 5.08 If, in the reasonable opinion of the Company Representative, the Contractor Representative is not suitably experienced or is unable to properly supervise the Work or communicate with the Company Representative, then the Contractor shall, upon receipt of written notice from the Company Representative, replace that representative and immediately notify the Company of that change.
- 5.09 No Work shall be carried out by:
 - (a) the Contractor unless under the direct and continuous supervision of the Contractor or the Contractor Representative; or
 - (b) a Subcontractor unless under the direct and continuous supervision of the Subcontractor or the Subcontractor's designated representative.

ARTICLE 6 STANDARDS OF PERFORMANCE AND WORK PROGRESS

Work Progress Plan

- 6.01 **The estimated work, including the scope of work in Schedule A, any notice to intending bidders and as identified in the Schedule B, is not guaranteed. The removal of units or the removal of a portion of the scope of work may be required, from time to time. The contractor will not be eligible for any compensation from the company for the removal of units or a portion thereof, or a reduction in the scope of work. The substitution of work areas shall be per Article 10 of this Agreement. Substitution of work areas may or may not be possible.**
- 6.02 If the Contractor will complete the Work itself, the Contractor Representative shall meet with the Company Representative before the commencement of Work to:
- (a) inspect the Work Area,
 - (b) review the Contract Documents and work performance requirements, and
 - (c) jointly develop a Work Progress Plan which outlines in general terms the scope, timing, location and any special requirement of the Work.
- 6.03 If the Work will be completed by Subcontractor(s) the Contractor Representative shall, before the commencement of Work, submit a Work Progress Plan to the Company Representative for approval.
- 6.04 The Work Progress Plan shall be developed on a form approved by the Company. The Work Progress Plan must provide for the orderly completion of all Work, comply with all provisions of this Agreement, and be satisfactory to the Company.
- 6.05 The Work Progress Plan may divide the scheduled Work into Payment Areas. Where no Payment Areas are approved the entire Work Area shall be considered to be one Payment Area.
- 6.06 The Work Progress Plan shall become a part of this Agreement and Work shall proceed in accordance with the Work Progress Plan.

Standards of Performance

- 6.07 The Contractor acknowledges it has satisfied itself to:
- (a) the nature and magnitude of the Work; and
 - (b) the general character, quality and quantity of the equipment and materials required to execute and complete the Work.
- Any failure by the Contractor to discover matters which affect or could affect the Work does not relieve the Contractor from its obligations under this Agreement, or otherwise affect the Contract Price.
- 6.08 The Contractor shall at all times exercise the standard of care, skill and diligence normally exercised and observed by persons engaged in the performance of activities similar to the Work.

Continuity and Suspension of Work

- 6.09 The actual date the Work may commence is dependent upon the weather and Work Progress Plan development. Once commenced, Work shall be continuous except as provided for in sections 6.09.
- 6.10 The Company may, if in its reasonable judgement weather or other conditions are unsuitable for Work to proceed, suspend operations for either a specified or an indefinite period.
- 6.11 In the event of suspension under section 6.09, the Term shall be extended by a length of time equal to the duration of the suspension, or another length of time if the Parties agree.
- 6.12 If the Company, having suspended Work pursuant to the section 6.09, does not permit Work to resume within five (5) Work Days, the Contractor may, by giving written notice to the Company, terminate this Contract without penalty. Neither Party is liable for compensation of any kind arising out of the

suspension of operations. Payment shall be made for all Work satisfactorily performed before the suspension of Work.

- 6.13 If the Contractor does not terminate the Contract in accordance with Section 6.11, the Parties may enter into negotiations for compensation for the Contractor remaining available, but neither Party is obliged to do so.

ARTICLE 7 INDEMNIFICATION AND INSURANCE

Indemnity

- 7.01 The Contractor shall indemnify and save harmless the Company, 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 Company 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 Company, its other contractor(s), authorized representatives(s) or any other persons.
- 7.02 None of the Company or the Company Representative 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 Company.
- 7.03 Neither the Company nor any of its employees, authorized representatives, or agents are liable to the Contractor or the Contractor's employees or agents for any injury, loss, or damage however occasioned to any of them or their equipment or livestock while being transported or conveyed in any vessel, boat, aircraft owned or operated by the Company, and the Contractor shall not undertake claims against the Company, its employees, authorized representatives, or agents to recover any such injury, loss or damage either on its own behalf or on behalf of its employees or agents. The Contractor shall indemnify and save harmless the Company, its employees, authorized representatives, or agents from any such claims initiated by the Contractor's employees, subcontractors, servants, or agents.

Insurance

- 7.04 During the Term, the Contractor shall pay and maintain insurance coverage as specified in the Contract Documents or as specified in writing by the Company, if attached, as those terms may be modified from time to time in accordance with our directions.

ARTICLE 8 PROTECTION OF WORK AND PROPERTY

General

- 8.01 The Contractor shall protect the Company's property and property adjacent to the Work Area, from damage and is responsible for damage which may arise as the result of the Contractor's operations under the Agreement, except damage which occurs as a result of:
- (a) errors in the Contract Documents; or
 - (b) acts or omissions of the Company, other Contractors, their agents and employees.

Protection of the Environment

- 8.02 If the Contractor encounters circumstances where the Contractor knows or should reasonably know that, due to weather conditions or site factors, proceeding with the Work may, directly or indirectly, cause Environmental Damage, the Contractor shall:
- (a) immediately suspend such Work;

- (b) immediately advise the Company of the suspension and circumstances;
- (c) not proceed with such Work until the Company so instructs; and
- (d) upon the Company's instruction to proceed with such work, do so in accordance with the Company's instructions.

8.03 The Contractor shall not be deemed to be in breach of this Agreement for suspending Work pursuant to Section 8.02.

Fire Protection

8.04 The Contractor shall:

- (a) take every precaution to prevent unintentional fire from occurring on or about the Work Area,
- (b) ensure that no person burns any debris on or about the Work Area unless authorized under a Burning Reference Number issued by the Ministry of Forests and Range,
- (c) ensure that, with respect to smoking,
 - (i) no person smokes except in areas that are free of or fully cleared of all flammable material,
 - (ii) no burning material falls outside cleared areas, and
 - (iii) all burning material is completely extinguished before leaving cleared areas.

ARTICLE 9 COMPLIANCE WITH THE LAW

9.01 This Agreement is governed by and is to be construed in accordance with the laws of the Province of British Columbia.

9.02 The Contractor shall comply with all laws affecting the Work, including the *Workers Compensation Act* and its regulations and the *Employment Standards Act* and its regulations.

9.03 Without limiting section 9.02, the Contractor shall:

- (a) be considered the "Prime Contractor" for the Work, as described in the *Occupational Health and Safety Regulations*, and shall carry out all associated duties;
- (b) be solely responsible for safety at the Work Area;
- (c) provide the required compensation coverage for the Contractor, all employees and partners employed or engaged in the execution of the Work;
- (d) pay all assessments and levies associated with the Work and provide the Company upon request with proof of having done so;
- (e) promptly pay all persons employed or engaged in the execution of the Work; and
- (f) obtain all licenses and permits required by law to carry out the Work, unless obtained by the Company and provided to the Contractor before commencement of the Work, and provide the Company with proof of having obtained those licenses or permits.

9.04 Nothing in this Agreement shall relieve the Contractor from its responsibility to comply with all applicable provisions of the *Forest & Range Practices Act* and its regulations.

ARTICLE 10 CHANGES IN CONDITIONS

10.01 If a Changed Condition occurs during the course of the Work, the following applies:

- (a) The parties shall immediately advise each other of particulars of the Changed Condition and the Contractor Representative and the Company Representative shall meet to attempt to deal with the condition.
- (b) If the Changed Condition is so substantial that amending the Agreement to deal with the change would change the essential nature of the Work, then either party may elect not to proceed with the Work any further and the contract shall be brought to an end.

- (c) If either party so elects, and both Parties can mutually agree to change the Agreement in writing, and the amendment is signed by both Parties, the amendment will become part of the existing agreement.
- (d) If the Changed Condition can be dealt with by the substitution of an alternate Work Area or by other amendment to the Agreement and if such substitution or other amendment will not change the essential nature of the Work, then the Company may, in its discretion, substitute such an alternate Work Area (and make changes to this Agreement that are appropriate to deal with the substitution) or make other amendments to this Agreement. The Contractor shall be obliged to proceed on that basis. If the parties cannot agree on a price for the Work as amended in the substituted Work Area, then the price shall subsequently be determined pursuant to Article 14.
- (e) The Company is not obliged to make any payment under section 10.01 to satisfy any claim by the Contractor for any losses occasioned by a Changed Condition.

ARTICLE 11 INSPECTION AND ACCEPTANCE

Request for Inspection and Acceptance

- 11.01 The Contractor shall, upon completing all Work within a Payment Area, promptly request that the Company inspect and determine the acceptability of the Work. The request must be in writing, may take the form of an invoice, and, must be delivered to the Company during the Company's normal business hours.

Inspection by the Company

- 11.02 The Company shall, following receipt of the Contractor's request for inspection and acceptance, promptly inspect and determine the acceptability of the Work performed in the Payment Area. Work shall be inspected in accordance with the Contract Documents. The Company is not obliged to make any determination of acceptability before receiving the written request.
- 11.03 The Contractor is encouraged, but not required, to observe inspections while they are underway.
- 11.04 The Company shall provide the Contractor with a copy of inspection results.
- 11.05 The Company reserves the right to inspect, at all times during the Term, any Work performed.
- 11.06 The Contractor shall pay the Company, on demand, all direct and indirect additional inspection costs incurred because Payment Areas are not fully completed by the time specified in the Contractor's request for inspection and acceptance.
- 11.07 Inspections are conducted by the Company in order to determine compliance with the provisions of this Agreement and to provide the basis for calculating the payment due. These inspections are conducted for the sole benefit of the Company, and do not release the Contractor from the responsibility of providing quality control measures to assure that the Work strictly complies with this Agreement.

Re-Inspection

- 11.08 If the results of an inspection are unacceptable to the Contractor, it may, if it does so within three (3) Work Days of receiving the inspection results, request the Company re-inspect the Work.
- 11.09 If the Contractor requests a re-inspection of the Work, the Company shall perform the re-inspection at a time mutually agreed to by the Parties, but in any event no later than ten (10) Work Days after receiving the request.
- 11.10 The results of the re-inspection shall be used to determine payment and shall be final and binding.
- 11.11 The Contractor shall pay the Company's costs of the re-inspection only if the difference in Work quality between the original inspection and the re-inspection is less than ten percent (10%) of the original inspection results.

ARTICLE 12 MEASUREMENT AND PAYMENT

Payment

12.01 The Company shall, subject to the provisions of this Agreement and the *Financial Administration Act* and regulations, pay the Contractor for all Work which has been completed in accordance with the Contract Documents.

Payment Initiation

12.02 The Company shall upon acceptance of the Work within a Payment Area, promptly initiate a payment.

Holdback

12.03 The Company is not obliged to advance to the Contractor more than eighty (80%) of the calculated amount of any payment. The twenty (20%) holdback shall be retained for forty (40) calendar days after the completion, or earlier termination, of all Work and interest is not payable on the amount held back by the Company.

12.04 The Company is authorized, but not obliged, to apply the holdback funds as follows:

- (a) firstly, to any unpaid government agencies;
- (b) secondly, to the Contractor's and Subcontractor's unpaid workers, Subcontractors and material suppliers; and
- (c) thirdly, as security for the correction of any breach of, or for payment of any Assessment provided for in, this Agreement.

Payment for Part Performance

12.05 If this Agreement expires or is terminated before completion of the Work, the Company shall only pay for that portion of the Work completed to the satisfaction of the Company before the expiration or termination.

Method of Measurement

12.06 All linear and area measurements under this Agreement are measured on the horizontal plane, unless specified otherwise in an attached Schedule.

Re-measurements

12.07 If the calculation of a payment depends upon the area completed, and if the Contractor believes the area used in calculating that payment is incorrect, the Contractor may request the Company remeasure the Payment Area. The request shall be delivered in writing to the Company, within three (3) Work Days of the Contractor receiving a copy of the payment calculation for the Payment Area in question.

12.08 If the Company's remeasurement indicates that the originally specified area was correct within five percent (5%), the original measurement will be used and the Contractor will pay for the cost of the remeasurement. If the difference between measurements exceeds five percent (5%), payment will be based on the second measurement without charge for the remeasurement.

Appropriation

12.09 Despite any other provision of this Agreement, the Company's obligation to pay the Contractor, pursuant to this Agreement, is subject to:

- (a) the Legislative Assembly of the Province of British Columbia having provided sufficient funds to enable the Company, in any Fiscal Year or part thereof, to make payment pursuant to this Agreement when it is due; and
- (b) Treasury Board not having controlled or limited expenditure of any funds.

Taxes

- 12.10 The Company certifies that the Work to be carried out pursuant to this Agreement is for the use of, and is being purchased by the Company, and is therefore subject to the Federal Goods and Services Tax.

ARTICLE 13 NON-COMPLIANCE AND TERMINATION

Termination by the Company

- 13.01 The Company may, at its sole discretion, terminate this Agreement at any time, and no claim may be made by the Contractor for any losses occasioned by that termination if the termination:
- (a) occurs before the Company notifies the Contractor to commence Work;
 - (b) is caused by an Act of God, unsuitable weather, natural disaster, withdrawal of labour in labour disputes, or any other unforeseeable causes over which the Company has no direct control; or
 - (c) is caused by the Contractor's failure to perform or comply with the provisions of this Agreement.

Mutual Termination

- 13.02 This Agreement may be terminated at any time by the mutual consent of the Parties.

Performance Security

- 13.03 If the Company terminates this Agreement, Performance Securities will only be returned if the termination:
- (a) is under section 13.01(b), or
 - (b) is under section 13.02 and is occasioned by an Act of God, unsuitable weather, flood, fire, washout, or other unforeseeable cause clearly beyond the control of the Contractor.

Non-Compliance with Agreement Provisions

- 13.04 If, in the opinion of the Company, the Contractor fails to perform or fails to comply with any of its obligations under this Agreement, the Company may, in its discretion do one or more of the following and the Contractor shall be obliged to comply:
- (a) require the Contractor to re-work the area;
 - (b) impose other requirements on the Contractor to deal with the alleged failure of compliance;
 - (c) impose an Assessment if such an Assessment is provided for in the Contract Documents;
 - (d) require the Contractor to do no further Work until the alleged failure of compliance is dealt with according to the Company's requirements;
 - (e) terminate this Agreement.

These remedies shall be in addition to and not instead of any other remedy which the Company may have for breach of contract.

- 13.05 The Company shall inspect any re-worked areas, the results of the inspection shall supersede any previous inspection results, and the Contractor shall pay the Company's costs of the inspection.
- 13.06 For the purposes of section 13.04(a), the Company need not notify the Contractor before imposing an Assessment.
- 13.07 If the Company imposes an Assessment on the Contractor, the Assessment may be collected by deduction from a payment under this Agreement, any Performance Security or from any holdback.
- 13.08 If the Contractor does not agree with the Company's opinion pursuant to section 13.04 that there has been a failure to comply, the Contractor shall comply with any and all of the requirements in section

13.04(a) to (b), but the Contractor shall have the right to seek compensation from the Company, under Article 14, if there in fact was no failure to comply.

ARTICLE 14 DISPUTE RESOLUTION

- 14.01 If a dispute occurs between the Parties concerning any matter governed by this Agreement, the disputing Party shall promptly advise the other Party and the Parties together shall use all reasonable efforts to resolve the dispute.
- 14.02 If the Parties are unable to resolve the dispute informally, within five (5) Work Days, then the Contractor shall give to the Company Representative written particulars of the complaint, which particulars shall include the following:
- (a) a detailed description of the nature of the complaint;
 - (b) a list of the relevant provisions of the Contract Documents; and
 - (c) an evaluation by the Contractor of the matters in dispute.
- 14.03 The Company shall, within twenty (20) Work Days of receipt by the Company Representative of the written particulars, give the Contractor a decision, in writing, of one of the following:
- (a) that the Company accepts the position of the Contractor; or
 - (b) that the Company rejects the position of the Contractor.
- 14.04 If the Company accepts the position of the Contractor, the Parties shall enter into an Amending Document to reflect the Agreement.
- 14.05 If the Company rejects the position of the Contractor, the Parties shall proceed to mediation with a mutually agreed upon third party. If the dispute is not resolved within fifteen (15) Work Days of appointment of the mediator, then the Parties may, if they both agree, proceed to arbitration pursuant to the *Commercial Arbitration Act*.
- 14.06 If the matter in dispute is not resolved promptly pursuant to section 14.01, the Company Representative may give to the Contractor instructions that in his or her opinion are necessary to provide for the proper performance of the Work and to prevent delays.
- 14.07 If the Contractor receives instructions pursuant to section 14.06, the Contractor shall act immediately to carry out the Work pursuant to the instructions, but any Work performed by the Contractor in this respect shall be without prejudice to any claim the Contractor may have concerning the dispute.
- 14.08 Nothing in this Article precludes either Party from having a dispute resolved by a court of competent jurisdiction, although no steps shall be taken by either Party to initiate legal proceedings until after the process described in sections 14.01 through 14.03 has been completed.

ARTICLE 15 MISCELLANEOUS

Confidentiality

- 15.01 The Contractor will treat as confidential and will not, without the prior written consent of the Company, disclose or permit to be disclosed, either before or after the expiration or sooner termination of this Agreement, any information supplied to, obtained by, or which comes to the knowledge of the Contractor as a result of this Agreement except if the disclosure is necessary to enable the Contractor to fulfill it's obligations or to comply with applicable law, including the *Freedom of Information and Protection of Privacy Act*, or if it is information that is generally known to the public other than as a result of a breach of this agreement.

Contractor Status

- 15.02 The Contractor is an independent Contractor and not a servant, employee, partner or agent of the Company.

- 15.03 The Contractor shall accept instructions from the Company, but the Contractor is not subject to the control of the Company in respect of the manner in which instructions are carried out.
- 15.04 The Contractor shall not purport to commit the Company to the payment of any money to any person.
- 15.05 The Contractor shall ensure all personnel hired by the Contractor to perform the Work are at all times employees of the Contractor and not of the Company. The Contractor is solely responsible for arranging reliefs and substitutions, pay, supervision, discipline, employment insurance, leave and all other matters arising out of the relationship of employer and employee.

Notices

- 15.06 Any notice or document required to be given under this Agreement shall be conclusively deemed to be validly given or delivered to and received by the Parties at the work site or at the address, facsimile, or email address specified in this Agreement (or at such other address as either Party may from time to time designate by notice in writing to the other):
- (a) if hand delivered to the Contractor or the Contractor's Representative, on the date of that personal delivery;
 - (b) if mailed, on the third business day after the mailing of the same in British Columbia by prepaid post;
 - (c) if delivered by courier service, on the third business day after collection by the courier service of the same in British Columbia;
 - (d) if sent by facsimile transmission, when transmitted, only if transmitted to the facsimile machine numbers first above written. The onus of proving transmission and valid delivery lies with the transmitting Party, by copy of a facsimile transmission confirmation to the appropriate fax number;
 - (e) If sent by electronic transmission, when it has entered the Party's electronic information.

Non-Waiver

- 15.07 A waiver of any provision of this Agreement or a waiver of a breach by the Contractor of any provision of this Agreement is effective only if it is in writing and signed by the Company.
- 15.08 A written waiver by the Company of any provision of this Agreement or of any breach by the Contractor of any provision of this Agreement is not a waiver of any subsequent breach of the same or any other provision of this Agreement.

Contractor-Furnished Facilities

- 15.09 Except as specified in the Contract Documents, the Contractor shall undertake all Work and furnish at its cost all labour, equipment, supervision, transportation, supplies and incidentals necessary to perform the Work.

Unsuitable Workers

- 15.10 The Contractor shall ensure all persons employed to perform the Work are competent, adequately trained, fully instructed and supervised, and legally entitled to work in Canada.
- 15.11 The Contractor shall, upon request of the Company Representative, remove any person it employs for purposes of the Agreement who, in the reasonable opinion of the Company, is incompetent or has conducted himself or herself improperly, and the Contractor shall not permit a person who has been so removed to perform any further Work.

Survival of Terms

- 15.12 All terms of this Agreement in favour of the Company and all rights and remedies of the Company, either at law or in equity, survive the expiry or sooner termination of this Agreement.

Ownership

- 15.13 Everything produced by the Contractor as a result of this Agreement, and any property provided by the Company to the Contractor as a result of this Agreement :
- (a) is the exclusive property of the Company; and
 - (b) the Contractor shall deliver it to the Company's request.

Assignment of Copyright

- 15.14 The Contractor assigns to the Company in right of the Company, as represented by the Company, all rights in the Copyright in the Material. Upon request, the Contractor must deliver to the Company documents satisfactory to the Company waiving in favour, and it assigns, any moral rights that the Contractor (or its employees) or subcontractors (or the subcontractors employees) may have in the Material and confirming the vesting of the copyright in the Company.

Conflict of Interest

- 15.15 The Contractor shall not perform any service for any other person, firm or corporation which, in the reasonable opinion of the Company, may give rise to a conflict of interest with the Contractor's obligations under this Agreement.

Site Clean Up

- 15.16 The Contractor shall maintain the Occupied Areas free from any accumulations of waste products or debris, other than that caused by the Company or other contractors.
- 15.17 Upon the Contractor vacating any Occupied Area, the Company Representative shall inspect the area to determine, at his or her sole discretion, whether or not the area was left in an acceptable condition.
- 15.18 If the Company Representative determines the Contractor left the Occupied Area in an unacceptable condition, the Company may repair the area and charge the entire cost of the repairs to the Contractor.

Camping and Parking

- 15.19 Use of Provincial Crown forest land, including any roads, landings or recreational sites by the Contractor or the Contractor's employees or agents for the purposes of lodgings, camping or trailer parking in connection with Work under this Agreement, is permitted on recreational sites only with prior written approval of a representative of the Ministry of Tourism, Sport and the Arts and is permitted on other Provincial Crown forest land, including roads and landings only with prior written approval of a representative of the Ministry of Forests and Range. Such use, if approved, shall be without charge to the Contractor; but, the approval may be revised or revoked at any time by the Crown.

Powers Cumulative

- 15.20 The powers set out in the Contract Documents for the Company to enforce the Contractor's compliance with this Agreement may be exercised separately, concurrently or cumulatively.

Non-transferable

- 15.21 The Contractor shall not assign this Agreement, or subcontract any obligations under this Agreement, without the prior written consent of the Company.

Transferable

- 15.22 The Company may, at its sole discretion, assign its rights under this agreement to another party and all terms and conditions will continue in full force mutatis mutandis (with those things having been changed which need to be changed). Notice will be given as per clause 15.06.

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement as of the day and year first above written.

Signed and delivered on behalf of the Company by an authorized representative:

Forsite Consultants Ltd. **Date**
Contract Officer / Expense Authority

Signed and delivered on behalf of the Contractor (or by an authorized signatory of the Contractor if a Corporation):

Signature of the Contractor **Date**
or Authorized Signatory

Affix Corporate Seal

OPERATIONAL SERVICES CONTRACT

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