

This Agreement dated for reference the 25th day of March, 2015.

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,  
represented by the Minister of Community, Sport and Cultural Development (the  
"Province")

AND

REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN (the "Recipient")

for the Okanagan Falls Governance Study (the "Study") for matters related to current  
community governance and servicing in Okanagan Falls Project No. 51 RS 1506

WHEREAS:

- A. The Province created the Local Government Restructure Grant Program to enable communities to study various forms of local government structure and implement local government structure (the "Program");
- B. The Recipient, having met the eligibility criteria required in the Regulation, applied to the Province for a grant under the Regulation and on March 25, 2015 the Province approved Funding under the Program for the Recipient to conduct work as described in Schedule A to this Agreement;
- C. The Funding is approved pursuant to Part 3, section 9(d) of the Regulation.

NOW THEREFORE, in consideration of the sum of One Dollar and other valuable consideration, the receipt and sufficiency of which is acknowledged by each party, the parties agree as follows:

#### DEFINITIONS

1. In this Agreement and its recitals the following definitions apply:

"**Agreement**" means this Agreement and any schedules attached hereto;

"**Commencement Date**" means the date identified in Schedule A;

"**Completion Date**" means the date identified in Schedule A upon which the Recipient will complete the Project;

"**Contract**" means a contract between the Recipient and a Third Party whereby the latter agrees to contribute a product or service to the Project in return for financial consideration;

"**Eligibility Criteria**" means the requirements set out in section 10(1) of the Regulation;

"Fiscal Year" means the period beginning April 1 of a year and ending March 31 of the following year;

"Funding" means the monies paid by the Province to the Recipient under this Agreement in accordance with Schedule B of this Agreement;

"Program Staff" means employees of the Ministry of Community, Sport and Cultural Development who are directly involved in the administration of the Program, and includes anyone authorized to act on their behalf;

"Project" means the project described in Schedule A of this Agreement;

"Regulation" means the *Local Government Grants Regulations*, B.C. Reg. 221/95 enacted under the *Local Government Grants Act* [R.S.B.C 1996] Chapter 275;

"Stipulations" are the requirements identified in Schedule A of this Agreement that the Recipient must meet in order to retain the Funding under this Agreement and includes the terms and conditions set out in this Agreement; and

"Third Party" means any person or entity or its officers, employees or agents, other than a party to this Agreement that is involved in the implementation of the Project.

## SCHEDULES

2. The Schedules to this Agreement are:

Schedule A Project Descriptions, Stipulations and Dates

Schedule B Payment and Reporting Requirements

## TERM OF AGREEMENT

3. Notwithstanding the actual date of execution of this Agreement, the term of this Agreement begins on the Commencement Date and expires on the Completion Date.

## OBLIGATIONS OF THE RECIPIENT

4. Upon receipt of the Funding by the Recipient and in order for the Recipient to retain the Funding, the Recipient agrees to meet the Stipulations identified in Schedule A of this Agreement.

5. The Recipient agrees to:
  - (a) carry out the Project in a diligent and professional manner;
  - (b) commence carrying out the Project within six months of the date of reference of this Agreement;
  - (c) complete the Project no later than the Completion Date; and
  - (d) provide evidence satisfactory to the Province that the Recipient has commenced the Project in accordance of section 5(b) of this Agreement.
6. If, in the opinion of the Province, the Recipient has failed to provide evidence satisfactory to the Province in accordance with section 5(d) of this Agreement to demonstrate the Project has commenced, the Province may terminate this Agreement, effective immediately and require the refund of all Funding advanced to the Recipient.
7. The Recipient will comply with all applicable laws, statutes, and regulations of British Columbia and, as applicable, Canada and the bylaws of any local government.
8. The Recipient agrees to:
  - (a) establish and maintain books of account, administrative records, invoices, receipts and vouchers for all expenses incurred in a form and content satisfactory to the Province;
  - (b) permit the Province to inspect at all reasonable times, any books of account, records, or Contracts between the Recipient and a Third Party related to this Agreement, including reports and interim reports, (both printed and electronic, including, but not limited to, electronic storage devices), whether complete or not, that are produced, received or otherwise acquired by the Recipient as a result of this Agreement;
  - (c) maintain all such accounts and records for a period of six years after the Completion Date; and
  - (d) ensure that all Contracts entered into by the Recipient with any Third Parties contain the provision in section 7 above.
9. The Recipient agrees to ensure it has obtained all necessary permissions, consents, rights or licenses (the "Permissions") necessary to provide the Province with copies of any written reports, including electronic copies of those reports, produced under this Agreement or produced under a Contract between the Recipient and a Third Party. The Permissions will also grant the Province the right to use, distribute, and reproduce the reports for purposes related to the Program.
10. At the request of the Province, the Recipient must provide to the Province written documentation confirming that the Recipient has obtained the Permissions described in section 9 of this Agreement.

11. The Recipient acknowledges that it is not the agent of the Province and will do no act which might be construed as authorizing any contract or permitting any other liability or obligation to be incurred on behalf of the Province.
12. No sub-contract entered into by the Recipient will relieve the Recipient from any of its obligations under this Agreement or impose upon the Province any obligation or liability arising from any such sub-contract.

#### **OBLIGATIONS OF THE PROVINCE**

13. Given the Recipient has met the Eligibility Criteria, the Province will pay the Recipient the amount and in the manner set out in Schedule B of this Agreement upon execution of this Agreement.

#### **INDEMNIFICATION**

14. The Recipient will be solely responsible for and shall indemnify and save harmless the Province, and its ministers, officers, servants, employees and agents from and against all losses, claims, liabilities, suits, damages, actions, causes of action, costs and expenses, and demands of any kind ("losses"), or other proceedings by whomsoever brought or prosecuted in any manner based upon, or occasioned by any injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights, caused by or arising directly or indirectly, from:
  - (a) the Recipient's performance under this Agreement or the breach of any term or condition of this Agreement by the Recipient, its officers, servants, employees and agents, or by any Third Party's performance of its contract with the Recipient and any officers, employees, servants or agents of the Third Party;
  - (b) any omission or other willful or negligent act of the Recipient, a Third Party, their respective employees, officers, or agents; and
  - (c) anything arising in connection with this Agreement or the Project, including the delivery or implementation of the Project.

#### **INSURANCE**

15. The Recipient will, without limiting its obligations or liabilities herein, provide and maintain insurances with insurers licensed in Canada with coverage of a type, and in amounts, that any similar business, acting reasonably, would obtain for a project similar to the Project under this Agreement, during the term of this Agreement.
16. The Recipient shall require and ensure that each Third Party maintains insurances comparable to those required above.

## **DEFAULT**

17. Any of the following events will constitute an Event of Default whether any such event be voluntary, involuntary or result from the operation of law or of any judgment or order of any court or administrative or government body:
- (a) the Recipient fails to comply with the Stipulations or any other provision of this Agreement;
  - (b) any representation or warranty made by the Recipient in connection with this Agreement is untrue or incorrect;
  - (c) any information, statement, certificate, report or other document furnished or submitted by or on behalf of the Recipient pursuant to or as a result of this Agreement is untrue or incorrect; or,
  - (d) the Recipient fails to provide positive confirmation that the Project has been completed by the Completion Date.

## **TERMINATION**

18. Upon the occurrence of any Event of Default and at any time thereafter the Province may, notwithstanding any other provision of the Agreement, at its sole option, elect to do any one or more of the following:
- (a) terminate this Agreement and require the Recipient to return to the Province any part of the Funding paid to the Recipient that has not been expensed or made subject to legally binding obligations to a Third Party;
  - (b) pursue any other remedy available at law or in equity.
19. The Recipient may terminate this Agreement and provide a full refund to the Province of the Funding under this Agreement.
20. If either party terminates this Agreement under paragraph 18(a) or 19, then such termination is effective upon ninety (90) days written notice to the other party.

## **REMEDIES NON-EXCLUSIVE**

21. The rights, powers and remedies conferred on the Province under this Agreement or any statute or law are not intended to be exclusive and each remedy shall be cumulative and in addition to and not in substitution for every other remedy existing or available to the Province.
22. The exercise of any one or more remedies available to the Province will not preclude the simultaneous or later exercise by the Province of any other right, power or remedy.

## **APPROPRIATION**

23. Notwithstanding any other provision of this Agreement, the payment of money by the Province to the Recipient under this Agreement is subject to:
- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act* to enable the Province, in any fiscal year or part thereof when any payment by the Province to the Recipient falls due under this Agreement, to make that payment; and
  - (b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation referred to in subsection (a) of this section.

## **NO FURTHER OBLIGATIONS**

24. The Recipient acknowledges that nothing in this Agreement will bind the Province to provide any additional funding towards the Project as defined in Schedule A, or any cost overruns of the Project and that no partnership, joint venture or agency will be created or will be deemed to be created by this Agreement or any action of the parties under this Agreement. No commitment to any other decision or project is implied by this Agreement.

## **JOINT AND SEVERAL OBLIGATIONS**

25. In the event the Recipient is comprised of more than one entity, then the covenants and obligations of each of such entities with the others will be both joint as well as several.

## **AMENDMENTS**

26. Unless otherwise specified in this Agreement, this Agreement may be amended only by further written agreement between the parties.

## **SURVIVAL OF TERMS**

27. Sections 8(b) and, (c), 14, and 15, continue in force indefinitely, even after this Agreement ends.

## **NOTICE**

28. (a) Any written communication from the Recipient to the Province must be mailed, personally delivered, faxed, or electronically transmitted to the following address:

Ministry of Community, Sport and Cultural Development  
Local Government Structure  
Mailing Address: P.O. Box 9839, STN PROV GOVT  
Victoria, British Columbia V8W 9T1

Attention: Director, Local Government Structure

Fax No. (250) 387-7972

- (b) Any written communication from the Province to the Recipient must be mailed, personally delivered, faxed or electronically transmitted to the following address:

Regional District of Okanagan-Similkameen  
101 Martin Street  
Penticton BC V2A 5J9

Attention: Chief Administrative Officer

Fax No. 250-492-0063

- (c) Any written communication from either party will be deemed to have been received by the other party on the tenth business day after mailing in British Columbia; on the date of personal delivery if personally delivered; or on the date of transmission if faxed.
- (d) Either party may, from time to time, notify the other by notice in writing of a change of address and following the receipt of such notice, the new address will, for the purposes of section 28 (a) or 28 (b) of this Agreement, be deemed to be the address or facsimile of the party giving such notice.

## **SIGNING IN COUNTERPART**

29. This Agreement may be executed in counterpart by a separate copy of this Agreement being executed by each party and when so executed and delivered to the other party by a method provided for in section 28, shall constitute one and the same agreement.

## **MISCELLANEOUS**

30. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
31. The Schedules to this Agreement are an integral part of this Agreement as if set out at length in the body of this Agreement.

- 32. If any provision of this Agreement or the application to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be enforceable to the extent permitted by law.
- 33. Nothing in this Agreement operates as a consent, permit, approval or authorization by the Province or any ministry or branch thereof to or for anything related to the Project that by statute, the Recipient is required to obtain unless it is expressly stated herein to be such a consent, permit, approval or authorization.
- 34. The Recipient will not, without the prior, written consent of the Province, assign, either directly or indirectly, this Agreement or any right of the Recipient under this Agreement.
- 35. All disputes arising out of or in connection with this Agreement will be referred to and finally resolved by arbitration pursuant to the *Commercial Arbitration Act*.

IN WITNESS WHEREOF each of the parties has executed this Agreement on the dates set out below.

SIGNED by the Minister of Community, Sport )  
 and Cultural Development or his or her )  
 duly authorized representative on behalf )  
 of HER MAJESTY THE QUEEN IN )  
 RIGHT OF THE PROVINCE OF )  
 BRITISH COLUMBIA: )  
 )  
 )  
 )  
 )  
 )

Date: \_\_\_\_\_

\_\_\_\_\_  
 Ministry's Authorized Signatory

REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN:

Per: Bill Newell  
 Authorized Signatory

Bill Newell, CAO  
 Name/Title

Date: 30 March 2015



Schedule A to the Agreement between the Province and the Regional District of Okanagan-Similkameen dated for reference March 25, 2015.

### **Schedule A – PROJECT DESCRIPTION, STIPULATIONS AND DATES**

#### **A.1 Project Description – Okanagan Falls Governance Study**

The purpose of the Okanagan Falls Governance Study (the “Study”) is to review the current community governance in Okanagan Falls and the surrounding area and illustrate the features of the current local government structure through description of the service delivery, cost recovery, and decision-making arrangements.

The study will provide the community with current information about its governance and services, and the capabilities of the rural governance system by:

- (a) describing governance of unincorporated areas in the Province of BC,
- (b) describing local service providers in the study area including roles, responsibilities, geographic and legal limits of jurisdiction, powers and cost recovery mechanisms,
- (c) describing all local services provided in the study area including the geographic extent for benefits of costs, the cost recovery methods used, and extent of cooperation and integration,
- (d) identifying geographies of concurrent services and communities, and,
- (e) engaging residents and property owners in the identification of common interests and concerns.

A governance study committee (the “Committee”) will be established by the Recipient and will be responsible for guiding and managing the research, analysis, and public engagement aspects of the Study. Terms of reference for the Study to be issued by the Ministry after consultation with the Recipient will provide additional details of the Project.

#### **A.2 Stipulations**

The following Stipulations must be met by the Recipient in order to retain the Funding it receives under this Agreement:

- (a) The Recipient must use the Funding solely for the purpose of the Study and for defraying the costs of undertaking, completing, and providing written reports to the Province on the Study;
- (b) The Funding must be used only for reasonable costs and expenses related to the Study that are incurred between the Commencement Date and the Completion Date; and
- (c) The Recipient will submit written reports on the Study to the Province in accordance with Schedule B of this Agreement.

**A.3 Commencement Date and Completion Date**

Notwithstanding the date of execution of this Agreement, the Commencement Date of the Project is March 25, 2015.

The Completion Date of the Project is December 31, 2016.

**A.4 Project Commitment Number**

The Project commitment number assigned to this Project is: 51 RS 1506

The Project commitment number must be quoted on all correspondence related to the Project.

Schedule B to the Agreement between the Province and the Regional District of Okanagan-Similkameen dated for reference March 25, 2015.

**Schedule B: PAYMENT AND REPORTING REQUIREMENTS**

**B.1 Funding by the Province:**

The Recipient having met the Eligibility Criteria and upon agreeing to meet the Stipulations in this Agreement, the Province will provide Funding to the Recipient upon execution of this Agreement in the amount of \$50,000 for the Project.

**B.2 Timing of Payment to the Recipient:**

The Province will make one payment of \$50,000 to the Recipient which will become due and payable upon the signing of this Agreement.

**B.3 Interim Progress Reports:**

The Recipient agrees to provide interim reports to the Province, through Program Staff, that include:

- (a) the Committee composition, once established, and its preliminary meeting schedule;
- (b) the community engagement strategy as developed by the Committee;
- (c) a copy of draft proposals from one or more Third Parties selected to undertake the Project; and
- (d) a copy of the preliminary report produced by one or more Third Parties before it is finalized for public engagement and stakeholder consultation.

**B.4 Final Report:**

The Recipient agrees to provide to the Province through Program Staff a final report on the Project no later than December 31, 2016.