

## AGREEMENT

BETWEEN:

**THE TOWN OF THREE RIVERS**, as represented by the CAO (hereinafter referred to as the "TOWN OF THREE RIVERS")  
OF THE FIRST PART

AND:

\_\_\_\_\_, of \_\_\_\_\_,  
(hereinafter referred to as the "Contractor")  
OF THE SECOND PART

WHEREAS the TOWN OF THREE RIVERS has requested the Contractor to provide certain services;

AND WHEREAS the Contractor has agreed to provide such services to the TOWN OF THREE RIVERS;

AND WHEREAS the TOWN OF THREE RIVERS and the Contractor wish to set out the terms and conditions relating to the provision of such services;

THEREFORE, the Council and the Contractor agree as follows:

### DEFINITIONS:

"Contracting Authority" means the Town of Three Rivers or the authorized delegate;

### 1.SERVICES AND PAYMENT

- 1.1 The Contractor agrees to provide to the TOWN OF THREE RIVERS those services set out in the Request for Proposal, "**Landscaping Stone Pathway Sackville to Station Street**" and attached as Appendix "A" hereto and the Contractor's Proposal, dated \_\_\_\_\_ and attached as Appendix "B" hereto (the "Services") to the full satisfaction of the TOWN OF THREE RIVERS.
- 1.2 The TOWN OF THREE RIVERS agrees to pay for the services, a total amount not greater than \$\_\_\_\_\_ based on the formula set out in Appendix B hereto.
- 1.3 The Contractor and the TOWN OF THREE RIVERS have mutually agreed upon the following terms, and nothing in Appendix "A" or Appendix "B" will supersede the terms listed in this part

## 2. TERM

2.1. This Contract shall commence on the \_\_\_\_\_ and terminates on \_\_\_\_\_, unless otherwise terminated in accordance with the provisions of this Contract.

## 3. NOTICE AND ADDRESS

3.1 Any notice required to be given herein or any other communication required by this contract shall be in writing and shall be personally delivered, sent by facsimile, or posted by prepaid registered mail and shall be addressed as follows:

i) If, to the TOWN OF THREE RIVERS:

John Jamieson, CAO  
172 Fraser Street  
Montague, PE  
COA IRO  
Facsimile number: 902-838-3392

Reference: Landscaping Stone Pathway Sackville to Station Street

3.2 Every such notice and communication, if delivered by hand, shall be deemed to have been received on the date of delivery or if sent by prepaid registered mail shall be deemed to have been received on the seventh day after posting, or if by facsimile, 48 hours after the time of transmission, excluding from the calculation weekends and statutory holidays.

## 4. ENTIRE AGREEMENT

This contract comprises the entire agreement between the parties hereto and supersedes and shall take effect in substitution for all previous agreements and arrangements whether written or implied between the parties relating to the services to be provided by the contractor and all such prior agreements, arrangements and understandings shall be deemed to have been terminated by mutual consent with effect from the date of execution of this contract.

## 5. GENERAL TERMS

5.1 Any information obtained from or concerning any department of the TOWN OF THREE RIVERS, or clients of any department of the TOWN OF THREE RIVERS, by the contractor, its agents or employees in the performance of any contract shall be confidential. The contractor shall take such steps as are necessary to ensure that any such information is not disclosed to any other person and shall maintain confidential and secure all material and information that is the property of the TOWN OF THREE RIVERS and in the possession of or under the control of the contractor. This clause survives the termination of this contract.

- 5.2 Time shall in every respect be of the essence.
- 5.3 The Contractor is an independent Contractor with the TOWN OF THREE RIVERS and nothing in this contract shall be construed or deemed to create the relationship of employee and employer or of principal and agent between the TOWN OF THREE RIVERS and the Contractor. The Contractor is solely responsible for payments of all statutory deductions or contributions including but not limited to pension plans, unemployment insurance, income tax, workers' compensation and any payroll tax.
- 5.4 This contract shall be interpreted and governed in accordance with the laws of PEI and the laws of Canada as they apply in PEI.
- 5.5 No waiver by either party of any breach of any term, condition or covenant of this contract shall be effective unless the waiver is in writing and signed by both parties. A waiver, with respect to a specific breach, shall not affect any rights of the parties relating to other or future breaches.
- 5.6 The failure of either party at any time to require the performance of any provision or requirement of this contract shall not affect the right of that party to require the subsequent performance of that provision or requirement.
- 5.7 Title to any report, drawing, photograph, plan, specification, model, prototype, pattern, sample, design, logo, technical information, invention, method or process and all other property, work or materials which are produced by the Contractor in performing the contract or conceived, developed or first actually reduced to practice in performing the contract (herein called "the property") shall vest in the TOWN OF THREE RIVERS and the Contractor hereby absolutely assigns to the TOWN OF THREE RIVERS the copyright in the property for the whole of the term of the copyright.
- 5.8 It is intended that all provisions of this agreement shall be fully binding and effective between the parties, but in the event that any particular provision or provisions or a part of one is found to be void, voidable or unenforceable for any reason whatever, then the remainder of the agreement shall be interpreted as if such provision, provisions, or part thereof, had not been included.
- 5.9 This contract may be extended by the written consent of the parties.
- 5.10 The Contracting Authority may delegate any of his authority and undertaking pursuant to this contract to any other officer, employee or agent of the TOWN OF THREE RIVERS.
- 5.11 This contract shall ensure to the benefit of and be binding on the respective administrators, successors and assignment of each of the parties hereto.

## 6. CONTRACTOR RESPONSIBILITIES

- 6.1 The Contractor shall indemnify and hold harmless, the TOWN OF THREE RIVERS, its officers, employees, servants and agents from and against all claims, actions, causes of action, demands, losses, costs, damages, expenses, suits or other proceedings by whomsoever made, brought or prosecuted in any manner based upon or related to the activities of the Contractor under this contract.

- 6.2 The Contractor shall be liable to the TOWN OF THREE RIVERS for any loss or damage to property or equipment that is supplied to or placed in the care, custody or control of the Contractor for use in connection with the contract whether or not such loss or damage is attributable to causes beyond the Contractor's control.
- 6.3 ASSIGNMENT: The Consultant may not assign or delegate work to be done under this contract, or any part thereof, to any other party without the written consent of the TOWN OF THREE RIVERS. In the case of a proposed assign of monies owing to the Contractor under this contract, the consent in writing of the CAO of the TOWN OF THREE RIVERS must be obtained during the term of this Contract.
- 6.4 The Contractor shall notify the TOWN OF THREE RIVERS immediately of any claim, action, or other proceeding made, brought, prosecuted or threatened in writing to be brought or prosecuted that is based upon, occasioned by or in any way attributable to the performance or non-performance of the services under this contract.
- 6.5 If at any time the Contractor considers their estimates indicate costs will exceed the project budget, they will immediately advise the Town of Three Rivers. If in the opinion of the Town of Three Rivers the excess is due to design, costs factors or matters under the control or reasonably foreseeable by the Contractor, the Town of Three Rivers may require the Contractor at their expense and at no additional cost to the Town of Three Rivers, do everything by way of revision of the design to bring the cost estimate within the project budget.
- 6.6 Confidential Data
- Except as required in the performance of services set out in this agreement, the Contractor must maintain as confidential all data and information made available to the Contractor, the TOWN OF THREE RIVERS, or any other parties which is generated by or results from the Consultant's performance of the Services described in this Contract. All such data and information is the property of the Town of Three Rivers. This clause shall survive the termination of the Contract.

## 7. TERMINATION

- 7.1 The TOWN OF THREE RIVERS may terminate this contract at any time without penalty upon giving written notice to this effect to the Contractor if, in the opinion of the Contracting Authority, the Contractor is unable to deliver the service as required, the Contractor's performance of work is persistently faulty, in the event that the Contractor becomes insolvent or commits an act of bankruptcy, in the event that any actual or potential labour dispute delays or threatens to delay timely performance of the contract or the Contractor defaults or fails to observe the terms and conditions of the contract in any material respect.
- 7.2 This contract shall terminate as of the day for termination set out in the written notice and the Contractor shall forthwith invoice the TOWN OF THREE RIVERS for work performed to the date of termination.

## 8. FINANCIAL

- 8.1 The TOWN OF THREE RIVERS, having given written notice of a breach, may withhold or hold back in whole or in part any payment due the Contractor without penalty, expense or liability, if in the opinion of the Contracting Authority, the Contractor has failed to comply with or has in any way breached an obligation of the Contractor. Any such hold back shall continue until the breach has been rectified to the satisfaction of the TOWN OF THREE RIVERS.
- 8.2 The TOWN OF THREE RIVERS may set off any payment due the Contractor against any monies owed by the Contractor to the TOWN OF THREE RIVERS.
- 8.3 The Town of Three Rivers will pay the HST and such must be listed on all invoices as a separate line item.
- 8.4 Provided all terms and conditions on the part of the Contractor have been complied with, each invoice will be paid thirty (30) calendar days after receipt of the invoice, or thirty (30) calendar days after delivery of the services, whichever is later. Invoices from PEI Contractors will be paid twenty (20) calendar days after receipt of the invoice, or twenty (20) calendar days after receipt of the services, whichever is later.
- 8.5 The TOWN OF THREE RIVERS may, in order to discharge lawful obligations or to satisfy lawful claims against the Contractor or a Subcontractor arising out of the execution of work, pay any amount which is due and payable to the Contractor under the contract directly to the obligee of, and/or the claimants against, the Contractor or Subcontractor.

## 9. INSURANCE

The Contractor shall, without limiting his obligations or liabilities hereto, obtain, maintain and pay for during the period of this agreement, the following insurance with limits not less than those shown:

- a) Workers Compensation insurance covering all employees engaged in the work in accordance with the statutory requirements of the Territory or Province having jurisdiction over such employees. If the Contractor is assessed any additional levy, extra assessment or super-assessment by a Workers' Compensation Board as a result of an accident causing injury or death to an employee of the Contractor or Subcontractor, or due to unsafe working conditions, then such levy or assessment shall be paid by the Contractor at its sole cost and is not reimbursed by the TOWN OF THREE RIVERS.
- b) Motor Vehicle, water craft and snow craft standard liability insurance covering all vehicles and/or craft owned or non-owned, operated and/or licensed by the Contractor and used by the Contractor in the performance of this agreement in an amount not less than two million dollars (\$2,000,000.00) per occurrence for bodily injury, death and damage to property.
- c) Comprehensive General Liability Insurance with limits of not less than five million dollars (\$5,000,000.00) (inclusive) per occurrence for bodily injury, death and damage to property including loss of use thereof. Such insurance shall include but not be limited to the following terms and conditions:

X Products & Completed Operations Liability \*

X Contractor's Protective Liability

- X Blanket Contractual Liability
- X Broad Form Property Damage
- X Personal Injury Liability
- X Cross Liability
- X Medical Payments
- X Non-owned Automobile Liability \*
- X Contingent Employers Liability \*
- X Employees as Additional Insureds \*

\*WHERE APPLICABLE

- d) Professional Liability Insurance with limits of not less than two hundred fifty thousand dollars (\$250,000.00) per claim and five hundred thousand dollars (\$500,000.00) in the annual aggregate, to cover claims arising out of the rendering of or failure to render any professional service under this contract or agreement.
- e) Motor Truck Cargo insurance, against all risks of physical loss or damage in an amount not less than \$500,000, covering the property of the TOWN OF THREE RIVERS while in the care and custody of the Contractor during any transit, warehousing and delivery services called for by the contract.

All policies shall provide that thirty days written notice be given to the TOWN OF THREE RIVERS prior to any material changes or cancellations of any such policies.

The policies shall name the TOWN OF THREE RIVERS and all Subcontractors as additional insured only with respect to the terms of this contract (except on Workers' Compensation Insurance and Professional Liability) and shall extend to cover the employees of the insured hereunder.

The Contractor shall be responsible for any deductibles, exclusions and/or insufficiency of coverage relating to such policies.

The Contractor shall deposit with the TOWN OF THREE RIVERS prior to commencing with the work a certificate of insurance evidencing the insurance(s) required by this clause in a form satisfactory to the TOWN OF THREE RIVERS and with insurance companies satisfactory to the TOWN OF THREE RIVERS.

IN WITNESS WHEREOF the parties hereto have set their hand and seals as of the date and year entered below.

FOR THE TOWN OF THREE RIVERS:

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

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Witness

FOR THE CONTRACTOR:

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

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Witness

