



West Kelowna Economic Development Corporation
January 2023

SERVICE AGREEMENT

BETWEEN

CITY OF WEST KELOWNA, a municipality incorporated under the Local Government Act, R.S.B.C. 1996, c. 323, and having its municipal office at 2760 Cameron Road, West Kelowna, BC, V1Z 2T6

("West Kelowna")

WEST KELOWNA ECONOMIC DEVELOPMENT CORPORATION, a company incorporated under the Business Corporations Act, S.B.C 2002, c. 57, under Incorporation No. [TBD] and having its registered and records office at [TBD]

("WKEDC")

WHEREAS

- A. West Kelowna recognizes the importance of and is committed to securing economic and business development services within West Kelowna.
- B. West Kelowna wishes to contract with WKEDC to provide on behalf of West Kelowna economic and business development services for the benefit and betterment of the municipality, its residents and businesses.
- C. WKEDC wishes to provide economic and business development services on behalf of West Kelowna.
- D. West Kelowna is empowered to enter into the *Agreement* under s. 8(2) of the *Community Charter* and WKEDC is empowered to enter into this *Agreement* under its Charter and Articles.

NOW THEREFORE, in consideration of the premises and mutual covenants and agreements contained in this *Agreement*, the parties covenant and agree as follows:



INTERPRETATION

1. (a) Reference in this *Agreement* to:
 - (i) the singular includes a reference to the plural and a reference to the plural includes a reference to the singular, unless the context otherwise requires
 - (ii) a particular numbered paragraph, article or section, or lettered appendix, is a reference to the correspondingly numbered paragraph, article or section, or lettered appendix, of this *Agreement*
 - (iii) an "enactment" is a reference to that enactment as amended, revised, consolidated, or replaced
 - (iv) any enactment is a reference to an enactment of British Columbia or West Kelowna, as the case may be
 - (v) a party is a reference to a part of this *Agreement*
- (b) The headings given to paragraphs, articles, and sections in this *Agreement* are for convenience of reference only. They do not form part of this *Agreement* and must not be used in the interpretation of this *Agreement*.
- (c) If any clause or portion of this *Agreement* is declared or held invalid for any reason, the invalidity shall not affect the validity of the remainder of that clause or this *Agreement*, and the terms and provisions of this *Agreement* shall continue to be in force and in effect and be construed as if it had been executed without the invalid portion.
- (d) This *Agreement* shall be governed and construed in accordance with the laws of the Province of British Columbia.

TERM OF AGREEMENT

2. Subject to section 3, this *Agreement* takes effect on January 1, 2024, and shall continue in effect unless terminated as provided herein, until 11:59 pm on December 31, 2028.
3. Provided WKEDC has performed the services required of it hereunder and subject to the *Local Government Act* and the *Community Charter*, the parties hereby express their intention to renew this *Agreement* for a further term of five (5) years and to negotiate in good faith the fees to be paid by West Kelowna to WKEDC to continue the services required of it hereunder during such renewal term.

4. This *Agreement* may be terminated by
 - (a) mutual agreement of West Kelowna and WKEDC, or
 - (b) either party with one (1) year's written notice.

SERVICES

5. WKEDC shall provide economic development services to West Kelowna in order to attract business and investment to the community, build a diverse non-residential tax base, and both lead and contribute to efforts designed to enhance the community's prosperity.
6. Specific services to be provided by WKEDC include:
 - (a) initiate, lead the development of, monitor progress under, and oversee updates to a *West Kelowna Economic Development Strategy*
 - (b) develop, in collaboration with others, programs and initiatives aimed at attracting businesses, employers and investment to West Kelowna
 - (c) develop appropriate branding aimed at identifying West Kelowna as a distinct community for business and investment within the Central Okanagan, British Columbia and Canada
 - (d) coordinate sector-specific and broader economic development activities undertaken by or in collaboration with business and economic development groups
 - (e) develop and support programs aimed at retaining and expanding existing businesses
 - (f) advise the City on the development of, or changes to, services, infrastructure, bylaws, policies and regulations to support business growth and expand the non-residential tax base
 - (g) serve as the City's primary liaison to the Central Okanagan Economic Development Commission, the Greater Westside Chamber of Commerce, the Westbank First Nation Economic Development Commission, and other Central Okanagan business and economic development agencies

REPORTING TO CITY

7. On or before December 31 of each year during the term of this *Agreement*, WKEDC shall deliver to West Kelowna a work plan and budget for the ensuing calendar year, complete with proposed services, expected revenues and anticipated expenses (including staffing costs) for the period.

8. During the term of this *Agreement*, the Chair of WKEDC's Board of Directors (or his/her designate) and WKEDC's Chief Executive Officer shall meet with West Kelowna City Council, upon request by the City, to review the services provided under this *Agreement*.

PAYMENT

9. For the services to be provided by WKEDC, West Kelowna shall pay in each year during the term of this *Agreement* pay WKEDC a Base Fee of \$400,000.00.
10. The Base Fee shall be adjusted each year by an amount equal to the change in the Consumer Price Index (British Columbia) from January 1 to December 31 in the previous year.
11. The Base Fee shall be reduced by West Kelowna by an amount equal to the value of support services provided by West Kelowna to WKEDC, upon request of WKEDC, and as included in WKEDC's budget as an expense of the corporation.
12. The Base Fee shall be increased by West Kelowna to fund any additional services provided by WKEDC at the request of West Kelowna, or as agreed by West Kelowna.
13. The Base Fee shall be paid in quarterly instalments by West Kelowna to WKEDC.

RETURN OF MONIES

14. In the event that this *Agreement* is terminated prior to the expiration of its term, West Kelowna shall be released of its obligations under this *Agreement* to further fund WKEDC.
15. WKEDC shall, if required by West Kelowna:
 - (a) refund to West Kelowna such monies that have been advanced by West Kelowna pursuant to the terms of this *Agreement*, and that are in excess of amounts that are contractually or otherwise irrevocably committed by WKEDC in respect of the services being provided under this *Agreement* by WKEDC
 - (b) deliver to West Kelowna any WKEDC's assets, including any title or interest WKEDC may have in any property or right, as relate to the services being provided by WKEDC under this *Agreement*
16. If West Kelowna exercises its rights pursuant to section 14:
 - (a) West Kelowna shall assume all obligations and commitments of WKEDC that relate to West Kelowna's exercise of such rights pursuant to section 14

- (b) West Kelowna shall save WKEDC, its Directors and Officers harmless from such obligations and commitments, save and except in respect of matters in which a Director or Officer has acted in willful contravention of the *Business Corporations Act*, WKEDC's *Articles* or the *Criminal Code*, or has acted in bad faith or pursuant to an undisclosed conflict of interest

COOPERATION

- 17. West Kelowna agrees to provide WKEDC with such assistance as may be reasonably required of it from time to time to enable WKEDC to carry out its economic development services as set out in sections 5 and 6.

INDEPENDENCE

- 18. Notwithstanding West Kelowna's status as the sole shareholder and owner of WKEDC, West Kelowna recognizes WKEDC as a separate and distinct entity, and acknowledges that WKEDC is free to carry out its services under this *Agreement* and conduct its other business activities in such a manner as its Board of Directors may determine and direct.
- 19. WKEDC shall be free and is expected to raise additional funding for its business purposes as its Board of Directors may determine.
- 20. Additional funding raised by WKEDC shall not affect West Kelowna's obligations set out in sections 9 through 13 of this *Agreement*.

INSURANCE

- 21. WKEDC shall maintain and keep in force until termination of this *Agreement* a Commercial General Liability Policy with minimum coverage of \$5,000,000.00 per occurrence, a maximum deductible of \$50,000.00, and West Kelowna as an additional insured.
- 22. The Policy must include, at a minimum:
 - (a) premises and operations
 - (b) blanket contractual
 - (c) cross liability
 - (d) contingent employers liability
 - (e) personal and advertising liability
 - (f) non-owned auto
 - (g) other extensions that may be required or should be included now or at a later date during the term of this *Agreement* as agreed by WKEDC and West Kelowna

23. Insurance policies must not be amended in any material way or cancelled until after West Kelowna receives 30-days' prior written notice of such amendment or cancellation.
24. WKEDC shall submit to West Kelowna certificates of insurance as required by this *Agreement* and shall provide West Kelowna, upon request by the municipality, satisfactory proof that all insurance remains in full force and effect, and that all premiums have been paid.
25. WKEDC shall maintain and keep in force until the end of the term of this *Agreement* automobile insurance on all owned, rented or leased vehicles in an amount of not less than \$5,000,000.00 if the vehicle is to be used to conduct work on behalf of WKEDC.
26. WKEDC shall maintain and keep in force a Directors and Officers Liability Policy with minimum coverage of \$5,000,000.00 per occurrence, and with a maximum deductible of \$50,000.00 to protect Directors, Officer and members of boards of committees for which WKEDC is responsible pursuant.
27. In the event that WKEDC leases or rents office space to carry out its day to day business operations, WKEDC shall obtain a Tenants Legal Liability Policy suitable, in the opinion of an insurance broker who is licensed to conduct business in the Province of British Columbia, to cover any risks associated with such lease or rental.

GENERAL

28. Time shall be of the essence in this *Agreement*.
29. Nothing in this *Agreement* affects West Kelowna's rights and powers in the exercise of its statutory functions under provincial statute, bylaws, resolutions, orders or regulations, all of which may be fully exercised as if this *Agreement* had not been executed and delivered by West Kelowna and WKEDC.
30. In the event of a dispute or disagreement arising from this *Agreement* or its interpretation, or in respect of the obligations of the parties hereunder, the matter in dispute may, at the initiative of either party, be submitted to a court of competent jurisdiction, or arbitration pursuant to this section. Notice of arbitration shall be given in writing. West Kelowna and WKEDC shall each appoint one arbitrator; the two arbitrators so appointed must appoint a third arbitrator or, failing agreement as to the appointment of a third arbitrator, such arbitrator must be appointed by a judge of the Supreme Court of British Columbia. The decision of the arbitration panel is final and binding in all respects; the cost of the arbitration process will be borne equally by West Kelowna and WKEDC. The arbitration will be governed in accordance with the provisions of the *Commercial Arbitration Act* of British Columbia or such replacement statute that is in force as at the date of the notice of arbitration.

31. Every reference to the parties in this *Agreement* is deemed to include the successors and permitted assigns of the parties.
32. WKEDC may not assign its interest in this *Agreement* without the express written consent of West Kelowna.
33. West Kelowna and WKEDC shall do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this *Agreement*.
34. It is mutually understood, agreed and declared by and between the parties that neither West Kelowna nor WKEDC has made to the other party any representations, covenants, warranties, guarantees, promises or agreements, oral or otherwise, express or implied, other than those contained in this *Agreement*.
35. Any notice or other communication required or contemplated to be given or made by any provision of this *Agreement* shall be given or made in writing and either delivered personally (and if so, deemed to be received when delivered) or mailed by prepaid registered mail in any Canada Post office (and if so shall be deemed to be delivered on the sixth business day following such mailing except that, in the event of interruption of mail service, notice shall be deemed to be delivered only when actually received by the party to whom it is addressed), so long as the notice is addressed to:

WKEDC at:

[TBD]

and to WKEDC's solicitors:

[TBD]

and to West Kelowna at:

City of West Kelowna
2760 Cameron Road
West Kelowna, BC, V1Z 2T6
Attention: Paul Gipps, Brad Savoury, Director of Legal Services

and to West Kelowna's solicitors:

Lidstone & Company
1300-128 Pender Street West
Vancouver, BC, V6B 1R8
Attention: [TBD]

or to such other address to which a party from time to time notifies the other party in writing.

36. No amendment or waiver of any portion of this *Agreement* shall be valid unless in writing and executed by the parties to this *Agreement*.
37. Waiver of any default by any party shall not be deemed to be a waiver of any subsequent default by that party.
38. The parties represent and warrant to each other that:
 - (a) all necessary corporate actions and proceedings have been taken by each of the parties to authorize its entry into and performance of this *Agreement*
 - (b) upon its execution and delivery on behalf of the parties, this *Agreement* constitutes a valid and binding obligation on each of the parties
 - (c) neither the execution and delivery nor the performance of this *Agreement* will breach any other agreement or obligation, or cause either of the parties to be in default of any other agreement or obligation with or to each other
 - (d) each of the parties has the corporate capacity and authority to enter into and perform this *Agreement*
39. West Kelowna from time to time shall do everything reasonably necessary to cause WKEDC to perform its obligations under this *Agreement*, including the passage of such WKEDC shareholder resolutions as may be necessary to enable WKEDC to perform its obligations under this *Agreement*.
40. This *Agreement* enures to the benefit of and is binding on the parties and their respective successors, subcontractors, trustees, administrators and receivers, despite any rule of law or equity to the contrary.
41. This *Agreement* is the entire agreement between the parties; it terminates and supersedes all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of this *Agreement*.

IN WITNESS WHEREOF the parties have executed this *Agreement*.