

PLANNING SERVICES AGREEMENT

January 1, 2021 – December 31, 2025

BETWEEN:

REGIONAL DISTRICT OF CENTRAL OKANAGAN

1450 KLO Road
Kelowna, BC, V1W 3Z4

(the “**Regional District**”)

AND

CITY OF WEST KELOWNA

2760 Cameron Road
West Kelowna, BC, V1Z 2T6

(the “**Municipality**” or “**West Kelowna**”)

WHEREAS

A. The Regional District is currently comprised of the following four member municipalities and two electoral areas:

- City of Kelowna;
- District of Peachland;
- District of Lake Country;
- City of West Kelowna;
- Central Okanagan West Electoral Area; and
- Central Okanagan East Electoral Area.

Westbank First Nation Council has a representative on the Regional District Board in a non-voting capacity.

B. The Regional District has provided planning services to its electoral areas since 1969, including under current Part 14 of the *Local Government Act* RS2015 (the “**Act**” or “**LGA**”);

C. For the calendar years 2016 to 2020 inclusive, the Municipality has participated and contributed in part for certain portions of the Electoral Areas in Regional District Electoral Area Planning, as set out in accordance with the City of West Kelowna 2016-2020 Planning Services Agreement. Going forward, the Municipality wishes to renew its participation and contribute in part for certain portions of the Electoral Areas, as set out in accordance with this agreement;

- D. The Regional District and its member municipalities, including the Municipality, have sought to divide the Electoral Areas into the Fringe Planning Areas (the “**FPA**”);
- E. The Regional District and Municipality hereby agree as to the following framework for voting, cost allocations and other terms and conditions regarding Electoral Area Planning Services and the FPA in accordance with the Act (the “**Agreement**”).

NOW THEREFORE in consideration of the mutual promises set out in this Agreement, the Regional District and the Municipality agree as follows, including pursuant to section 381 of the **LGA**:

PART A – BACKGROUND & TERM

1. APPLICATION AND INTERPRETATION

1.1. The following Schedule is attached to and forms part of this Agreement:

- (a) Schedule “A” – Fringe Planning Areas

1.2. In this Agreement:

- (a) “**FPA**” or “**Fringe Planning Area**” means the lands within the geographic area of the RDCO Electoral Areas shown highlighted and in bold outline on Schedule “A”;
- (b) “**Part 14**” means Part 14 *Planning and Land Use Management* of the *Local Government Act*;
- (c) “**Planning Services**” means Regional Planning Services and Community Planning Services, whereby for the purposes of this Agreement:
 - (i) “**Community Planning Services**” (“**Com**”) means all Part 14 matters including, but not limited to, Official Community Plans, Rural Land Use Bylaws, Zoning Bylaws, Development Variance Permits, Subdivisions, Temporary Use Permits, and Land Use Contracts.
 - (ii) “**Regional Planning Services**” (“**Reg**”) means matters pertaining to the Regional Growth Strategy, Crown Land Referrals, Resource Extraction Referrals, and Agricultural Land Reserve Referrals.

1.3. The following interpretation rules apply to this Agreement:

- (a) Unless otherwise provided, the terms in this Agreement are interpreted in accordance with the Regional District’s bylaws.

- (b) The headings and captions are for convenience only and do not form a part of this Agreement and will not be used to interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions.
 - (c) The word "including" when following any general term or statement is not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar terms or matters but rather as permitting it to refer to other items or matters that could reasonably fall within its scope.
 - (d) A reference to currency means Canadian currency.
 - (e) A reference to a statute includes every regulation made pursuant thereto, all amendments to the statute or to any such regulation in force from time to time, and any statute or regulation that supplements or supersedes such statute or any such regulation.
 - (f) A reference to time or date is to the local time or date in Kelowna, British Columbia.
 - (g) Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.
 - (h) A reference to approval, authorization, consent, designation, waiver or notice means written approval, authorization, consent, designation, waiver or notice evidenced with the signature of a authorized representative of the local government.
 - (i) A reference to a section means a Section of this Agreement, unless a specific reference is provided to a statute.
- 1.4. This Agreement is construed in accordance with and governed by the laws applicable in the Province of British Columbia.

2. TERM AND TERMINATION

- 2.1. The parties acknowledge that this Agreement commences on January 1, 2021, and continues for 5 years until December 31, 2025, unless, in accordance with the Act, the Municipality withdraws from the FPA Agreement by written notice that it intends to participate fully in Electoral Area Planning Services and will cost-share its full allocation.
- 2.2. If not renewed, opt-out notice given or other arrangements made in accordance with the Act, then the Municipality will participate fully in Electoral Area Planning Services in 2026.

PART B – FRINGE PLANNING AREAS

3. GEOGRAPHIC EXTENT OF FPAs

3.1. Since the 2007 incorporation of the District of West Kelowna (now City), the Regional District has been comprised of the following four member municipalities and two electoral areas:

- (a) City of Kelowna;
- (b) District of Peachland;
- (c) District of Lake Country;
- (d) City of West Kelowna;
- (e) Central Okanagan West Electoral Area; and
- (f) Central Okanagan East Electoral Area.

3.2. For the purposes of the provision, cost-sharing and voting arrangements on Planning Services, the Municipality will only participate with respect to lands within the FPAs of the Regional District's Electoral Areas shown on Schedule "A", and labeled as:

- (a) Within the Regional District's Central Okanagan West Electoral Area:
 - (i) Proposed West Kelowna;
 - (ii) Peachland and West Kelowna;
 - (iii) Proposed West Kelowna and Kelowna West; and
- (b) No portion of the Regional District's Central Okanagan East Electoral Area.

(collectively "**West Kelowna's FPAs**")

4. MUNICIPALITY'S VOTING ENTITLEMENT IN FPAs AND EAs

4.1. For its voting entitlement, the Municipality is entitled to:

- (a) No votes on Community Planning Services for lands in portions of the Electoral Areas not located within West Kelowna's FPAs;
- (b) One vote for each of its Directors on the respective Regional Planning Services and Community Planning Services in each of West Kelowna's FPAs; and
- (c) Despite the above, with respect to Official Community Plans, Zoning Bylaws and Rural Land Use Bylaws within the Electoral Area which regulate lands both within and outside a West Kelowna FPA, then:
 - (i) One vote for each of its Directors on:
 - (A) General amendments (including repeal and new OCP's, Zoning Bylaws, and Rural Land Use Bylaws); and

- (B) Site-specific amendments for lands located within a West Kelowna FPA;
 - (ii) No votes for site-specific amendments for lands located outside a West Kelowna FPA.
- 4.2. At the time of execution of this Agreement, it is acknowledged that West Kelowna has two (2) Directors on the Regional District Board and therefore has two (2) votes.
- 4.3. For clarity, should the number of Directors change during the term of this agreement then the number of votes would change correspondingly along with the cost sharing amounts based on the formula in Section 5 below.

5. MUNICIPAL COST-SHARING AMOUNT FOR FPAs

- 5.1. The Municipality's cost-sharing is determined by the following formula, as calculated by Regional District staff:

Total Cost of Electoral Area Planning apportioned to each Electoral Area
multiplied by
 the Ratio of Land Parcels within the FPA Boundary
multiplied by
 the Ratio of Votes at the Board Table
equals
 the Municipal Cost Sharing Amount.

- 5.2. By way of estimation only for 2021, it is anticipated West Kelowna's annual share of costs will be approximately \$35,020.

PART C – GENERAL

- 6. NOTICE: Any notice permitted or required by this Agreement to be given to either party must be given to that party at the address set out above, to the attention of the Corporate Officer, or to any other address of which the party has given the other party notice in writing expressly for the purposes of this Agreement.
- 7. NO DEROGATION OF POWERS: Except as expressly set out in this Agreement, nothing in this Agreement prejudices or affects the rights and powers of the Regional District or the Municipality in the exercise of its powers, duties or functions under the *Community Charter* or the LGA or any of its bylaws.

- 8. ASSIGNMENT:** This Agreement may not be assigned.
- 9. AMENDMENT:** No amendment to this Agreement is effective unless it is made in writing and is duly executed by all parties.
- 10. WAIVER:**
- (a) No provision of this agreement is to be considered to have been waived by a party unless the waiver is expressed in writing by the party.
 - (b) The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.
- 11. ENTIRE AGREEMENT:**
- (a) This Agreement contains the entire agreement and understanding of the parties with respect to the matters contemplated by this Agreement and supersedes all prior and contemporaneous agreements between them with respect to such matters.
 - (b) No representations, warranties or conditions, express or implied, oral or otherwise, have been made other than those expressed in this Agreement.
- 12. SURVIVAL:** All representations and warranties set forth in this Agreement and all provisions of this Agreement, the full performance of which is not required prior to a termination of this Agreement, survive any such termination and will be fully enforceable thereafter.
- 13. SEVERABILITY:** Each article of this Agreement is severable. If any provision of this Agreement is held to be illegal or invalid by a court of competent jurisdiction, the provision may be severed and the illegality or invalidity must not affect the validity of the remainder of this Agreement.
- 14. COUNTERPART:** This Agreement may be executed in counterpart with the same effect as if both parties had signed the same document. Each counterpart is deemed to be an original. All counterparts are construed together and constitute one and the same Agreement.

IN WITNESS WHEREOF the parties have set their hands and seals, with the last Date of Execution being the day at which this Agreement is entered into and operative:

REGIONAL DISTRICT OF CENTRAL OKANANGAN

by its authorized signatories

Gail Given, Board Chair

Brian Reardon, CAO

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Date of Execution

CITY OF WEST KELOWNA

by its authorized signatories

Gord Milsom, Mayor

Paul Gipps, CAO

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Date of Execution

SCHEDULE "A" FRINGE PLANNING AREAS

