

# Original Contract

**SIMILKAMEEN COUNTRY DEVELOPMENT ASSOCIATION  
FEE FOR SERVICES AGREEMENT**

THIS AGREEMENT dated for reference January 1, 2023

BETWEEN

**VILLAGE OF KEREMEOS**

PO Box 160  
702 – 4<sup>TH</sup> Street  
Keremeos, BC V0X 1N0  
(the "Village")

AND

**REGIONAL DISTRICT OF OKANAGAN SIMILKAMEEN**

101 Martin Street  
Penticton BC  
V2A 5J9  
(the "RDOS")

AND

**SIMILKAMEEN COUNTRY DEVELOPMENT ASSOCIATION**

PO Box 490,  
415 – 7<sup>TH</sup> Avenue  
Keremeos, BC V0X 1N0

(the "SCDA")

GIVEN THAT

- A. The SCDA currently provides visitor information services; and
- B. The Village and the RDOS wish to have visitor information services provided under the terms of this Agreement.

The parties agree as follows:

**1.0 Schedules and Definitions**

**1.1 Definitions**

**"Commencement Date"** means January 1, 2023;

**"Opening Date"** means that date when SCDA opens the Visitor Information Centre for use by the public;

**"Operating Hours"** means those hours when the Visitor Information Centre is open for use by the public as referred to in Section 5;

**“Services”** means those visitor information and promotional services provided by the SCDA in accordance with Schedule “A” to this Agreement;

**“Service Fee”** means annual sum set out in Schedule “B” to this Agreement payable by Village and RDOS to the SCDA;

**“Term”** means the term of this Agreement as set out in section 2.1;

**“Visitor Information Centre”** (the “Centre”) means the building located at 415 – 7<sup>th</sup> Avenue on property legally described as That Part Block 81 shown on Plan M8075 DL 174 SDYS Plan 300 (PID 012-563-251) owned by the Village of Keremeos.

- 1.2 All Schedules to this Agreement are incorporated into and form an integral part of this Agreement and are as follows:

Schedule “A” – Services

Schedule “B” – Service Fees

## 2.0 Term

- 2.1 The Term of this Agreement shall be for the period of three (3) years from the Commencement Date, unless earlier terminated as provided herein.

## 3.0 Services

The SCDA covenants and agrees to provide the Services as set out under Schedule ‘A’.

- 3.1. Village and RDOS shall pay to the SCDA the annual Service Fee, as set out in Schedule ‘B’ prior to July 1 in each year of the Term. SCDA invoices for payment of fees will be issued in accordance with the provisions of Notification described in section 16.0 of this agreement.

## 4.0 Payment of Wages and Accounts

- 4.1. The SCDA shall pay all trade accounts promptly and agrees to indemnify and save harmless Village and RDOS from all claims with respect thereto.
- 4.2. The SCDA shall pay all employees’ wages, holiday pay, social services tax, employment insurance, workers’ compensation charges, and income tax deductions promptly as required by law and agrees to indemnify and save harmless Village and RDOS from any claims with respect thereto.

## 5.0 Hours of Business

- 5.1. The SCDA covenants and agrees to operate the Centre and to keep it open for business during the Operating Hours. The SCDA acknowledges that Village and RDOS may, in consultation with the SCDA, establish the Operating Hours or make any changes thereto from time to time.

- 5.2. Village and RDOS acknowledge that the Operating Hours as of the Commencement Date are to be as follows:

- June – August, the Visitor Centre will be open 7 days per week, 6 hours per day.
- September – May, the Visitor Centre will be open 3 days per week, 6 hours per day.
- The Visitor Centre will be closed between Christmas and New Year's, including the statutory holiday dates.
- The Visitor Centre may be closed for intermittent staff illness/vacation. In this case, signage directing Visitors to alternate public services and washrooms, as well as virtual resources will be provided.

## 6.0 Reporting Requirement

- 6.1. The SCDA shall submit to Village and RDOS the following information on a quarterly basis:

Quarterly financial statements and minutes of all meetings.

Quarterly statistical information provided by the SCDA to Tourism BC.

Reporting documents specified in 6.1 will be submitted to the Village of Keremeos CAO at [cao@keremeos.ca](mailto:cao@keremeos.ca). The CAO will forward copies to the appropriate corporate officer at the RDOS.

- 6.2. Every year of the Term, provide for the Village Council and RDOS Board:

- Financial Statements prepared in a generally accepted accounting format with comparison to budget for the previous fiscal year.
- Proposed budget for the current fiscal year.

Reporting documents specified in 6.2 will be submitted in accordance with the provisions of Notification described in section 16.0 of this agreement.

- 6.3. On an annual basis in every year of the Term, provide for the Village and RDOS Council:

No later than April 30 of every year a presentation at a regular meeting of Council on the prior year's operations and current projected activities.

## **7.0 Indemnification of Village and RDOS**

- 7.1 The SCDA covenants and agrees to indemnify and save harmless Village and RDOS and its directors, officers, employees, contractors, and agents, as applicable, from and against any and all manner of actions, causes of action, damages, losses, costs or expenses that Village and RDOS or its directors, officers, employees, contractors, and agents, as applicable, may sustain, incur or be put to by reason of this Agreement

## **8.0 Termination**

- 8.1 If the SCDA dissolves, becomes insolvent or bankrupt, makes an assignment for the benefit of creditors, fails or neglects to fully or promptly observe and perform any term, covenant, condition or provision contained in this Agreement, Village and RDOS may, at Village and RDOS's option and without limiting Village and RDOS's other rights and remedies hereunder or at law or equity, terminate this Agreement effective 30 days after written notice of termination to the SCDA. The Village and RDOS shall not be liable to compensate the SCDA for damages, costs or losses resulting from the exercise of this right of termination.
- 8.2 If the SCDA defaults on the lease agreement between the Village and the SCDA for the Visitor Information Centre, or if the lease for the Visitor Information Centre is not renewed between the SCDA and the Village, the Village and RDOS may at their option and without limiting Village and RDOS's other rights and remedies hereunder or at law or equity, terminate this Agreement effective 30 days after written notice of termination to the SCDA. The Village and RDOS shall not be liable to compensate the SCDA for damages, costs or losses resulting from the exercise of this right of termination.
- 8.3 Notwithstanding anything herein to the contrary, in the event the SCDA fails to perform or comply with any of its obligations herein, the Village and the RDOS may give the SCDA notice in writing of such breach. If the SCDA shall not cure the said breach within three (3) days after receipt of notice (if a monetary breach), or within seven (7) days after receipt of notice if a breach of any other nature which is capable of cure, then the Village and the RDOS, at their respective option, shall have the right to:
- (a) terminate this Agreement by giving written notice to the SCDA;
  - (b) initiate legal proceedings against the SCDA for legal or equitable relief and/or
  - (c) pursue any other remedy allowed by law or in equity, provided, however, if the SCDA's breach is not capable of cure and/or the Village or RDOS may suffer irreparable harm as a result of the SCDA's breach, then the Village and RDOS shall not be required to give written notice to SCDA, or to wait any period of time before pursuing any remedies hereunder. In any proceeding for relief hereunder, the prevailing party shall be entitled to recover its costs and reasonable solicitor client fees incurred in or by reason of such proceedings. The unenforceability, in whole or in part, of any remedies made available in this Section 8 shall not affect or limit the Village's or the RDOS' rights to any of the remaining remedies available to the Village or the RDOS.

- 8.4 All of the remedies set forth above or elsewhere in this Agreement given to the Village and the RDOS and all rights and remedies given to the Village and the RDOS by law or equity shall be cumulative and concurrent.

#### **9.0 Insurance**

- 9.1 The SCDA shall obtain on the commencement date of the Term, at its own cost and maintain in full force and effect during the Term, a minimum of Comprehensive General Liability Insurance in the name of the SCDA, which insures all operations of the SCDA contemplated by this Agreement and the contractual assumption of liability reflected by this Agreement. Such General Liability Insurance shall be written with a limit of at least THREE MILLION DOLLARS (\$3,000,000.00) combined single-limit per occurrence and FIVE MILLION DOLLARS (\$5,000,000.00) in the aggregate for bodily injury and property damage liability, personal injury liability and coverage for all acts and omissions of any employees or agents of the SCDA. Such policy shall stipulate that such insurance is primary of any valid and collectible insurance maintained by any of the foregoing entities for any claim(s) arising out of providing the Services.
- 9.2 All such policies of the SCDA shall list the Village and the RDOS as an additional insured. All such policies of the SCDA shall be endorsed to provide that the underwriters and insurers of the SCDA shall not have any rights of subrogation. Further, all such policies of the SCDA shall provide for THIRTY (30) days' written notice to all insureds prior to any adverse modification or termination of any such policy.
- 9.3 Certificates of all insurance required pursuant to this Section 9 shall be provided to the Village and the RDOS.
- 9.4 The Village and the RDOS shall have the absolute right to terminate this Agreement upon written notice to the SCDA if the SCDA does not deliver to the Village and the RDOS the certificate of insurance required hereunder. In the event of such termination by the Village and the RDOS, there shall be no further liability of whatsoever kind or nature by the Village and the RDOS to the SCDA, and the Village and the RDOS shall retain the right to proceed with a legal action against the SCDA to recover any and all damages sustained by reason of the SCDA's default hereunder.

#### **10.0 Assignment**

- 10.1 The SCDA shall not assign or sublicense all or any part of this Agreement or the benefit thereof without the prior written consent of Village and RDOS.

#### **11.0 Warranty of Non-Profit Status**

- 11.1 The SCDA represents and warrants to and covenants with Village and RDOS that it is now and will continue to be a not-for-profit corporation and a non-commercial undertaking and that it does not and will not distribute profit to its members.

**12.0 Whole Agreement**

- 12.1 The provisions in this Agreement constitute the whole agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the provision of the Services.

**13.0 Severability**

- 13.1 Should any provision or provisions of this Agreement be illegal or not enforceable, it or they shall be considered separate and severable from the Agreement and its remaining provisions shall remain in force and be binding upon the parties as though they said provision or provisions had never been included.

**14.0 Waiver or Non-Action**

- 14.1 Waiver by Village and RDOS of any breach of any term, covenant or condition of this Agreement by the SCDA shall not be deemed to be a waiver of any subsequent default by the SCDA. Failure by Village and RDOS to take any action with respect to any breach of any term, covenant or condition of this Agreement by the SCDA shall not be deemed to be a waiver of such term, covenant or condition.

**15.0 Time of the Essence**

- 15.1 Time is of the essence of this Agreement.

**16.0 Notices**

- 16.1 Except in the case of emergency, when notice may be given by telephone with later confirmation in writing, any notice, request, or approval which is required or permitted to be given in this Agreement shall be in writing and may be delivered personally or forwarded by registered mail to the addresses set forth below:

If to the Village  
**VILLAGE OF KEREMEOS**  
PO Box 160  
702 – 4<sup>TH</sup> Street  
Keremeos, BC V0X 1N0  
Attention: CAO

If to the RDOS  
**REGIONAL DISTRICT OF OKANAGAN SIMILKAMEEN**  
101 Martin Street  
Penticton BC  
V2A 5J9  
Attention: CAO

If to the SCDA  
**SIMILKAMEEN COUNTRY DEVELOPMENT ASSOCIATION**  
PO Box 490,  
415 – 7<sup>TH</sup> Avenue  
Keremeos, BC V0X 1N0  
Attention: Administrator

- 16.2 Any notice mailed is deemed given and received on the third business day after it has been posted, addressed to the parties at their above addresses or at such other address or addresses as may from time to time be notified in writing by the parties. If there is between the time of mailing and the actual receipt of the notice a mail strike, slow down or other labour dispute that might affect the delivery of such notice by the mail, then such notice is only effective if actually delivered. Any personally delivered notice is deemed given and received on the date it is delivered.


## 17.0 Interpretations

### 17.1 In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice-versa, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (e) reference to any enactment (as defined under the *Interpretation Act*) includes any regulations, orders or directives made under the authority of that enactment;
- (f) reference to any enactment (as defined under the *Interpretation Act*) is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (g) the provisions of Section 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (h) all provisions are to be interpreted as always speaking;
- (i) reference to a "party" is a reference to a party to this Agreement and to their respective successors, permitted, assigns, trustees, administrators and receivers;
- (j) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided;
- (k) any act, decision, determination, consideration, consent or exercise of discretion by a party, or other person, as provided in this Agreement must be performed, made or exercised acting reasonably; and
- (l) where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including" and that expression is to be given the broadest possible interpretation.


As evidence of their agreement to be bound by the above, the parties have executed and delivered this Agreement on the dates set out below:

**Village of Keremeos**  
by its authorized signatories:

  
\_\_\_\_\_  
**Mayor Jason Wiebe**

  
\_\_\_\_\_  
**CAO Marg Coulson**

**Regional District Okanagan Similkameen**  
by its authorized signatories:

  
\_\_\_\_\_  
**Chair Mark Pendergraft**

  
\_\_\_\_\_  
**CAO Bill Newell**

**Similkameen Country Development Association**

by its authorized signatories:

  
\_\_\_\_\_  
**Mac Watson**

### **Schedule "A"** **SERVICES**

#### **Visitor Information Services:**

- Greet and assist visitors coming to the community;
- Answer all tourism related enquiries;
- Provide accurate, helpful and high quality information;
- Satisfy visitor needs or interests to encourage longer stays;
- Encourage visitors to spend money and make return visits;
- Promote local attractions and events which motivate visitors to stay longer;
- Collect visitor data to determine who visitors are, their origin, their activities, their length of stay and the activities or needs requested;
- Provide visitor data to community businesses;
- Encourage development of the tourism industry in the community and inform the community about the value of tourism
- Encourage local businesses to be enthusiastic about tourism and provide a high level of service
- Promote the community throughout the region through other Visitor Centres and regional destination marketing organizations.

#### **Village and RDOS Promotional Services:**

- Support local clubs and organizations with convention and event development; through information sharing, provision of Village and RDOS profile packages, etc.
- Sponsorship and/or support community promotions and events such as parades, shop local campaigns, Similkameen Sizzle and Christmas Light-up.
- Attendance at local and out of town tradeshow as mutually agreed upon from time to time.
- Maintain tourism website (TourismBC);
- Provide and update community profile and promotional material

**Schedule "B"**  
**SERVICE FEES**

Annual fees during the term to be paid to SCDA as follows:

	<b>ANNUAL FEE</b>
Village of Keremeos	\$13,000.00
RDOS Area "B"	\$10,000.00
RDOS Area 'G'	\$10,000.00

**END OF DOCUMENT**