

COLUMBIA SHUSWAP FILM COMMISSION
Film Commission Services
SERVICE AGREEMENT

THIS AGREEMENT made as at the 1st day of June, 2017.

BETWEEN:

COLUMBIA SHUSWAP REGIONAL DISTRICT
Columbia Shuswap Film Commission

555 Harbourfront Drive NE, Box 978

Salmon Arm BC V1E 4P1

(Hereinafter called the "Regional District", "we", "us", or "our", as applicable)

OF THE FIRST PART

AND:

1089472 B. C. Ltd.

David Barritt

767 Abbington Lane

Tappen BC V0E 2X3

(Hereinafter called the "Contractor", "you", or "your" as applicable)

OF THE SECOND PART

The parties to this Agreement agree as follows:

SECTION 1 – DEFINITIONS

1. Where used in this Agreement:

- (a) "**Contract Price**" – means the total aggregate value stipulated in the Schedule B
- (b) "**Material**" – means all findings, data, reports, documents, records and material, (both printed and electronic), whether complete or otherwise, that have been produced, received, compiled or acquired by, or provided by or on behalf of the Regional District to, the Contractor as a direct result of this Agreement, but does not include:
 - a. Property owned by the Contractor;
- (c) "**Services**" – means the services described in the Schedule A;
- (d) "**Term**" – means the start and end date of the Agreement stipulated in the Schedule A;
- (e) "**Refund**" – means any refund or remission of federal or provincial tax or duty available with respect to any items that the Province has paid for or agreed to pay for under this Agreement;
- (f) "**Personal Information**" – means recorded information about an identifiable individual.

SECTION 2 – APPOINTMENT

2. The Regional District retains the Contractor to provide the Services during the Term, both described in Schedule "A".

SECTION 3 – PAYMENT OF CONTRACT PRICE

3. Subject to the provisions of this Agreement, the Regional District will pay the Contractor, in the amount and manner, and at the times set out in Schedule "B" attached to this Agreement.

SECTION 4 – REPRESENTATIONS AND WARRANTIES

- 4.01 The Contractor represents and warrants to the Regional District with the intent that the Regional District will rely thereon in entering into this Agreement that:
- (a) All information, statements, documents and reports by the Contractor to the Regional District in connection with this Agreement are true and correct;
 - (b) The Contractor has no knowledge of any fact that materially adversely affects, or so far as it can foresee, might materially adversely affect, its properties, assets, condition (financial or otherwise), business or operations or its ability to fulfill its obligations under this Agreement;
 - (c) It is not in breach of, or in default under, any law, statute or regulation of Canada or of the Province of British Columbia applicable to or binding on it or its operations;
- 4.02 All statements contained in any certificate, application, proposal or other document delivered by or on behalf of the Contractor to the Regional District under this Agreement or in connection with any of the transactions contemplated hereby will be deemed to be representations and warranties by the Contractor under this Agreement.
- 4.03 All representations, warranties, covenants and agreements made herein and all certificates, applications or other documents delivered by or on behalf of the Contractor are material and will have been relied upon by the Regional District and will continue in full force and effect during the continuation of this Agreement.

SECTION 5 – RELATIONSHIP

- 5.01 No partnership, joint venture, agency or other legal entity will be created by or will be deemed to be created by this Agreement or any actions of the parties pursuant to this Agreement.
- 5.02 The Contractor will be an independent contractor and not the servant, employee or agent of the Regional District.
- 5.03 The Contractor will not in any manner whatsoever commit or purport to commit the Regional District to the payment of money to any person, firm or corporation.
- 5.04 The Regional District may, from time to time, give instructions to the Contractor in relation to the carrying out of the Services, and the Contractor will comply with those instructions but will not be subject to the control of the Regional District regarding the manner in which those instructions are carried out except as specified in this Agreement.

SECTION 6 – CONTRACTOR'S OBLIGATIONS

6.01 The Contractor will:

- (a) Carry out the Services in accordance with the terms of this Agreement during the Term stated in Schedule "A" of this Agreement;
- (b) Comply with the payment requirements set out in Schedule "B", including all requirements concerning the use, application and expenditure of the payments provided under this Agreement;
- (c) Comply with all applicable laws;
- (d) Unless agreed otherwise supply, at its own cost, all labor, materials and approvals necessary to carry out the Services;
- (e) Subject to obtaining the prior written approval of the Regional District concerning form, content and location, the Contractor may post signs acknowledging the Regional Districts participation in the Services.

SECTION 7 – RECORDS

7.01 The Contractor will:

- (a) Establish and maintain accounting and administrative records in form and content satisfactory of the Regional District, to be used as the basis for the calculation of the Contract Price;
- (b) Establish and maintain books of account, invoices, receipts and vouchers for all expenses incurred in form and content satisfactory to the Regional District.

7.02 The Parties agree that the Regional District does not have control, for the purpose of the *Freedom of Information and Protection of Privacy Act*, of the records held by the Contractor.

SECTION 8 – CONFLICT OF INTEREST

8.01 The Contractor will not, during the Term, perform a service for or provide advice to any person, or entity where the performance of such service or the provision of the advice may, in the reasonable opinion of the Regional District, give rise to a conflict of interest between the obligations of the Contractor to the Regional District under this Agreement and the obligations of the Contractor to such other person, or entity.

SECTION 9 – CONFIDENTIALITY

9.01 The Contractor will treat as confidential all information or material supplied to or obtained by the Contractor, or any sub-contractor, as a result of this Agreement and will not, without the prior written consent of the Regional District, except as required by applicable law, permit its disclosure except to the extent that such disclosure is necessary to enable the Contractor to fulfill its obligations under this Agreement.

SECTION 10 – DEFAULT

10.01 Any of the following events will constitute an Event of Default, namely:

- (a) The Contractor fails to comply with any provision of this Agreement;
- (b) Any representation or warranty made by the Contractor in accepting this Agreement is untrue or incorrect;
- (c) Any information, statement, certificate, report or other document furnished or submitted by or on behalf of the Contractor pursuant to or as a result of this Agreement is untrue or incorrect;
- (d) The Contractor ceases, in the opinion of the Regional District, to operate;
- (e) A change occurs with respect to any one or more, including all, of the properties, assets, condition (financial or otherwise), business or operations of the Contractor which, in the opinion of the Regional District, materially adversely affects the ability of the Contractor to fulfill its obligations under this Agreement;
- (f) An order is made or a resolution is passed or a petition is filed for the liquidation of the Contractor;
- (g) The Contractor becomes insolvent or commits an act of bankruptcy or makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
- (h) A bankruptcy petition is filed or presented against, or a proposal under *the Bankruptcy and Insolvency Act* (Canada) is made by the Contractor;
- (i) A receiver or receiver-manager of any property of the Contractor is appointed; or
- (j) The Contractor permits any sum which is not disputed to be due by it to remain unpaid after legal proceedings have been commenced to enforce payment thereof.

SECTION 11 – TERMINATION

11.01 Upon the occurrence of any Event of Default and at any time thereafter the Regional District may, notwithstanding any other provision of this Agreement, at its option, elect to do any one or more of the following:

- (a) Terminate the Agreement, in which case the payment of the amount required under paragraph 12.03 of this Agreement will discharge the Regional District of all liability to the Contractor under this Agreement;
- (b) Require the Event of Default be remedied within a time period specified by the Regional District;
- (c) Suspend any installment of the Contract Price or any amount that is due to the Contractor while the Event of Default continues;
- (d) Waive the Event of Default;
- (e) Pursue any other remedy available at law or in equity.

11.02 The Regional District may also, at its option, either:

- (a) Terminate this Agreement on 60 days written notice, or
- (b) Terminate this Agreement immediately if the Regional District determines that the Contractor's failure to comply places the health or safety of any person receiving the Services at immediate risk,

And in either case, the payment of the amount required under paragraph 12.03 of this Agreement will discharge the Regional District of all liability to the Contractor under this Agreement.

- 11.03** Where this Agreement is terminated before 100% completion of the Services, the Regional District will pay to the Contractor that portion of the Contract Price which is equal to the portion of the Services completed to the satisfaction of the Regional District prior to termination.

SECTION 12 – DISPUTE RESOLUTION

- 12.01** 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*.

SECTION 13 – INDEMNITY

- 13.01** Without limiting the provisions of subparagraph (c) of paragraph 6.01, the Contractor will comply with the Workers' Compensation Legislation for the Regional District.
- 13.02** The Contractor will indemnify and save harmless the Regional District, its employees and agents, from and against any and all losses, claims, damages, actions, causes of action, costs and expenses that the Regional District may sustain, incur, suffer or put to at any time either before or after the expiration or termination of this Agreement, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission of the Contractor, or of any agent, employee, officer, director, or sub-contractor of the Contractor pursuant to this Agreement, excepting always liability arising out of the independent negligent acts of the Regional District.

SECTION 14 – ASSIGNMENT AND SUB-CONTRACTING

- 14.01** The Contractor will not, without the prior, written consent of the Regional District:
- (a) Assign, either directly or indirectly, this Agreement or any right of the Contractor under this Agreement; or
 - (b) Sub-contract any obligation of the Contractor under this Agreement.
- 14.02** No sub-contract entered into by the Contractor will relieve the Contractor from any of its obligations under this Agreement or impose upon the Regional District any obligation or liability arising from any such sub-contract.
- 14.03** This Agreement will be binding upon the Regional District and its assigns and the Contractor, the Contractor's successors and permitted assigns.

SECTION 15 – OWNERSHIP

- 15.01** Any equipment, machinery or other property, provided by the Regional District as a result of this Agreement will:
- (a) be the exclusive property of the Regional District;
 - (b) Forthwith be delivered by the Contractor to the Regional District on written notice to the Contractor requesting delivery of the same, whether such a notice is given before, upon, or after the expiration or sooner termination of this Agreement.

SECTION 16 – NOTICES

- 16.01** Any written communication from the Contractor to the Regional District must be mailed, personally delivered, faxed, or electronically transmitted to the following address:

Columbia Shuswap Regional District
Attention: Robyn Cyr
Columbia Shuswap Film Commission
781 Marine Park Drive NE
Box 978
Salmon Arm, BC V1E 4P1

- 16.02** Any written communication from the Regional District to the Contractor must be mailed, personally delivered, faxed or electronically transmitted to the following address:

1089472 B. C. Ltd.
David Barritt
767 Abbington Lane
Tappen BC V0E 2X3

- 16.03** Any written communication from either party will be deemed to have been received by the other party on the five business days after mailing in British Columbia; on the date of personal delivery if personally delivered; or on the date of transmission if faxed;
- 16.04** Either party may from time to time, notify the other party in writing of a change of address and, following the receipt of such notice, the new address will, for the purposes of paragraph 17.01 or 17.02 of this Agreement, be deemed to be the mailing address of the party giving notice.

SECTION 17 – NON-WAIVER

- 17.01** No term or condition of this Agreement and no breach by the Contractor of any such term or condition will be deemed to have been waived unless such waiver is in writing signed by the Regional District and the Contractor.
- 17.02** The written waiver by the Regional District or any breach by the Contractor of any term or condition of this Agreement will not be deemed to be a waiver of any other provision of any subsequent breach of the same or any other provision of this Agreement.

SECTION 18 – ENTIRE AGREEMENT

- 18.01** This Agreement including the Schedules constitutes the entire Agreement between the parties with respect to the subject matter of this Agreement.

SECTION 19 – SURVIVAL OF PROVISIONS

- 19.01** All of the provisions of this Agreement in favor of the Regional District including, without limitation, paragraphs 3.02, 5.03, 7.01, 8.02, 10.01, 12.03, 14.03, 16.01, 18.01 to 18.02 and all of the rights and remedies of the Regional District, either at law or in equity, will survive any expiration or sooner termination of this Agreement.

SECTION 20 – MISCELLANEOUS

- 20.01** This Agreement will be governed by and construed in accordance with the laws of the Regional District.
- 20.02** The Schedules to this Agreement are an integral part of this Agreement as if set out at length in the body of this Agreement.
- 20.03** No amendment or modification to this Agreement will be effective unless it is in writing and duly executed by the parties.
- 20.04** 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.
- 20.05** Nothing in this Agreement operates as a consent, permit, approval or authorization by the Regional District to or for anything related to the Services that by statute, the Contractor is required to obtain unless it is expressly stated herein to be such a consent, permit, approval or authorization.
- 20.06** Where the Contractor is a corporation, the Contractor warrants that the signatory has been duly authorized by the Contractor to execute this Agreement without corporate seal on behalf of the Contractor.
- 20.07** This Agreement may be executed by the parties in separate counterparts each of which when so executed and delivered shall be an original, and all such counterparts may be delivered by facsimile transmission and such transmission shall be considered an original.
- 20.08** For the purpose of paragraphs 21.09 and 21.10, an "Event of Force Majeure" includes, but is not limited to, acts of God, changes in the laws of Canada, governmental restrictions or control on imports, exports or foreign exchange, wars (declared or undeclared), fires, floods, storms, strikes (including illegal work stoppages or slowdowns), lockouts, labor shortages, freight embargoes and power failures or other cause beyond the reasonable control of a Party, provided always that lack of money, financing or credit will not be and will not be deemed to be an "Event of Force Majeure".
- 20.09** Neither party will be liable to the other for any delay, interruption or failure in the performance of their respective obligations if caused by an Event of Force Majeure, in which case the time period for the performance or completion of any such obligation will be automatically extended for the duration of the Event of force Majeure.
- 20.10** If an Event of Force Majeure occurs or is likely to occur, then the party directly affected will notify the other Party forthwith, and will use its reasonable efforts to remove, curtail or contain the cause of the delay, interruption or failure and to resume with the least possible delay compliance with its obligations under this Agreement.

Section 21 - Insurance

The Contractor will be required to provide to the Regional District:

21.01 Proof of public liability insurance for injury, property damage or death arising from the Proponent's operations under the agreement in an amount not less than **THREE MILLION (\$3,000,000) DOLLARS** naming the Columbia Shuswap Regional District as additional named insured;

21.02 Proof of professional liability insurance in an amount of not less than **FIVE HUNDRED THOUSAND (\$500,000) DOLLARS**; and

21.03 Proof of registration with WorkSafeBC.

The parties hereto have executed this Agreement the day and year as set out above.

SIGNED AND DELIVERED by the
Columbia Shuswap Regional District

SIGNED AND DELIVERED by the Contractor or an
Authorized Representative of the Contractor

Charles Hamilton CAO

David Barritt - **1089472 B. C. Ltd.**

(Signature)

(Signature)

SCHEDULE A

CRITERIA AND DELIVERABLES

Creative BC brings a strategic and integrated approach to the growth and development of the province's creative industries. Creative BC provides professional expertise and business support to strengthen BC's motion picture, interactive digital, music and publishing sectors. The programs, services and investments act as a catalyst to help these sectors realize their economic and creative potential and contribute to the future prosperity of our province.

Creative BC provides funding under a Transfer Agreement with Creative BC that enables the Columbia Shuswap Film Commission to meet the following criteria of this agreement.

The responsibilities of the **Columbia Shuswap Film Commission** in this agreement are as follows:

1. Be a certified member of the Association of the Film Commissioners International;
2. Have a permanent business address;
3. Provide evidence of financial support by municipal and/or regional governments;
4. Submit a business plan and budget to Creative BC annually;
5. Sign a Transfer under Agreement with Creative BC agreeing to the above criteria and the following deliverables;
6. Maintain and update a regional film website which includes local information to production clients including information relating to local business, local labor, and local government contacts that would generally be required to work with filming activities in the Shuswap region;
7. To provide Creative BC with a copy of the Columbia Shuswap Film Commissions financial statements and/or annual report no later than 30 days following the end date of this agreement.
8. To include the Creative BC logo and website link on the front page of the Columbia Shuswap Film Commission web site; and,
9. Recognize Creative BC as a financial partner on the Columbia Shuswap Film Commission's website.

The responsibilities and deliverables of the **Contractor** to the **Regional District** and the **Columbia Shuswap Film Commission** are as follows:

1. To capture high quality digital images that promote the diversity and accessibility of film locations in the Columbia Shuswap region.
2. To maintain and update the Reel Scout database with current location images as required.
3. To respond to client location requests, as required.
4. To provide film industry clients with location surveys and scouting services and act as a local point of contact for the Columbia Shuswap Film Commission.
5. To work collaboratively with the Columbia Shuswap Film Commission and Creative BC on planning sessions, as required.
6. To provide regional production reports to the Columbia Shuswap Film Commission for the calendar year, in which this agreement is in effect, within 30 days of the end date of this agreement.
7. To work with Creative BC to develop and participate in provincial marketing activities and initiatives as required.
8. To meet monthly with the CSRD EDO to provide on current film activities.

9. To attend training sessions with Creative BC on the Reel Scout location database as required.
10. To maintain current knowledge of the Columbia Shuswap region by completing regular scouting trips.
11. To maintain relationships with local community organizations and businesses that can provide support for film production for the CSFC.
12. Provide an annual report on film activity throughout the CSFC region – to be completed by March 31 for the previous calendar year.
13. To continue to develop relationships and create networks with producers, production managers and location managers in Los Angeles that will be scouting for film locations in BC.

TERM OF THE AGREEMENT

This Agreement is for a term commencing June 1, 2017 and ending on December 31, 2017.

SCHEDULE "B"
Fees

1. Fees will be payable to the Contractor, in the fulfillment of the obligation under this Agreement, as follows:
 - a) Upon receipt and approval of two signed Agreements with the Regional District agreeing to the criteria and deliverables as set out in Schedule "A",
 - b) The fees for these services will be paid to David Barritt *1089472 B. C. Ltd.* to deliver the services as outlined in Schedule "A".
 - c) The Contractor will be reimbursed for reasonable expenses for travel expenses such as meals and accommodations directly related to film location requests. These expenses must be approved by the Regional District prior to any expenses being incurred.
 - d) Invoices for these services will be submitted to the Regional District monthly with detailed activities and back up documentation.
2. Notwithstanding paragraph 1 of this Schedule in no event will the fees payable to the Contractor in accordance with paragraph 1 of this Schedule exceed, in the aggregate, \$45,000.00 annually and does not include GST.
3. In accordance with paragraphs 3 of the Agreement, all such refunds or remissions obtained by the Contractor must be applied to the provision of the Services, set out in Schedule "A" or performance of any other obligation of the Contractor under this Agreement in respect of those Services.