

SERVICES AGREEMENT  
(TIER II)

THIS SERVICES AGREEMENT (“Agreement”) is entered into as of the latter of the signature dates below, between the Keweenaw Bay Indian Community, a federally recognized Indian Tribe, whose address is 16429 Beartown Road, Baraga, Michigan 49908 (the “Community”), and \_\_\_\_\_, whose address is \_\_\_\_\_ (“Contractor”), collectively referred to as the “Parties”, and individually referred to as a “Party”.

WHEREAS, the Community desires to contract with Contractor to provide \_\_\_\_\_ services for the Community, as described in this Agreement and Attachment I (the “Services”);

WHEREAS, Contractor agrees to provide the Services to the Community on the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the promises, conditions, and covenants contained herein, the Parties hereby mutually agree as follows:

1. SERVICES TO BE PERFORMED

Contractor shall perform all the Services in accordance with the terms and conditions of the Agreement and in Attachment I, *Scope of Services and Fee Schedule* (“Attachment I”), which is attached hereto and incorporated herein by this reference.

2. TERM OF THE AGREEMENT

The term of this Agreement is effective on the latter date of the signatures of the parties hereto and the Services shall be completed by or on \_\_\_\_\_, unless terminated earlier as provided for herein.

3. COMPENSATION AND EXPENSES

The compensation for the Services provided by Contractor to the Community shall be as follows:

Contractor shall be compensated for the Services as provided for in Attachment I. [NOTE: Compensation not to exceed \$149,999.99.] The Community shall pay the Contractor for the Services as provided for in Attachment I.

4. INDEPENDENT CONTRACTOR

4.1 The Parties agree that Contractor will act as an independent contractor and not as an employee of the Community in the performance of Contractor’s obligations under the Agreement. Accordingly, Contractor shall be responsible for payment of all taxes and fees arising out of Contractor’s activities in accordance with the Agreement.

4.2 Contractor understands that as an independent contractor, Contractor is not entitled to any of the protections, rights, and benefits of an employee of the Community. Contractor hereby waives any right or claim to unemployment benefits, workers' compensation benefits, insurance coverage and benefits, vacation and holiday benefits, and other benefits or contributions to such benefits that an employee of the Community may be entitled to receive.

## 5. INSURANCE

5.1 INSURANCE COVERAGES. Until completion and final acceptance of the Services, Contractor shall purchase and maintain the insurance coverages with the liability limits specified below to cover all aspects of the services provided. The specified coverages and liabilities are minimum requirements and the Community makes no representation that the coverages and limits are adequate. Certificates of such insurance, which shall be prepared on the most current edition of ACORD certificate form, and copies of policies if requested by the Community, shall be filed with the Community prior to commencing the Services and shall be subject to its approval for adequacy of protection and the satisfactory character of the insurer, but in no case shall they be less than the following limits:

- (a) Workers Compensation: Applicable Statutory Limits;
- (b) Employer's Liability: Five Hundred Thousand Dollars (\$500,000);
- (c) Commercial General Liability (including Products and Completed Operation; Personal Injury and Advertising; Contractual Liability; Premises Operations; Independent Contractors' Protective; and Broad Form Property Damage):
  - (i) Bodily Injury and Property Damage: One Million Dollars (\$1,000,000) Each Occurrence; Two Million Dollars (\$2,000,000) Annual Aggregate;
  - (ii) Products and Completed Operations to be maintained for three (3) years after final payment. Two Million Dollars (\$2,000,000) Annual Aggregate;
  - (iii) General Liability Annual Aggregate per Project Endorsement: Two Million Dollars (\$2,000,000).
- (d) Pollution Liability: One Million Dollars (\$1,000,000) Each Occurrence; Two Million Dollars (\$2,000,000) Annual Aggregate;
- (e) Commercial Automobile Liability: Bodily Injury and Property Damage: One Million Dollars (\$1,000,000) Combined Single Limit;
- (f) Umbrella/Excess Liability: One Million Dollars (\$1,000,000). Umbrella/Excess Liability shall be over Commercial General Liability, Commercial Automobile Liability, and Employers Liability on a follow form basis.

5.2 ADDITIONAL INSURED, AND WAIVER OF SUBROGATION. The Community shall be named as an additional insured on the General Liability on a primary and non-contributory basis. A Waiver of Subrogation in favor of the Community shall be included with respect to the Commercial General Liability and Workers' Compensation policies.

5.3 SUBSTITUTE INSURANCE. During the term of the Agreement, Contractor's insurance policies shall not be changed or cancelled until after at least thirty (30) days' prior notice to the Community. In the event of such cancellation, Contractor shall provide the Community within said thirty (30) days with substitute insurance coverage meeting the requirements of this section. In the event that substitute insurance coverage is not provided to the Community within the time period required by this subsection 5.3, the Community shall have the right to suspend the Services until the substituted insurance coverage is provided to the Community by Contractor to the Community's satisfaction.

5.4 CONTRACTOR'S CONTINUING OBLIGATIONS. Compliance by Contractor with the foregoing requirements as to carrying insurance and furnishing certificates shall not relieve Contractor from Contractor's obligations and liability under this Agreement.

## 6. INDEMNIFICATION

Contractor agrees to defend, indemnify, and hold harmless the Community and its council members, officers, departments, agencies, agents, representatives, and employees (collectively referred to herein as "Indemnitees") from all claims, suits, losses, damages, liabilities, and expenses of whatever kind or nature, including bodily injury, death, property damages, and attorneys' fees (collectively referred to herein as "Claim(s)") that are in any way related to this Agreement or arise out of any act or omission of Contractor, or anyone for whose acts or omissions Contractor is legally liable, that results in a Claim(s) against the Indemnitees. Nothing in this Section 6 shall be construed to limit the insurance obligations agreed to herein. The obligations of Contractor hereunder shall survive the termination or expiration of the Agreement. However, the Contractor is not obligated to indemnify or defend the Indemnitees for any losses arising out of or resulting from the Indemnitees gross negligence or willful misconduct.

## 7. CONFIDENTIAL INFORMATION

7.1 All information that relates to the financial, business, legal, transactional, and other affairs of the Community that Contractor receives by virtue of Contractor's relationship under this Agreement with the Community shall be considered by Contractor as confidential, unique, and valuable ("Confidential Information"). Contractor agrees that Contractor will not disclose, directly or indirectly, to or use for the benefit of Contractor or any third party any such Confidential Information, or any knowledge or data related to Confidential Information, acquired by virtue of Contractor's relationship under this Agreement with the Community, without the prior written approval of the Community.

7.2 The obligations of Contractor hereunder shall survive the termination or expiration of the Agreement.

7.3 All data, records, and reports and any other proprietary data that is either provided by the Community to the Contractor or that is created by the Contractor shall at all times be the exclusive property of the Community.

## 8. REPRESENTATIONS AND WARRANTIES

8.1 Contractor warrants that the Services shall be performed in a thorough, efficient, and workmanlike manner; promptly; and with due diligence and care.

8.2 Contractor warrants that all goods Contractor uses or provides in connection with performing the Services will be merchantable, safe, and fit for the Community's intended purposes, and the purposes have been communicated to the Contractor.

8.3 Contractor warrants that it currently possesses all necessary licenses, permits, and approvals required in the applicable tribal, state, and federal jurisdiction to perform the Agreement. Upon request by the Community, Contractor shall provide the Community with copies of all such licenses, permits, and approvals.

8.4 Contractor is qualified to do business and is in good standing in every jurisdiction in which that qualification is required for purposes of this Agreement, except where the failure to be so qualified, in the aggregate, could not reasonably be expected to adversely impact its ability to perform its obligations under this Agreement.

8.5 Each person signing the Agreement on behalf of Contractor and the Community

represents that he or she has full authority to enter into the Agreement and bind the Community or Contractor.

8.6 Contractor has the full right, power, and authority to enter into this Agreement and to perform its obligations under it. The execution, delivery, and performance of this Agreement by Contractor will not violate, conflict with, require consent under, or result in any breach or default under (1) any of Contractor's organizational documents (including its certificate of incorporation and by-laws), (2) any applicable law or regulation, or (3) the provisions of any material contract to which Contractor or any of its material assets are bound.

8.7 The obligations of Contractor hereunder shall survive the termination or expiration of the Agreement.

## 9. TERMINATION

The Community reserves the right to terminate the Agreement at any time for any reason, upon 14 days' written notice to Contractor.

## 10. BREACH

Contractor's failure to adhere to any covenant, condition, or other promise contained in this Agreement shall be considered a breach. For the avoidance of doubt and at a minimum, Contractor's failure to perform Services as provided in this Agreement and Contractor's default of any representation or warranty contained in Section 8 shall be considered a breach. If Contractor breaches this Agreement, the Community may pursue all rights or remedies that are now or subsequently available at law, in equity, by statute, or in this Agreement; this right shall survive termination of this Agreement by either Party. All rights and remedies provided in this Agreement are cumulative and not exclusive.

## 11. NOTICES

Any notices necessary, required, or permitted under this Agreement shall be given in writing and sent postage prepaid by certified mail or with a national overnight service to the addresses of the Parties set forth in this Agreement or to another address that a Party substitutes by written notice. Notice by mail shall be effective upon receipt of the mail. Notice by national overnight service shall be presumed to have been given one day after deposit with a national overnight service.

## 12. MISCELLANEOUS

12.1 The Agreement shall be governed by and construed in accordance with the laws of the Keweenaw Bay Indian Community notwithstanding the applicability of any jurisdiction's choice of law rules. Contractor and any successor or permitted assigns irrevocably consents to resolve all claims or controversies that relate to this Agreement in the Keweenaw Bay Indian Community Tribal Court.

12.2 In the performance of this Agreement, the Contractor is required to give preference to Indians, Indian organizations, and certified Indian-owned economic enterprises in contracting, hiring, promotions, training, and all other aspects of employment. The Contractor must comply with all rules, regulations, and guidelines of the Community's Tribal Employment Rights Ordinance (TERO).

12.3 Any failure by the Community to exercise any rights or privileges, to insist upon full performance of all obligations assumed by Contractor, or to insist upon strict adherence to any term of the Agreement on any occasion shall not be considered or construed as waiving any such rights, privileges, obligations or duties, or to deprive the Community of the right thereafter to

insist upon strict adherence to any term of the Agreement, or as creating any custom contrary thereto.

12.4 The Parties acknowledge that the Agreement has resulted from negotiations between, and is fair to, both Parties, and therefore any rule of construction requiring ambiguities to be construed against the drafter of an agreement shall not apply to any term or provision of the Agreement.

12.5 In the event that any provision of the Agreement is judicially determined to be invalid by a court of competent jurisdiction, the remaining provisions shall not be effected thereby, but shall continue in full force and effect.

12.6 Neither this Agreement nor the performance of the Services shall be assigned, subcontracted, or delegated by either Party to any entity or any other person without the express written approval of the other Party. **SUBJECT TO THE PRECEDING SENTENCE, THIS AGREEMENT SHALL APPLY TO, BE BINDING IN ALL RESPECTS UPON, AND INURE TO THE BENEFIT OF THE SUCCESSORS AND PERMITTED ASSIGNS OF THE PARTIES.**

12.7 The Agreement contains the entire agreement and understanding by and between the Parties, and no statements, promises, or inducements made by either Party or agent of either Party that are not contained in this written Agreement shall be valid or binding. This clause shall not apply to a good faith claim for fraud either Party brings against the other Party.

12.8 No waiver, modification, or amendment of the Agreement or of any covenant, condition or limitation contained in the Agreement shall be valid unless in writing and duly executed by both Parties to the Agreement. The Parties to the Agreement further agree that the provisions of this subsection 12.8 may not be waived, except as set forth in this subsection 12.8.

12.9 Time is of the essence as to the obligations of the Parties under the Agreement.

12.10 This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

12.11 Each of the Parties shall reasonably execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provision of this Agreement and to give effect to the transactions contemplated by it.

12.12 The aggregate amount of all damages for which the Community may be liable to the Contractor pursuant to this Agreement shall not exceed the amount stated in Attachment I. **COMMUNITY SHALL NOT BE LIABLE TO CONTRACTOR FOR ANY INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROFITS, LOSS OF BUSINESS REPUTATION, OR OPPORTUNITY RELATING TO THE BREACH OR ALLEGED BREACH OF THIS AGREEMENT.**

12.13 This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Signatures transmitted by e-mail, facsimile, or similar electronic means shall operate and be accepted as originals.

**IN WITNESS WHEREOF**, the Parties hereto have executed the Agreement as of the last date of the signatures below.

**KEWEENAW BAY INDIAN COMMUNITY**

By: \_\_\_\_\_  
Brigitte LaPointe-Dunham, CEO, on behalf  
of the Community

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

**CONTRACTOR**

By: \_\_\_\_\_

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

## SERVICES AGREEMENT

### Attachment I

#### *Scope of Services and Fee Schedule*

#### **A. Scope of Services:**

- (1) During the term of the Agreement, Contractor shall provide the following Services to the Community's \_\_\_\_\_ Department:
  - a)
- (2) The Director of the \_\_\_\_\_ ("Director") shall approve the successful completion of the Services by Contractor.

#### **B. Fee Schedule:**

- (1) The compensation for the Services provided by Contractor to the Community shall be as follows:
  - a)
  - b) KBIC's obligation to provide compensation shall be conditioned upon successful completion and inspection of the Services as stated herein.
- (2) Contractor shall submit a monthly invoice to the Community. Payment shall be made to Contractor within 30 days after receipt of the invoice by the Community; provided, that the Director approves the Services performed by Contractor for the period invoiced by Contractor.
- (3) The compensation includes all expenses incurred by Contractor in preparation and performance of the Services provided for under the Agreement, including, by way of illustration, but not limitation, travel expenses, meals, printing and research. All costs and expenses incurred in connection with this Agreement shall be paid by the Party incurring such costs and expenses.
- (4) The Davis-Bacon Act Wage Determinations, Indian Self-Determination and Education Assistance Act, employee whistleblower protections (41 U.S.C. 4712), and KBIC TERO regulations apply.