

Request for Services:

Reference No.: CWF-LNIC-01-2022

Canadian Wildlife Federation (“CWF”) is seeking engineering and design services from qualified firms for the restoration of fish passage at a collapsed irrigation dam on Clapperton Creek near Merritt, BC.

1. Project Description

Clapperton Creek flows into the Nicola River just downstream of Nicola Lake, approximately 10 km northeast of Merritt, BC. A collapsed irrigation dam, which appears to have been installed in the 1930s, is located approximately 1.7 km upstream from the mouth at 10U 666296 E, 5560782 N. The dam appears to be orphaned and is located within the boundaries of the Lower Nicola Indian Band (“LNIB”) Zoht IR No.4. Mill Creek Road parallels Clapperton Creek at the dam location, the stream bank and dam form a part of the road prism. CWF is working closely with LNIB to complete the work; all work must comply with all applicable Provincial and Federal Regulations, LNIB Laws, Plans and Policies, particularly the Subdivision, Development and Servicing Law, the Land Use Plan, Environmental Management Plan, Cultural Heritage Policy, and the Land Use and Zoning Law. Failure to meet all applicable CWF and LNIB Design Guidelines will require the successful Proponent to revise all deficient work to the satisfaction of CWF and LNIB, at no additional cost.

We are seeking a detailed site plan and stream channel restoration designs for restoring year-round fish passage for adult and juvenile salmonids. It is expected that several approaches may be taken to restore fish passage, ranging from modifying the dam and surrounding stream to facilitate passage, to partial or full removal of the dam from the stream, each with their own opportunities and risks. This project will therefore be phased into two components.

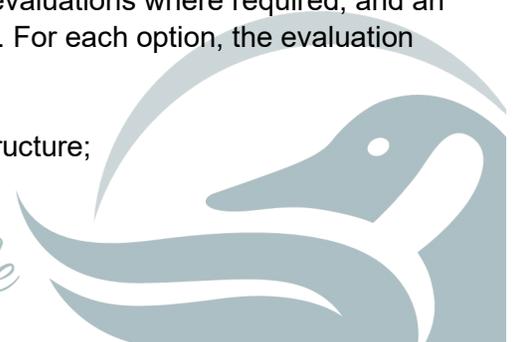
Phase One will consist of preparation of a site plan, site report, and conceptual design drawings for two or more remediation options, including at minimum a dam retrofit option and a dam removal and/or partial removal option.

Based on the outcome of the Phase One work, CWF may choose to advance the preferred design option (to be determined by the Project Team with input from the successful bidder) to a Phase Two which will be a detailed design stage, for which final issued for construction drawings will be prepared.

2. Project Deliverables and Timeline

2.1 Phase One - all deliverables to be completed by March 31, 2023

1. Engineering site survey and site plan, including stream long profile and cross sections, completed to sufficient detail to support detailed design.
2. Design report including hydrologic, hydraulic, and geotechnical evaluations where required, and an evaluation of each of the two or more conceptual design options. For each option, the evaluation should include a comparison of:
 - Effectiveness of the structure for passing fish;
 - Potential risks to Clapperton Creek and surrounding infrastructure;



- Expected longevity;
- Expected maintenance and timeline (durability);
- Expected likelihood of success;
- Constructability;
- Construction duration; and
- Estimated cost.

3. Conceptual design drawings for each remediation option.

2.2 Phase Two – to be completed by August 31, 2023

1. Completion of signed and sealed detailed (issued for tender/issued for construction) designs for the preferred option, including general arrangement drawings and design notes including material specifications for restoration of stream bed and banks.
2. Engineering construction estimate for project components.

3. Environmental Review

An environmental assessment developed in accordance with LNIB's Interim Environmental Assessment Process will need to be undertaken prior to construction. Although construction is not anticipated as part of this assignment, LNIB's Interim Environmental Assessment Process is included for reference in Appendix "A" and should be considered in the context of the overall design approach.

4. Instructions to Proponents

Provide a proposal for both phases of the work, including proposed methodology and timelines, proposed project team, and qualifications of key team members. A cost breakdown for the work in a format that distinguishes between service fees and disbursements will also be required.

4.1 Proposal Submission Location

Proposals shall be emailed to:

Attention: Betty Rebellato, National Fish Passage Program Improvement Coordinator

bettyr@cwf-fcf.org

4.2 Proposal Submission Date and Time

Proposals shall be submitted to Canadian Wildlife Federation by **4:00pm Pacific Standard Time January 31, 2023.**

CWF reserves the right to not accept late submissions.

4.3 Project Team

Canadian Wildlife Federation

Nicolas Lapointe

Email: nlapointe@cwf-fcf.org

your connection to

wildlife



Sarah Sra, Conservation Planner
Email: sarajs@cwf-fcf.org

Betty Rebellato, National Fish Passage Program Improvement Coordinator
Email: bettyr@cwf-fcf.org

Lower Nicola Indian Band

Monica Charters, Economic Development Administrative Assistant
Email: monica.charters@lnib.net

Brandi O'Flynn, Lands Manager
Email: brandi.oflynn@lnib.net

CWF and LNIB may assign other team members throughout the project.

4.4 Enquires by Proponents during the Proposal Period

Direct all enquires during the proposal period to Betty Rebellato by email at: bettyr@cwf-fcf.org.

Enquiries must be made by January 23, 2023. Enquiries will be responded to by January 27, 2023. CWF shall not be responsible for Proponents adjusting their proposals based on oral instructions by any member of CWF or the Project Team.

4.5 Technical Proposal Format

The Proponent is directed to carefully consider Section 4.6 of this RFS when preparing the technical section of its proposal. The proposal is to include but not limited to the following:

- Proposed methodology and timelines summarizing your approach to the project, including a list of project deliverables.
- A narrative that describes challenges or opportunities that the Proponent anticipates may impact the success of this project. Describe how the team will approach each challenge to deliver a successful outcome.
- A narrative that describes local knowledge of the area, and experience related to fish passage; and
- A detailed description of the two most relevant projects the project team has completed. Include project team members and sub-consultants involved, their scope, duration and client references. Projects must be directly relevant;
- A summary paragraph for each project team member and sub-consultant describing their role, relevant skills, qualifications and experience;



4.6 Proposal Evaluation Process

4.6.1 Method of Evaluation

After the Proposal Submission Date and Time, each Project Team member shall use the following evaluation criteria to assess each technical proposal.

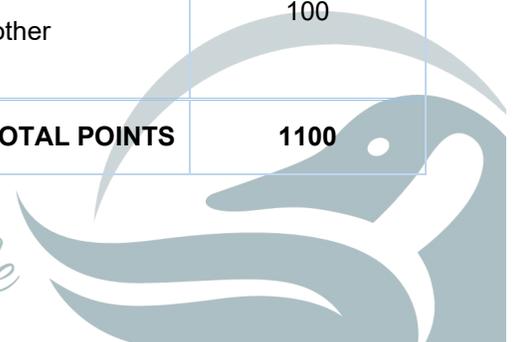
Each section of the technical proposal shall be reviewed and awarded a percentage of the maximum possible score according to the following evaluation scale table. Note that each technical proposal is evaluated separately, and it is possible for more than one proposal to be awarded the same Percent of Total Points Possible.

EVALUATION SCALE TABLE		
% of Total Points Possible	Quality Summary	Description
100	Excellent	Surpasses CWF and LNIB expectations.
85	Good	Sound response that fully meets CWF and LNIB expectations.
75	Acceptable	Acceptable response that meets basic requirements and poses acceptable risk.
50	Weak	Unacceptable response that does not meet the basic requirements and poses considerable risk.
25	Seriously Deficient	Deficient response in many areas and poses unacceptable risk.
0	Unacceptable	Response is completely unacceptable or missing.

Applying the preceding Evaluation Scale Table, the Evaluation Criteria for each Section of the Technical Proposal is as follows:



TECHNICAL PROPOSAL WEIGHTING CRITERIA		
ITEM	TECHNICAL EVALUATION CRITERIA	TOTAL POINTS
1	<p>Project Technical Requirements (500)</p> <p>Phase One (400)</p> <p>Phase 2 (100)</p> <p>Technical evaluation of the proposal will be based on:</p> <ul style="list-style-type: none"> • Understanding of the project scope and associated challenges • Overall project approach • Ability to meet prescribed timelines • Proposed methodology including clear description of tasks and technical ability • Proposed project deliverables • Completeness and adequacy of proposal 	500
2	<p>Challenges and Opportunities (100 points)</p> <p>Describe challenges or opportunities that the Proponent anticipates will impact the success of this project. Describe how the team will approach each challenge to deliver a successful outcome.</p>	100
3	<p>Project Team Qualifications (300 points)</p> <p>Provide a summary paragraph for each project team member and sub- consultant describing their role, relevant skills, qualifications and experience.</p> <ul style="list-style-type: none"> • Project manager (50 points) • Complete team (150 points) • Project Experience (100 points) <p>Provide a detailed description of the two most relevant projects the project team has completed. Include which project team members and sub- consultants were involved, their scope, budget, duration and client references. Projects should be directly relevant. CWF may contact the references provided.</p>	300
4	Local knowledge to the area and fish passage experience. (100)	100
PRICE EVALUATION CRITERIA		
5	<p>Price Proposal Evaluation</p> <p>Lowest price Proponent is awarded 100 points.</p> <p>Lowest price / other proponent's price x 100 points = # of points for another Proponents.</p>	100
TOTAL POINTS		1100



4.6.2 Final Determination of the Successful Proponent

The evaluation process noted above will assist the Project Team to determine the Proponents with the highest point scores. It is anticipated that the Proposal that is evaluated to receive the most points based on the evaluation process described above will be selected as the successful Proponent; however, CWF reserves the right to select the Proponent that, overall, the Project Team judges will provide the best value.

CWF shall notify the successful Proponent in writing.

4.7 Proponent's Responsibility

Proposals are evaluated against a number of specific criteria and factors. It is the responsibility of the Proponent to ensure their proposal clearly demonstrates how these evaluation criteria and factors will be addressed in their performance of the work.

4.8 Reserved Rights

By this RFS, CWF reserves to itself the absolute and unfettered discretion to terminate this RFS at any time for any reason, invite submissions, consider, and analyze submissions, select a proponent, or attempt to negotiate an Agreement with any Proponent as the Project Team considers desirable. Without limiting the generality of the foregoing, CWF reserves the right to:

- Reject or consider any compliant submission whether or not it contains all information required by this RFS;
- Require clarification where a submission is unclear prior to award;
- Reject any or all submissions without any obligation, or any compensation or reimbursement, to any Proponent or any other person associated with this RFS process;
- Disqualify or reject any submission without discussion with the submitting party;
- Reject any proposal that the Project Team considers is not in its best interests; and/or
- Extend the submission date and time.

4.9 No Obligation to Proceed

While it is CWF's intention to proceed through the RFS process in order to have the project completed, CWF is under no obligation to proceed. The receipt by CWF of any information (including any submissions, ideas, plans, drawings, models, or other materials communicated or exhibited by any Proponent, or on its behalf) shall not impose any obligations of any kind on CWF. Proponents acknowledge there is no guarantee by CWF, its officers, employees, or agents, that the process initiated by the issuance of this RFS will continue, or that this RFS process or any RFS process will result in a contract with CWF for the development of the project.

4.10 CWF's Decision Making Power

CWF has the power to make any decision, or to exercise any contractual right or remedy, contemplated in this RFS at its sole discretion. Nothing in this RFS will be interpreted as reducing CWF's authority.



4.11 Irrevocability of Proposals

By submission of a clear and written notice, Proponents may amend or withdraw a proposal prior to the closing of the submission date and time. Upon closing of submissions, all proposals become irrevocable. By submission of a proposal, the Proponent agrees that should its proposal be successful, the Proponent will enter into an Agreement with CWF as stated in Section 4.14.

4.12 Proponents' Expenses

Proponents are solely responsible for their own expenses in preparing a proposal and for subsequent negotiations with CWF, if any. CWF shall not be liable for any costs, loss or damages to the Proponent related to the submission of proposals, including, but not limited to, costs incurred in preparing proposals, loss of business, loss of revenue, or consequential damages.

4.13 Proposal Validity

Proposals will be open for acceptance by CWF for a minimum of thirty (30) days following the submission closing date.

4.14 Form of Agreement

Upon the award of this Project, the successful Proponent will be required to enter into an Agreement with CWF. The form of the Agreement is located in Appendix "B" of this RFS for reference.

4.15 Negotiation Delay

If for any reason the Agreement with the selected Proponent is not finalized within thirty (30) days of notification of the successful Proponent, CWF may, at its sole discretion and at any time, thereafter, terminate discussions with that Proponent and enter into discussions with another Proponent or choose to terminate the RFS process, and proceed, or not proceed with the project in some other manner.

4.16 Agreement with Terms

By submitting a proposal, the Proponent agrees to all the terms and conditions of this RFS.

4.17 Modification of Terms

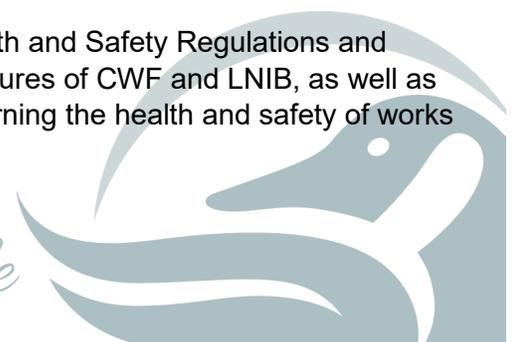
CWF reserves the right to modify the terms of the RFS at any time at its sole discretion.

4.18 Laws of Ontario

Any Agreement resulting from this RFS will be governed in accordance with the applicable laws of the Province of Ontario and of Canada.

4.19 Health and Safety Requirements

The Proponent must be able to comply with the current Occupational Health and Safety Regulations and Workers Compensation Act of WorkSafeBC and the safety policies/procedures of CWF and LNIB, as well as other applicable federal, provincial, and local regulations or policies concerning the health and safety of works and the general public.



4.20 Liability for Errors

While CWF has expended considerable efforts to ensure an accurate representation of information in this RFS, the information contained in this RFS is supplied solely as a guideline for Proponents. The information is not guaranteed or warranted to be accurate by CWF or LNIB, nor is it necessarily comprehensive or exhaustive. Nothing in this RFS is intended to relieve Proponents from forming their own opinions and conclusions with respect to the matters addressed in this RFS.

4.21 Confidentiality

Any Proponent and any other person who, through this RFS process, gains access to confidential information of CWF or LNIB shall keep strictly confidential all information which in any way reveals confidential business, financial or investment details, programs, strategies, or plans, learned through this RFS process. This requirement will continue with respect to such information learned by the successful Proponent, if any, over the course of any negotiations for service which arises out of this RFS process.

4.22 Ownership of Documents

Upon delivery to CWF, all Proposals (and all their contents) become the property of CWF and will not be returned to the Proponents except as CWF, in its sole and absolute discretion, may determine.

4.23 Conflict of Interest

The Proponent warrants that, at the date of submitting a proposal, no conflict of interest exists or is likely to arise in the performance of its obligations under the contract, if the Proponent is selected by CWF.

4.24 Not a CWF or LNIB Employee

The successful Proponent will acknowledge and agree that neither the Proponent nor any person employed by or associated with the successful Proponent in the performance of services or otherwise, is an employee of, or has an employment relationship of any kind with CWF or LNIB or is in any way entitled to terms or conditions of employment or employment benefits of any kind whatsoever from CWF or LNIB under any collective agreement or otherwise including but not limited to private programs or coverages and statutory programs and overages, whether under the Employment Standards Act of British Columbia (as amended from time to time), the Employment Insurance Act of Canada (as amended from time to time), health plan contributions or otherwise.

4.25 Proponent's Employees

The Proponent's representatives shall be under the exclusive supervision of the Proponent. All responsibility and authority for hiring, training, supervision, direction, compensation, discipline, termination, and administration of the Proponent's representatives, and any and all costs or expenses related thereto, rest exclusively with the Proponent.



Appendix “A” LNIB’s Interim Environmental Process

Environmental Review (“ER”)

LNIB’s Environmental Protection Coordinator conducts a preliminary review of all proposed activities within the scope of the project, it follows the process of analyzing a project and its potential for environmental impacts to determine if it meets Federal, specified Provincial, and/or LNIB environmental laws. The ER will outline environmental concerns and provide potential and/or preferred mitigation strategies.

A generalized template for the type of topics covered includes but is not limited to the following:

1. Proponent Information
2. Project Description
3. Land Use / Project Activities
4. Permit and Lease application
5. Environmental Review
 - 5.1. Environmental Considerations
 - 5.2. Spill Response & Reporting
 - 5.3. Waste Management
 - 5.4. Invasive Weeds
6. LNIB Law
7. Federal Law
8. Cultural Heritage Considerations
9. Schedule A – Consolidated Recommendations & Responsibilities
10. Bibliography of Research Sources

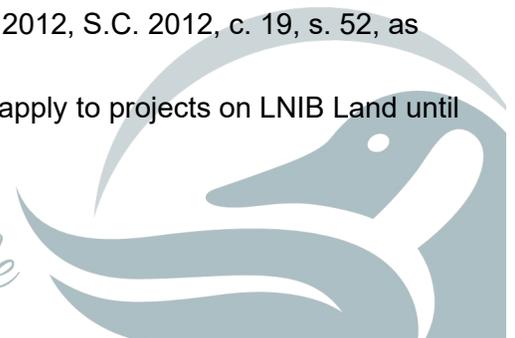
Environmental Assessment (“EA”)

An EA is completed externally by an approved Environmental Consultant to conduct an assessment of a project’s potential to impact or meet intended goals of environmental, economic, and social sustainability. This includes assessing impacts to groundwater, sensitive/aquatic ecosystems, Species at Risk in the area and social or economic considerations given the proposed activities. This list is not exhaustive, and the bulk content of an EA will be determined by the focus of the given project and any concerns raised by LNIB in the ER.

The results of the EA will be used to inform stipulations in an agreement made between LNIB and the proponent for the approval of the project.

Process

1. In this Appendix,
 - a. "CEAA (1992)" means the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37 [repealed, 2012, c. 19, s. 66], as it read immediately prior to its repeal;
 - b. "CEAA 2012" means the *Canadian Environmental Assessment Act*, 2012, S.C. 2012, c. 19, s. 52, as amended from time to time.
2. This Appendix sets out the environmental assessment process that will apply to projects on LNIB Land until the enactment and coming into force of LNIB Laws on that subject.



3. LNIB shall conduct an assessment process in respect of every project on LNIB Land consistent with:
 - a. CEAA (1992), or
 - b. CEAA 2012.
4. Notwithstanding clause (3), LNIB is not required to conduct an additional environmental assessment if LNIB decides to adopt an environmental assessment that Canada conducts in respect of that project.
5. If LNIB elects to use a process consistent with CEAA (1992), the following applies:
 - a. When LNIB is considering the approval, regulation, funding or undertaking of a project on LNIB Land that is not described in the exclusion list as defined in CEAA (1992), the LNIB Chief and Council of shall ensure that an environmental assessment of the project is carried out in accordance with a process that is consistent with that of CEAA (1992). Such assessment shall be carried out as early as practicable in the planning stages of the project before an irrevocable decision is made.
 - b. LNIB shall not approve, regulate, fund, or undertake the project unless the Chief Council has concluded, taking into consideration the results of the environmental assessment, any economically and technically feasible mitigation measures identified as necessary during the assessment, and any public comments received during the assessment, that the project is unlikely to cause any significant adverse environmental effects or that any such effects are justifiable under the circumstances.
 - c. If LNIB approves, regulates, funds, or undertakes the project, LNIB shall ensure that all mitigation measures referred to paragraph (b) above are implemented at its expense or it is satisfied that another person or body will ensure their implementation. The Chief and Council shall also consider whether a follow-up program, as defined in CEAA (1992), is appropriate in the circumstances and if so, shall design a follow-up program and ensure its implementation.
6. If LNIB elects to use a process that is consistent with CEAA 2012, the following applies unless it is inconsistent with any amendments made to CEAA 2012 in the future or any legislation that replaces CEAA 2012:
 - a. If the project is a "designated project" as defined in CEAA 2012, LNIB shall conduct an environmental assessment of that project in accordance with a process that is consistent with that of CEAA 2012.
 - b. If the project is a "project" as defined in section 66 of CEAA 2012, LNIB shall not carry out the project on LNIB Land, or exercise any power or perform any duty or function conferred on it under the Land Code or a First Nation law that would permit the project to be carried out, in whole or in part, on LNIB Land, unless the Chief Council determines that the carrying out of the project (i) is not likely to cause significant adverse environmental effects as defined in CEAA 2012; or (ii) is likely to cause significant adverse environmental effects and the Council decides that those effects are justified in the circumstances.
7. All processes shall be conducted at the expense of the proponent of the project.
8. The provisions in this Appendix are without prejudice to any environmental assessment process that LNIB may develop in accordance with the First Nations Land Management Act and the Framework Agreement for incorporation in LNIB laws respecting environmental assessment.



Appendix B

DRAFT SERVICE CONTRACT

BETWEEN:

CANADIAN WILDLIFE FEDERATION, a non-profit, wildlife conservation organization, having its head office located at 350 Michael Cowpland Drive, Kanata, Ontario, K2M 2W1 Canada.

(hereinafter the "Federation")

AND:

[CONTRACTOR NAME], of the City of [name of city], in the province of [name of province], having its head office located at [Contractor address]

(hereinafter the "Contractor")

WHEREAS the Federation is one of Canada's largest non-profit, non-governmental conservation organizations and is dedicated to fostering awareness and enjoyment of Canada's natural world;

AND WHEREAS the Contractor is in the business of providing engineering design services in the province of [province];

AND WHEREAS the Federation wishes to retain the services of the Contractor on the terms and conditions outlined in this agreement (the "Agreement");

NOW THEREFORE in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Nature of the Relationship

1.1 The Contractor is engaged as an independent contractor, and nothing contained in this Agreement shall be construed to create or imply a joint venture, principal/agent or employment relationship between the parties. Neither the Contractor, nor any of the Contractor's employees, officers, or agents, will be deemed to be employees of the Federation for any purpose.

1.2 The Contractor does not have the authority to act for or bind the Federation in any way, or to execute agreements on behalf of the Federation, unless expressly authorized by the Federation. The Contractor agrees not take any action or permit any action to be taken on their behalf which purports to be done in the name of or on behalf of the Federation without the prior written consent of the Federation.

1.3 The Contractor's relationship with the Federation is not exclusive. The Contractor may, during the term of this Agreement, pursue independent business opportunities outside of those set out in this Agreement, provided that such opportunities do not conflict with the Services contracted for hereunder.

2. Services

2.1 The Federation is engaging the Contractor to provide the services of developing preliminary designs to remediate fish passage at an orphaned dam on Clapperton Creek near Merritt, BC (the "Services") and the Contractor agrees to provide the Services on an as-needed basis, as discussed and agreed to with the Federation. A detailed description of the Services is attached as Schedule "A" to this Agreement.

2.2 The Contractor agrees:

- to provide the Services in a competent, professional, and timely manner, to the satisfaction of the Federation;
- to abide by all reasonable and applicable practices, policies, and procedures instituted by the Federation from time-to-time in the provision of the Services;
- to maintain a current license or certification with the appropriate regulatory body and remain a member in good standing;
- to provide such reports to the Federation on the provision of the Services, as may be requested from time to time;
- to abide by all lawful instructions given by the Federation in connection with the Services; and
- that they are not party to any agreement with any third party that would restrict their ability to enter into this Agreement or to perform their obligations hereunder and that they will not, by entering into this Agreement with the Federation, breach any non-disclosure, proprietary rights, non-competition, non-solicitation, or other covenant made to any third party.

2.3 The Contractor shall not delegate or subcontract the Services to be provided to the Federation pursuant to this Agreement without the express prior written approval of the Federation.

3. Term of Agreement

3.1 This Agreement will come into effect on [DATE] and shall continue in force until [DATE] (the "Term"), unless otherwise terminated in accordance with section 6 of this Agreement.

3.2 Should the contractual relationship between the parties continue beyond the Term set out above, in the absence of a new written agreement between the parties, the terms of this Agreement will continue to apply.

4. Fees and Expenses

4.1 The Contractor will charge the Federation at the rate of [TBD], exclusive of taxes, for the provision of Services rendered in accordance with this Agreement. The Contractor will provide the Federation with a detailed invoice for Services rendered at the end of each month. The Federation agrees to pay such invoices within thirty (30) days of receipt of the Contractors valid invoice, in accordance with its standard payment practices.

4.2 The Federation shall reimburse the Contractor for reasonable expenses incurred in the performance of Services pursuant to this Agreement, in accordance with the Federation's generally established practices, and provided that such expenses have been approved in advance by the Federation. All invoices for expenses shall be submitted within thirty (30) days after expenses have been incurred and must include receipts for the expense or other evidence of payment in a form acceptable to the Federation.

4.3 All payments made by the Federation to the Contractor pursuant to this Agreement are inclusive of sales tax, GST/HST, excise taxes or similar taxes of any kind, whether at the federal, provincial or other jurisdictional level.

4.4 All invoices shall be sent to the following email address: invoice@cwf-fcf.org, and copied to the staff member identified in section 19 (Notices).

5. Permits, Licenses and Authorizations

5.1 The Contractor shall be responsible for obtaining any and all permits, licenses, and authorizations; and the Contractor shall be responsible for filing any and all Notifications required to carry out the work in compliance with all laws applicable in British Columbia.

6. Compliance with Worker's Compensation Act

6.1 The Contractor shall be solely responsible for construction safety during the performance of the Services; and at its own expense, provide the necessary WorkSafe BC compensation coverage for itself, all workers and any shareholders, directors, partners or other individuals employed or engaged in the performance of the Services, and shall ensure all approved Subcontractors obtain WorkSafe BC coverage.

7. Responsibility for Tax Filings and Other Remittances

7.1 The Federation will not make any contributions, deductions, or remittances to Canada Pension Plan, Employment Insurance, or Canada Revenue Agency on behalf of or for the benefit of the Contractor.

7.2 The Contractor represents and warrants that they either: (i) have a GST/HST registration number, or (ii) are exempt from the requirement to have such a registration number. The Contractor agrees to promptly provide the Federation with their GST/HST registration number or, alternatively, with proof of exemption in a form satisfactory to the Federation. The Contractor's GST/HST registration number must be displayed on each invoice submitted to the Federation.

7.3 The Contractor is responsible for submitting all required payments that may be payable for Employment Insurance, the Canada Pension Plan, provincial health plans, municipal, provincial or federal taxes, including income tax, HST, and any other municipal, provincial or federal government remittance requirements.

7.4 Should the relationship between the parties be found in law to constitute an employment relationship, the Contractor agrees to indemnify the Federation against any amounts which are found to be owing by way of employer contributions or withholdings under any provincial or federal legislation relating to the deemed employment status and the Contractor agrees to hold the Federation harmless for any and all such payments and any fines, interest or penalties arising from the non-payment or failure to withhold.

8. Termination

8.1 In addition to and without in any way limiting the termination provisions set out in section 3 of this Agreement, this Agreement may be terminated under any of the following conditions:

- (i) at any time by the mutual written consent of the parties;
- (ii) by the Federation at any time without any advance written notice for cause, which shall include, but may not be limited to, the Contractor's gross misconduct or negligence in the provision of Services; and
- (iii) by either party by providing two (2) weeks advance written notice to the other party.

8.2 Upon the termination of this Agreement, the Contractor shall be compensated for any un-billed Services already provided to the Company prior to the termination date. The Contractor agrees to furnish a final invoice to the Federation detailing same within thirty (30) days of the termination of this Agreement and the Federation agrees to pay such invoice within thirty (30) days of receipt, in accordance with its standard payment practices.

8.3 In the event the relationship between the parties is deemed to constitute an employment relationship, the Contractor agrees that their entitlements upon termination will be governed by and limited to only the minimum entitlements expressly provided for by the Ontario *Employment Standards Act, 2000*, as amended, and, as such, the Contractor will not be entitled to reasonable notice at common law.

9. Waiver of Liability and Indemnity

9.1 The Contractor shall be responsible for any liability for loss, damage or injury to the Federation, which may be caused directly or indirectly by the Contractor, including, but not limited to, damages from negligence, loss of use, loss of business, loss of revenue, or consequential damages. The Federation does not assume responsibility for any loss, damage or injury which may occur by reason of a failure or deficiency in the Services provided by the Contractor.

9.2 The Contractor shall indemnify and save the Federation harmless from all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever that result, in whole or in part, from the negligence of the Contractor in the performance or non-performance of the Contractor's obligations pursuant to this Agreement.

10. Confidential Information

10.1 For the purposes of this Agreement, "Confidential/Proprietary Information" means all information, material, and facts, including intellectual property and business records, (collectively referred to herein as "information"), relating to the actual or anticipated operations or affairs of the Federation or any of its subsidiaries, whether or not such information: (i) is reduced to writing; (ii) is created or developed by the Contractor or someone else; (iii) is created or developed by the Federation or by others employed or engaged by or associated with the Federation or by any of its subsidiaries; or (iv) is designated or marked as "confidential" or "proprietary" or with some other designation or marking.

For greater certainty, Confidential/Proprietary Information includes, but is not limited to:

- (i) the Contractor's Work, as defined in this Agreement, and any other work product resulting from or relating to the Services performed or to be performed by the Contractor pursuant to this Agreement;
- (ii) information about the Federation's operations, methods, practices, contracts, policies, proposals, including, without limitation, technical and financial information, such as financial reports, donor lists, client lists, etc.;
- (iii) information received in confidence from third parties by the Federation; and,
- (iv) information which becomes known to the Contractor as a result of this engagement with the Federation, and which the Contractor, acting reasonably, believes or ought to believe is confidential or proprietary information from its nature, or from the circumstances surrounding its disclosure to the Contractor.

10.2 At all times during the Term of this Agreement and after the cessation of same, the Contractor agrees:

- (i) that all Confidential/Proprietary Information remains the sole and exclusive property of the Federation;
- (ii) to keep all Confidential/Proprietary Information in the strictest trust and confidence and to take all reasonable precautions to secure and protect the Confidential/Proprietary Information from any unauthorized or inadvertent access, use, copying, transfer, transmission, destruction, or disclosure;
- (iii) not to disclose to anyone outside the Federation, or use in other than the Federation's operations, any Confidential/Proprietary Information without the Federation's prior written permission;
- (iv) not to disclose to the Federation, or use in the Federation's operations, or cause the Federation to use, any information or material that is confidential to others; and,
- (v) to ensure that any of the Contractor's employees, officers, and agents involved with the provision of Services pursuant to this Agreement, or who have access to Confidential/Proprietary Information, comply with the Contractor's obligations with respect to Confidential/Proprietary Information pursuant to this Agreement.

10.3 However, nothing in section 10.2 precludes the Contractor from disclosing or using Confidential/Proprietary Information if:

- (i) the Confidential/Proprietary Information is available to the public or in the public domain at the time of such disclosure or use, without any breach of this Agreement; or
- (ii) disclosure of such Confidential Information is required to be made by law, provided that, before disclosure is made, the Contractor notifies the Federation of the requirement and, to the extent possible in the circumstances, affords the Federation the opportunity to dispute the requirement; or

- (iii) the Confidential/Proprietary Information becomes available to the Contractor on a non-confidential basis from a source other than the Federation, its subsidiaries, or their respective partners, or suppliers without breach of this Agreement.

11. Federation Property

11.1 Upon the termination of this Agreement or at any time during the Term of this Agreement at the Federation's request, the Contractor agrees to immediately return all Federation property in the Contractor's possession and control to the Federation including, without limitation, all Confidential/Proprietary Information, computer software, manuals, documents, equipment, working materials, and donor lists of the Federation and, if requested, to certify by way of affidavit or statutory declaration, that all such property, including Confidential/Proprietary Information, has been returned to the Federation and that no copies thereof remain in the possession or control of the Contractor or of any of the Contractor's employees, officers, or agents.

12. Intellectual Property Rights*

12.1 The Federation shall be the owner of anything the Contractor produces, conceives, develops, or contributes to in the course of providing Services to the Federation, including, without limitation, all techniques, drawings, specifications, designs, documentation, reports and donor lists (collectively the "Contractor's Work").

12.2 All intellectual property rights in the Contractor's Work shall be the sole and exclusive property of the Federation. The Federation shall have the sole and exclusive right to obtain copyright registrations, letters patent, industrial designs, trademark registrations, and any other protections in respect of the Contractor's Work and the intellectual property rights in the Contractor's Work.

12.3 The Contractor hereby assigns all rights, title, and interests in and to the Contractor's Work to the Federation. The Contractor irrevocably and unconditionally waives all moral rights they may now have or may in future have in any of the Contractor's Work.

12.4 The Contractor further agrees to, at any time during the Term of this Agreement or after the cessation of same, execute all documents and do all other acts necessary to: (i) ensure the Federation is and remains the sole and exclusive owner of the Contractor's Work and of all intellectual property rights in relation thereto, (ii) and to protect the Federation's interests as the sole and exclusive owner of the Contractor's Work and of all intellectual property rights in relation thereto.

13. Irreparable Harm

13.1 The Contractor acknowledges and agrees that the Federation will suffer irreparable harm if the Contractor were to breach or threaten to breach any of the Contractor's obligations pursuant to sections 10 – 12 of this Agreement, and that, in addition to any other rights and remedies that it may have in law or equity, the Federation will be entitled to seek and be granted temporary or permanent injunctive relief to prevent the Contractor from engaging in or continuing to engage in any breach of sections 10 – 12 of this Agreement. Any claims asserted or actions the Contractor may commence against the Federation will not constitute a valid defense in response to any motion or application for injunctive relief the Federation may bring against the Contractor pursuant to this Agreement.

14. Entire Agreement

14.1 This Agreement, including the attached Schedules, constitutes the entire Agreement between the parties, and any and all previous representations, agreements, written or oral, express or implied, between the parties or on their behalf, relating to this Agreement, are terminated and cancelled and each of the parties releases and forever discharges the other from all actions, causes of action, claims, demands whatsoever, under or in respect of any previous agreements. There are no representations, warranties, forms, conditions, undertakings or collateral agreements, express or implied between the parties other than as expressly set forth in this Agreement.

15. Sections and Headings

15.1 The division of this Agreement into sections and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.

16. Severability

16.1 The validity or enforceability of any provision or any part of any provision of this Agreement shall not affect the validity or enforceability of any other provision or part of any provision. If any provision of this Agreement or any part thereof is determined to be invalid, void, illegal, or otherwise unenforceable, in whole or in part, such a determination shall not invalidate the rest of the Agreement, which shall remain in full force and effect. If any provision of this Agreement is found to be so broad as to be unenforceable, such provision shall be interpreted more narrowly so as to be only so broad as is enforceable.

17. Survival

17.1 The Contractor acknowledges and agrees that the Contractor has ongoing obligations to the Federation pursuant to this Agreement, including those set out in sections 5 and 7 – 10 of this Agreement, that will survive the termination of this Agreement and the cessation of the Services provided hereunder.

18. Amendments and Waivers

18.1 This Agreement cannot be amended, modified, or supplemented in any respect except by subsequent written agreement signed by both parties.

18.2 The failure of either party to insist upon strict performance of any provision of this Agreement or to exercise any right arising out of this Agreement shall neither impair that provision or right nor constitute a waiver of that provision or right, in whole or in part, in that instance or in any other instance. Any waiver by a party of a particular provision or right pursuant to this Agreement shall be done in writing and signed by the party providing the waiver, and shall only be valid with respect to the particular matter then at issue and, if applicable, only for a specified period of time.

19. Notices

19.1 Any notice required under this Agreement is sufficiently given if delivered personally, sent by ordinary prepaid mail, prepaid courier or email addressed as follows:

To the Federation at:

The Canadian Wildlife Federation
350 Michael Cowpland Drive

Kanata, Ontario, K2M 2W1
Attn:
Email:

To the Contractor:

“Contractor Name”
“Contractor Address”
Attn:
Email:

20. Benefit and Assignment

20.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other party.

21. Governing Law and Attornment

21.1 This Agreement shall be deemed to have been made and shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties agree that the adjudication of any disputes arising with respect to this Agreement will occur in the Province of Ontario by an Ontario court or another Ontario adjudicative body of competent jurisdiction (e.g., Board, Tribunal, etc.) and that the courts and adjudicative bodies of Ontario shall have exclusive jurisdiction with respect to any dispute, claim or other matter arising pursuant to this Agreement.

22. Dispute Resolution

22.1 Without in any way limiting either party’s right to ultimately commence formal legal proceedings, the parties agree to make *bona fide* efforts to resolve any disputes arising out of the interpretation, application, or administration of this Agreement by negotiations before resorting to formal legal proceedings.

22.2 If the parties are unable to resolve any such dispute within fifteen (15) days of receiving notice in writing of the dispute from the other party, the parties agree to attempt to resolve the dispute by way of structured negotiation with the assistance of a mutually acceptable mediator, with the fees for such mediator borne equally by the parties.

22.3 The time frames referred to in this section may be amended by mutual agreement.

23. Independent Legal Advice

23.1 Both parties acknowledge and agree that the terms of this Agreement are fair and reasonable and that they have each been provided with sufficient opportunity to obtain independent legal advice prior to signing this Agreement and have either done so or deliberately chosen not to.

24. Execution of Agreement

24.1 This Agreement may be executed in one or more counterparts, each of which when executed will be deemed to be an original and all of which will together constitute one and the same instrument.

Delivery of an executed copy of this Agreement by facsimile or transmitted electronically in portable document format (“PDF”) will be effective as delivery of this Agreement.

24.2 This Agreement may be executed electronically by way of electronic signature and may be stored electronically by either party. An electronically executed or stored copy of this Agreement shall be deemed to be an original.

IN WITNESS WHEREOF the parties have executed this Agreement as of the last date of signature below.

CONTRACTOR

(Signature) _____

(Position) _____

(Date) _____

FEDERATION

(Signature) _____

(Position) _____

(Date) _____

DRAFT

SCHEDULE A
Description of Services

1. The Contractor will perform the following Services during the term of this Agreement:
2. The Contractor will create the following Deliverables under this Agreement:
3. The fees of the Contractor will be paid according to the following breakdown and invoice schedule:

DRAFT