

Alberta Infrastructure

1. DEFINITIONS

- .1 "**Contract**" means the undertaking by, and the agreement between, the *Minister* and the *Consultant* to perform their respective contractual obligations.
- .2 "**Consultant**" means the person or firm identified in the Agreement Form, with whom the *Minister* enters into the *Contract* to perform the *Services*.
- .3 "**Subconsultant**" means a person or firm with whom the *Consultant* enters into a contract to perform part of the *Services*.
- .4 "**Minister**" means the Minister of Alberta Infrastructure or an officer duly authorized to represent the Minister of Alberta Infrastructure for the purposes of the *Contract*.
- .5 "**Services**" includes everything done or performed by or through the *Consultant* that is within the scope of the *Contract*, as set out in the *Contract*, including preparation and submission of any deliverables required by the *Contract*.
- .6 "**Additional Services**" includes things that, during the *Contract*, the *Minister* or the *Consultant* determine may need to be done or performed by or through the *Consultant*, but that are not contemplated by the parties at the time the *Contract* is signed, and that are outside the scope of the *Contract* unless and until the *Contract* is amended to include them as *Services*.

2. ASSIGNMENT

- .1 The *Consultant* shall not assign the *Contract* in whole or in part, nor shall the *Consultant* subcontract the *Contract* as a whole, without the prior written consent of the *Minister*, which the *Minister* shall not unreasonably withhold.

3. CONFIDENTIALITY

- .1 The *Consultant* and the *Consultant's* employees shall not use, copy, disclose or otherwise communicate any information not available to the general public that was gained by them in the course of their duties related to the *Contract*, except as is necessary in the proper discharge of those duties. This obligation survives the *Contract*.

4. CONFLICTS OF INTEREST

- .1 The *Consultant* and the *Consultant's* employees:
 - .1 shall conduct their duties related to the *Contract* with impartiality and shall, if they exercise inspection or other discretionary authority over others in the course of those duties, disqualify themselves from dealing within anyone with whom a relationship between them could bring their impartiality into question,
 - .2 shall not influence, seek to influence, or otherwise take part in a decision of the *Minister*, knowing that the decision might further their private interests,

4. CONFLICTS OF INTEREST (CONT'D)

- .3 shall not accept any commission, discount, allowance, payment, gift, or other benefit that is connected, directly or indirectly, with the performance of their duties related to the *Contract*, that causes, or would appear to cause, a conflict of interest, and
- .4 shall have no financial interest in the business of a third party that causes, or would appear to cause, a conflict of interest in connection with the performance of their duties related to the *Contract*, and if such financial interest is acquired during the term of the *Contract*, the *Consultant* shall promptly declare it to the *Minister*.

5. CONTRACT AMENDMENTS

- .1 The parties may make material changes to the *Contract*, but only by written amendment signed by both parties.
- .2 The *Minister* is not liable for payment for *Additional Services* without a written amendment to the *Contract*.

6. DISPUTE RESOLUTION

- .1 The *Minister* and the *Consultant* shall make bona fide efforts to settle, by negotiation, any dispute that arises between them, but when either party comes to believe that the dispute cannot be resolved by negotiation, either party may refer the dispute to arbitration, by serving written notice on the other party.
- .2 Neither the *Minister* nor the *Consultant* may unilaterally proceed to litigation without the written agreement of the other party.
- .3 A referral to arbitration must be to a single arbitrator agreed by both parties and must be in accordance with the Arbitration Act (Alberta). An arbitration award binds the parties, except as otherwise provided by the Arbitration Act (Alberta).
- .4 During any dispute resolution process, and without prejudice to any claim by either party, the *Consultant* shall perform the *Services* to completion without delay and the *Minister* shall pay undisputed invoices without delay.

7. ERRORS AND OMISSIONS

- .1 If, in the *Minister's* opinion, there is an error or omission in the *Services*, the *Consultant* shall perform any remedial *Services* requested by the *Minister* as a result of that error or omission. These remedial *Services* are not *Additional Services*.

8. GOVERNING LAW

- .1 The *Contract* is governed by the laws of the Province of Alberta.

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9. HOLD HARMLESS

- .1 The *Consultant* shall indemnify and hold harmless the *Minister* from all third party claims, demands actions or costs (including legal costs on a solicitor-client basis) for which *Consultant* is legally responsible, including those arising out of negligence or willful acts by the *Consultant* or the *Consultant's* employees or agents. This hold harmless provision survives the *Contract*.

10. INFORMATION DISCLOSURE

- .1 All information provided by either party to the other party is subject to the disclosure and protection provisions of the Freedom of Information and Protection of Privacy Act (Alberta), ("the FOIPP Act"). The FOIPP Act allows any person a right of access to records in the *Minister's* custody or control, subject to limited and specific exceptions as set out in the FOIPP Act.
- .2 The *Consultant* may identify those parts of any submission from the *Consultant* to the *Minister* that the *Consultant* considers confidential and what harm could reasonably be expected from disclosure. The *Minister* does not warrant that this identification will preclude disclosure if disclosure is determined to be required under the FOIPP Act.
- .3 Deliverables produced by the *Consultant*, which are the property of the *Minister* under the *Contract*, could be considered records under the control of a public body and could therefore also be subject to the FOIPP Act before delivery to the *Minister*.
- .4 Before disclosing to the *Minister* any individual's personal information, the *Consultant* shall obtain the consent of the affected individual. The consent must be in writing and must specify to whom the personal information can be disclosed and how the personal information can be used.

11. INSURANCE

- .1 Without restricting any obligations or liabilities under the *Contract*, the *Consultant* shall provide, maintain and pay for the following minimum insurance coverage, in forms acceptable to the *Minister*:
 - .1 General liability insurance with limits of not less than \$2,000,000 inclusive per occurrence, insuring against bodily injury, personal injury and property damage, including loss of use thereof.
 - .2 Automobile liability insurance on all vehicles owned, operated or licensed in the *Consultant's* name, with limits of not less than \$1,000,000.
- .2 The *Consultant* shall, upon the *Minister's* request, submit proof of required insurance coverage, in the form of a certificate of insurance or a certified true copy of the policy.

12. MINISTER'S RIGHT OF REVIEW

- .1 The *Consultant* shall permit the *Minister* to review, comment upon, and critique the *Consultant's* deliverables.
- .2 If the *Minister* directs the *Consultant* to change a deliverable, the *Consultant* shall promptly make the change, unless in the *Consultant's* opinion the change will compromise the *Consultant's* legal or ethical obligations, in which case the *Consultant* shall notify the *Minister* accordingly, in writing. Changes directed by the *Minister* under this provision are not *Additional Services*, unless in the *Minister's* opinion they constitute a material change to the *Services*.
- .3 The *Minister* may, at the completion of the *Contract*, evaluate the *Consultant's* performance of the *Services* and review the results of the evaluation with the *Consultant*.

13. OWNERSHIP OF DELIVERABLES AND OF COPYRIGHT

- .1 Deliverables required by the *Contract* become the property of the *Minister* upon the earliest of their delivery to the *Minister* or termination of the *Contract*.
- .2 In accordance with the Copyright Act (Canada), any copyright arising out of the performance of the *Services*, including any copyright arising out of the creation of deliverables, belongs to the *Minister*.

14. PAYMENT

- .1 The *Consultant* shall submit invoices monthly or submit a single invoice upon completion of the *Services*.
- .2 Amounts invoiced on account of fees for *Services* must not exceed the value of *Services* performed before the date of invoice submission.
- .3 Invoices must exclude Goods and Services Tax (GST).
- .4 The *Minister* certifies that the purchaser of the *Services* under the *Contract* is the Government of Alberta and is therefore not subject to GST.
- .5 Where an invoice includes amounts on account of *Services* paid on a time rate basis, the *Consultant* shall provide, with the invoice, a breakdown indicating the name, hourly rate, and number of hours billed for each billable person. The *Consultant* shall provide an explanation, satisfactory to the *Minister*, if there is any change with respect to persons designated in the *Contract* to perform the *Services*.
- .6 The *Minister* shall pay the *Consultant* 30 days after receipt of an invoice that is in accordance with the terms of the *Contract*.

15. PAYMENT OF REIMBURSABLE EXPENSES

- .1 If the *Contract* provides for payment of reimbursable expenses as a pre-determined fixed amount, amounts invoiced monthly on account of these reimbursable expenses must be proportional to the pre-determined fixed amount.
- .2 If the *Contract* provides for payment of reimbursable expenses based on actual costs incurred, the following conditions apply:
 - .1 Only expenses specified in the *Contract* as reimbursable, and expenses not specified in the *Contract* as reimbursable but specifically approved in writing by the *Minister* before they are incurred, are reimbursable.
 - .2 Amounts claimed for transportation, accommodation and meal expenses must comply, where applicable, with the current Public Service Subsistence, Travel and Moving Expenses Regulation ("the Expenses Regulation"), despite the Expenses Regulation being intended to apply to Government of Alberta employees. The Expenses Regulation is accessible at <http://www.chr.alberta.ca/legreg/travel/travel-regulation.pdf>.
 - .3 All claims for reimbursable expenses incurred by the *Consultant*, *Subconsultants*, or their employees, must be accompanied by originals or photocopies of supporting receipts, invoices, or statements issued by parties other than the claimant, except for those expenses that the Expenses Regulation permits to be claimed without receipts.
 - .4 The GST portion of an otherwise reimbursable expense is not reimbursable by the *Minister*.
 - .5 No markup on reimbursable expenses is payable by the *Minister*.

16. RECORDS AND AUDIT

- .1 If the *Minister* pays for all or any part of the *Services* based on a time rate fee, or pays for any reimbursable expenses based on actual costs incurred, the *Consultant* shall maintain records related to hours spent and costs incurred in performing the *Services*, for at least three years following the completion or termination of the *Contract*. The *Consultant* shall make these records available for inspection and audit by the *Minister*, at the *Consultant's* premises, at a time agreed by the parties.

17. RELATIONSHIP BETWEEN THE PARTIES

- .1 The *Consultant*, in performing the *Services*, is acting as an independent contractor. No agency, partnership or employee-employer relationship is created between the *Consultant* and the *Minister*.

18. SUBCONSULTANTS

- .1 The *Consultant* shall, before commencing the *Services*, provide the *Minister* with the names of all *Subconsultants* that will be used in the performance of the *Services*. The *Consultant* shall obtain the *Minister's* prior written consent for any changes to named *Subconsultants*.
- .2 The *Consultant* shall bind each *Subconsultant* to the terms of the *Contract*, to the extent applicable to the part of the *Services* performed by the *Subconsultant*.
- .3 The *Consultant* shall discharge the *Consultant's* lawful obligations to *Subconsultants* and shall satisfy any *Subconsultant* claims against the *Consultant* or the *Minister*.

19. SUSPENSION OF SERVICES

- .1 The *Minister* may, at any time and for any reason, temporarily suspend the *Services*, by giving a written notice to the *Consultant* stating the effective date of the suspension.
- .2 If the *Minister* suspends the *Services*, the *Consultant* shall take immediate steps to mitigate any costs or expenses incurred by the *Consultant* after the effective date of the suspension.
- .3 If the *Minister* suspends the *Services*, and does not authorize resumption of the *Services* within 90 days after the effective date of the suspension, and the parties have not agreed to extend the suspension period on agreed terms, the *Contract* is considered terminated on the 91st day after the effective date of the suspension.
- .4 When the suspension period expires, the *Consultant* may submit an invoice for any costs or expenses directly attributable to the suspension, and unavoidably incurred during the suspension period, regardless of whether the *Services* are resumed or the *Contract* is considered terminated.

20. TERMINATION OF CONTRACT

- .1 The *Minister* may, at any time and for any reason, terminate the *Contract* by giving a written notice to the *Consultant* stating the effective date of the termination.
- .2 If the *Minister* terminates the *Contract*, or if the *Contract* is considered terminated following a suspension of *Services*, the extent of the *Minister's* liability to the *Consultant* is limited to payment for all *Services* performed in accordance with the *Contract* up to and including the effective date of the termination including, if applicable, any costs or expenses unavoidably incurred during a suspension period. This obligation survives the *Contract*.