

# **ALBERTA TRANSPORTATION AND ECONOMIC CORRIDORS**

## **Consulting Services Contract**

**FOR**

**[PROJECT TITLE - SAME AS TOR]  
[PROJECT SUB-TITLE]**

**BETWEEN**

**HIS MAJESTY THE KING IN RIGHT OF ALBERTA**

as represented by the Minister of Transportation and Economic Corridors

(hereinafter called the "Department")

**AND**

**[CONSULTANT'S NAME]**

(hereinafter called the "Consultant")

**Contract No. XXXXX**



Consulting Services Contract Other - Published by Alberta Transportation and Economic Corridors

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**The Department** desires that consulting services be rendered for **[Description]** (hereinafter called the "**Project**").

**The Department and the Consultant** agree as follows:

This Contract constitutes the entire arrangement between the parties with respect to the subject matter of the Contract, and supersedes all previous negotiations, communications and other arrangements relating to it.

The scope of services to be provided by the Consultant for the Project shall be in accordance with the attached Schedule 'A', which forms part of this Contract, and as summarised below:

### **Summary of Services.**

## **1. DEFINITIONS**

**Consultant** means the person, organization or company with whom the Department enters into Contract to perform the Services required by this Contract.

**Consultant's Representative** means the person identified in writing by the Consultant as having the authority to represent the Consultant.

**Contract** means Consulting Services Contract

**Close-out Costs** mean those costs incurred by the Consultant following termination of the Contract to bring the project to a close and provide Project information to the Department as compiled to the point of termination.

**Deliverables** means information, project plans and designs, contract documentation, contract supervision, planning studies, and other relevant information as defined in the Contract that the Consultant has committed to provide to the Department under the terms of the Contract.

**Department** means His Majesty the King in right of Alberta, as represented by the Minister of Transportation and Economic Corridors, or their duly authorized representative.

**Expenses** means that portion of the total fee that covers indirect consultant costs, such as Sub-consultant costs and other disbursements.

**Fees** means the compensatory amount that the Department will pay the Consultant in return for the services and deliverables as defined under the terms of the Contract.

**Force Majeure Event** means any war, invasion, insurrection, armed conflict, act of foreign enemy, revolution, terrorist act, interference by military authorities, nuclear explosion, contamination by ionizing radiation, epidemic, pandemic including Covid 19, or quarantine restriction that prevents, delays or interrupts the performance of any obligation under the Contract, other than any obligation to pay any money, and provided such event does not occur by reason of:

- i) The negligence of the party relying on the Force Majeure Event (or those for whom it is in law responsible); or
- ii) Any act or omission of the party relying on the Force Majeure Event (or those for whom it is in law responsible) that is in breach of the Contract.

**Project/Services Schedule** means the time period agreed to by the Department and the Consultant within which services are to be performed, from the date of commencement of the services to the date of completion of the services.

**Services** means everything that is necessary to meet the Consultant's obligations under the Contract.

**Subconsultant** means any architect, professional engineer or other person engaged by the Consultant to perform part of the services included in the Contract.

## 2. **RESPONSIBILITIES AND AUTHORITY**

### **Consultant**

The Consultant shall be represented by **[Resource's Name]**. Changes to project staff require prior express written approval of the Department.

The Consultant shall provide consulting services in accordance with current standards, specifications and guidelines that are applicable to the work.

The Consultant shall observe and comply with all Federal, Provincial and Municipal statutes, codes, regulations and by-laws.

The Consultant shall designate a representative to be in charge of the services and to liaise with the Department's representative. The Consultant's approved list of Project personnel, including all sub-consultants, will not be changed without the express written permission of the Department's representative, which shall not be unreasonably withheld. The Project personnel are listed in the attached Schedule 'B', which forms part of this Contract.

No change to the scope of work performed in the Project as defined in this Contract and schedules shall be allowed without the express written permission of the Department's representative, other than in the case of emergency. In the case of such emergency the Consultant shall notify the Department's representative as soon as possible.

The Consultant shall indemnify and hold harmless the Department, its employees and agents from any and all third party claims, demands, actions or costs (including legal costs on a solicitor-client basis) for which the 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 shall survive this Contract.

## **CONFLICTS OF INTEREST**

1. The Consultant and the Consultant's employees, subcontractors and agents:
  - (1) Shall conduct their duties related to this 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 the impartiality of the consultant or its employees into question;
  - (2) Shall not influence, seek to influence, or otherwise take part in a decision of the

Department, knowing that the decision might further their private interests;

- (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 this 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 this Contract, and if such financial interest is acquired during the term of this Contract, the Consultant shall promptly declare it to the Department.
  - (5) Shall comply with, and ensure that its employees and subcontractors comply with, the Lobbyists Act of Alberta.
2. In the event the Consultant becomes aware of any matter that causes or is likely to cause a conflict of interest in relation to the Consultant's performance under this Contract, the Consultant shall immediately disclose such matter to the Department in writing.
  3. In the event that the Department becomes aware of the existence of a pecuniary or other interest that would cause or appear to cause a conflict of interest in carrying out the Consultant's obligation to the Department other than by notification, the Department may take whatever action the Department deems appropriate including the termination of this Contract should the Department determine such action appropriate.
  4. A breach of the conflict of interest clauses of this Contract constitutes grounds for termination of the Contract, should the Department determine such action appropriate.

## **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), ("**FOIPP Act**"), as amended, revised or substituted from time to time. The FOIPP Act allows any person a right of access to records in the Department'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 Department that the Consultant considers confidential and what harm could reasonably be expected from disclosure. The Department 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 Department under this 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 Department.
4. Before disclosing to the Department any individual's personal information, as defined in FOIPP Act, 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.

#### **OWNERSHIP OF DELIVERABLES AND OF COPYRIGHT**

1. Ownership in all Materials including copyright, patent, trade secret, industrial design or trade mark that are made, prepared, developed, generated, produced or acquired under or in relation to this Contract by the Consultant, the Consultant's employees, subcontractors or his agents, belongs to the Department as they are made, prepared, developed, generated, produced or acquired. The Materials shall be delivered to the Department the earlier of as specified in this Contract or upon completion or termination of this Contract.
2. The Consultant
  - (i) irrevocably waives in whole all moral rights, and
  - (ii) shall ensure that its employees, subcontractors and agents irrevocably waive in whole all moral rights,to the Materials made, prepared, developed, generated, produced, or acquired under this Contract and declares that these waivers shall operate in favour of the Department and the Department's assignees and licensees.

## **Department**

The Department's representatives shall be the interpreter of the requirements of the Contract, consistent with the intent of the Contract.

The Department's representatives may request the Consultant to make changes in the scope, and the Consultant shall advise the Department of the effects of such changes on the Contract, including scope of services, Project schedule, compensation and other implications to the Project.

The Department's representatives may suspend or terminate the Contract at any stage and terminate this Contract at the Department's sole and absolute discretion by giving written notice to the Consultant.

During a period of suspension, the Consultant shall minimize all fees and expenses relating to the services on the Project that may occur during this period. The Department shall pay the Consultant for those fees and expenses in accordance with the Contract that are substantiated as having been reasonably incurred during the suspension period.

The effective date of termination of the Contract shall not be less than 7 (seven) days after receipt of such notice. Upon receipt of notice to terminate, the Consultant shall take steps to bring the Project to a close and not perform any further work after the termination date. The Department shall pay the Consultant for the services provided and expenses incurred in accordance with this Contract up to the effective date, and for any substantiated close-out costs reasonably incurred after the date of termination.

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

This hold harmless shall survive this Contract.

### 3. **PROJECT SCHEDULE**

The commencement date for this Contract shall be the date of **Execution**. The completion date for this Contract shall be **[Date in Bold]** unless amended by mutual consent. The Project shall be completed in accordance with the attached Schedule 'B', which forms part of this Contract. The extension of the completion date assumes no other changes to the terms and conditions of the agreement.

### 4. **FEES AND PAYMENT**

The maximum amount payable by the Department to the Consultant under the Contract is **[\$X,XXX.XX]** and must not be exceeded without the express permission of the Department. Cost details to complete the Project inclusive of fees and expenses are as shown in Schedule 'B'.

The Consultant shall submit detailed invoices to the Department's representative for authorized services performed in accordance with this Contract.

The Department certifies that the purchaser of the services described in this Contract is the Government of Alberta or a listed tax-free Government of Alberta Agency, and the purchaser is therefore not subject to the GST or the HST.

The Consultant shall:

- (a) For the purposes of determining fees by other than a lump sum basis, keep and maintain in accordance with generally accepted accounting principles complete and accurate books, records, and accounts of all costs, expenditures and commitments relating to this Contract and, on 2 - days (or as extended at the discretion of the Department) prior notice, provide to the Department these documents to examine, audit and take copies and extracts.
- (b) Keep the documents referred to in this clause (a) above for 3 years following the completion or termination of this Contract.

For services outside of the Scope of Work, the Consultant shall submit a cost estimate to the Department's representative. These services and estimate shall be approved in writing by the Department's representative prior to any extra work being performed. The estimate may be based on a fee schedule of hourly charge-out rates and a schedule of disbursements shown in the attached Schedule(s), or on a lump sum (all based on original proposal rates).

## **5. GENERAL PROVISIONS**

All plans, drawings, specifications, designs, data, programs and documents prepared under this Contract shall be and remain the exclusive and confidential property of the Department. All information pertaining to the Project supplied by the Department shall be treated by the Consultant as confidential during as well as after completion of the Project. The Consultant shall not permit any use of such documents for any purpose without the prior express written permission of the Department.

The copyright of all technical documentation provided by the Department or created during the execution of the Project by the Consultant, his employees or sub-consultants belongs to the Department. All such material shall be transferred to the Department upon completion of the Project or as required by the Department. The Consultant shall have no rights to any invention or apply for any patents for materials developed or conceived through the prosecution of the Project.

For engineering services, the Consultant shall sign, seal, and date all drawings produced under this Contract. The seal shall consist of the Association of Professional Engineers, Geologists and Geophysicist of Alberta Member stamp or seal, and the permit stamp. Design drawings produced by other than the Consultant must also be signed, sealed and stamped by an accredited engineer before being accepted by the Consultant.

The Consultant shall be responsible for all work performed, and review of the Consultant's work by the Department shall not relieve the Consultant of any responsibility. Signing of documents by the Department's staff does not relieve the Consultant from any responsibility for their work.

A Contract with a sub-consultant does not relieve the Consultant of any obligation under this Contract, nor does it impose any liability upon the Department.

The Consultant shall exercise reasonable care in providing the services for the Project and must also achieve a standard of competence of a reasonably skilled person engaged in work in the profession to which the Consultant is engaged to provide services under this Contract.

### **Force Majeure Event**

If a Force Majeure Event occurs then notwithstanding any other provision of the Contract:

- i) To the extent that and for so long as either party is prevented by the Force Majeure Event from performing any obligation under the Contract, that party is relieved from liability due to its inability to perform or delay in performing that obligation; and
- ii) If the Force Majeure Event wholly or substantially prevents the Consultant from proceeding with the Services then the specified or adjusted completion date or Project/Services Schedule as applicable shall be adjusted for the period of the Force Majeure Event.

Upon either party becoming aware of the occurrence of a Force Majeure Event that prevents that party from performing any obligation under the Contract, that party shall in a timely manner give the other party notice of the Force Majeure Event, including reasonable details of the anticipated effects on performance of the Contract, and thereafter the Consultant shall, on an ongoing basis, notify the Department of its plans for remedying or mitigating the effects of the Force Majeure Event.

If the Consultant anticipates that the Force Majeure Event will delay completion of the applicable Services by the specified or adjusted completion date, but is of the opinion the delay can be avoided or mitigated through extraordinary measures, the Consultant may propose to the Department that such extraordinary measures be taken by the Consultant at the Department's expense.

## **6. INSURANCE REQUIREMENTS**

### **General**

The Consultant shall for the duration of this Contract, without limiting its obligations or liabilities herein and at its' own expense, provide and maintain the following insurance coverage in accordance with the Alberta Insurance Act.

- a) General Liability in an amount not less than \$2,000,000 inclusive per occurrence, insuring against bodily injury, personal injury and property damage including loss of use thereof.
- b) Automobile Liability on all vehicles owned or licensed in the name of the Consultant in an amount of not less than \$2,000,000.
- c) Professional Liability in an amount not less than \$2,000,000 for Water Management projects, or \$1,000,000 for any other projects insuring against errors and omissions in their performance of professional services under this Contract. Such insurance shall include bodily injury coverage. The Consultant shall maintain appropriate insurance coverage for at least two (2) years after the completion of services. Where appropriate, this insurance shall include coverage arising from pollution risks.
- d) The Consultant shall be required to procure and maintain appropriate insurance coverage for the use of watercraft and aircraft if they are required in the execution of the Project, as determined by the Department.
- e) All insurance shall be endorsed to provide the Department with 30 days advance written notice of cancellation, including cancellation for non-payment of premium.

The Consultant shall provide the Department with acceptable evidence of all required insurance in the form of a detailed insurance certificate at the time of execution of this Contract and at any time requested by the Department. The Consultant shall provide certified copies of all required insurance upon request by the Department.

The Consultant shall require and ensure that each subcontractor or subconsultant provides evidence of comparable insurance to that set forth in items a) to e) above.

### **Worker's Compensation Board and Occupational Health & Safety**

The Consultant shall maintain Worker's Compensation Insurance in the amount required by the Workers' Compensation Board for the term of this Contract. In the event the Consultant is performing work as defined in the Occupational Health and Safety Regulations and the Consultant is a proprietor or performs an exempt activity as defined by the Worker's Compensation Board, then the Consultant shall hold and maintain Worker's Compensation Insurance personal coverage throughout the length of this Contract.

The Consultant shall familiarize themselves, their staff and their sub-consultants with the terms of the Occupational Health and Safety Act and Regulations to ensure complete understanding of the responsibilities given and compliance required. The Consultant acknowledges and accepts all of the responsibilities and duties of the "Prime Contractor" as defined in the Occupational Health and Safety Act. The Prime Contractor shall to the extent required by the Occupational Health and Safety Act establish and maintain a Health and Safety system or process to ensure compliance with the Act and Regulations by sub-consultants. The Consultant shall also, to his satisfaction, ensure that any sub-consultants are able to comply with all health and safety regulations before commencing work.

In the event that the worksites of two or more Prime Contractors coincide, it shall be the responsibility of the Prime Contractor of this Contract to coordinate all other Prime Contractors and jointly develop a health and safety system or process for the affected worksite. If two or more Prime Contractors of the Department cannot agree on a process or system that addresses the safety concerns of all parties, work at the affected worksite shall cease until the dispute is settled.

As the Department representative on site, the Consultant will arbitrate disputes between Prime Contractors other than those involving his own forces. When a dispute occurs which involves forces of the Consultant, the Department will arbitrate the dispute. The arbitrator, after review, will decide which Prime Contractor shall be responsible for resolving the disputed safety issue. Such decision shall be final and binding upon all Prime Contractors.

## **7. CLAIMS**

If a situation or occurrence arises between the Department and the Consultant, in connection with or arising out of the Contract or the execution of the Project, which results in a difference of opinion between the parties as to payment or compensation required under the Contract, such a situation or occurrence will be considered a claim (the "**Claim**").

The Department or Consultant shall issue a notice of the Claim ("**Notice of Claim**") to the other party. The Notice of Claim shall be in writing and shall state the details of the Claim.

The Notice of Claim shall be served as soon as possible after the occurrence of the circumstance giving rise to the Claim and not later than seven (7) days after the occurrence of the circumstance or the claimant becoming aware of the circumstance. Failure to serve the Notice of Claim within this prescribed time period will prejudice the claimant's right to proceed with the Claim, unless the claimant can demonstrate that such delayed notice did not prejudice the ability of the other party to take action to minimise any additional costs resulting from the Claim.

The claimant shall maintain such records as may be necessary to support the Claim and the other party shall have the right to inspect such records.

Both parties shall make bona fide efforts to resolve the Claim. Attempts to resolve the Claim shall sequentially follow the Department's administrative review structure as follows:

1. **Regional Director,**
2. **Assistant Deputy Minister, Capital Planning, Grants and Engineering Services**

If the Claim is not resolved to the satisfaction of both parties through this process and the claimant wishes to pursue the matter further, it is incumbent upon the claimant to issue a Dispute Notice (as defined and in accordance with clause 9, Disputes).

## **8. DISPUTES**

If the Claim has not been resolved by the claims review process (as set out in clause 8) (now the "**Dispute**"), the Dispute will be resolved in accordance with the dispute resolution procedure set out below (the "**Dispute Resolution Procedure**"):

- a) the Dispute Resolution Procedure shall be started by delivery of a notice (the "**Dispute Notice**") in writing and expressly referring to this clause 9, from one party to the other party providing details of the Dispute and invoking the Dispute Resolution Procedure in respect of that Dispute;
- b) any Dispute Notice issued by the Consultant to the Department must be sent to:

Executive Director, Strategic Procurement & Grants  
3rd Floor, Twin Atria Building  
4999 - 98 Avenue  
Edmonton, AB, T6B 2X3

- c) within 30 days from the receipt of the Dispute Notice, officials designated by the Department and the Consultant will meet (the "**Settlement Meeting**") at a mutually acceptable time and place to make all reasonable efforts to attempt to resolve the Dispute (all negotiations held pursuant to the Settlement Meeting are to be held on a without prejudice basis and will not be used by either party as evidence at any other proceeding); and
- d) if the Settlement Meeting does not result in resolution of the Dispute, either party may refer the Dispute to a court of law of competent jurisdiction.


## **9. SUCCESSORS AND ASSIGNMENT**

The Consultant shall not assign or otherwise dispose of any of its rights, obligations or interests in this Contract without the prior written consent of the Department, which shall not be unreasonably withheld. Any attempt to assign any of the rights, obligations or interests in this Agreement without the written consent of the Department is void. If the Department consents, it is a condition of such consent that the assignee, the assignor and the Department enter into an agreement satisfactory to the Department.


This Contract shall apply to and be binding on both parties and their successors and permitted assigns.

## 10. ADDRESSES OF PARTIES

Notices or communications required or desired to be given pursuant to this Contract may be given to the Department by delivery to or by mail addressed:

<p style="text-align: center;"><b>[Name]</b> <b>[Title]</b> <b>Alberta Transportation and Economic Corridors</b> <b>[Address]</b></p> <p style="text-align: center;"> <b>(xxx) xxx-xxxx</b> <b>email:</b></p>
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Notices or communications required or desired to be given pursuant to this Contract may be given to the Consultant by delivery to or by mail addressed:

<p style="text-align: center;"><b>[Name]</b> <b>[Company Name]</b> <b>[Address]</b></p> <p style="text-align: center;"> <b>(xxx) xxx-xxxx</b> <b>email:</b></p>
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Either party may change its address by advising the other party in writing.

Proof of the giving of any notice not sent by registered mail shall be on the party giving the same. Notices mailed shall be deemed to have been given at the time they would be delivered in the ordinary course of mailing.

This Contract may be executed by the parties in counterparts, and may be delivered by electronic transmission in Portable Document Format (PDF), each of which upon execution and delivery shall be deemed an original and all which taken together shall constitute one and the same agreement.

**IN WITNESS WHEREOF** this Contract has been executed by the parties hereto:

HIS MAJESTY THE KING IN  
RIGHT OF ALBERTA, as  
represented by the Minister of  
Transportation and Economic  
Corridors

[CONSULTANT'S NAME]

Per:

Per:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

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