

**ALBERTA TRANSPORTATION**  
**Consulting Services Contract**

**FOR**

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

**BETWEEN**

**HER MAJESTY THE QUEEN**

in the right of the Province of Alberta  
represented by the Minister of Transportation  
(hereinafter called "the Minister")

**AND**

**[CONSULTANT'S NAME]**

(hereinafter called "the Consultant")

Contract No. [XXX/XX]

**The Minister** desires that consulting services be rendered for

**[Description]**

(hereinafter called "the Project").

**The Minister 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:

*Preliminary Engineering, Detailed Design, Tender Package Preparation, Material Fabrication Inspection, (for construction/rehab. supervision) Construction Supervision and Contract Administration for Grading, Granular Base Course, Asphalt Concrete Pavement, Bridge Construction, Water Management projects, Environmental Projects and Other Work.*

**1. DEFINITIONS**

**Consultant** means the person, organization or company with whom the Minister 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 Minister 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 Minister under the terms of the Contract.

**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 Minister will pay the Consultant in return for the services and deliverables as defined under the terms of the Contract.

**Minister** means Her Majesty the Queen in right of Alberta, as represented by the Minister of Transportation.

**Minister's Representative** means the person identified by the Minister to represent the Minister under the Contract.

**Project/Services Schedule** means the time period agreed to by the Minister 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 provide consulting engineering services in accordance with standards as outlined in the latest version of the "Engineering Consultant Guidelines for Highway and Bridge Projects", Volume's 1 and 2. ***(This clause is to be added if not in TOR/Proposal for Right/Way, Environmental, Planning, Design, & Construction).***

### **Clause 1 - OPTIONAL FOR NON - ENGINEERING RELATED CONTRACTS**

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

**Clause 2 - OPTIONAL FOR NON - ENGINEERING RELATED CONTRACTS**

The Consultant shall provide consulting services in accordance with current standards, specifications and guidelines that are applicable to the work. *(This Clause is Optional).*

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 Minister'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 Minister'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 Minister's representative, other than in the case of emergency. In the case of such emergency the Consultant shall notify the Minister's representative as soon as possible.

**Clause 3 - HOLD HARMLESS CLAUSE FOR ENGINEERING RELATED CONTRACTS (WITH MEMBERS OF CEA)**

The Consultant agrees to hold harmless the Minister and the Minister's employees and agents from any and all third party claims, demands or actions 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.

**Clause 4 - HOLD HARMLESS CLAUSE FOR NON - ENGINEERING RELATED CONTRACTS (OR WITH THOSE WHOM ARE NOT MEMBERS OF CEA)**

The Consultant shall indemnify and hold harmless the Minister, 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 provision 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 with 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 Minister, 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 Minister.
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 Minister in writing.
3. In the event that the Minister 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 Minister other than by notification, the Minister may take whatever action the Minister deems appropriate including the termination of this Contract should the Minister 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 Minister 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 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 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 Minister.
4. Before disclosing to the Minister 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 Minister as they are made, prepared, developed, generated, produced or acquired. The Materials shall be delivered to the Minister 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 Minister and the Minister's assignees and licensees.

**Minister**

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

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

The Minister's representatives may suspend or terminate the Project at any stage and terminate this Contract at the Minister'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 Minister 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 Minister 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.

**Clause 5 - HOLD HARMLESS CLAUSE FOR ENGINEERING RELATED CONTRACTS (WITH MEMBER OF CEA)**

The Minister agrees to hold harmless the Consultant and the Consultant's employees and agents from any and all third party claims, demands, or actions for which the Minister is legally responsible, including those arising out of negligence or willful acts by the Minister or the Minister's employees or agents.

The Minister agrees to hold harmless the Consultant against any claims by third parties for bodily injury or property damage to the extent that a Court of competent jurisdiction has determined that such injury or damage was caused or contributed to by deficient Project Requirements.

This hold harmless shall survive this Contract.

Project Requirements are defined as guidelines or specifications approved in writing by the Minister including but not limited, to the Engineering Consultant Guidelines for Highway and Bridge Projects, Volume 1 Design and Tender, and Volume 2 Construction Contract Administration.

**Clause 6 - HOLD HARMLESS CLAUSE FOR NON - ENGINEERING RELATED CONTRACTS (OR WITH THOSE WHOM ARE NOT MEMBERS OF CEA)**

The Minister 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 Minister is legally responsible, including those arising out of negligence or willful acts by the Minister or the Minister's employees or agents.

This hold harmless provision 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. If this Contract is extended, the escalation clause as noted under item 4, Fees and Payment, will apply. 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 Minister to the Consultant under the Contract is **[\$X,XXX.XX]** and must not be exceeded without the express permission of the Minister, notwithstanding the cost escalation provisions as specified. The total cost includes deletable items totaling **[\$X,XXX.XX]**.

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 Minister's representative for authorized services performed in accordance with this Contract.

The Minister 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 Minister) prior notice, provide to the Minister 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 Minister's representative. These services and estimate shall be approved in writing by the Minister'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).

A price escalation/de-escalation factor will be applied to outstanding fees (including meals/mileage) to provide a fair accounting method for inflationary influences over the term of the Contract. These influences will be accounted for by adjusting the fees in accordance with the accumulated change in the [APEGGA Annual Salary Survey for "Engineers - All Industries" \[Mercer's Compensation Planning Survey for Non-Union Employees, By Industry, For Profit Services\]](#). The annual [APEGGA \[Mercer's Index\]](#) figures, when published, will be reviewed by the Minister. This annual value (escalation factor) will be used to adjust fees in the first year after the year of the Contract. Subsequent years of escalation are compounded.

**Example:**

*Year of Contract - 2010*

- *No rate increase for services in 2010.*

*Escalation factor announced for 2011 services - 1.9%*

- *Fees remaining as of January 1, 2011 are increased by 1.9%.*

*Escalation factor announced for 2012 services - 2.4%*

- *Fees remaining as of January 1, 2012 are increased by 2.4%.*

## 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 Minister. All information pertaining to the Project supplied by the Minister 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 Minister.

The copyright of all technical documentation provided by the Minister or created during the execution of the Project by the Consultant, his employees or sub-consultants belongs to the Minister. All such material shall be transferred to the Minister upon completion of the Project or as required by the Minister. 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 Minister shall not relieve the Consultant of any responsibility. Signing of documents by the Minister'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 Minister.

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**

Neither the Consultant nor the Minister shall be deemed to be in default of its obligations under this Contract if and for as long as any delay or non-performance is directly or indirectly caused by or results from events of Force Majeure beyond the control of that party. These events shall include, but not be limited to, strikes, civil disturbances, war, fires, and acts of any government or branch or agency thereof other than any party hereto.

## **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 accordance with the Alberta Insurance Act, 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. Such insurance will include blanket contractual liability.
- b)** Automobile Liability on all vehicles owned, operated or licensed in the name of the Consultant in an amount of not less than \$1,000,000.
- 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. The Consultant shall maintain appropriate insurance coverage for at least two (2) years after the completion of services.
- d)** "All Risk" Valuable Papers insurance on all such items pertaining to the work under this Contract in an amount adequate to enable their reconstruction.
- e)** 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 Minister.

- f) All insurance shall be endorsed to provide the Minister with 30 days advance written notice of cancellation or material change restricting coverage.

The Consultant shall provide the Minister with acceptable evidence of all required insurance at the time of execution of this Contract and at any time requested by the Minister. 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 by arbitration.

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 Minister 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. SAFETY CERTIFICATE OF RECOGNITION (COR)**

The Consultant shall, for the duration of this Contract, without limiting its obligations or liabilities herein and at its own expense, maintain a valid safety Certificate of Recognition from the Alberta Construction Safety Association or an approved equivalent. A Small Employer's Certificate of Recognition is not considered acceptable. The Consultant will provide a valid Safety Certificate of Recognition for his organization or company from an approved Safety Accreditation Program.

## **8. CLAIMS**

If a situation or occurrence arises between the Minister 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.

Where the Minister or Consultant considers that a Claim has arisen under the Contract, the Minister or Consultant shall issue a Notice of Claim to the other party. A Notice of Claim shall be in writing and shall state the details of the Claim.

A 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 a 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 a claim, that the other party shall have the right to inspect.

Both parties shall make bona fide efforts to resolve a claim. Attempts to resolve claims shall sequentially follow the Minister's administrative review structure as follows:

1. **Regional Director**
2. **Executive Director, Program Management Branch**

In the event 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 Notice of Dispute in accordance with Appendix A, Mandatory Dispute Resolution Process of the document entitled "Dispute Resolution Process for Government of Alberta Construction Contracts" (go to the following link for electronic file copy of the Process document)

[http://www.transportation.alberta.ca/Content/docType29/Production/dispute\\_resolution\\_\(full\).pdf](http://www.transportation.alberta.ca/Content/docType29/Production/dispute_resolution_(full).pdf)

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Claims which escalate into disputes shall follow the processes identified in the document entitled "Dispute Resolution Process for Government of Alberta Construction Contracts", Appendices A, B, C, D & E. In the event of a conflict between the aforementioned Appendices and other provisions in this Contract, the Appendices shall govern. All references to the Owner in the aforementioned document shall mean Alberta Transportation.

Any Notice of Dispute issued by the Consultant shall be served to:

**Executive Director  
Program Management Branch  
Alberta Transportation  
2nd Floor, Twin Atria Building  
4999-98th Avenue  
Edmonton, Alberta  
T6B 2X3**

## **9. SUCCESSORS AND ASSIGNMENT**

This Contract shall apply to and be binding on both parties and, except as provided below, their executors, administrators, successors and assigns.

If the Consultant is an individual and dies or becomes incapacitated before the Project has been completed, this Contract shall be deemed cancelled as of the date of his death or incapacity, and the Minister shall pay for the services rendered and disbursements made to the date of cancellation.

**10. ADDRESSES OF PARTIES**

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

<p style="text-align: center;"><b>[Name]</b> <b>[Title]</b> <b>Alberta Transportation</b> <b>[Address]</b></p> <p style="text-align: center;"> <b>(780) 297-2462</b>    <b>(780) 428-3073</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>(780) 297-2462</b>    <b>(780) 428-3073</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.

**Reviewed by Minister's Representative:**

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Director of Professional Services

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

**SIGNED AND SEALED OR WITNESSED**

in the presence of:

by:

**WITNESS**

\_\_\_\_\_  
**CONSULTANT'S AUTHORIZED  
REPRESENTATIVE SIGNATURE**

\_\_\_\_\_

\_\_\_\_\_  
**PRINTED NAME**

\_\_\_\_\_  
**DATE**

**SIGNED AND SEALED OR WITNESSED**

in the presence of:

by:

**WITNESS**

\_\_\_\_\_  
**MINISTER'S AUTHORIZED  
REPRESENTATIVE SIGNATURE**

**John Engleder, P. Eng.**

\_\_\_\_\_

\_\_\_\_\_  
**PRINTED NAME**

\_\_\_\_\_  
**DATE**