

ALBERTA TRANSPORTATION
**Contract for Engaging Information Technology Consultant
Services**

FOR

[PROJECT TITLE]
[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]

WHEREAS the Minister desires that consulting services be rendered for **Project Name** (hereinafter called "the Project").

NOW THEREFORE, the Minister and the Consultant agree as follows:

1. SCOPE OF WORK

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:

- *Scope of Work.*

2. PROJECT SCHEDULES

The commencement date for this Contract shall be the date of **Execution**. The completion date for this Contract shall be **month XX, year** 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.

3. STAFF

[The team directed by the Consultant shall include staff as listed in the attached Schedule "B". Changes to project staff require prior express written approval of the Minister. Sub-consultants may be engaged only with prior written approval of the Minister.]

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

The Consultant shall maintain close liaison with appropriate Alberta Transportation staff and, where necessary, become familiar with the Department's methods of survey, specifications, documentation requirements, design procedures and standards.

The Consultant warrants that, as required by the *Conflicts of Interest Act (Alberta)*, no member of the Legislative Assembly, person(s) directly associated with a member of the Legislative Assembly, or respondents to other Alberta Transportation IT related Request for Proposals (RFP) are associated with the Consultant in a fashion that may breach the Act.

The Consultant 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 their impartiality into question.

The Consultant and the Consultant's employees, subcontractors and agents 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.

The Consultant and the Consultant's employees, subcontractors and agents must declare any and all associations with other Consultants currently engaged by Alberta Transportation. These relationships may preclude or restrict involvement in the Project, as determined by the Minister.

The Consultant and the Consultant's employees, subcontractors and agents must ensure that their participation in the Project is conducted fairly and without collusion or fraud. The Consultant shall not discuss or communicate, directly or indirectly, with any other respondents during the resource selection process regarding rates or other confidential information pertaining to the preparation or submission of their responses to any RFP.

The Consultant and the Consultant's employees, subcontractors and agents shall not accept any commission, discount, allowance, payment, gift, or other benefit that is connected, directly or indirectly, with the performance of their duties and warrants that it has no pecuniary or other interest that would cause or appear to cause a conflict of interest in carrying out the Consultant's obligations to the Minister. Should such an interest be acquired, The Consultant and the Consultant's employees, subcontractors and agents shall notify the Minister in writing. The Minister will upon receipt of the notification take whatever action the Minister determines to be appropriate.

As a condition of this Contract, the Consultant must disclose any matter that causes or is likely to

cause a conflict of interest in relation to the Consultant's performance under this Contract.

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.

Breach of the conflict of interest terms constitutes grounds for the termination of this Contract should the Minister determine such action appropriate.

4. FEES AND PAYMENT

The Consultant has estimated the total cost to complete the Project to be **\$000,000.00** inclusive of fees and expenses as shown on Schedule "B". The Consultant agrees that the total cost shall not be exceeded without prior written approval of the Minister, notwithstanding the cost escalation provisions as specified.

For the purposes of determining fees by other than a lump sum basis, the Consultant shall keep a detailed record of the hours worked by and the salaries paid to its staff employed on the Project. The Consultant shall submit detailed invoices to the Minister for work performed under this Contract. Subject always to approval by the Minister, the Consultant shall be paid for this work and reimbursed for allowable disbursements and expenses.

The Consultant shall invoice the Minister monthly. Each invoice shall contain a brief description of the work done in the period covered and the work done to date. The invoice shall show the rates and hours for each employee involved and substantiating documentation for disbursements.

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

Alberta Transportation is listed as a tax-free Alberta Government Agency and is, therefore, not subject to the Goods and Services Tax. All fees are to exclude any allowance for such tax. This includes

invoices for any salaries, disbursements and sub-consultant work.

Any Goods and Services Tax that the Consultant has paid in completing the Project will require the Consultant to claim an input tax credit directly from the Federal Government. The Consultant does not require the Government of Alberta registration number for the claim.

Sub-consultant invoices that include the Goods and Services Tax will require the Consultant to subtract this portion from the invoice prior to submitting the invoice to the Minister.

The Minister may inspect and audit the books, payroll accounts and records of the Consultant at any time with respect to any item that the Minister is required to pay either directly or indirectly because of this Contract.

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 Mercer's Compensation Planning Survey for Non-Union Employees, By Industry, For Profit Services. The annual 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

Information Disclosure

- a) 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 provided that such information is designated as confidential by the Minister before it is given to the Consultant.
- b) All information pertaining to the Project concerning the Minister or third parties shall be treated by the Consultant, the Consultant's employees, sub-contractors, and agents as strictly confidential during, as well as after, completion of the Project. The use, copy, or disclosure of information shall only be used as necessary for the completion of the Project or upon prior express written permission of the Minister.
- c) All information pertaining to this Contract is subject to the disclosure and protection provisions of the Freedom of Information and Protection of Privacy Act (Alberta), ("the FOIPP act"), as well as all other regulatory requirements governing the management of Personal Information. 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. 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.
- d) Prior to disclosure of any individual's personal information to the Minister, the Consultant shall obtain consent from the affected individual. This consent must be in writing and specify to whom the personal information can be disclosed and how the information shall be used.
- e) The Consultant shall maintain security standards, including control of access to data and other information consistent with the highest standards of business practice in the industry.
- f) 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 as such may be subject to the FOIPP Act before delivery to the Minister.

Ownership

- a) 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, its employees, sub-consultants, or agents remain the sole property of the Minister as they are made, prepared, developed, generated, produced or acquired. The Materials shall be delivered to the Minister upon completion or termination of this Contract.

- b) The Consultant forever irrevocably waives in whole all moral rights, and shall ensure that its employees, sub-contractors and agents forever 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.
- c) In accordance with the Copyright Act (Canada), any copyright arising out of the performance of services, including any copyright arising out of the creation of deliverables, belongs to the Minister.

6. ABANDONMENT OR SUSPENSION

The Minister may abandon or suspend the Project at any stage and may terminate this Contract without cause by giving notice at least three (3) days prior to the effective date for such termination. Notice of any such abandonment, suspension or termination shall be given in writing to the Consultant by the Minister. Upon the termination of the Project the Consultant shall not perform any further work in connection with this Contract except as required to advise the Minister of work completed to the date of termination. The Consultant shall be entitled to payment for their services and disbursements made up to the effective date.

7. INSURANCE AND LIABILITY

The Consultant shall for the duration of this Contract, without limiting their obligations or liabilities herein and at their own expense, provide and maintain the following insurance's with insurers licensed in Alberta and in forms and amount acceptable to the Minister.

- a) General Liability Insurance, 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 shall 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) "All Risk" Valuable Papers insurance on all such items pertaining to the work under this Contract in an amount adequate to enable their reconstruction.

The Consultant shall provide the Minister with acceptable evidence of all required insurance at the time of execution of this Contract.

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. **Executive Director, Information Management Branch**
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".

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. HOLD HARMLESS

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.

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 shall survive this Contract.

10. WORKERS COMPENSATION BOARD AND OCCUPATIONAL HEALTH AND 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 Workers' Compensation Board, then the Consultant shall hold and maintain Workers' Compensation Insurance personal coverage throughout the length of this Contract.

The Consultant shall familiarise 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.

11. 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.

Neither party may assign this Contract without the consent in writing of the other.

12. 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>Project Sponsor Name Position Branch Name Alberta Transportation 3rd Floor, Twin Atria Building 4999 – 98th Avenue Edmonton, Alberta T6B 2X3</p> <p>☎(780) XXX-XXXX FAX: (780) XXX-XXXX</p>

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>Consultant's Representative Consultant's Name 00000 - 00 Street Town, Province T0X X0X</p> <p>☎(780) XXX-XXXX FAX: (780) XXX-XXXX</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:

Director, Professional Services

Project Sponsor

Executive Director, Information Management Branch

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**

PRINTED NAME

DATE