

This Property Management Services Master Specification Section contains:

- .1 This Cover Page
- .2 Data Sheet - General
- .3 Specification Section Text:
 - .1 See page 1 for list of contents.

This Section is not intended to be edited. It should be used as is, in its entirety. Any required modifications must be made by means of Supplementary Conditions. If Supplementary Conditions are deemed necessary, discuss with Infrastructure, Procurement Branch.

Ensure that Division 01 - General Requirements is coordinated with the General Conditions of Contract to avoid duplication and conflict.

Change Log

2023-09-07

Section 00 72 10
General Conditions of Contract

Changes made in this Section Update (2023-09-07):

1. 3.1.5 – Updated link for 'Province's Green Guide'.

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1. GENERAL

1.1 DEFINITIONS

- .1 The following definitions shall apply to all Contract Documents. Terms used in the Contract Documents which are defined in this Section shall have the meanings designated in these definitions.
- .1 “Additional Services” means any services, work, duties, functions or deliverables not otherwise included in the Contract.
 - .2 “Alberta Time” means Mountain Standard Time or Daylight Saving Time as provided for in the *Daylight Saving Time Act* (Alberta).
 - .3 “Bid” means the response submitted by the Contractor in response to the Bid Documents.
 - .4 “Bid Closing Date and Time” means the date and time as stated on the cover page of the Bid Documents.
 - .5 “Bid Documents” means this solicitation for the Services.
 - .6 “Bidder” means a legal entity, or representative thereof, that submits a Bid.
 - .7 “Business Day” means 08:15 to 16:30, Alberta Time, Monday to Friday, excluding holidays observed by the Province.
 - .8 “Contract” means compiled contract documents, including the Unit Price Bid and Contract Form, once executed by both the Bidder and the Province.
 - .9 “Contract Price” means the total amount payable by the Province to the Contractor under the Contract Documents as stated in the Contract, including authorized adjustments thereto.
 - .10 “Contractor” means the legal entity engaged by the Province to provide Services.
 - .11 “Day” means the calendar day.
 - .12 “FOIP Act” means the *Freedom of Information and Protection of Privacy Act* (Alberta), as amended from time to time.
 - .13 “Materials” mean the specified products, if any, purchased and used expressly for the performance of a Service.
 - .14 “Other Contractor” means any person, firm or corporation employed by or having a separate contract with the Province for services other than that required by the Contract Documents.
 - .15 “Personal Information” means “personal information” as defined in the *FOIP Act*.

- .16 “Place of the Services” means the designated site or location of the facility, in whole or in part, in which the Services are to be performed. “Place of the Services” is synonymous with “Place of the Work”.
- .17 “Province” means His Majesty the King in right of Alberta as represented by the Minister of Infrastructure or the Minister’s authorized representative(s). The term “Minister” is synonymous with “Province”.
- .18 “Regulatory Requirements” mean laws, ordinances, rules, regulations, orders, codes, and other legally enforceable requirements in effect at the Place of the Services and applicable to the performance of the Services.
- .19 “Services” means work, duties, functions and deliverables as set out in the Contract.
- .20 “Shop Supplies” mean supplies that are not specified but are typically provided in the performance of a Service.
- .21 “Subcontractor” means a person, firm or corporation having a direct contract with the Contractor for the performance of a part of the Services at the Place of the Services.
- .22 “Sub-subcontractor” means a person, firm, or corporation having a direct contract with a Subcontractor for the performance of a part of the Services at the Place of the Services.
- .23 “Unit Price” means the amount payable by the Province to the Contractor under the Contract Documents for a single unit of each separately identified item of Services for which a unit price arrangement is prescribed as the basis of payment, as stated in the Unit Price Schedule, including authorized adjustments thereto.
- .24 “Work” is synonymous with Services.

1.2 CONTRACT DOCUMENTS

- .1 The Contract Documents shall be signed by the Province and the Contractor.
- .2 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.
- .3 The intent of the Contract Documents is to include the labour, Materials, and Shop Supplies necessary for the performance of the Services in accordance with these documents. It is not intended, however, that the Contractor shall supply Materials or perform work not consistent with, covered by, or properly inferable from the Contract Documents.
- .4 Words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

- .5 Where the context so requires, the use of the masculine gender shall include the feminine and/or neuter genders and the singular shall include the plural, and vice versa.
- .6 This Contract contains the entire agreement of the parties concerning the subject matter of this Contract and except as expressed in this Contract, there are no other understandings or agreements, verbal or otherwise, that exist between the parties.

1.3 LAW OF THE CONTRACT

- .1 Subject to Article 4.3 - Dispute Resolution Procedure, this Contract shall be governed by and interpreted in accordance with the laws in force in Alberta and the parties irrevocably attorn to the exclusive jurisdiction of the courts of Alberta.
- .2 The Contractor shall comply with the provisions of all laws, now in force or in force after the signing of this Contract, that expressly or by implication apply to the Contractor in performing the work of this Contract.
- .3 Article 1.3 – Law of the Contract shall survive the Contract.

1.4 RIGHTS AND REMEDIES

- .1 Except as expressly provided in the Contract Documents, the duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- .2 No action or failure to act by the Province or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
- .3 Any waiver by either party of the performance by the other of an obligation under this Contract must be in writing, and such waiver does not constitute a continuing waiver of the performance of that obligation unless a contrary intention is expressed in writing.
- .4 The rights and remedies of the Province under this Contract are cumulative and any one or more may be exercised at any time.

1.5 RELATIONSHIP AND COVENANT

- .1 The relationship of the Contractor to the Province in performing the Services under this Contract is that of an independent contractor, and nothing in this Contract is to be construed as creating an agency, partnership, joint venture or employment relationship between the Contractor and the Province.

- .2 The Contractor covenants with the Province to cooperate with the Consultant and to provide its skill and judgment in furthering and protecting the interests of the Province during execution of the Services. The Contractor shall provide the Services in accordance with the Contract Documents and accepted practices for Services this type. The Contractor shall employ its best efforts to perform the Services diligently and in an expeditious, economical, and financially prudent manner, consistent with the best interests of the Province.

1.6 CONFLICT OF INTEREST AND ETHICAL CONDUCT

- .1 The Contractor shall ensure that there is not a conflict of interest or an apparent conflict of interest on the part of the Contractor or its employees, Subcontractors, or agents in relation to the Work, and all Work shall be performed in accordance with high ethical standards, including without limitation the following:
 - .1 the Contractor and its employees, Subcontractors and agents shall not influence, or seek to influence, or otherwise take part in a decision of the Province knowing that the decision might further their private interests;
 - .2 where the Work involve providing advice, making recommendations to the Province or exercising discretionary authority regarding a right, permission, privilege, status, contract or benefit, then such advice, recommendations or discretion must be provided, made or carried out impartially and without bias;
 - .3 except for payment as set out in this Contract, the Contractor and its employees Subcontractors or agents shall not accept any collateral gift, payment, commission or other direct benefit arising from or connected to the performance of the Services;
 - .4 the Contractor and its employees, Subcontractors and agents shall not have any 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 the Work;
 - .5 the Contractor, upon request by the Province, shall deliver copies of all written ethical standards, conflict of interest policies and codes of conduct established or observed by the Contractor in its business practices or in relation to its employees, Subcontractors or agents; and
 - .6 the Contractor shall comply with, and ensure that, its employees, Subcontractors and agents comply with, the *Lobbyists Act* (Alberta), as amended from time to time.

- .2 In the event the Contractor becomes aware of any matter that causes or is likely to cause a conflict of interest in relation to the performance of the Work, the Contractor shall immediately disclose such matter to the Province in writing. Upon such disclosure, the Contractor shall not commence or continue performance of the Work without the prior written consent of the Province. If the Province is of the opinion the Contractor or its employees, Subcontractors or agents are in a conflict of interest, the Province may terminate this Contract in accordance with Article 2.1 - Province's Right to Terminate Contract.

1.7 CONTRACT AMENDMENTS

- .1 The parties may amend this Contract only by mutual written agreement signed by the parties. The Province shall not pay for Services which are not approved in writing.
- .2 The Province may at any time authorize the Contractor to perform Additional Services or amend the terms and conditions of the Contract upon mutual agreement of the Contractor.
- .3 For any extension period, a price escalation factor shall be applied to the original pricing to provide a fair accounting method for inflationary influences, commencing one Day after the Term End Date, unless the Contract is terminated or otherwise concludes. These influences will be accounted for by adjusting the prices in accordance with the accumulated change in the Statistics Canada, Consumer Price Index, Alberta, All Items. These monthly or annual values (escalation factor) shall be used to adjust pricing for any extension period. Subsequent years of escalation shall be compounded from the start of the Contract or, if applicable, the start of a previous extension. The last year of this Contract, prior to any extension, shall be the base year used for calculating any escalation. The original contract pricing will remain in place in the event that the compounded escalation factors result in a reduction of pricing.

2. PROVINCE

2.1 PROVINCE'S RIGHT TO TERMINATE CONTRACT

- .1 The Province may, by giving a written notice of termination to the Contractor, terminate the Contract at any time without cause.
- .2 If the Province terminates the contract because the Contractor is adjudged to be bankrupt or is insolvent or is declared in default of the Contract, the Contractor shall be entitled to be paid for all work performed in accordance with the Contract Documents up to the date of termination.
- .3 If the Province terminates the contract for any other reason the Contractor shall be entitled to be paid for all work performed in accordance with the Contract Documents up to the date of termination, including reasonable profit and for loss sustained upon Products and such other damages as the Contractor may have sustained as a result of the termination of the Contract.

- .4 The Province’s right to terminate the Contract is not subject to dispute resolution Under Article 4.3.

3. CONTRACTOR

3.1 CONTRACTOR’S RESPONSIBILITIES FOR PERFORMANCE OF SERVICES

- .1 The Contractor shall perform the Services competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Services in accordance with the Contract Documents. The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of the Services.
- .2 The Contractor must exercise a standard of care, skill, and diligence that would normally be provided by an experienced, prudent, and qualified Contractor.
- .3 The Contractor shall apply and pay for all necessary permits or licenses required for the performance of the Services.
- .4 The Contractor shall ensure that Services at the Place of the Services are provided in an environmentally friendly manner using best practices that mitigate harmful environmental impacts.

The Contractor shall comply with the Province's Green Guide. The Green Guide is accessible at:

https://www.alberta.ca/system/files/custom_downloaded_images/tr-greenguide.pdf

- .5 The Contractor shall keep the Place of the Services free from accumulations of waste materials resulting from the performance of the Contract.

3.2 INSURANCE

- .1 The Contractor shall, at its own expense, in accordance with the *Insurance Act* (Alberta) and without limiting its liabilities under this Contract:
 - .1 insure its operations under a contract of General Liability Insurance not less than \$2,000,000 inclusive per occurrence, against bodily injury, personal injury, and property damage including loss of use thereof; and
 - .2 maintain Automobile Liability Insurance on all vehicles owned, operated, or licensed in the Contractor’s name, with limits of not less than \$2,000,000.
- .2 The Contractor shall provide the Province with acceptable evidence of insurance, in the form of a detailed certificate of insurance, prior to commencing the Services and at any other time upon request of the Province.
- .3 The Contractor shall ensure that all its Subcontractors, if any, obtain and maintain insurance sufficient to meet the insurance requirements in clause 3.2.1 above.

- .4 Notice of Cancellation of Policy: Each required policy, except for the automobile policy, shall be endorsed to provide the Province with not less than 30 Days advance written notice of cancellation including cancellations for non-payment of premium.

3.3 HOLD HARMLESS AGREEMENT

- .1 Each party shall indemnify and hold harmless the other, its employees and agents against and from any and all third party claims, demands, actions, or costs (including legal costs on a solicitor-client basis) to the extent arising from:
 - .1 that party’s breach of this Contract, or
 - .2 the negligence, other tortious act of willful misconduct of that party, or those for whom it is legally responsible, relation to the performance of its obligations under this Contract.
- .2 The Contractor shall indemnify and hold harmless the Province against and from any loss or damage to real or personal property of the Province to the extent arising from the Contractor’s breach of this Contract or from the negligence, other tortious act or willful misconduct of the Contractor, or those for whom it is legally responsible.
- .3 Article 3.3 – Hold Harmless Agreement, shall survive the Contract.

3.4 SAFETY AND SECURITY

- .1 The Contractor, its employees, Subcontractors, and agents when using any of the Province's buildings, lands, premises, equipment, hardware, or software shall comply with all safety and security policies, regulations, or directives relating to those buildings, premises, equipment, hardware, or software.
- .2 For the purposes of the *Occupational Health and Safety Act* (Alberta), the "prime contractor" for the "work site" will be either the Province or its designated contractor for the Work of this Contract. The Contractor, its employees, Subcontractors and agents shall:
 - .1 Comply with the *Occupational Health and Safety Act* (Alberta) and its regulations as required to ensure the health and safety of all persons at the "work site", as defined in the *Occupational Health and Safety Act* (Alberta).
 - .2 Cooperate with, and comply promptly with any directives of, the above designated “prime contractor“ on safety related matters.

3.5 WORKERS' COMPENSATION ACT AND OCCUPATIONAL HEALTH AND SAFETY ACT

- .1 Upon request from the Province, deliver to the Province a certificate from the Workers’ Compensation Board showing that the Contractor is registered and in good standing with the Board.

- .2 The Contractor shall pay all fees in connection with Workers' Compensation and comply with all requirements of the *Workers' Compensation Act* (Alberta), and as amended from time to time.
- .3 The Contractor shall comply with all safety requirements as contained in the Regulations as issued under authority of the latest edition of the *Occupational Health and Safety Act* (Alberta).

3.6 LABOUR

- .1 Unless otherwise specified in the Contract Documents, the Contractor shall provide and pay for all labour necessary for the performance of the Work.
- .2 Persons employed in performing the Work shall be skilled in and competent to properly perform the tasks assigned to them and, when required by laws, rules, regulations, or the Contract Documents, qualified to do so.
- .3 The Contractor shall maintain good order and discipline among persons employed at the Work site.

3.7 EMPLOYMENT CONDITIONS

- .1 The Contractor agrees and shall ensure that wages, hours of work and other conditions of employment of all persons employed by the Contractor, any Subcontractor and any Sub-subcontractor in the performance of any Work required by this Contract shall be in compliance with the requirements of the applicable law.

3.8 ITEMS PROVIDED BY CONTRACTORS

- .1 Unless otherwise indicated in the Contract Documents, the Contractor shall provide and pay for all materials, tools, equipment, transportation, and other facilities and services necessary for the performance of the Services.
- .2 Materials and Shop Supplies provided shall be new unless otherwise agreed by the Province. Materials and Shop Supplies that are not specified shall be of a quality best suited to the purpose, and their use may be subject to the Province's approval.

3.9 PROTECTION OF WORK AND PROPERTY

- .1 The Contractor shall take reasonable precautions necessary to protect the Work and the Province's property from damage during the performance of the Contract and shall make good any damage to the Province's property caused by the Contractor or any of the Contractor's Subcontractors during the performance of the Contract at no cost to the Province.

3.10 INSPECTION OF WORK

- .1 The Province, authorized representatives of the Province including testing agencies, and authorities having jurisdictional interests shall, at reasonable times, have proper and safe access to the Work, including parts of the Work in preparation at locations other than the Place of the Work, for the purposes of observation, inspection, and testing.
- .2 The Province may order any part or parts of the Work to be specially examined should the Province believe that such work is not in accordance with the requirements of the Contract Documents. If, upon examination such work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct such work and pay the cost of examination and correction. If such work is found to be in accordance with the requirements of the Contract Documents, the Province shall pay the cost of examination and replacement.

3.11 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- .1 The Contractor acknowledges that this Contract, including without limitation the name of the Contractor, fees payable, the Term, and details of the Services may be subject to disclosure under the *FOIP Act*. The Contractor further acknowledges that the *FOIP Act* applies to the Province's Information (as defined in Article 3.12 – Non-Disclosure of Information) collected, used or disclosed in the performance of Work, and the Contractor shall adhere to the *FOIP Act* in its collection, use and disclosure of any Personal Information,
- .2 The Contractor shall not collect, use or disclose any Personal Information under this Contract except as reasonably required to fulfill its obligations under this Contract, or as otherwise expressly authorized in writing by the Province.
- .3 Upon request, the Contractor shall, at the Contractor's expense, and within five Business Days, provide to the Province any records that are requested under the access provisions of the *FOIP Act* that are in the custody or under the control of the Contractor. Should the Contractor receive an access request under the *FOIP Act*, the Contractor shall not respond to it, but shall immediately forward the access request to the Province for further handling.
- .4 In providing the Services the Contractor shall make every reasonable effort to ensure that Personal Information that is to be or is actually used to make a decision that directly affects an individual, is both complete and accurate. At the Province's request the Contractor must correct, within five Business Days of the request, Personal Information that the Contractor may have either collected or compiled about an individual pursuant to this Contract.

- .5 The Contractor shall:
 - .1 protect Personal Information against any unauthorized access, use disclosure, loss, destruction or alteration;
 - .2 immediately advise the Province of any actual or potential unauthorized access, use, disclosure, destruction or alteration of Personal Information and provide all reasonable assistance to the Province to prevent or remedy the same; and
 - .3 provide the Province with any information regarding the Contractor's security measures that the Province may require to verify compliance with the *FOIP Act*.
- .6 The Contractor shall store only in Canada all records of Personal Information which are disclosed to the Contractor under this Contract, including records that are collected, used or stored on behalf of the Province.
- .7 The Contractor shall act on any direction that the Province may provide with regard to the use, collection, access, security, disclosure, alteration, loss or destruction of the Personal Information.
- .8 Article 3.11 - Freedom of Information and Protection of Privacy, shall survive the Contract.

3.12 NON-DISCLOSURE OF INFORMATION

- .1 Except as provided in Article 3.11 - Freedom of Information and Protection of Privacy and this Article, all information, regardless of form, including Personal Information, that is obtained, generated, provided or collected by the Contractor in the performance of the Work (the "Province's Information"), shall not be disclosed or published by the Contractor without the prior written consent of the Province. The Contractor may disclose the Province's Information to employees, Subcontractors or agents of the Contractor who have a need to know for the purpose of performing the Work, provided that the Contractor has a confidentiality agreement with the agent or permitted Subcontractor containing confidentiality provisions substantially similar to this Contract.
- .2 Subject to Article 3.11 the Contractor's obligations in this Article do not apply to information or documents which:
 - .1 are or become publicly available through no act or omission of the Contractor;
 - .2 are independently developed without benefit of the Province's Information; or
 - .3 are received by or from a third party without restriction and without a breach of an obligation of confidentiality.

- .3 The Contractor shall retain the Province’s Information as confidential and shall make reasonable security arrangements against unauthorized access, use, disclosure, loss, destruction or alteration of the Province’s Information. The Contractor shall immediately advise the Province of any unauthorized access, use, disclosure, loss or destruction of the Province’s Information, and shall provide the Province any assistance reasonably required to rectify such a situation.
- .4 The Contractor shall return or deliver the Province’s Information to the Province upon completion or termination of this Contract, or upon request of the Province.
- .5 The Province’s Information may be disclosed to the extent required by law or court order, provided that the Province is given reasonable notice and opportunity to seek to prevent or limit its disclosure.
- .6 No press release, public announcement or other public commentary relating to this Contract shall be made by the Contractor without the prior written approval of the Province.
- .7 Article 3.12 – Non-Disclosure of Information shall survive the Contract.

4. PROVINCE AND CONTRACTOR

4.1 INTERPRETATION OF CONTRACT DOCUMENTS BY PROVINCE

- .1 The Province shall be, in the first instance, the interpreter of the requirements of the Contract Documents, and the judge of the performance thereunder by the Contractor. Interpretations and decisions of the Province shall be consistent with the intent of the Contract Documents.

4.2 PAYMENT

- .1 The Contractor shall submit invoices monthly.
- .2 Each application for payment shall exclude any amount for federal Goods and Services Tax.
- .3 The Province represents and warrants that, as the purchaser of the Services provided under this Contract, no amount payable under this Contract is subject to the Goods and Services Tax (GST) or Harmonized Sales Tax (HST) under Part IX of the *Excise Tax Act* (Canada) as amended. The Government of Alberta’s GST Registration Number is 1240 72513RT0001.
- .4 For unit price Contracts which includes hourly rates:
 - .1 The Contractor shall provide, with each invoice, a breakdown indicating the hourly rate and daily hours billed, and a breakdown of the Services provided for each hour billed.

- .2 Only hours worked in the performance of the Services may be billed, excluding travel time between the Contractor's residence and primary place of work. Vacation time, sick leave, bereavement leave, training leave, and other planned or unplanned absences may not be billed.

- .5 The Contractor shall invoice for actual costs of permits and Materials, other than Shop Supplies, which shall be reimbursed from the specified contingency allowance. Shop Supplies are included in the hourly rate and are not separately reimbursable.

- .6 The Contractor shall be paid within 30 Days of receipt of the invoice acceptable to the Province provided that:
 - .1 the rates identified in the Bid and Contract Form, for completion of the Services in accordance with the Contract; and
 - .2 upon submitting an invoice and other supporting documentation required by the Province describing the Services for which payment is claimed.

- .7 Notwithstanding this article or any other article in the Contract, the Province may withhold or deduct funds from any amount for which the Contractor submits an invoice:
 - .1 in an amount equal to that which is the subject of the Dispute Resolution Procedure pursuant to this Contract;
 - .2 such sums as permitted or required by law including, but not limited to the *Builders' Lien Act* (Alberta), the *Public Works Act* (Alberta), or the *Income Tax Act* (Canada).
 - .3 such sums as may be required to satisfy:
 - .1 any unpaid and overdue account that is enforceable against the Province,
 - .2 any penalty, fee, order, award, or judgment which may be enforced by the Court of King's Bench of Alberta,
 - .3 third party claims related to the Services, or
 - .4 costs incurred by the Province to satisfy any of the matters noted in this Contract plus costs on a solicitor and own client basis.

- .8 Without limiting any other right of the Province and notwithstanding any article in this Contract, the Contractor agrees that the Province may set-off any amount claimed by or payable to the Contractor against any amount that:
 - .1 in the Province's opinion, should not have been paid to the Contractor;
 - .2 is owed by the Contractor to the Province; or
 - .3 is sufficient to satisfy any penalty, fee, award, order, decision, or judgment against the Contractor.

- .9 The Province will pay the Contractor for any Additional Services in accordance with any amendment(s) to the Contract.

4.3 DISPUTE RESOLUTION PROCEDURE

- .1 This Article is subject to Article 2.1 – Province’s Right To Terminate Contract.

- .2 The following expressions have the following meanings:

“Dispute” means any disagreement, failure to agree or other dispute in respect of the application or interpretation of any provision of the Agreement;

“Dispute Notice” means a notice from one party to the other party providing details of a Dispute and invoking the Dispute Resolution Procedure in respect of that Dispute.

- .3 Any Dispute will be resolved in accordance with the Dispute Resolution Procedure set out herein, which procedure shall be followed in the order set out below:

- .1 the Dispute Resolution Procedure shall be started by delivery of a Dispute Notice by one party to the other;
- .2 the parties shall attempt to resolve the Dispute by a Settlement Meeting under section 4.3.4;
- .3 if the Settlement Meeting does not result in resolution of the Dispute, either party may refer the Dispute to Court.

Within 21 Days of a party becoming aware of the basis for a potential Dispute, such party shall give the other party notice of the basis for a potential Dispute. Failure by such party to provide such notice in such manner shall not thereafter disqualify such party from providing a Dispute Notice, but the other party may in that event assert a claim for damages arising from such failure.

- .4 Settlement Meeting

- .1 In the event of a Dispute, which is not resolved in the normal course of business, either party may deliver a Dispute Notice to the other party. Within 30 Days from the delivery of the Dispute Notice, officials designated by the Province and the Contractor will meet at a mutually acceptable time and place to attempt to resolve the Dispute (a "Settlement Meeting"). The parties through their representatives will make all reasonable efforts to resolve the Dispute. All negotiations held pursuant to Section 4.3.4 are to be held on a without prejudice basis and will not be used by either party as evidence at any other proceeding.

- .5 Court

- .1 If any Dispute is not resolved by agreement between the parties, after a Settlement Meeting either party may refer the Dispute to Court.

4.4 ASSIGNMENT

- .1 The Contractor shall not assign the Contract, either in whole or in part, nor shall the Contractor sublet the Contract as a whole, without the previous written consent of the Province, which consent shall be at the Province's sole discretion.
- .2 The Province shall not be bound by any assignment by the Contractor of any monies payable or to become payable to the Contractor under the Contract, without the written consent of the Province, which consent:
 - .1 will not be given for a general assignment of book debts, but
 - .2 may, at the Province's sole discretion, be given for a specific assignment of all or part of monies payable to the Contractor under the Contract.

4.5 ACCOUNTING

- .1 The Contractor shall keep and maintain in accordance with Canadian generally accepted accounting principles complete and accurate books, records, and accounts relating to this Contract and, on demand, provide to the Province these documents to examine, audit, and make copies and take extracts; and
- .2 The Contractor shall keep the documents referred to in the above clause for three years following the completion of termination of the Contract.

5. OTHER PARTIES

5.1 SUBCONTRACTORS

- .1 The Contractor agrees to preserve and protect the rights of the parties under the Contract with respect to the Services to be performed under subcontract and to:
 - .1 enter into contracts or written agreements with subcontractors and require them to perform their work in accordance with and subject to the terms and conditions of the Contract Documents, and
 - .2 be as fully responsible to the Province for acts and omissions of the Contractor's subcontractors and of persons directly or indirectly employed by the Subcontractors as for acts and omissions of persons directly employed by the Subcontractor.
- .2 The Province may, for reasonable cause, object to the use of a proposed Subcontractor and require the Contractor to contract with another Subcontractor.
- .3 The Contractor shall not be required to contract as a Subcontractor a person or firm to whom the Contractor may reasonably object.
- .4 Nothing contained in the Contract Documents shall create a contractual relationship between a Subcontractor and the Province.

5.2 OTHER CONTRACTORS

- .1 The Province reserves the right to let separate contracts in connection with the Services.
- .2 The Province shall coordinate the work and insurance coverages of Other Contractors as they affect the Services of this Contract.

5.3 OBLIGATIONS TO AND CLAIMS OF THIRD PARTIES

- .1 The Contractor shall, with respect to lawful obligations of and lawful claims against the Contractor or any Subcontractor arising from the Contract:
 - .1 discharge such obligations of and satisfy such claims against the Contractor, and
 - .2 ensure the discharge of such obligations of and the satisfaction of such claims against Subcontractors.
- .2 The Contractor shall, when requested by Province, make a statutory declaration deposing to the existence and condition of any obligations and claims referred to in Article 5.3.1.

6. REQUIREMENTS OF CONTRACT

6.1 CONTRACT TIME

- .1 Time and all time limits stated in the Contract Documents are of the essence of the Contract. Contractor shall perform work expeditiously and with adequate forces to complete the Work of the Contract within the time specified in the Contract Documents.

6.2 WARRANTY

- .1 The warranty period for labour under the Contract is 30 Days from the completion of the Service provided.
 - .1 Province shall promptly give the Contractor notice in writing of any observed defects and deficiencies which occur during the 30 Day labour warranty period.
 - .2 The Contractor shall promptly correct, at the Contractor's expense, defects or deficiencies in the Service provided which appear prior to and during the 30 Day labour warranty period.
- .2 The Contractor shall obtain a minimum one year warranty for materials, if any.
 - .1 Any warranties in excess of one year shall be issued by the manufacturer to the benefit of the Province.
- .3 The Province shall give notice of observed defects promptly.

6.3 SURVIVAL OF ARTICLES

- .1 Notwithstanding any other provision of this Contract, those sections which by their nature continue after the conclusion or termination of this Contract shall continue after such completion or termination, including without limitation the following:
 - .1 Article 1.2 Law of the Contract;
 - .2 Article 3.3 Hold Harmless Agreement;
 - .3 Article 3.11 Freedom of Information and Protection of Privacy;
 - .4 Article 3.12 Non-Disclosure of Information; and
 - .5 Article 4.5 Accounting.

6.4 COUNTERPART SIGNATURES

- .1 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 to be an original and all of which taken together shall constitute one and the same agreement.

6.5 SAFETY, HEALTH, AND SECURITY

- .1 At the time of using or entering any of the Province’s or third party’s buildings, premises, equipment, hardware or software, the Contractor, its employees, Subcontractors and agents shall comply with all safety, health, and security policies or directives relating to those buildings, premises, equipment, hardware or software that are in effect, at their own cost.

6.6 FORCE MAJEURE

- .1 “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 this Contract, other than any obligation to pay any money, and provided such event does not occur by reason of:
 - .1 The negligence of the party relying on the Force Majeure Event (or those for whom it is in law responsible); or
 - .2 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 this Contract.
- .2 If a Force Majeure Event occurs, then notwithstanding any other provision of this Contract:

- .1 To the extent that and for so long as either party is prevented by the Force Majeure Event from performing any obligation under this Contract, that party is relieved from liability due to its inability to perform or delay in performing that obligation; and
- .2 If the Force Majeure Event wholly or substantially prevents the Contractor from proceeding with the Services then the completion date of the Contract shall be adjusted for the period of the Force Majeure Event.
- .3 Upon either party becoming aware of the occurrence of a Force Majeure Event that prevents that party from performing any obligation under this 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 this Contract, and thereafter the Contractor shall, on an ongoing basis, notify the Province of its plans for remedying or mitigating the effects of the Force Majeure Event.
- .4 If the Contractor anticipates that the Force Majeure Event will delay the completion date of the Contract, but is of the opinion the delay can be avoided or mitigated through extraordinary measures, the Contractor may propose to the Province that such extraordinary measures be taken by the Contractor at the Province's expense.

END OF SECTION