



NOTE FOR TEMPLATE USERS

Consultant Agreement – Owner’s Engineer Services

This contract template should only be used to contract with architects/engineers that will be acting in the capacity of the Owner’s Engineer. Please review Schedule D to understand the scope of work that is covered by this template.

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Government of the Northwest Territories

CONSULTANT AGREEMENT ARCHITECTURAL AND ENGINEERING SERVICES

Department of Infrastructure

Project Title: [Click here to enter text](#)

Location: [Click here to enter text](#)

Project Number: [Click here to enter text](#)

Agreement Number: [Click here to enter text](#)

Consultant: [Click here to enter text](#)

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CONSULTANT AGREEMENT

This Agreement made as of the [enter text](#) day of [enter text](#), [enter text](#) (the "Effective Date")

BETWEEN:

THE GOVERNMENT OF THE NORTHWEST TERRITORIES (the "GNWT")

OF THE FIRST PART

AND:

[Consultant Business Name](#) (the "Consultant")

[Address](#)

[Address Cont.](#)

Attention: [Click here to enter text.](#)

OF THE SECOND PART

WHEREAS the GNWT and the Consultant have reached an agreement with respect to the terms and conditions under which the Consultant will provide the hereinafter described services to the GNWT;

NOW THEREFORE, in consideration of covenants and agreements hereinafter reserved and contained, the parties agree as follows:

ARTICLE 1. DEFINITIONS

In this Agreement:

"Agreement" means this agreement, comprised of the following documents forming the Agreement between the GNWT and the Consultant:

- (i) the Main Body of this Agreement;
- (ii) schedules "A", "B", "C", "D", "E", "F" and "G" of this Agreement;
- (iii) the Terms of Reference / Request for Proposals, reference number (Event ID) [Enter event ID](#), prepared by the GNWT and issued on [Enter a date](#) (supporting documentation attached);
- (iv) addenda number [Enter No.](#) to [Enter No.](#), inclusive, that were issued prior to the proposal submission deadline in the Request for Proposals (supporting documentation attached); and
- (v) the Consultant's Proposal (supporting documentation attached).

"Business Day" means any day other than a Saturday, Sunday, scheduled GNWT mandatory leave days over Christmas holidays or holiday as defined in the *Interpretation Act* R.S.N.W.T. 1988, c.I-8, as amended from time to time.

"Contract Change Order" means a written form issued to the Consultant by the GNWT which describes work or services that are added to or deleted from the original scope of work of this Agreement, which may alter the original Agreement Amount and/or completion date.

“Construction Contract” means the contract between the GNWT and the Contractor for the execution of the Work.

“Construction Contract Documents” means the Construction Contract and all documents relating to the Work including the plans, drawings, specifications, schedules and all variations and modifications thereto.

“Construction Cost” means the contracted prices of all elements of the Work designed or specified by the Consultant. Where there are no contracted prices for all or part of the project, the Construction Cost shall be the estimated costs at current market rates as determined by the Consultant and agreed to by the GNWT. Construction Cost does not include the compensation of the Consultant and the Sub-Consultants, and other costs such as the cost of the land and rights-of-way.

“Consultant” means the Consultant as designated in Article 5, Execution.

“Contractor” means the person, firm or corporation contracting with the GNWT for the execution of the Work.

“Cost Estimates”

Class C Estimate: This estimate, which is prepared by the Consultant with limited site information, is based on probable conditions affecting the project. It represents the summation of all identifiable project elemental costs.

Class B Estimate: This estimate is prepared by the Consultant after site investigations and studies have been completed and the major systems defined. It is based on a project brief and preliminary design.

Class A Estimate: This is a detailed estimate prepared by the Consultant based on final drawings and specifications.

“GNWT” means the Government of the Northwest Territories as represented by the Minister of the Department of Infrastructure, the Deputy Minister of the Department of Infrastructure or any person specifically authorized by them to act on their behalf.

“Main Body” of the Agreement means this Agreement, minus the schedule and appendices.

“NWT” means the Northwest Territories.

“Project” means the total construction contemplated as outlined in Clause 2.1, of which the Work and/or Services may be the whole or a part.

“Project Brief” means a document describing in sufficient detail the Services to be provided to permit the design to proceed. It may include general project information, content plan, time plan, cost plan, and design data, specifically related to the subject project.

“Project Requirements” means instructions and directions in writing, which may include data, documents, plans, drawings, specifications, tendering procedures and pre-tender addenda provided by the GNWT concerning the project, its administration, time and cost limits and may include the Project Brief.

“Services” means the totality of all labour, materials and equipment used or incorporated into the project by the Consultant pursuant to this Agreement.

“Subconsultant” means a person, firm, or corporation to whom the Consultant has retained to perform any part of the Services.

“Subcontractor” means a person, firm, or corporation to whom the Contractor has retained to perform the whole or any part of the Work.

“Work” means the totality of all labour, materials and equipment used or incorporated into the project by the Contractor pursuant to the Construction Contract.

“Harassment Free and Respectful Workplace Policy” means the GNWT’s policy, as may be amended from time to time, available for viewing at the following website:

https://www.fin.gov.nt.ca/sites/fin/files/resources/harassment_free_and_respectfull_workplace_policy_2017.pdf

ARTICLE 2. TECHNICAL

2.1. SCOPE OF AGREEMENT

Except, as expressly stated herein, all Services shall be performed as set out in the following attached schedules and other referenced attachments:

- Schedule “A” Scope of Services;
- Schedule “D” Consultant’s Basic Services;
- Schedule “E” Consultant’s Additional Services;
- The Terms of Reference / Request for Proposals, reference number (Event ID) [Enter event ID](#), including all addenda; and
- The Consultant’s Proposal

2.2. TERM OF AGREEMENT

2.2.1. This Agreement shall commence on the Effective Date, and unless otherwise stated in 2.2.2 the Consultant Services shall be considered complete after the one-year warranty period expires or whenever the corrections required of the Contractor at the end of this period are completed, or after the Final Certificate of Completion is issued, whichever is the latest. The Warranty Period and Final Certificate of Completion are defined in the Construction Contract.

2.2.2. This Agreement shall terminate on [Click here to enter a date](#). Sub-clause 2.2.1 applies if no date is inserted here.

2.2.3. This Agreement may be extended by written consent of the parties.

ARTICLE 3. FINANCIAL

3.1. AGREEMENT AMOUNT

As consideration for performance hereof the GNWT will pay the Consultant as set out in Schedule “B” attached herewith.

ARTICLE 4. GENERAL CONDITIONS

4.1. ENTIRE AGREEMENT

4.1.1. No implied terms or obligations of any kind by or on behalf of the GNWT shall arise from anything in this Agreement and the express covenants and agreements therein contained and made by the GNWT are the only covenants and agreements upon which any rights against the GNWT are to be founded.

- 4.1.2. This Agreement constitutes the entire arrangement between the parties with respect to the subject matter of the Agreement, and supersedes all previous negotiations, communications and other arrangements, either written or oral, relating to it, unless incorporated by reference herein.
- 4.1.3. In interpreting this Agreement, if there is a conflict within the documents forming the Agreement, the order of priority of documents from highest to lowest shall be:
- 4.1.3.1. the Main Body of this Agreement;
 - 4.1.3.2. Schedules “A”, “B”, “C”, “D” and “E”;
 - 4.1.3.3. addenda number [Enter No.](#) through [Enter No.](#), inclusive, that were issued prior to the proposal submission deadline in the Request for Proposals;
 - 4.1.3.4. the Terms of Reference / Request for Proposals; and
 - 4.1.3.5. the Consultant’s Proposal.

4.2. APPLICABLE LAW

This Agreement shall be governed by the laws of the Northwest Territories and of Canada as they apply in the Northwest Territories and the courts of the Northwest Territories will have exclusive jurisdiction to determine all disputes and claims arising between the parties.

4.3. INDEPENDENT CONSULTANT

The Consultant is an independent Consultant with the GNWT and nothing in this Agreement shall be construed or deemed to create the relationship of employee and employer or of principal and agent between the GNWT and the Consultant. The Consultant is solely responsible for payments of all statutory deductions or contributions including but not limited to pension plans, unemployment insurance, income tax, workers’ compensation and the GNWT Payroll Tax.

4.4. NO WAIVER

No waiver by either party of any breach of any term, condition or covenant of this Agreement shall be effective unless the waiver is in writing and signed by both parties. A waiver, with respect to a specific breach, shall not affect any rights of the parties relating to other or future breaches.

4.5. PERFORMANCE

The failure of either party at any time to require the performance of any provision or requirement of this Agreement shall not affect the right of that party to require the subsequent performance of that provision or requirement.

4.6. SEVERANCE

It is intended that all provisions of this Agreement shall be fully binding and effective between the parties, but in the event that any particular provision or provisions or a part of one is found to be void, voidable or unenforceable for any reason whatever, then the particular provision or provisions shall be deemed severed from the remainder of this Agreement and all other provisions shall remain in full force.

4.7. OWNERSHIP

4.7.1. Title to any report, drawing, photograph, plan, specification, model, prototype, pattern, sample, design, logo, technical information, invention, method or process and all other property, work or materials which are produced by the Consultant in performing the Services or conceived, developed or first actually reduced to practice in performing the Services (herein called “the property”) shall vest in the GNWT and the Consultant hereby absolutely assigns to the GNWT the copyright in the property for the whole of the term of the copyright.

4.7.2. The Consultant:

- (i) irrevocably waives in whole all moral rights, and
- (ii) shall ensure that its employees, subcontractors, sub-consultants and agents irrevocably waive in whole all moral rights, to the property made, prepared, developed, generated, produced, or acquired under this Agreement and declares that these waivers shall operate in favour of the GNWT and the GNWT’s assignees and licensees.

4.8. PECUNIARY INTEREST

The Consultant declares that the Consultant has no pecuniary interest in the business of any third party that would affect the objectivity of the Consultant in carrying out the Services. Should the Consultant acquire such an interest during the term of this Agreement, the Consultant shall declare it immediately to the GNWT. Failure of the Consultant to declare such an interest may result in the GNWT terminating this Agreement without notice or penalty.

4.9. HARASSMENT FREE AND RESPECTFUL WORKPLACE POLICY

4.9.1. The parties and their employees, agents and representatives shall observe and be bound by the Harassment Free and Respectful Workplace Policy of the GNWT. A copy of which can be found at the following website:

https://www.fin.gov.nt.ca/sites/fin/files/resources/harassment_free_and_respectfull_work_place_policy_2017.pdf

4.9.2. The Consultant shall, upon request of the GNWT, remove from any GNWT work site where the Services are being performed; any person employed by it for purposes of this Agreement who, in the opinion of the GNWT has violated the Harassment Free and Respectful Workplace Policy. The Consultant shall not permit a person who has been removed to return to that work site.

4.10. TIME OF ESSENCE

4.10.1. Time is of the essence of this Agreement.

4.10.2. When requested by the GNWT, the Consultant shall submit a detailed schedule within 14 days of this Agreement’s effective date suitable to the project for the performance of their Services for the project and shall adhere to the schedule approved by the GNWT. If a change in the approved schedule becomes necessary, the Consultant shall submit a report to the GNWT and obtain approval for any change therein.

4.11. NOTICE AND ADDRESS

- 4.11.1. Any notice required to be given herein or any other communication required by this Agreement shall be in writing and shall be personally delivered, sent by e-mail, or posted by prepaid registered mail to the addresses shown in Article 5, Execution, or such other address as may be designated by a Notice given by any party to the other.
- 4.11.2. Every such notice and communication, if delivered by hand, shall be deemed to have been received on the date of delivery or if sent by prepaid registered mail shall be deemed to have been received on the seventh day after posting, or if by e-mail, 24 hours after the time of transmission, excluding from the calculation weekends and statutory holidays.

4.12. GNWT's RESPONSIBILITIES

The GNWT's responsibilities are as set out in Schedule "C" attached herewith.

4.13. CERTIFICATION

Upon notification of award of this Agreement, the Consultant is required to furnish within 14 days, when requested by the GNWT:

- 4.13.1. Proof of compliance with the NWT *Engineering Geological and Geophysical Professions Act*. All plans, reports or similar documents prepared by an Engineer, Geologist or Geophysicist shall bear the NWT stamp or seal.
- 4.13.2. Proof of compliance with the NWT *Architect Act*. All plans, reports or similar documents prepared by an Architect shall bear the NWT stamp or seal.
- 4.13.3. Proof of compliance with all applicable Workers' Compensation and Employers' Liability Acts in the NWT.

4.14. SUSPENSION OF SERVICES

- 4.14.1. The GNWT may require the Consultant to suspend any part of the performance of this Agreement for a specified or unspecified period by giving written notice of suspension to the Consultant. The Consultant shall continue to perform any unsuspended Services.
- 4.14.2. During the period of suspension, the Consultant shall minimize their payroll costs and operating expenses and within 10 days of the receipt of the notice of suspension, deliver to the GNWT a schedule of net expenses in respect of which they claim to be reimbursed. The GNWT will give due consideration to claim and will make such payment, which, in the opinion of the GNWT, compensates the Consultant for reasonable costs and expenses incurred during the period of suspension.
- 4.14.3. If the period of suspension is 60 days or less, the Consultant shall, upon the expiration of that period, resume the performance of the suspended Services.
- 4.14.4. If the period of suspension is more than 60 days, and if the GNWT and the Consultant agree that the performance of the suspended Services will be continued by the Consultant, the Consultant shall resume performance of the suspended Services subject to any terms and conditions agreed upon by the GNWT and the Consultant. (Fees and/or schedule may have to be revised.) If agreement cannot be reached to continue the Services, the notice of suspension shall be deemed to be a notice of termination.

4.15. SUCCESSORS

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and assigns.

4.16. TERMINATION OF AGREEMENT – NO DEFAULT

4.16.1. The GNWT may terminate this Agreement at any time by giving a written notice of termination to the Consultant. When a written notice is received by the Consultant, the Consultant shall, subject to any conditions stipulated in the notice, forthwith cease all operations in performance of this Agreement.

4.16.2. In the event of termination, the GNWT will pay and the Consultant will accept in full as settlement of all claims, an amount calculated under Schedule “B”, Financial, as specified for that phase or a proportionate part thereof based on the Services performed together with such further amount as will in the opinion of the GNWT compensate the Consultant for reasonable expenses continuing after the date of termination.

4.17. TERMINATION OF AGREEMENT – DEFAULT

4.17.1. If:

- (i) the Consultant fails to comply with any of the terms or conditions of this Agreement; or
- (ii) a proceeding in bankruptcy, receivership or insolvency is instituted by or against the Consultant or its property; or
- (iii) the Consultant makes an assignment for the benefit of creditors; or
- (iv) the Consultant fails to comply with applicable laws, by-laws, or statutory regulations in force from time to time; or
- (v) the Consultant ceases or threatens to cease to carry on its business;

the GNWT shall provide written notice to the Consultant of the default and the Consultant shall have a period of thirty (30) days from the date of the notice to cure the default to the satisfaction of the GNWT in its unfettered discretion. If a default continues for more than thirty (30) days, the GNWT may terminate this Agreement by delivery of notice in writing to that effect to the Consultant.

4.17.2. The Consultant shall be liable to and upon demand therefore pay to the GNWT an amount equal to all loss and damage suffered by the GNWT by reason of non-completion of the Services by the Consultant. If the Consultant fails to pay for such loss or damage on demand, the GNWT shall be entitled to deduct the same from any payments due and payable to the Consultant. Termination under this sub-clause does not operate so as to relieve or discharge the Consultant from any obligation under this Agreement or imposed upon them by law in respect to the Services or any portion thereof that they have completed.

4.17.3. Such termination shall not limit in anyway the GNWT’s recourse to any remedies available to it at law, equity or otherwise.

4.18. NO ASSIGNMENT, DELEGATION OR SUBCONSULTING

- 4.18.1. The Consultant shall not assign this Agreement, nor delegate or sub-consult any of the Services to be performed by it hereunder without the express written consent of the GNWT. Any such attempted assignment, delegation or sub-consulting shall entitle the GNWT to terminate if assignment, delegation or sub-consulting is done without such consent.
- 4.18.2. Where the Consultant has submitted a Subcontractor Disclosure Form as part of its Proposal, such form shall constitute the approved list of subcontractors for the purposes of this Agreement.
- 4.18.3. Every assigned, delegated or sub-consulting agreement entered into by the Consultant shall adopt all of the terms and conditions of this Agreement that are of general application; and
- 4.18.4. Every assignment, delegation or sub-consulting shall not relieve the Consultant from its responsibility for the performance of any of its obligations hereunder or to impose liability upon the GNWT

4.19. LOCAL/NORTHERN LABOUR

The Consultant is obliged to meet the level(s) of local and NWT content, as defined in the Business Incentive Policy, identified in the Consultant's Proposal.

4.20. CHANGES IN SERVICES

- 4.20.1. The Consultant shall, if requested in writing by the GNWT, make changes in the Services including changes which may increase or decrease the original scope of Services; and
- 4.20.2. Prior to commencing such changes, the Consultant shall advise the GNWT of any known and anticipated effects of changes on the Construction Cost, Consultant fees, Project Schedule and other matters concerning the Project. The Consultant shall, upon request from the GNWT, submit a Substantiation of Business Incentive Policy Adjustment form equal to the value of the requested change and in the form available through the following link:

<http://www.fin.gov.nt.ca/en/files/substantiationofbusinessincentivepolicyadjustmentxlsx>

4.21. EFFECT OF APPROVALS

No acceptance or approval by the GNWT whether expressed or implied shall be deemed to relieve the Consultant of their professional or technical responsibility for the plans, drawings, calculations or other material prepared or assembled by the Consultant.

4.22. RECORDS TO BE KEPT BY CONSULTANT

- 4.22.1. The Consultant shall during the term of this Agreement and for a period of two years from the date of completion of this Agreement maintain and keep full records of all estimates and actual costs to the Consultant in respect to services rendered together with all designs, quotations, contracts, correspondence, invoices, receipts and vouchers relating thereto, and the Consultant shall make all such records available for copy, audit or inspection by the GNWT or any person acting on behalf of the GNWT.
- 4.22.2. It should be noted that all information, including documents submitted to the GNWT are in the custody or under the control of the GNWT and thus subject to the protection and disclosure provisions of the *Access to Information and Protection of Privacy Act* (the "ATIPP"). The

Consultant acknowledges that the GNWT may be required to release, in whole or in part, this Agreement and any other information or documents in the GNWT's possession or control relating to this Agreement pursuant to the ATIPP.

4.23. ERRORS AND OMISSIONS

The Consultant shall not be entitled to payment in respect of costs incurred by the Consultant in remedying errors and omissions in the Services that are attributable to the Consultant, the Consultant's employees, or persons for whom the Consultant had assumed responsibility in performing the Services.

4.24. DISPUTES

In the event of a disagreement regarding any aspect of the Consultant's Services or any instructions given under this Agreement, the Consultant may give notice of their dispute in writing to the GNWT requesting a decision. Such notice shall be delivered to the GNWT within 14 days of the origin of the disagreement or receipt of the instruction. Pending such decision the Consultant shall continue to perform their Services in accordance with the instructions of the GNWT who shall give its decision in writing to the Consultant within 30 days of receiving the said notice. In the event that the Consultant is dissatisfied with the decision, they shall continue to perform their Services and, within 14 days from receipt of the decision, they may submit a written request for the Deputy Minister of the Department of Infrastructure to review the matter in dispute. The Deputy Minister and the Consultant may appoint a mutually acceptable person to mediate in the dispute.

4.25. INDEMNIFICATION BY CONSULTANT

The Consultant shall defend, indemnify and hold harmless the GNWT, its Ministers, officers, employees, servants and agents from and against all claims, actions, causes of action, demands, costs, losses, damages, expenses, suits or other proceedings by whomever made, brought or prosecuted in any manner based upon or related wholly or partially to the acts or omissions of the Consultant in its performance of this Agreement. The obligation to indemnify and hold harmless shall not apply to the extent that a court of competent jurisdiction finally determines that such losses or damages were caused by the intentional or negligent acts or omissions of the GNWT, its Ministers, officers, employees, servants or agents.

4.26. CLAIMS AGAINST AND OBLIGATIONS OF THE CONSULTANT

- 4.26.1. The Consultant shall promptly discharge all bona fide obligations and shall satisfy all bona fide claims against the Consultant relating to the performance of Services pursuant to this Agreement.
- 4.26.2. If the Consultant fails to discharge and satisfy such bona fide obligations and claims, within a reasonable period of time after they become due and payable, the GNWT may retain out of the monies, or part thereof, due or to become due to the Consultant the amounts required to discharge and satisfy such bona fide obligations and claims, and may make the required payments directly to the claimants.
- 4.26.3. A payment made pursuant to sub-clause 4.26.2 is to the extent of the payment a discharge of the GNWT's liability under this Agreement to the Consultant.
- 4.26.4. For the purpose of 4.26.2 a claim shall be considered lawful when it is so determined:
 - (a) by a court of competent jurisdiction, or
 - (b) by an arbitrator duly appointed to arbitrate the said claim, or

- (c) by written notice delivered to the GNWT and signed by the Consultant authorizing payment of the said claim or claims.

4.27. INSURANCE

The Consultant shall without limiting its obligations or liabilities hereto, obtain, maintain at its sole cost and expense and pay for during the period of this Agreement, the following minimum insurance. The amount and type of insurance specified herein in no way reduces or limits the liability or responsibility of the Consultant hereunder:

- 4.27.1. Workers' Safety Compensation Commission (WSCC) insurance covering all employees engaged in the work in accordance with the statutory requirements of the Territory or Province having jurisdiction over such employees. If the Consultant is assessed any additional levy, extra assessment or super-assessment by a Workers' Compensation Board as a result of an accident causing injury or death to an employee of the Consultant or sub-consultant, or due to the unsafe working conditions, then such levy or assessment shall be paid by the Consultant at its sole cost and is not reimbursed by the GNWT.
- 4.27.2. Commercial General Liability insurance on an occurrence basis with limits of not less than two million dollars (\$2,000,000.00) inclusive per occurrence for bodily injury, personal injury, death and damage to property including loss of use thereof.
- 4.27.3. Motor Vehicle Liability, including snowmobiles and ATVs, standard liability insurance, if applicable, covering all vehicles owned or non-owned, operated and/or licensed by the Consultant and used by the Consultant in the performance of this Agreement, in an amount no less than one million dollars (\$1,000,000) per occurrence for bodily injury, death and damage to property. Also, if applicable, buses used directly or indirectly in the performance of this Agreement shall have limits of not less than one million dollars (\$1,000,000) for vehicle hazards and not less than one million dollars (\$1,000,000) for bodily injury to or death of one or more passengers and loss of or damage to passenger property in one accident. (School buses shall include the relevant School Bus endorsements with limits not less than two million dollars (\$2,000,000) for bodily injury to or death of one or more passengers and loss of or damage to passenger property in one accident.)
- 4.27.4. Aircraft Liability Insurance, if applicable, covering all aircraft, owned or non-owned, operated and/or licensed by the Consultant and used directly or indirectly in the performance of this Agreement with a bodily injury, death and property damage and passenger hazard limit of six million dollars (\$6,000,000.00) inclusive.
- 4.27.5. Watercraft Liability Insurance, if applicable, covering all watercraft, owned or non-owned, operated and/or licensed by the Consultant and used directly or indirectly in the performance of this Agreement with a bodily injury, death or property damage and passenger hazard limit of one million dollars (\$1,000,000.00) inclusive.
- 4.27.6. Professional Liability Insurance, if applicable, with limits of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the annual aggregate, to cover claims arising out of the rendering of or failure to render any professional service under this Agreement. This insurance shall be maintained continuously from commencement of the Service until not less than twelve (12) months from the date of the Final Certification of Completion.

4.28. GENERAL INSURANCE CONDITIONS

- 4.28.1. The Consultant shall provide, maintain, and pay for any additional insurance which is required to be provided by this Agreement, or by law, or which the Consultant considers necessary to cover risks not otherwise contemplated by the insurance specified in these conditions.
- 4.28.2. Umbrella/Excess Liability insurance may be purchased to achieve the limits required.
- 4.28.3. All policies shall provide that thirty (30) days written notice be given to the GNWT prior to any cancellations of any such policies.
- 4.28.4. The Commercial General Liability policy shall name the GNWT and all subcontractors as additional insureds only with respect to the terms of this contract and shall extend to cover the employees of the insureds hereunder.
- 4.28.5. The Consultant shall be responsible for any deductibles, exclusions and/or insufficiencies of coverage relating to such policies.
- 4.28.6. The Consultant shall deposit with the GNWT, prior to commencing with the Services, certificate(s) of insurance evidencing the insurance required by this Agreement in a form satisfactory to the GNWT and with insurance companies satisfactory to the GNWT.

4.29. MIGRATORY BIRDS

- 4.29.1. It is a condition of this Agreement that the Consultant comply with the federal *Migratory Birds Convention Act*, 1994, S.C. 1994, c.22, the federal *Species at Risk Act*, S.C. 2002, c.29, the Northwest Territories *Wildlife Act*, S.N.W.T. 2013,c.30, and their regulations, including the requirements to ensure the long-term conservation of migratory birds by minimizing the risk of harm to migratory birds and their nests, eggs and habitats.

The Consultant's project manager/lead is required to complete, or have completed within the previous 12 months, the "Migratory Bird Awareness for GNWT-INF & Contractors" online webinar and review the "Beneficial Management Practices for Migratory Birds in the NWT" document prior to commencing the Services. The webinar can be accessed through the following link: <https://connectednwt.instructure.com/enroll/DYAKRM>

4.30. COVID-19

- 4.30.1. The Consultant shall comply with any measures, restrictions, or orders issued by the Chief Public Health Officer of the Northwest Territories, any COVID-19 measures, restrictions, or orders issued by the Government of Canada, and any requirements to wear personal protective equipment (including, but not limited to facemasks), in any facility or site where the Services are to be performed.

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ARTICLE 5. EXECUTION

The parties hereto have entered into this Agreement by the hands of their duly authorize representatives.

SIGNED, SEALED AND DELIVERED

in the presence of:

[Consultant Business Name](#)

[Address](#)

[Address Cont.](#)

[Click here to enter email](#)



Signature

Print Name

Title

Print Name (Witness)

Date

Witness Signature

Date (Witness)

GOVERNMENT OF THE NORTHWEST TERRITORIES (GNWT)

[Click here to enter text](#)

[Click here to enter text](#)

Signature

Print Name

Title

Date

Witness Signature

Print Name

[Click here to enter text](#)

[Click here to enter text](#)

SCHEDULE “A” SCOPE OF SERVICES

DESCRIPTION OF SERVICES

All Services hereinafter described shall be performed by the Consultant in accordance with this Agreement. In performing the Services, the Consultant shall respond to all GNWT enquiries concerning this Agreement (emails or phone calls) within one (1) Business Day. Without limiting the generality of the foregoing, the Consultant shall, at its own risk and expenses provide:

[Click here to enter text](#)

SCHEDULE “B” FINANCIAL

B1. AGREEMENT AMOUNT

The maximum amount payable by the GNWT under this Agreement shall not exceed a total of \$[Click here to enter text](#) for fees and estimated expenses unless specifically authorized by a written Contract Change Order approved by the GNWT. All payments shall be in accordance with Sections “B2” through “B8” in this Schedule.

B2. AMOUNT PAYABLE – GENERAL

B2.1. Subject to any other provisions of this Agreement, the GNWT shall pay the Consultant, at the times, in the manner and for the amount hereafter set out and the Consultant shall accept that amount as payment in full satisfaction for everything furnished and done in respect of the Services to which the payment relates.

B2.2. The fees are payable by the GNWT only when the Services have been performed to the satisfaction of the GNWT and within the cost estimate established to perform these Services. Any payment in respect of a phase or part of a phase shall not be deemed a waiver of any breach of this Agreement by the Consultant nor relieve the Consultant from the performance of any provision or requirement of this Agreement nor of the GNWT’s rights of set-off at law or under this Agreement for costs or expenses arising from default or negligence of the Consultant.

B2.3. Section 97 of the GNWT *Financial Administration Act*, S.N.W.T. 2015, c.13, is deemed a provision of this Agreement.

“It is a condition of every contract and other agreement made by or on behalf of Government requiring an expenditure that an expenditure pursuant to the contract or agreement will be incurred only if there is a sufficient uncommitted balance in the appropriation for the department for the Government fiscal year in which the expenditure is required under the contract or agreement.”

B3. PAYMENT TO CONSULTANT ON ACCOUNT OF BASIC SERVICES

B3.1. The fee for the Consultant’s basic services as identified in Schedule “D”, shall be computed as follows:

[Click here to enter text](#)

B3.2. Progress payments shall be made on a monthly or mutually agreed upon basis (the “payment period”). Where compensation is based on a Stipulated Sum or Percentage of Construction Cost, monthly payments shall be made so that the Basic Compensation for each phase shall be in proportion to the Services performed within the phases.

Schematic Design Phase	% or \$
Design Development Phase	% or \$

Construction Document Phase	% or \$
Bidding or Negotiation Phase	% or \$
Construction Phase	% or \$
Post Construction Phase	% or \$

- B3.3. When payment for travel time is based on hourly rates, the travel time authorized by the GNWT during normal working hours shall be chargeable as time worked. Authorized travelling time outside of normal working hours shall be chargeable up to a maximum of three (3) hours per day. However, not more than eight (8) hours in any one day shall be claimed for the time spent in travelling.

B4. PAYMENT TO CONSULTANT ON ACCOUNT OF ADDITIONAL SERVICES

In addition to the Consultant's fees for basic services the GNWT will pay the Consultant for additional services, as specified in Schedule "E"; Consultant's Additional Services, as authorized by the GNWT, as follows:

[Click here to enter text](#)

B5. PAYMENT TO CONSULTANT FOR REIMBURSABLE EXPENSES

- B5.1. Reimbursable expenses, or disbursements, are expenditures the Consultant must necessarily make in order to perform the Services.

B5.1.1. With the exception of duty travel rates which shall be paid without markup in accordance with B5.1.2. (b), reimbursable expenses shall be computed as a multiple of 1.05 times the amounts expended by the Consultant. The Consultant shall provide the GNWT with copies of all invoices for reimbursement.

B5.1.2. Reimbursable expenses shall include but not be limited to the following:

- (a) Reproduction of plans, drawings, specifications and other documents for tender purposes
- (b) Travel Expenses:
Unless noted otherwise, travel, meal and accommodation costs approved by the GNWT shall be paid in accordance with the rates established under the GNWT's Collective Agreement with the Union of Northern Workers. Such costs shall be paid by the Consultant to the travelling employee at the full rate that is established under the GNWT's Collective Agreement with the Union of Northern Workers. For further certainty, the Consultant shall not deduct or in any way reduce the rate payable to the traveling employee.
- (c) Telecommunication Expenses
Long distance telephone calls, long distance facsimile messages, photocopies, courier service and postage. This may be a lump sum fee if agreeable to the GNWT and the Consultant.
- (d) Equipment and Vehicle Rental Costs

Vehicle rental costs are reimbursable only when the work is done out of town from the Consultant's office. CADD equipment and other computer expenses are not considered to be reimbursable unless otherwise noted in "E."

- (e) Other expenses, as herein noted:

Click here to enter text

- (f) All other reimbursable expenses or disbursements must be approved by the GNWT prior to being incurred.

B6. TIME OF PAYMENT

- B6.1. The Consultant shall, on a monthly basis or as otherwise mutually agreed upon with the GNWT, submit a written progress claim (invoice) detailing the portion of the Services completed during the relevant payment period, sufficient to support payment. Where the Consultant has made commitments in its Proposal pursuant to the Business Incentive Policy, each progress claim shall be accompanied by a completed Substantiation of Business Incentive Policy Invoice Report, in the form prescribed in Schedule "F".
- B6.2. The GNWT shall, not later than ten days after receipt of a progress claim referred to in B6.1 issue a progress report, a copy of which the GNWT will give to the Consultant that indicates the value of the part of the Services described in the progress claim that, in the GNWT's opinion, is in accordance with the Agreement and was not included in any progress report relating to this Agreement. The progress report may take the form of an endorsement of the Consultant's progress claim.
- B6.3. The timing of all payments will be made in accordance with the GNWT payment policy as described in the GNWT's Financial Administration Manual, Policy 720.
- B6.4. Any delay by the GNWT in making any payment when it is due pursuant to these Terms of Payment shall not be a breach of this Agreement by the GNWT.
- B6.5. When the GNWT delays making a payment, the Consultant shall be entitled to receive interest on the amount that is overdue, in accordance with the GNWT's Policy 725.
- B6.6. The Consultant may invoice the GNWT from time to time, but no more frequently than monthly. All invoices and supporting documents are to be emailed to Financial_SharedServices@gov.nt.ca or addressed and sent to the nearest Financial Shared Services office:

North Slave Region

Financial Shared Services
Bag Service 1511
Yellowknife, NT X1A 2R3
Drop off: 3rd Floor, YK Centre

Beaufort Delta Region

Financial Shared Services
Box 2480
Inuvik, NT X0E 0T0
Drop off: 3rd Floor, 106
Veterans Way

Sahtu Region

Financial Shared Services
Bag Service 1300
Norman Wells, NT X0E 0V0
Drop off: #8 Town Square

South Slave Region

Financial Shared Services
PO Box 1230
Fort Smith, NT X0E 0P0
Drop off: 182B McDougal
Road

South Slave Region

Financial Shared Services
62 Woodland Dr.
2nd Floor Wright Building
Hay River, NT X0E 1G1
Drop off: Suite 211, 62
Woodland Drive

Dehcho Region

PO Box 440
Fort Simpson, NT X0E 0N0
Drop off: 3rd Floor,
Education Building

Invoices should clearly indicate the reference number [Click here to enter text](#) to avoid delay in payment. Invoices that do not indicate the reference number may be returned to the Consultant.

B7. GOOD AND SERVICES TAX

The GNWT certifies that the property and Services purchased by the GNWT from the Consultant are being purchased with government funds and are not, therefore, subject to the Goods and Services Tax (the “GST”). It is the sole responsibility of the Consultant to determine if input tax credits are available in respect of the provision of property and Services to the GNWT. The GNWT will not compensate the Consultant for any GST liability incurred in the provision of property and Services to the GNWT.

B8. RIGHT OF SET-OFF

Without limiting any right of set-off or deduction given or implied by law or elsewhere in this Agreement, the GNWT may set-off any amount payable to the GNWT by the Consultant under this Agreement or under any contract against any amount payable to the Consultant under this Agreement.

B9. LOCAL AND NORTHERN EMPLOYMENT

The Consultant shall include a Substantiation of Business Incentive Policy Invoice Report with each progress claim/invoice submission. The Substantiation of Business Incentive Policy Invoice Report shall be in the form contained in Schedule “D” attached to this Agreement. Substitute forms will not be accepted by the GNWT.

SCHEDULE “C” GNWT RESPONSIBILITIES

- C1.** The GNWT shall provide the Consultant with the Project Requirements including the construction budget.
- C2.** The GNWT shall provide promptly written decisions, instructions, acceptances and other relevant information required by the Consultant to enable the Consultant to perform the Services as scheduled.
- C3.** If tenders or proposals are to be called, the GNWT shall arrange for such and issue the documents, receive bids and award the Construction Contract(s).
- C4.** The following duties and responsibilities of the GNWT to the Consultant are added to this Agreement as noted herein.

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SCHEDULE “D” CONSULTANT’S BASIC SERVICES

D1. BASIC SERVICES

The Consultant’s Basic Services consist of the six phases described in Paragraphs D1.1 through D1.6 and includes any other services which are designated as part of the Basic Services. The Consultant’s Basic Services include the co-ordination required to integrate all parts of the Services.

The Consultant shall respond to all GNWT enquiries concerning this Agreement (emails or phone calls) within one (1) Business Day.

D1.1. SCHEMATIC DESIGN PHASE

- D1.1.1. The Consultant shall review the Project Requirements furnished by the GNWT. The Consultant shall advise the GNWT of the need for any further information and data including surveys, borings, soundings, and soil reports.
- D1.1.2. The Consultant shall provide a preliminary evaluation of the project and a Class C Cost Estimate. The Consultant shall also furnish a proposed project schedule in a format acceptable to the GNWT as noted in 4.10.2.
- D1.1.3. Based on the mutually agreed upon program and budget, the Consultant shall review with the GNWT, alternative approaches to design and construction of the project.
- D1.1.4. The Consultant shall prepare, for approval by the GNWT, schematic/preliminary design documents consisting of drawings and other documents appropriate to the size of the project illustrating the scale and relationship of project components.
- D1.1.5. The Consultant shall participate in a review of the schematic design documents and the Class C Cost Estimate with the GNWT. Written approval of the schematic design and estimate must be obtained from the GNWT prior to commencement of the Design Development Phase.

D1.2. DESIGN DEVELOPMENT PHASE

- D1.2.1. Based on the approved schematic design documents and the approved budget, the Consultant shall prepare, for approval by the GNWT, design development documents consisting of drawings, outline specifications and other documents appropriate to the size of the project to fix and describe the size and character of the entire project as to architectural, structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate.
- D1.2.2. The Consultant shall assist the GNWT in obtaining preliminary approvals from authorities having jurisdiction, (such as the Safety Division, Territorial Fire Marshal, Health and Welfare Canada, and Municipal Governments) as required.
- D1.2.3. The Consultant shall prepare a Class B Cost Estimate.

- D1.2.4. The Consultant shall participate in a review of the design development documents and Class B Estimate with the GNWT. Written approval of the design and estimate must be obtained from the GNWT prior to commencement of the Contract Documents Phase.

D1.3. CONSTRUCTION DOCUMENT PHASE

- D1.3.1. Based on the approved design development documents, the Consultant shall prepare construction contract documents consisting of drawings and specifications setting forth in detail the requirements for construction of the project
- D1.3.2. The Consultant shall participate, when requested by the GNWT, in review with the GNWT, when the plans and specifications are 50%, 75% and 100% complete. If requested by the GNWT, written approvals shall be obtained from the GNWT at each review stage prior to commencing further Services.
- D1.3.3. The Consultant shall revise the cost estimate to reflect changes in the design, the tender date or market conditions. A Class A Cost Estimate will be submitted at the 100% review.
- D1.3.4. The Consultant shall assist in obtaining final approvals from authorities having jurisdiction over the projects noted in the Design Development Phase.
- D1.3.5. The Consultant shall provide in digital format to the GNWT a complete set of drawings in Auto CADD.

D1.4. BIDDING OR NEGOTIATION PHASE

- D1.4.1. The Consultant shall assist the GNWT in obtaining tenders or proposals.
- D1.4.2. The Consultant shall review any tenders or proposals that are submitted to verify their completeness and the Consultant shall then make a recommendation for the award of a contract.

D1.5. CONSTRUCTION PHASE – ADMINISTRATION OF THE CONSTRUCTION CONTRACT

- D1.5.1. Unless otherwise provided in this Agreement, the Consultant shall provide administration of the Construction Contract as set forth below.
- D1.5.2. The Consultant shall conduct inspections at intervals appropriate to the stage of construction which they consider necessary to enable them to determine if the Work is proceeding in general accordance with the Construction Contract Documents. However, the Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work, unless otherwise stipulated in this Agreement. On the basis of such on-site observations, the Consultant shall keep the GNWT informed on the progress and quality of the Work, and shall endeavor to guard the GNWT against defects and deficiencies in work of the Contractor.
- D1.5.3. The Consultant shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, nor will they be responsible for the acts and omissions of the Contractor, Subcontractors, or any other persons performing any of the Work.

- D1.5.4. The Consultant shall at all times have access to the Work wherever it is in preparation or progress.
- D1.5.5. The Consultant shall determine the amounts owing to the Contractor based on observations at the site and on evaluation of the Contractor's application for payment, and shall issue, in a timely manner, certificates for payment in such amounts, as provided in the Construction Contract Documents.
- D1.5.6. The issuance of a certificate for payment shall constitute a representation by the Consultant to the GNWT based on the Consultant's observations at the site and on the data comprising the Contractor's application for payment, that the Work has progressed to the point indicated; that, to the best of the Consultant's knowledge, information and belief, the quality of Work is in accordance with the Construction Contract Documents and that the Contractor is entitled to payment in the amount certified. Such certification is subject to continuing evaluation of the Work as it progresses for general conformance with the Construction Contract Documents, to the result of any subsequent tests required by or performed under the Construction Contract Documents, to minor deviations from the Construction Contract Documents correctable prior to completion, and to any specific qualifications stated in certification for payment.
- D1.5.7. The Consultant shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on the written request of the GNWT and shall render written decisions within a reasonable time, on all claims, disputes, and other matters in question between the GNWT and the Contractor relating to the execution or progress of the Work or the interpretation of the Construction Contract Documents, when so requested by the GNWT.
- D1.5.8. Interpretation and decisions of the Consultant shall be consistent with the intent of and reasonable inferable from the Construction Contract Documents and shall be written or graphic form.
- D1.5.9. The Consultant shall notify the GNWT of all Work, which does not conform to the Construction Contract Documents, and the Consultant shall make a recommendation as to whether or not said work should be rejected. Whenever, in the Consultant's opinion, it is necessary or advisable for implementation of the intent of the Construction Contract, the Consultant will request the GNWT for special inspection or testing of the Work, whether or not such work be fabricated, installed or completed.
- D1.5.10. The Consultant shall review or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data, and Samples for conformance with the design concept of the Work and with the requirements and intent of the Construction Contract Documents. Such action shall be taken with reasonable promptness.
- D1.5.11. The Consultant shall assist in the preparation of Change Orders and other project documentation required for the GNWT's review and approval or execution in accordance with the Construction Contract Documents.
- D1.5.12. The Consultant shall supply all engineering equipment normally associated with work of this nature including but not limited to slump cones, thermometers, transits, levels, chains, tapes, rods and range poles. Specialized equipment may be purchased or leased by the Consultant on a reimbursable basis; however, prior

approval of the GNWT will be required and purchased equipment will become the property of the GNWT at the conclusion of the Work.

- D1.5.13. The Consultant shall coordinate project meetings with the Contractor and their Subcontractors when necessary and the Consultant shall attend all such meetings, unless otherwise advised, and report the results of each to the GNWT with copies of the minutes of each meeting.
- D1.5.14. In the absence of other directions from the GNWT, the Consultant shall submit monthly reports to the GNWT on the progress of the Work.
- D1.5.15. The Consultant shall prepare deficiency lists and advise the GNWT of work to be done in order to complete the project and assist in preparation of an Interim Certificate of Completion in accordance with the provisions of the Construction Contract. The Consultant shall carry out further inspections necessary to ensure that all deficiencies are rectified and assist in the preparation of the Final Certificate of Completion for approval by the GNWT.
- D1.5.16. The Consultant shall take steps towards ensuring that all operating manuals, warranties, guarantees and instructions are provided to the GNWT as specified in the Construction Contract Documents.

D1.6. POST CONSTRUCTION PHASE

The Consultant will assess any reported defects or deficiencies arising during the one-year warranty period as specified in the Construction Contract Documents and when requested the Consultant shall inspect the Work with the GNWT prior to the expiry of that period. The Consultant shall issue on behalf of the GNWT the necessary instructions to the Contractor if work is required to correct such defects or deficiencies.

D2. CONSTRUCTION COST ESTIMATES

- D2.1. If at any time the Consultant considers their estimates indicate the cost will exceed the project budget, they will immediately advise the GNWT. If in the opinion of the GNWT the excess is due to design, cost factors or matters under the control or reasonably foreseeable by the Consultant, the GNWT may require the Consultant at their expense and at no additional cost to the GNWT, do everything by way of revision of design to bring the cost estimate within the project budget.
- D2.2. If the lowest tender for the project exceeds the latest approved estimate of construction by more than 15%, the Consultant, at their own expense, and at no additional cost to the GNWT shall, if required by the GNWT, do everything necessary (including design modifications) to bring the cost of the tendered work within the limits stipulated. This work may consist of reducing or modifying the project scope but is not intended to be a complete redesign.
- D2.3. If the bidding or negotiation phase has not commenced within three months after the Consultant submits the Construction Contract Documents to the GNWT, any estimate of construction cost may be adjusted to reflect any change in prices in the construction industry since the date of submission of the Construction Contract Documents to the GNWT. The cost to adjust such estimate shall be considered an additional service.

SCHEDULE “E”

CONSULTANT’S ADDITIONAL SERVICES

The following services are not included in the Basic Services unless so identified elsewhere in this Agreement. They shall be provided only if authorized or confirmed in writing by the GNWT prior to any work being done. They shall be paid for by the GNWT as provided in this Agreement, in addition to the compensation for Basic Services.

- E1. If the GNWT requests that continuous representation at the site is required, the Consultant shall provide one or more project representatives to assist the Consultant in carrying out such responsibilities. Such project representatives shall be selected, employed and directed by the Consultant as approved by the GNWT. The duties, responsibilities and limitations of authority of such project representatives shall be as mutually agreed between the GNWT and the Consultant.
- E2. Providing consultation concerning replacement of any work damaged by fire or other similar cause during construction, and furnishing services, as may be required in connection with the replacement of such work.
- E3. Providing services made necessary by the default of the Contractor or by major defects or deficiencies in the Work of the Contractor.
- E4. Preparing a set of reproducible record drawings showing changes in the work made during construction based on marked up prints, drawings, and other data furnished by the Contractor to the Consultant. Drawings to be labelled “As-Built” or “Record Drawings” dated and signed by the Consultant.
- E5. Preparing operation and maintenance manuals, and/or training personnel for operation and maintenance.
- E6. Providing services after expiry of the warranty period.
- E7. Providing translation to a language other than the English language.
- E8. When requested by the GNWT, providing a model for the use of the GNWT.
- E9. Providing services to investigate existing conditions or facilities such as preparing measured drawings or verifying the accuracy of drawings or other information furnished by the GNWT.
- E10. Providing detailed estimates, of Construction Costs using detailed quantity surveys, inventories of material and equipment, or analyses of owning and operating costs. These services would normally be done by a specialized cost Consultant.
- E11. Preparing documents for alternative, separate or sequential bids or providing extra services in connection with bidding, negotiation or construction prior to the completion of the construction documents phase.
- E12. Providing calculations, which establish the optimum insulation values, life-cycle costs and pay-back periods for energy related systems and components.
- E13. Providing services to the GNWT in connection with any mediation, arbitration or legal proceeding.
- E14. Providing pre-design services such as surveys and soil investigation analysis.
- E15. Providing any other services not otherwise included in this Agreement as herein noted:

[Click here to enter text](#)

SCHEDULE "F"

SUBSTANTIATION OF BUSINESS INCENTIVE POLICY INVOICE REPORT

Consultant:				
Contract/Agreement Title:				
Submitted By:				
Invoice Period:	From:		To:	

Contract Number:	
Invoice Number:	
Invoice Date:	
Invoice Value:	

<https://www.fin.gov.nt.ca/en/files/bipcontentsubstantiationinvoicereportformxlsx>

Employee / Personnel Engaged				BIP Spend (\$)	
Name	Employer	Residence (Town/City)	Hours	Local (\$)	NWT (\$)
Subcontractor(s) Engaged					
Business Name	Services Provided	Vendor Location (Town/City)			
Goods Supplier(s) Engaged					
Business Name	Goods Commodity / Description	Vendor Location (Town/City)			
Total BIP Spend:				\$	\$
Enter any NON-BIP content in this row (do NOT enter non-BIP content in rows above)				>>> Total Non-BIP Spend:	
				Invoice Total:	\$