
Consultant Agreement Government of the Northwest Territories

Project

Location

Project Number

Contract Number

Consultant

**Client
Department**

CONTENTS

Page

ARTICLE 1	DEFINITIONS	1
ARTICLE 2	TECHNICAL.....	3
ARTICLE 3	FINANCIAL.....	3
ARTICLE 4	GENERAL CONDITIONS	4
	4.1 Entire Agreement.....	4
	4.2 Applicable Law	4
	4.3 Independent Consultant.....	4
	4.4 No Waiver	4
	4.5 Performance	4
	4.6 Severance	5
	4.7 Ownership.....	5
	4.8 Pecuniary Interest	5
	4.9 Workplace Conflict Resolution Policy.....	5
	4.10 Time of Essence	5
	4.11 Notice and Address.....	6
	4.12 G.N.W.T.'s Responsibilities.....	6
	4.13 Certification.....	6
	4.14 Suspension of Services.....	6
	4.15 Successors	7
	4.16 Termination of Agreement - No Default	7
	4.17 Termination of Agreement - Default.....	7
	4.18 No Assignment, Delegation or Subconsulting.....	8
	4.19 Local/Northern Labour	8
	4.20 Changes in Services	9
	4.21 Effect of Approvals.....	9
	4.22 Records to be kept by Consultant	9
	4.23 Errors and Omissions.....	9
	4.24 Disputes	9
	4.25 Indemnification by Consultant	10
	4.26 Claims Against and Obligations of the Consultant	10
	4.27 Insurance	10
	4.28 General Insurance Conditions.....	11
ARTICLE 5	EXECUTION	13
SCHEDULE "A"	Scope of Services	14
SCHEDULE "B"	Financial	15
SCHEDULE "C"	G.N.W.T.'s Responsibilities	19
SCHEDULE "D"	Consultant's Basic Services.....	20
SCHEDULE "E"	Consultant's Additional Services	25
APPENDIX I		
APPENDIX II		
APPENDIX III		
APPENDIX IV		

CONSULTANT AGREEMENT

This Agreement made as of the _____ day of _____, 20 __:

BETWEEN:

THE GOVERNMENT OF THE NORTHWEST TERRITORIES (the "G.N.W.T.")

OF THE FIRST PART

AND:

Attention: _____
(the "Consultant")

OF THE SECOND PART

WHEREAS:

The G.N.W.T 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 G.N.W.T.

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

ARTICLE 1
DEFINITIONS

In this Agreement:

- 1.1 **"Construction Contract"** means the contract between the *G.N.W.T.* and the *Contractor* for the execution of the *Work*.
- 1.2 **"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.
- 1.3 **"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 *G.N.W.T.* 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.

- 1.4 “**Consultant**” means the *Consultant* as designated in Article 5, Execution.
- 1.5 “**Contractor**” means the person, firm or corporation contracting with the *G.N.W.T.* for the execution of the Work
- 1.6 “**Cost Estimates**”
- 1.6.1 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.
- 1.6.2 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.
- 1.6.3 Class A Estimate
This is a detailed estimate prepared by the *Consultant* based on final drawings and specifications.
- 1.6 “**G.N.W.T.**” means the Government of the Northwest Territories as represented by the Minister of Public Works and Services, the Deputy Minister of Public Works and Services or any person specifically authorized by them to act on their behalf.
- 1.8 “**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.
- 1.9 “**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.
- 1.10 “**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 *G.N.W.T.* concerning the project, its administration, time and cost limits and may include the *Project Brief*.
- 1.11 “**Services**” means the totality of all labour, materials and equipment used or incorporated into the project by the *Consultant* pursuant to this Agreement.
- 1.12 “**Subconsultant**” means a person, firm or corporation to whom the *Consultant* has retained to perform any part of the Services.
- 1.13 “**Subcontractor**” means a person, firm or corporation to whom the *Contractor* has retained to perform the whole or any part of the Work.
- 1.14 “**Work**” means the totality of all labour, materials and equipment used or incorporated into the project by the *Contractor* pursuant to the *Construction Contract*.

- 1.15 “**Workplace Conflict Resolution Policy**” means the *G.N.W.T.*’s policy, as may be amended from time to time, available for downloading at the Financial Management Document Library accessible from the *G.N.W.T.*’s central web site at www.gov.nt.ca.

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:

Schedule “A” Scope of Services;
Schedule “D” Consultant’s Basic Services; and
Schedule “E” Consultant’s Additional Services.

2.2 TERM OF AGREEMENT

2.2.1 Notwithstanding the date of execution hereof, this Agreement is effective as per the Letter of Acceptance dated _____, which by reference shall be deemed as part hereof, 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 _____.
Subclause 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 *G.N.W.T.* 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 *G.N.W.T.* shall arise from anything in this Agreement and the express covenants and agreements therein contained and made by the *G.N.W.T.* are the only covenants and agreements upon which any rights against the *G.N.W.T.* 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.

4.2 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 *G.N.W.T.* 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 *G.N.W.T.* 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 *G.N.W.T.* 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**

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 *G.N.W.T.* and the *Consultant* hereby absolutely assigns to the *G.N.W.T.* the copyright in the property for the whole of the term of the copyright.

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 *G.N.W.T.* Failure of the *Consultant* to declare such an interest may result in the *G.N.W.T.* terminating this Agreement without notice or penalty.

4.9 **WORKPLACE CONFLICT RESOLUTION POLICY**

4.9.1 The parties and their employees, agents and representatives shall observe and be bound by the *Workplace Conflicts Resolution Policy* of the *G.N.W.T.* A copy of which will be provided upon request.

4.9.2 The *Consultant* shall, upon request of the *G.N.W.T.*, remove from any *G.N.W.T.* work site where the *Services* are being performed, any person employed by it for purposes of this Agreement who, in the opinion of the *G.N.W.T.* has violated the *Workplace Conflict Resolution 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 *G.N.W.T.*, 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 *G.N.W.T.* If a change in the approved schedule becomes necessary, the *Consultant* shall submit a report to the *G.N.W.T.* 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 facsimile or 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 facsimile or e-mail, 24 hours after the time of transmission, excluding from the calculation weekends and statutory holidays.

4.12 **G.N.W.T.'s RESPONSIBILITIES**

The *G.N.W.T.*'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 *G.N.W.T.*:

4.13.1 Proof of compliance with the N.W.T. Engineering Geological and Geophysical Professions Act. All plans, reports or similar documents prepared by an Engineer, Geologist or Geophysicist shall bear the N.W.T. stamp or seal.

4.13.2 Proof of compliance with the N.W.T. Architect Act. All plans, reports or similar documents prepared by an Architect shall bear the N.W.T. stamp or seal.

4.13.3 Proof of compliance with all applicable Workers' Compensation and Employers' Liability Acts in the N.W.T.

4.14 **SUSPENSION OF SERVICES**

4.14.1 The *G.N.W.T.* 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 *G.N.W.T.* a schedule of net expenses in respect of which they claim to be reimbursed. The *G.N.W.T.* will give due consideration to claim and will make such payment, which, in the opinion of the *G.N.W.T.*, 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 *G.N.W.T.* 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 *G.N.W.T.* 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 *G.N.W.T.* 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 *G.N.W.T.* 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 *G.N.W.T.* compensate the *Consultant* for reasonable expenses continuing after the date of termination.

4.17 **TERMINATION OF AGREEMENT – DEFAULT**

- 4.17.1 If:
- the *Consultant* fails to comply with any of the terms or conditions of this Agreement; or
 - a proceeding in bankruptcy, receivership or insolvency is instituted by or against the *Consultant* or its property; or
 - the *Consultant* makes an assignment for the benefit of creditors; or

the *Consultant* fails to comply with applicable laws, by-laws, or statutory regulations in force from time to time; or

the *Consultant* ceases or threatens to cease to carry on its business;

the *G.N.W.T.* 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 *G.N.W.T.* in its unfettered discretion. If a default continues for more than thirty (30) days, the *G.N.W.T.* 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 *G.N.W.T.* an amount equal to all loss and damage suffered by the *G.N.W.T.* 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 *G.N.W.T.* shall be entitled to deduct the same from any payments due and payable to the *Consultant*. Termination under this subclause 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 *G.N.W.T.*'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 subconsult any of the *Services* to be performed by it hereunder without the express written consent of the *G.N.W.T.* Any such attempted assignment, delegation or subconsulting shall entitle the *G.N.W.T.* to terminate if assignment, delegation or subconsulting is done without such consent.

4.18.2 Every assigned, delegated or subconsulting agreement entered into by the *Consultant* shall adopt all of the terms and conditions of this Agreement that are of general application; and

4.18.3 Every assignment, delegation or subconsulting shall not relieve the *Consultant* from its responsibility for the performance of any of its obligations hereunder or to impose liability upon the *G.N.W.T.*

4.19 **LOCAL/NORTHERN LABOUR**

Insofar as is practicable the *Consultant* shall employ and use only Local/Northern Labour, as defined in the Business Incentive Policy, in the execution of this Agreement.

4.20 **CHANGES IN SERVICES**

4.20.1 The *Consultant* shall, if requested in writing by the *G.N.W.T.*, 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 *G.N.W.T.* of any known and anticipated effects of changes on the *Construction Cost*, *Consultant* fees, Project Schedule and other matters concerning the Project.

4.21 **EFFECT OF APPROVALS**

No acceptance or approval by the *G.N.W.T.* 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 *G.N.W.T.* or any person acting on behalf of the *G.N.W.T.*

4.22.2 It should be noted that all information, including documents submitted to the *G.N.W.T.* are in the custody or under the control of the *G.N.W.T.* 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 *G.N.W.T.* may be required to release, in whole or in part, this Agreement and any other information or documents in the *G.N.W.T.*'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 *G.N.W.T.* requesting a decision. Such notice shall be delivered to the *G.N.W.T.* 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 G.N.W.T. 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 Public Works and Services 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 indemnify and hold harmless the G.N.W.T., its 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 to errors, omissions or negligent acts of the *Consultant* under this Agreement.

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 G.N.W.T. 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 subclause 4.26.2 is to the extent of the payment a discharge of the G.N.W.T.'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 G.N.W.T. 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 **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, death and damage to property including loss of use thereof.
- 4.27.2 **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.)
- 4.27.3 **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.
- 4.27.4 **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.
- 4.27.5 **Professional Liability Insurance**, if applicable, with limits of not less than five hundred thousand dollars (\$500,000) per claim and one million dollars (\$1,000,000) 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 *G.N.W.T.* prior to any cancellations of any such policies.
- 4.28.4 The policies shall name the *G.N.W.T.* and all *subconsultants* as additional insureds only with respect to the terms of this Agreement (except on Workers' Compensation insurance and Professional Liability insurance) 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 *G.N.W.T.*, prior to commencing with the *Service*, certificate(s) of insurance evidencing the insurance required by this Agreement in a form satisfactory to the *G.N.W.T.* and with insurance companies satisfactory to the *G.N.W.T.*

ARTICLE 5
EXECUTION

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

SIGNED, SEALED AND DELIVERED

in the presence of:

CONSULTANT:

Consultant's Full Business Name and Address:

_____ }
_____ }
_____ } Corporate Seal _____

Signature

Name and Title

Date

Signature

Witness

Name and Title

Name and Title

GOVERNMENT OF THE NORTHWEST TERRITORIES (G.N.W.T.)

Address:

_____ }
_____ }
_____ }

Signature

Date

Name

Witness Signature

Title

Name

SCHEDULE "A"

SCOPE OF SERVICES

A DESCRIPTION OF SERVICES

All *Services* hereinafter described shall be performed by the *Consultant* in accordance with this Agreement. Without limiting the generality of the foregoing, the *Consultant* shall, at its own risk and expense provide:

END OF SCHEDULE "A"

SCHEDULE "B"

FINANCIAL

B1 AGREEMENT AMOUNT

The maximum amount payable by the *G.N.W.T.* under this Agreement shall not exceed a total of \$_____ unless specifically authorized by a written Contract Change Order approved by the *G.N.W.T.* 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 *G.N.W.T.* 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 *G.N.W.T.* only when the *Services* have been performed to the satisfaction of the *G.N.W.T.* 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 *G.N.W.T.*'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 46 of the *G.N.W.T.* Financial Administration Act, 1988, is deemed a provision of this Agreement.

"It is a condition of every contract made by or on behalf of the Government requiring an expenditure that an expenditure pursuant to the contract will be incurred only if there is a sufficient uncommitted balance in the appropriated item for the fiscal year in which the expenditure is required under the contract."

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:

SCHEDULE "B"
FINANCIAL

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 *G.N.W.T.* 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 ACOUNT OF ADDITIONAL SERVICES**

In addition to the *Consultant's* fees for basic services the *G.N.W.T.* will pay the *Consultant* for additional services, as specified in Schedule "E"; *Consultant's* Additional Services, as authorized by the *G.N.W.T.*, as follows:

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 Reimbursable expenses shall be computed as a multiple of 1.05 times the amounts expended by the *Consultant*. The *Consultant* shall provide the *G.N.W.T.* 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 and accommodation costs approved by the *G.N.W.T.* shall be paid in accordance with the rates established under the *G.N.W.T.*'s Collective Agreement with the Union of Northern Workers.

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 *G.N.W.T.* 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.

SCHEDULE "B"
FINANCIAL

- F. All other reimbursable expense or disbursements must be approved by the *G.N.W.T.* prior to being incurred.

B6 **TIME OF PAYMENT**

- B6.1 The *Consultant* shall, in all cases, deliver on monthly or mutually agreed upon basis to the *G.N.W.T.*, in respect of that payment period, a written progress claim that sufficiently describes any part of the *Services* that has been completed during that payment period for payment purposes.
- B6.2 The *G.N.W.T.* 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 *G.N.W.T.* will give to the *Consultant* that indicates the value of the part of the *Services* described in the progress claim that, in the *G.N.W.T.*'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 *G.N.W.T.* payment policy as described in the *G.N.W.T.*'s Financial Administration Manual, Directive 1804.
- B6.4 Any delay by the *G.N.W.T.* in making any payment when it is due pursuant to these Terms of Payment shall not be a breach of this Agreement by the *G.N.W.T.*
- B6.5 When the *G.N.W.T.* delays in making a payment, the *Consultant* shall be entitled to receive interest on the amount that is overdue, in accordance with the *G.N.W.T.*'s Financial Administration Manual, Directive 1805.

B7 **GOODS AND SERVICES TAX**

The *G.N.W.T.* certifies that the property and *Services* purchased by the *G.N.W.T.* 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 *G.N.W.T.* The *G.N.W.T.* will not compensate the *Consultant* for any GST liability incurred in the provision of property and *Services* to the *G.N.W.T.*

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 *G.N.W.T.* may set-off any amount payable to the *G.N.W.T.* by the *Consultant* under this Agreement or under any contract against any amount payable to the *Consultant* under this Agreement.

END OF SCHEDULE "B"

SCHEDULE "C"

G.N.W.T.'S RESPONSIBILITIES

- C1.1 The *G.N.W.T.* shall provide the *Consultant* with the *Project Requirements* including the construction budget.
- C1.2 The *G.N.W.T.* 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.
- C1.3 If tenders or proposals are to be called, the *G.N.W.T.* shall arrange for such and issue the documents, receive bids and award the *Construction Contract(s)*.
- C1.4 The following duties and responsibilities of the *G.N.W.T.* to the *Consultant* are added to this Agreement as noted herein.

END OF SCHEDULE "C"

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*.

D1.1 **SCHEMATIC DESIGN PHASE**

D1.1.1 The *Consultant* shall review the *Project Requirements* furnished by the *G.N.W.T.* The *Consultant* shall advise the *G.N.W.T.* 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 *G.N.W.T.* as noted in 4.10.2.

D1.1.3 Based on the mutually agreed upon program and budget, the *Consultant* shall review with the *G.N.W.T.*, alternative approaches to design and construction of the project.

D1.1.4 The *Consultant* shall prepare, for approval by the *G.N.W.T.*, 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 *G.N.W.T.* Written approval of the schematic design and estimate must be obtained from the *G.N.W.T.* 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 *G.N.W.T.*, 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.

SCHEDULE "D"
CONSULTANT'S BASIC SERVICES

D1.2.2 The *Consultant* shall assist the *G.N.W.T.* 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 *G.N.W.T.* Written approval of the design and estimate must be obtained from the *G.N.W.T.* 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 *G.N.W.T.*, in review with the *G.N.W.T.*, when the plans and specifications are 50%, 75% and 100% complete. If requested by the *G.N.W.T.*, written approvals shall be obtained from the *G.N.W.T.* 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 *G.N.W.T.* a complete set of drawings in Auto CADD.

D1.4 BIDDING OR NEGOTIATION PHASE

D1.4.1 The *Consultant* shall assist the *G.N.W.T.* 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.

SCHEDULE "D"
CONSULTANT'S BASIC SERVICES

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 *G.N.W.T.* informed on the progress and quality of the *Work*, and shall endeavor to guard the *G.N.W.T.* 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 *G.N.W.T.* 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.

SCHEDULE "D"
CONSULTANT'S BASIC SERVICES

- 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 *G.N.W.T.* and shall render written decisions within a reasonable time, on all claims, disputes, and other matters in question between the *G.N.W.T.* 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 *G.N.W.T.*
- 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 *G.N.W.T.* 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 *G.N.W.T.* 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 *G.N.W.T.'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 *G.N.W.T.* will be required and purchased equipment will become the property of the *G.N.W.T.* 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 *G.N.W.T.* with copies of the minutes of each meeting.
- D1.5.14 In the absence of other directions from the *G.N.W.T.*, the *Consultant* shall submit monthly reports to the *G.N.W.T.* on the progress of the *Work*.

SCHEDULE "D"
CONSULTANT'S BASIC SERVICES

D1.5.15 The *Consultant* shall prepare deficiency lists and advise the *G.N.W.T.* 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 *G.N.W.T.*

D1.5.16 The *Consultant* shall take steps towards ensuring that all operating manuals, warranties, guarantees and instructions are provided to the *G.N.W.T.* 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 *G.N.W.T.* prior to the expiry of that period. The *Consultant* shall issue on behalf of the *G.N.W.T.* 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 *G.N.W.T.* If in the opinion of the *G.N.W.T.* the excess is due to design, cost factors or matters under the control or reasonably foreseeable by the *Consultant*, the *G.N.W.T.* may require the *Consultant* at their expense and at no additional cost to the *G.N.W.T.*, 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 *G.N.W.T.* shall, if required by the *G.N.W.T.*, 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 *G.N.W.T.*, 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 *G.N.W.T.* The cost to adjust such estimate shall be considered an additional service.

END OF SCHEDULE "D"

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 G.N.W.T. prior to any work being done. They shall be paid for by the *G.N.W.T.* as provided in this Agreement, in addition to the compensation for *Basic Services*.

- E1.1 If the *G.N.W.T.* 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 *G.N.W.T.* The duties, responsibilities and limitations of authority of such project representatives shall be as mutually agreed between the *G.N.W.T.* and the *Consultant*.
- E1.2 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.
- E1.3 Providing services made necessary by the default of the *Contractor* or by major defects or deficiencies in the Work of the *Contractor*.
- E1.4 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*.
- E1.5 Preparing operation and maintenance manuals, and/or training personnel for operation and maintenance.
- E1.6 Providing services after expiry of the warranty period.
- E1.7 Providing translation to a language other than the English language.
- E1.8 When requested by the *G.N.W.T.*, providing a model for the use of the *G.N.W.T.*
- E1.9 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 *G.N.W.T.*
- E1.10 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*.

SCHEDULE "E"
CONSULTANT'S ADDITIONAL SERVICES

- E1.11 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.
- E1.12 Providing calculations, which establish the optimum insulation values, life-cycle costs and pay-back periods for energy related systems and components.
- E1.3 Providing services to the *G.N.W.T.* in connection with any mediation, arbitration or legal proceeding.
- E1.14 Providing pre-design services such as surveys and soil investigation analysis.
- E1.15 Providing any other services not otherwise included in this Agreement as herein noted:

END OF SCHEDULE "E"