

## 5.2 General Terms and Conditions

### 5.2.1 Definitions

- 5.2.1.1 “Work” means the whole of the goods, services, materials required to be done, furnished and/or performed by the Contractor in order to carry out the Contract.
- 5.2.1.2 “Contract” means a notice in writing by the County of Grande Prairie to a Bidder of the acceptance of its Proposal, and the subsequent full execution by both parties of a written agreement, which shall constitute a Contract for the Work, and no Bidder shall acquire any legal or equitable rights or privileges whatever relative to the Work until the occurrence of both such events.
- 5.2.1.3 “Contractor” means an individual, corporation, or partnership contracted with for the purposes of performing the Work.
- 5.2.1.4 “County” means the County of Grande Prairie No. 1.
- 5.2.1.5 “County Representative” means the sole authority on behalf of the County for the administration and management of this Contract. Any changes to the Contract must be authorized in writing by the County Representative. The Contractor is not to perform work in excess of or outside the scope of the Contract based on written requests from any government personnel other than the County Representative.
- 5.2.1.6 “Project Authority” means the authorized officer or employee of the County who is responsible for all matters concerning the technical content of the work against the Contract.

### 5.2.2 General Clauses

- 5.2.2.1 **Interpretation:** Documents forming the Contract are complementary; what is required by any one document will be as binding as if required by all.
- 5.2.2.2 **Time of the Essence:** Unless otherwise provided, time shall be of the essence.
- 5.2.2.3 **Conduct:** The Contractor represents and warrants that it is competent to perform the Work and that it has the necessary qualifications, including knowledge, skill and experience to perform the Work, together with the ability to use those qualifications effectively for that purpose.
- The Contractor shall provide a quality service at least equal to that which contractors generally would expect of a competent contractor in a like situation.
  - The Contractor shall supply everything necessary for the performance of the Work.
  - The Contractor shall: (a) carry out the Work in a diligent and efficient manner; (b) ensure the Work: (i) is of proper quality, material and workmanship; (ii) is in full conformity with the specifications; and (iii) meets all other requirements of the Contract.
- 5.2.2.4 **Subcontracting:** The Contractor shall obtain the consent of the County in writing prior to subcontracting or permitting the subcontracting of any portion of the Work at any tier.

- In any subcontract, the Contractor shall, unless the County otherwise consents in writing, ensure that the subcontractor is bound by terms and conditions of the Contract.
- 5.2.2.5 **Assignment:** The Contract, or the right to receive payment hereunder, shall not be assigned, in whole or in part, by the Contractor without the prior consent in writing of the County and any purported assignment made without that consent shall be void and of no effect.
- Assignment of the Contract shall not relieve the Contractor from any obligation under the Contract or impose any liability upon the County, unless otherwise agreed to in writing by the County.
  - This agreement shall be binding on the parties hereto and their respective successors and assigns.
- 5.2.2.6 **Replacement of Named Personnel:** When specific persons have been named in the Contract as the persons who must perform the Work, the Contractor shall provide the services of the persons so named unless the Contractor is unable to do so for reasons beyond its control.
- If, at any time, the Contractor is unable to provide the services of any specific person named in the Contract, it shall provide a replacement person who is of similar ability and attainment.
  - The Contractor shall, before replacing any specific person named in the Contract, provide notice in writing to the County. The replacement must be acceptable to the Project Authority.
- 5.2.2.7 **Conflict of Interest:** The Contractor is required to disclose to the County any potential conflict of interest prior to commencing the Work.
- If a conflict of interest does exist as referred to above, the County may, at its discretion, withhold the Work from the Contractor until the matter is resolved to the satisfaction of the County.
  - If, during the Contract, the Contractor is retained by another client giving rise to a potential conflict of interest, then the Contractor shall so inform the County and if a significant conflict of interest is deemed to exist by the County, then the Contractor shall:
    - Refuse the new assignment, OR;
    - Take such steps as are necessary to remove the conflict of interest.
- 5.2.2.8 **Previous Agreements:** This Agreement supersedes all previous agreements, arrangements or understandings between the parties whether written or oral in connection with or incidental to the Work.
- 5.2.2.9 **Force Majeure:** If the Contractor is delayed in completion of the Contract by reasons of labour disputes, strikes, lock-outs, fire, or by any cause of any kind whatsoever beyond the Contractor's control, then the time of delivery shall be extended for a period of time equal to the time lost due to such delays, at no cost or penalty to the County.

- No delivery time extension shall be granted for delays unless written notice of the delay is given to the County within three (3) business days of its commencement. In the case of a continuing cause of delay, only one notice shall be necessary.

5.2.2.10 **Excusable Delay:** Any delay by a Party to the Contract in the performance of its obligations hereunder that is caused by an event beyond its control and which could not have been avoided by means reasonably available to it shall be an Excusable Delay. In the event of an Excusable Delay, the Party delayed shall, within three (3) working days, give notice to the other Party of the events that caused the delay indicating the reasons for the delay and showing what portion of its obligations hereunder are affected, and how. Within five (5) further working days the Party delayed will give the other Party a further written notice detailing its plans to prevent further delay and recovery plan for lost time. Notwithstanding the times set out herein for provision of notices the Party delayed shall act promptly when any event causing an Excusable Delay occurs and use all reasonable means to prevent further delay and recover lost time.

5.2.2.11 **Accounts and Audit:** The Contractor shall keep proper accounts and records of transactions and activities associated with the Contract, in addition to all expenditures or commitments made by the Contractor in connection therewith and shall keep all documents, invoices, receipts and vouchers relating thereto. All such accounts and records as well as any invoices, receipts and vouchers shall at all times during the contract period be open to audit, inspection and examination by the County.

- Copies of said records shall be provided to the County when requested by the employee responsible for the Contract so that they can be maintained in accordance with the County's Records Management Policy and Records Retention and Disposition requirements.
- When activities requiring the collection or handling of personal information are contracted out, the contract shall set out the privacy protection and security obligations assumed by the Contractor.
- The Contractor represents, warrants and covenants to the County that it is not aware of any actions, suits or proceedings pending or to its knowledge threatened against or adversely affecting it, which might materially affect its financial condition or its ability to perform and meet all duties, liabilities and obligations as may be required of it under this Contract.

5.2.2.12 **Term of Council:** Where a contract may extend beyond the term of Council, the contract shall contain provisions to minimize the financial liability of the County should the subsequent Council not approve sufficient funds to complete the contract and the contract must be terminated by the County.

5.2.2.13 **Survival:** All Contractor representations and warranties set out in the Contract as well as the provisions concerning indemnity against third party claims and accounts and audit and confidentiality shall survive the expiry of the Contract or the termination of the Contract, as shall any other provision of the Contract which, by the nature of the rights or obligations set out therein, might reasonably be expected to be intended to so survive.

5.2.2.14 **Severability:** If any provision of this Contract becomes illegal or unenforceable in whole or in part, the remaining provisions shall nevertheless be valid, binding and subsisting.

- 5.2.2.15 **Entire Agreement:** The Contract shall constitute the entire and sole agreement between the parties with respect to the subject matter of the Contract and shall supersede all previous negotiations, communications and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in the Contract. There shall be no terms, covenants, representations, statements or conditions binding on the parties other than those contained in the Contract.
- 5.2.2.16 **Status of the Contractor:** The Contractor is engaged as an independent contractor for the sole purpose of performing the Work. Neither the Contractor nor any of its personnel is engaged as an employee, servant or agent of the County.
- 5.2.2.17 **Amendments:** No amendment to the Contract shall be binding unless it is incorporated into the Contract by written amendment executed by the authorized representatives of the County and the Contractor.
- 5.2.2.18 **Waiver:** No party will be deemed to have waived the exercise of any right that it holds under this Contract unless such waiver is made in writing. No waiver made with respect to any instance involving the exercise of any such right will be deemed to be a waiver with respect to any other instance involving the exercise of the right or with respect to any other such right.
- 5.2.2.19 **Staff and Methods:** The Contractor shall perform the Work to a professional standard in accordance with current “best practices” and shall employ only skilled and competent staff who shall be under the supervision of a senior member of the Contractor’s staff.
- The Contractor shall employ sufficient personnel for the work specified in the Contract.
  - The Contractor shall name a project manager responsible for providing scheduled status reports to the County Project Authority or a designate.
- 5.2.2.20 **Publication:** The Contractor shall obtain the consent in writing of the County before publishing or issuing any information regarding the Work.
- 5.2.2.21 **Drawings and Documents:** Drawings and documents or copies thereof required to perform the Work shall be exchanged between the parties on a reciprocal basis, as required. Drawings and documents, including all drawings and documents delivered in an electronic, digital or other than paper format, prepared by the Contractor for the County, shall be the property of the County free of all claims by the Contractor of any nature and kind.
- Drawings and documents delivered in an electronic or digital format shall be submitted in a format acceptable to the County. County “Digital Plan Submission Standards and Procedures” are available on the County’s website: [www.countygp.ab.ca](http://www.countygp.ab.ca).
- 5.2.2.22 **Deviations:** The Contractor will not make any deviations from the Contract documents without the prior written permission of the County. Unauthorized deviations shall be corrected at the Contractor's expense.

### 5.2.3 **Acceptance**

- 5.2.3.1 **Inspection:** The Work and any and all parts thereof shall be subject to inspection and acceptance by the County.

5.2.3.2 **Approval:** Before advancing any payment to the Contractor, the County reserves the right to determine, in its sole and absolute discretion, whether the Work was performed to the satisfaction of the County.

- The method of approving the Work done will be in writing through electronic mail, courier, fax or traditional mail.
- In the event that the Work was not performed to the satisfaction of the County, the County may take such action as it deems necessary to correct the Contractor's default, including, without limitation, the following:
  - Direct Contractor to re-perform the Work in whole or in part for the Work that was not completed to the County's satisfaction;
  - Withhold payment due or accrued due to the Contractor for the Work performed pursuant to the Contract;
  - Set off any expenses incurred by the County in remedying any or all default or failures of the Contractor in having performed the Work satisfactorily against payment due or accrued due to the Contractor;
  - Terminate the contract for default and/or seek indemnification from the Contractor for losses suffered by the County as a result of such default.

5.2.3.3 **Final Acceptance:** Final acceptance shall occur when the County is satisfied that all work defects have been rectified.

#### 5.2.4 Termination of Agreement

5.2.4.1 **Suspension:** The County may at any time, by written notice, order the Contractor to suspend or stop all or part of the Work under the Contract for a period of up to 180 days. The Contractor shall immediately comply with any such order in the manner that minimizes the cost of so doing. At any time prior to the expiration of the 180 days, the County shall either rescind the order or terminate the Contract, in whole or in part, under the provisions for termination under the Contract.

5.2.4.2 **Termination for Contractor Default:** Notwithstanding anything to the contrary in this document, should the Contractor fail to comply with a direction or decision of the County properly given under the terms of the Contract, or where the Contractor is deemed by the County to be in default in any other manner as set forth by the following reasons constituting default, the County may, after giving ten (10) days prior written notice to the Contractor, give notice to immediately terminate this Contract, in whole or in part, and without charge with respect to all or any part of the Contract. Reasons constituting default include:

- The Contractor commits a material breach of its duties and obligations under this Contract, unless, in the case of such breach, the Contractor, within ten (10) calendar days after receipt of written notice of such breach from the County, in a manner satisfactory to the County in its sole, absolute and non-reviewable discretion, (a) cures such breach and (b) indemnifies the County for any resulting damage or loss;
- The Contractor commits numerous breaches of its duties under the Contract that collectively constitutes a material breach;

- A change in control of the Contractor where such control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of the Contractor are acquired, by any entity, or the Contractor is merged with or into another entity to form a new entity, unless the Contractor demonstrates to the satisfaction of the County that such event will not adversely affect its ability to perform the services under the Contract;
- The Contractor commits fraud or gross misconduct; or
- Where the Contractor becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or takes the benefit of any statute relating to bankrupt or insolvent debtors, or where a receiver is appointed under a debt instrument or a receiving order is made against the Contractor, or an order is made or a resolution passed for the winding up of the Contractor.
- In the event of a termination notice being given under the provisions of this section:
  - the Contractor shall be liable to the County for any milestone payments paid by the County for unfinished work, including all losses and damages which may be suffered by the County by reason of the default or occurrence upon which the notice was based, and also including any increase in the cost incurred by the County in procuring the Work from another source.
  - the County may do such things and incur such costs as it deems necessary to correct the Contractor's default, including without limitation the withholding of payment due or accrued due to the Contractor for services rendered pursuant to this Contract, which moneys may be set off by the County against any expenses that it may incur in remedying a default or failures as described above.
  - the Contractor shall agree to repay immediately to the County the portion of any advance payment that is unliquidated at the date of the termination. In the event of a termination notice being given under the provisions of this section, and subject to the resolution of any claim or claims which County may have against the Contractor as set forth in the previous three paragraphs, payment will be made within thirty (30) days of the date of the invoice from the County to the Contractor for the value of all finished work delivered and accepted by the County, such value to be determined in accordance with the rate(s) specified in the Contract.
- No specific remedy expressed in the Contract is to be interpreted as limiting the rights and remedies which the County may be entitled to, to mitigate damages, under any contract or otherwise in law.

5.2.4.3 **Termination for Convenience:** Notwithstanding anything contained in the Contract, the County may, at any time prior to the completion of the Work, by giving notice to the Contractor, terminate the Contract as regards all or any part of the Work not completed. Upon a termination notice being given, the Contractor shall cease work in accordance with and to the extent specified in the notice, but shall proceed to complete such part or parts of the Work as are not affected by the termination notice. The County may, at any time or from time to time, give one or more additional termination notices with respect to any or all parts of the Work not terminated by any previous termination notice.

- In the event of a termination notice being given pursuant to this section, the Contractor shall be entitled to be paid, to the extent that costs have been reasonably and properly

incurred for purposes of performing the Contract and to the extent that the Contractor has not already been so paid or reimbursed by the County:

- on the basis of the Contract Price, for all completed Work that is inspected and accepted in accordance with the Contract, whether completed before, or after and in compliance with the instructions contained in the termination notice;
- the cost to the Contractor for all Work terminated by the termination notice before completion, the cost to the Contractor being determined in accordance the Contract Price and percentage completed.
- The Contractor shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of, or directly or indirectly arising out of, any action taken or termination notice given by the County under this section, except to the extent that this section expressly provides.

#### 5.2.5 Confidentiality

5.2.5.1 **Confidentiality:** The Contractor must keep confidential all information provided to the Contractor by or on behalf of the County in connection with the Work, including any information that is confidential or proprietary to third parties, and all information conceived, developed or produced by the Contractor as part of the Work when copyright or any other intellectual property rights in such information belongs to the County under the Contract. The Contractor must not disclose any such information without the written permission of the County. The Contractor may disclose to a subcontractor any information necessary to perform the subcontract as long as the subcontractor agrees to keep the information confidential and that it will be used only to perform the subcontract.

5.2.5.2 **Freedom of Information and Protection of Privacy Act:** The County is subject to the *Freedom of Information and Protection of Privacy (FOIP) Act*, RSA 2000, F-25, as amended with respect to, and protection of, information under its custody and control. Accordingly, all documents provided to the County by the Contractor pursuant to this Contract may be available to the public unless the party submitting the information requests that it be treated as confidential as per section 16 and 17 of the FOIP Act.

- All information is subject to the FOIP Act and may be subject to release under the Act, notwithstanding the Contractor's request to keep the information confidential.
- "Confidential Information" means all information within the custody or control of the County that is relevant to the Work that is of a proprietary or confidential nature regardless of whether it is identified as proprietary or confidential or not including, without limitation, any personal information regarding the County's employees or residents. Confidential Information shall not include information that:
  - Is or becomes generally available to the public without fault or breach on the part of the Contractor, including, without limitation, breach of any duty of confidentiality owed by the Contractor to the County or to any third party, but only after that information becomes generally available to the public;
  - The Contractor can demonstrate was rightfully obtained by the Contractor, without any obligation of confidence of any kind, from a third party who had the right to transfer or disclose it to the Contractor free of any obligation of confidence;

- The Contractor can demonstrate was rightfully known to or in the possession of the Contractor at the time of disclosure free of any obligation of confidence; or
- Is independently developed by the Contractor without the use of any Confidential Information.
- All documents held by the Contractor that are either owned by the County, or developed by the Contractor for the County, shall be stored at a location physically inside Canada.
- All records transferred to the Contractor by the County or collected, created, maintained, or stored by the Contractor in the performance of the contractor's duties remain under the control of the County and are subject to the FOIP Act.
- The records under the control of the County must be retained and disposed in accordance with the records retention and destruction policies of the County and as such, must be not destroyed without prior consent of the County. All records in relation to this contract must be returned to the County for proper disposal.
- If you would like more information regarding Contractors' responsibilities in relation to FOIP, please contact the FOIP Coordinator for the County of Grande Prairie at 780-532-9722, or by e-mail at [foip@countygp.ab.ca](mailto:foip@countygp.ab.ca).

#### 5.2.6 Compliance with Laws and Policies

5.2.6.1 **Applicable Laws:** This Contract shall be governed by and construed in accordance with the laws of the Province of Alberta.

- The Contractor shall comply with all laws applicable to the performance of the Work.

5.2.6.2 **Occupational Health And Safety:** The Contractor shall comply with the provisions of the *Occupational Health and Safety Act*, Statutes of Alberta, 1980, Chapter 0-2, and amendments thereto and regulations hereinafter, and shall at all times ensure that all equipment and manpower at the work site shall comply with the requirements of the said Act and regulations hereinafter. The Contractor shall be the general representative and agent of the County for the purposes of insuring compliance with safety regulations.

- The Contractor shall at all times during the continuation of this contract with the County observe all the provisions of the *Labour Relations Act*, *Workers' Compensation Act*, *Employment Standards Act* and the *Occupational Health and Safety Act* as well as rules and regulations pursuant thereto.
- In the event the Contractor fails to comply with the said Acts and any regulations hereinafter, and the County is required to do anything or take any step or pay any sums to rectify such noncompliance, the County may subtract the costs of such rectification from any monies owing to the Contractor.

5.2.6.3 **Patents:** The Contractor shall make a prompt written disclosure of any patentable invention, improvement or discovery conceived or first actually reduced to practice in the performance of the Work and shall submit separately, or as part of the final report on the Work, a complete list of all such inventions, improvements and discoveries, including those previously disclosed.



- Subject to the provisions of this Section, any patentable rights or other rights in any invention, improvement or discovery conceived or actually reduced to practice in the performance of the Work, shall be the property of the Contractor.
- The Contractor, upon request in writing, shall grant to the County, for itself, pursuant to any statute of the Province of Alberta, an irrevocable, non-exclusive, royalty-free license to practice any invention, improvement or discovery conceived or actually reduced to practice, in the performance of the Work, in the manufacture, use and disposition, according to law, of any article or material, and in the use of any method, but such licence shall not include the right to sub-license.

5.2.6.4 **Laws, Permits, Notices, and Fees:** The Contractor shall comply with all County of Grande Prairie by-laws, ordinances, legal requirements, rules, regulations, codes and orders during the performance of the Work.

- The Contractor shall give required notices and comply with laws, ordinances, rules, regulations, codes and orders of authorities other than the County which may have proper jurisdiction in relation to the Work which are or come into force during the performance of Work.
- It is the Contractor's responsibility to ensure that all licenses and permits that are required by any and all regulatory bodies are applied for, approved and maintained in compliance with the appropriate legislation.
- The County will be responsible for verifying contract documents are in compliance with applicable laws, ordinances, rules, regulations and codes relating to the Work. If the contract documents are at variance with, or changes which require modification to the contract documents are made to laws, by-laws, ordinances, rules, regulations and codes by authorities having proper jurisdiction subsequent to the date of receipt of the bid, any resulting change in cost to the Contractor to perform the Work will constitute a corresponding change in the contract price. The Contractor shall immediately notify the County in writing requesting direction on variance or change.
- If the Contractor fails to notify the County and performs Work knowing it to be contrary to laws, by-laws, ordinances, rules, regulations, codes and orders of authorities having proper jurisdiction, the Contractor shall be responsible for costs, changes, modifications and correction of damages attributable to its failure to comply with those provisions.

5.2.6.5 **Workers' Compensation Board:** The Contractor shall provide evidence to the County of Grande Prairie, if requested, that an account has been opened with the Workers' Compensation Board and that all fees are paid in compliance with the Board; and that coverage is maintained for the duration of this agreement for any persons working for or employed by the Contractor on this agreement. No person under the age of sixteen (16) shall be employed under the terms of the agreement.