

# Form of Agreement for Prime Consultant Services

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This agreement # **20XX-XXX-X-XXXX** made as of the  day of , 20.

BETWEEN:

The Manitoba Housing and Renewal Corporation  
("Manitoba Housing"),

- and -

**(insert Consultant Name)**  
(the "Prime Consultant")

Whereas:

- A. On **insert date of RFP**, Manitoba Housing issued a Request for Proposals for the services of a Prime Consultant to undertake the design and construction contract administration services (the "**RFP**") for the **insert project number and project name**, located at **insert address of project**, (the "**Project**").
- B. The Prime Consultant submitted a Proposal in response to the RFP on **insert date of Proposal**, which Proposal has been accepted by Manitoba Housing, (the "**Proposal**").
- C. This agreement sets out the terms and conditions under which the Prime Consultant will undertake the design and provide contract administration services for the Project for Manitoba Housing.

Manitoba Housing and Prime Consultant agree as follows:

## **1 Definitions**

1.1 The following definitions shall apply to this agreement:

- 1.1.1 Additional Services means those professional services to be provided by the Prime Consultant, the Prime Consultant's employees or Sub-consultants on an hourly basis or on a fixed fee basis as Manitoba Housing and the Prime Consultant may agree upon in writing in accordance with subsection 3.1. Additional Services may include professional services that are not identified in Schedule A – Description of Services as being included in the Basic Services as of the date of this agreement.
- 1.1.2 Basic Services means those professional services which are identified as basic or optional services in Schedule A to be provided by the Prime Consultant, the Prime Consultant's employees or Sub-consultants.

- 1.1.3 Class A Construction Cost Estimate is based upon on the “Class B Construction Cost Estimate” which has been updated concurrently with the development of the construction documents and is submitted as a final pre-bid estimate. It requires project systems be designed and specified to completion, and based on a realistic construction schedule, accurate labour, and material costs. This is the final estimate before the bid/proposal call. This estimate shall be presented in elemental format and include all actual associated costs, including cash allowances, design, estimating and inflation allowances and anticipated amendment accounts as applicable. The expected degree of accuracy is within 5%.
- 1.1.4 Class B Construction Cost Estimate is based on data (on cost, time and construction) of a level of precision as is typically available when the design of the major systems and sub-systems of the project/ facility (including outline specifications and preliminary drawings and models) as well as when the results of all site or installation investigations are completed. This estimate shall be presented in elemental format and include allowance for all costs resulting from the anticipated schedule, all actual associated costs, including cash allowances, design, estimating and inflation allowances market conditions and anticipated amendment amounts as applicable. The expected degree of accuracy is within 10%.
- 1.1.5 Class C Construction Cost Estimate is based on updated user requirements; general description of the end built works, preliminary site information, and existing conditions, and takes into consideration, construction experience and market conditions as well as basic implementation logistics. The expected degree of accuracy is within 15%.
- 1.1.6 Class D Construction Cost Estimate provides an indication of the cost of the work, based on the user’s functional requirements to the degree known at the time. It shall be as a minimum be based on historical cost data for similar work, suitably adjusted for such factors as the effect of inflation, location, risk, quality, size, and time. All related factors affecting cost are considered to the extent possible. This estimate provides an indication of the order of magnitude of the work cost and estimated completion date. The expected accuracy is within 25%.
- 1.1.7 Construction Budget means Manitoba Housing’s combined estimate of the Construction Cost for the Project including applicable taxes, cash allowances, and construction contingencies, being \$ [REDACTED].
- 1.1.8 Construction Contract means the contract to be executed between Manitoba Housing and the Contractor, including all the other documents identified in the said contract as the Contract.
- 1.1.9 Construction Cost is the basis on which the Prime Consultant’s fee for Basic Services is calculated for the Project, and is determined in accordance with subsection 4.2.

- 1.1.10 Construction Documents means the drawings, specifications and other documents appropriate to the size and complexity of the Project, to describe the size and character of the entire Project including architectural, structural, mechanical, and electrical systems, materials and such other elements setting forth in detail the requirements for the construction, enlargement or alteration of the building or buildings of the Project.
- 1.1.11 Construction Manager means the person, firm or corporation, if any, contracting with Manitoba Housing to provide construction management services.
- 1.1.12 Consultant means a Sub-consultant or a Manitoba Housing Consultant, and Consultants means, collectively, any two or more Sub-consultants or Manitoba Housing Consultants.
- 1.1.13 Consultant Coordination consists of:
- 1.1.13.1 managing the communications between Consultants and with Manitoba Housing, and
  - 1.1.13.2 providing directions as necessary to give effect to any design decisions taken, and
  - 1.1.13.3 reviewing the product of the Work to assist in identifying conflicts and to monitor compliance with directions.
- 1.1.14 Contract Price means the total amount payable by Manitoba Housing to the Contractor under the Construction Contract.
- 1.1.15 Contractor means the entity or entities contracting with Manitoba Housing to provide labour, materials and equipment in execution of the Work.
- 1.1.16 Field Review/General Review means review during visits to the Place of the Work (and where applicable, at locations where building components are fabricated for use at the Project site) at intervals appropriate to the stage of the construction the Prime Consultant in its professional discretion, considers necessary to become familiar with the progress and quality of the Work and to determine the Work is in general conformity with the Construction Contract, and so report, in writing, to Manitoba Housing, Contractor and chief building official.
- 1.1.17 Instruments of Service means the design, documents, specifications and reports prepared by or on behalf of the Prime Consultant or Consultants, including but not limited to plans, sketches, drawings, graphic representations and computer-generated designs and materials.
- 1.1.18 Manitoba Housing Consultant means a consultant, other than the Prime Consultant, engaged by Manitoba Housing to provide services related to the Project.

- 1.1.19 Place of the Work means the designated site or location of the Work identified in the Construction Contract.
- 1.1.20 Project as described in this agreement means the project described in paragraph A of the preamble to this agreement, of which the Work may be the whole or a part.
- 1.1.21 Project Budget means Manitoba Housing's estimated total expenditure for the entire Work. It includes, but is not limited to, the Construction Budget, professional fees, costs of land, rights of way and all other costs to Manitoba Housing for the Project.
- 1.1.22 Reimbursable Expenses include the following actual expenditures, supported upon request by receipts or invoices, incurred by the Prime Consultant, the Prime Consultant's employees, Sub-consultants and the Sub-consultant's employees in the course of providing the Basic Services and Additional Services:
- 1.1.22.1 automobile transportation in connection with the Project for travel authorized by Manitoba Housing in accordance with subsection 4.6;
  - 1.1.22.2 air fare, lodging and meals for travel outside of Winnipeg in connection with the Project authorized by Manitoba Housing;
  - 1.1.22.3 communication and shipping costs;
  - 1.1.22.4 reproduction costs of Instruments of Service, photographs, and other documents, including plotting of computer-generated drawings;
  - 1.1.22.5 renderings, models, and mock-ups and web-based Project management services, specifically requested by Manitoba Housing; and
  - 1.1.22.6 fees, levies, duties or taxes for permits, licences or approvals from authorities having jurisdiction.
- 1.1.23 Sub-consultant means a person or entity having a direct contract with the Prime Consultant to perform a part or parts of the services.
- 1.1.24 Substantial Performance of the Work is as defined in The Builders' Liens Act, C.C.S.M. c.B91.
- 1.1.25 Toxic or Hazardous Substances or Materials means any solid, liquid, gaseous, thermal or electromagnetic irritant or contaminant and includes, without limitation, pollutants, moulds, asbestos, asbestos products, polychlorinated biphenyl (PCB), fungus/fungi, mildew(s), mushroom(s), yeast(s), bio-contaminants, biohazards and nuclear, and hazardous and special wastes whether or not defined in any federal, provincial or municipal laws, statutes or regulations.
- 1.1.26 Work means the total construction and related services required by the Construction Contract.

## **2 Schedules**

- 2.1 The following Schedules which are attached hereto or incorporated by reference form part of this agreement:
- 2.1.1 Schedule A – Description of Services;
  - 2.1.2 Schedule B – Basic Services Fee Submission;
  - 2.1.3 Schedule C – Additional Services Hourly Rates;
  - 2.1.4 Schedule D – Prime Consultant’s Work Plan and Schedule; and
  - 2.1.5 Schedule E – Contract Amendment.
- 2.2 In the event of any conflicts or inconsistencies, between the terms and conditions of this document and those in the schedules, the terms and conditions of this document shall prevail over those in the schedules.

## **3 Prime Consultant Services**

- 3.1 The Prime Consultant shall provide the Basic Services specified to be provided by the Prime Consultant in Schedule A - Description of Services and such other Additional Services as may be agreed in writing in an approved Change Request Document by Manitoba Housing and the Prime Consultant prior to the commencement of the Additional Services pursuant to subsection 6.6.
- 3.2 The Prime Consultant shall maintain records of Reimbursable Expenses. These records shall be maintained to acceptable accounting standards and made available to Manitoba Housing for viewing at mutually convenient times. If Manitoba Housing requires copies of any such records, the Prime Consultant agrees to promptly provide them to Manitoba Housing.
- 3.3 The Prime Consultant agrees:
- 3.3.1 the Basic Services and Additional Services shall be provided by the Prime Consultant’s key personnel and the Sub-consultants and their key personnel identified in its Proposal, unless Manitoba Housing agrees otherwise in writing;
  - 3.3.2 all contracts with Sub-consultants shall be executed immediately following finalization of this Agreement;
  - 3.3.3 the person or persons designated under paragraph 3.3.1 shall devote the percentage of time, attention, abilities and expertise to the project as committed in its Proposal to properly perform the Prime Consultant’s obligations under this agreement;
  - 3.3.4 to perform all obligations and provide the Basic Services and Additional Services in a professional manner satisfactory to Manitoba Housing;

- 3.3.5 to produce all drawings and specifications on Manitoba Housing supplied specification and drawing templates using Manitoba Housing layer configurations and displaying Manitoba Housing sheet title blocks, and
  - 3.3.6 to comply with all reasonable directions and requests of Manitoba Housing.
  - 3.3.7 should a change in Sub-consultants be required, a formal written request will be provided to Manitoba Housing, including justification for the change and supporting documentation of names, resumes, roles, responsibilities and percent of time devoted to the project. Manitoba Housing reserves the right to approve or deny any Sub-consultant based on previous working experiences and performance concerns;
  - 3.3.8 to provide a detailed project work plan and schedule outlining the plan for proceeding with the various stages of the services. The work plan and schedule shall include information on specific activities, tasks and timeframes and allocated human resources for each activity and stage of the services and shall become part of this Agreement as Schedule D.
- 3.4 The Prime Consultant shall engage the Sub-consultants for the Project identified in its Proposal under terms and conditions of agreements that are compatible with this agreement. The Prime Consultant shall coordinate the services of such consultants with Manitoba Housing Consultants, if any are required, and all other consultants, as required.
- 3.5 The services of the Sub-consultants are not Additional Services. The fees payable to the Sub-consultants for their services are within the Basic Services fee payable to the Prime Consultant as set out in paragraph 4.3.1. Any errors or omissions by a Sub-consultant shall be deemed to be the errors or omissions of the Prime Consultant and the Prime Consultant shall be and will remain fully responsible for the due performance of any portion or portions of the services provided by the Sub-consultants.
- 3.6 Without limiting the generality of subsection 3.4, the Prime Consultant shall ensure all requirements and terms and conditions of this agreement shall be binding upon each of its Sub-consultants, to the extent applicable to the part of the services performed by the Sub-consultant. In the event of any conflict between terms of this agreement and terms of an agreement between the Prime and a Sub-consultant, the terms of this agreement shall govern.
- 3.7 If Manitoba Housing is dissatisfied with the performance of any personnel assigned by the Prime Consultant to the Project, including Sub-consultants and employees of either the Prime Consultant or Sub-consultants, Manitoba Housing shall have the right to request the individual be replaced with an individual acceptable to Manitoba Housing. Manitoba Housing shall further be entitled to receive notice and must approve any purported replacement by the Prime

Consultant of key personnel assigned to the Project. Manitoba Housing shall not withhold approval without due cause.

- 3.8 Should the Prime Consultant become aware of any Toxic or Hazardous Substances or Materials not previously identified to the Prime Consultant in reports commissioned by Manitoba Housing, the Prime Consultant shall immediately report the discovery to Manitoba Housing in writing with as much particularity as is practicable in the circumstances.
- 3.9 The Prime Consultant shall discharge the Prime Consultant's lawful obligations to its Sub-consultants and shall satisfy any claims against the Prime Consultant or Manitoba Housing or the Government of Manitoba by its Sub-consultants.

#### **4 Prime Consultant Fee, Invoices and Reimbursable Expenses**

- 4.1 The Prime Consultant's fee for the Basic Services shall be the fees as set out in Schedule B – Basic Services Fee Submission.
- 4.2 The Prime Consultant's fee for Additional Services shall be in accordance with Schedule C –Additional Services Hourly Rates.
- 4.3 For the purposes of subsection 4.1, where the Prime Consultant's fee for Basic Services is based on a percentage of the Construction Cost, Construction Cost shall be calculated as follows:
- 4.3.1 Where a Class A Construction Cost Estimate has been determined, Construction Cost is calculated using the Class A Construction Cost Estimate, and then adjusting that amount to conform with the provisions that follow.
- 4.3.2 Where Manitoba Housing has chosen not to have a Class A Construction Cost Estimate prepared, the Construction Cost shall be calculated using the amount of the tender bids approved by Manitoba Housing, and then adjusting that amount to conform with the provisions that follow.
- 4.3.3 Where the services are being provided at a time when no Class A Construction Cost Estimate has been determined and no tender pricing has been received, Construction Cost is calculated using the Construction Budget, or the latest estimate of probable Construction Cost prepared by the Prime Consultant as approved by Manitoba Housing, and then adjusting that amount to conform with the provisions that follow.
- 4.3.4 Only that portion of any cash allowances or contingency amounts which have been used shall be included.
- 4.3.5 Only the cost of change orders which increase the Contract Price and Manitoba Housing and the Prime Consultant agree are required for reasons the Prime Consultant could not have foreseen or prevented through due diligence at the time of design shall be included.

- 4.3.6 If the amount of the tender bids approved by Manitoba Housing exceeds the Class A Construction Cost Estimate by more than 10%, then that portion of the amount that is in excess of 10% over the Class A Construction Cost Estimate shall be added. If the amount of the tender bids approved by Manitoba Housing exceeds the Class A Construction Cost Estimate by 10% or less, then no amount shall be added. Where no Class A Construction Cost Estimate exists, this provision does not apply.
- 4.3.7 Construction Cost excludes the following:
- 4.3.7.1 the cost of any change in the Work required as a result of an avoidable error or omission by the Prime Consultant,
  - 4.3.7.2 the compensation of the Prime Consultant or Consultants,
  - 4.3.7.3 other professional fees which are the responsibility of Manitoba Housing including those paid to act as the Construction Manager for the Project,
  - 4.3.7.4 the land cost and land development charges, and
  - 4.3.7.5 the cost of any construction-related insurance purchased by Manitoba Housing.
- 4.3.8 In the event Manitoba Housing furnishes labour or material below market cost, or recycled materials are used, the Construction Cost for purposes of establishing the Prime Consultant's fees includes the cost of all materials and labour necessary to complete the Work as if all materials had been new and as if all labour had been paid for at market prices at the time of construction or, in the event the construction does not proceed, at existing market prices at the anticipated time of construction.
- 4.4 Where the Prime Consultant's fee for Basic Services is based on a percentage of the Construction cost, the percentage fee as set out in Schedule B shall be adjustable in accordance with section 2.0 of Schedule B.
- 4.5 Manitoba Housing shall pay the Prime Consultant for all Reimbursable Expenses up to a maximum amount of \$ \_\_\_\_\_.
- 4.6 The rate for calculating automobile travel costs shall be in accordance with the amounts per kilometer as set out in the General Manual of Administration (outside Winnipeg only) on a per vehicle basis, not per individual Prime Consultant or Prime Consultant employee or Sub-consultant or Sub-consultant's employee basis. For clarity, automobile travel costs within Winnipeg shall not be Reimbursable Expense.
- 4.7 Any expenses not falling within the definition of Reimbursable Expenses must be approved by Manitoba Housing prior to any expenditure by the Prime Consultant. Without limiting the foregoing, Manitoba Housing must approve meals and lodging incurred by the Prime Consultant, the Prime Consultant's employees and

Sub-consultants in the course of providing the Basic Services and Additional Services prior to any expenditure by the Prime Consultant.

- 4.8 Fees for Basic Services performed during stage 1 (Pre-Design) will be invoiced by the Prime Consultant upon the completion of stage 1. Fees for Basic Services performed during the remaining stages 2 to 7 (Schematic Design; Design Development; Construction Documents; Bidding/tender; Construction Administration; and Pre-occupancy, Occupancy and Post Construction), will be invoiced by the Prime Consultant monthly for the services performed by the Prime Consultant during the prior month as the Project progresses. The invoices must set out in detail how the Prime Consultant arrived at the amount included within each monthly invoice and the stage to which the services relate and must be accompanied by supporting documents such as vouchers, statements and receipts to support the Prime Consultant's invoice. In addition, invoices must specify who performed the services, including whether one of the Prime Consultant's principals or employees or Sub-consultants performed the services.
- 4.9 Manitoba Housing shall pay the Prime Consultant within sixty (60) days after submittal to Manitoba Housing of invoices on account of the Prime Consultant's fee and Reimbursable Expenses.
- 4.10 The services under this agreement are being purchased by Manitoba Housing with Crown funds and are therefore not subject to the Goods and Services Tax. The Prime Consultant represents and warrants the Goods and Services Tax has not been included or quoted in any fees, prices or estimates and shall not be included in any invoice provided, or request for payment, under this agreement.
- 4.11 No deductions shall be made by Manitoba Housing from amounts payable to the Prime Consultant on account of penalty, liquidated damages, or other sums withheld from payments to Contractors, or on account of the cost of changes in the Work other than those for which the Prime Consultant is proven to be legally responsible or has agreed to pay.
- 4.12 In the event new or additional taxes in respect of the services included in this agreement are required by federal, provincial, regional or municipal legislation after the agreement is executed, the amount under this agreement shall be adjusted to include such taxes.

## **5 Manitoba Housing's Responsibilities**

5.1 If available, Manitoba Housing shall provide:

- Information regarding the requirements for the development of a project program, setting forth Manitoba Housing's project objectives, constraints, schedules and criteria including:
  - Spatial and functional requirements and relationships;

- Flexibility and expandability;
- Special equipment and systems; and
- Site requirements and constraints.
- A construction budget for the project.
- Information regarding surveys, reports and services as set out below:
  - Physical characteristics;
  - Legal limitations;
  - A written legal description of the site adjoining properties;
  - Grades and lines of streets, alleys, pavements and adjoining property and structures;
  - Adjacent drainage;
  - Rights of way;
  - Restrictions;
  - Easements and encroachments;
  - Zoning;
  - Deed restrictions;
  - Boundaries and contours of the site;
  - Locations, dimensions and data pertaining to existing buildings, other improvements and trees; and
  - Information concerning utility location services both public and private, above and below grade, including inverts and depths.
- All city by-laws documentation provided by the City of Winnipeg.
- Subsurface investigation and reports which include but are not limited to:
  - Test borings;
  - Test pits;
  - Determination of soil bearing values;
  - Percolation tests;
  - A list of, and evaluations of, toxic and hazardous substances and materials present at the place of the Work;

- Ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions with reports and appropriate professional recommendations.
  - Reports and appropriate professional recommendations of specialist Manitoba Housing consultants when required by the Prime Consultant.
  - Air and water pollution tests, tests for toxic and hazardous substances and materials, structural, mechanical, chemical and other laboratory and environmental tests, inspections, laboratory and field tests and reports as required by the Prime Consultant, its sub-consultants, the authorities having jurisdiction or the construction contract.
  - All legal, accounting and insurance counselling services as may be necessary at any time for the project, including such auditing services as Manitoba Housing may require to verify the contractor's applications for payment or to ascertain how or for what purpose the contractor uses the monies paid by or on behalf of Manitoba Housing.
- 5.2 The Prime Consultant shall be entitled to rely upon such information. Contracts for provision of information, whether arranged by Manitoba Housing or the Prime Consultant, shall be considered to be direct contracts with Manitoba Housing unless explicitly provided otherwise.
- 5.3 Manitoba Housing shall:
- 5.3.1 authorize in writing a person to act on Manitoba Housing's behalf and define that person's scope of authority with respect to the Project when Manitoba Housing deems it necessary;
  - 5.3.2 review documents submitted by the Prime Consultant and give the Prime Consultant decisions for the orderly progress of the Prime Consultant's services;
  - 5.3.3 authorize the Prime Consultant in writing to act on Manitoba Housing's behalf to apply for the building permit in Manitoba Housing's name. The Contractor will be responsible for paying and obtaining the building permit;
  - 5.3.4 immediately notify the Prime Consultant in writing if Manitoba Housing observes or otherwise becomes aware of any fault or defect in the Project or any nonconformity with the requirements of the Construction Contract;
  - 5.3.5 engage Manitoba Housing Consultants, if any, under terms and conditions of agreements that are compatible with this agreement; and
  - 5.3.6 ensure all Manitoba Housing Consultants under their contracts are required to, and do, carry professional liability insurance coverage.

5.4 Manitoba Housing agrees, should the Construction Contract or subsequent agreement include provision that any dispute between Manitoba Housing and the Contractor may be finally resolved by arbitration, then:

5.4.1 Manitoba Housing shall:

5.4.1.1 notify the Prime Consultant in writing ten (10) working days in advance of any arbitration and of any matters in dispute and the extent to which they affect the Prime Consultant; and

5.4.1.2 if Manitoba Housing has a claim against the Prime Consultant that arises from the dispute, bring that claim against the Prime Consultant at the time of the arbitration.

5.4.2 Manitoba Housing shall ensure the Construction Contract or subsequent agreement between Manitoba Housing and the Contractor provide that upon receipt of notice in paragraph 5.4.1 above, the Prime Consultant shall have the option to participate in the arbitration as a full party.

5.4.3 Manitoba Housing shall, in the event paragraph 5.4.1 and 5.4.2 above are not complied with, not pursue any claim against the Prime Consultant arising from matters resolved by the arbitration.

5.5 Manitoba Housing may provide in-house specifications and guidelines for reference purposes and product recommendation only. Manitoba Housing does not assume any liability for the contents of the specifications and guidelines if the Prime Consultant should choose to use any part of this information in their construction documents. The Prime Consultant has the option to use this information in part or in whole and accepts all associated liability for the final construction documentation.

## **6 Project Budget and Construction Costs**

6.1 Neither the Prime Consultant nor Manitoba Housing has control over other professional fees, land development or other costs related to the entire endeavour of Manitoba Housing, therefore the Prime Consultant cannot and does not warrant or represent Project costs will not vary from the Project Budget; however the Prime Consultant shall nevertheless at all times use its best efforts to meet Manitoba Housing's budget objectives.

6.2 Neither the Prime Consultant nor Manitoba Housing has control over the cost of labour, materials or equipment, over the contractor's methods of determining bid prices or over competitive bidding, market or negotiating conditions and therefore the Prime Consultant cannot and does not warrant or represent bids or negotiated prices will not vary from the estimate of probable Construction Cost; however the Prime Consultant shall nevertheless at all times use its best efforts to meet Manitoba Housing's budget objectives.

6.3 If the construction procurement phase has not commenced within three months after the Prime Consultant submits the Construction Documents to Manitoba

Housing, the agreed estimate of probable Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to Manitoba Housing and the date on which bids or proposals are sought.

- 6.4 If the lowest compliant bid or lowest negotiated proposal exceeds the latest agreed statement of probable Construction Cost by more than 15%, Manitoba Housing shall:
  - 6.4.1 provide written approval of an increase in the estimate of probable Construction Cost, or
  - 6.4.2 provide authorization for re-bidding or re-negotiating of the proposal, or
  - 6.4.3 co-operate with the Prime Consultant in revising the Project scope or quality as necessary to reduce the Construction Cost, or
  - 6.4.4 terminate this agreement in accordance with subsections 11.2.1 to 11.2.3.
- 6.5 If Manitoba Housing proceeds under paragraph 6.4.3, unless the excess is due to extraordinary market conditions which were not reasonably foreseeable, the Prime Consultant at no additional fee shall modify the Construction Documents or provide other services necessary to reduce the Construction Cost to within 15% of the latest agreed estimate of probable Construction Cost. Such modification of the Construction Documents to that extent shall be the limit of the Prime Consultant's responsibility under paragraph 6.4.3, and having done so, the Prime Consultant shall be entitled to compensation in accordance with this agreement, for all other such services performed, whether or not the construction phase has commenced.
- 6.6 Modifications, additions or deletions to the Basic Services or Additional Services may be requested by the Prime Consultant or Manitoba Housing from time to time throughout the term of this agreement.
  - 6.6.1 If Manitoba Housing proposes a change to the Prime Consultant's services, Manitoba Housing will provide notice of such proposal to the Prime Consultant. Once the change has been agreed to by the Prime Consultant and Manitoba Housing, the Prime Consultant shall set out the change in a Change Request Document in the form provided by Manitoba Housing. Such Change Request Document shall include details and supporting information with respect to a description of the Basic Services or Additional Services to be deleted or modified or the Additional Services to be added, and the impact of the work, services, fees, disbursements and expenses involved in the change. The completed Change Request Document shall constitute an offer by the Prime Consultant to provide the Basic Services or Additional Services as amended by the Change Request Document at the cost stated therein, or to delete the Basic

Services or part thereof from Schedule A, with a corresponding price reduction to Manitoba Housing stated in the Change Request Document. To be accepted, the offer contained in the Change Request Document must be approved in writing by Manitoba Housing. Any offers made by the Prime Consultant in accordance with this paragraph 6.6.1 shall be considered rejected by Manitoba Housing if it is not approved in writing within ten (10) days of receipt of the offer.

6.6.2 If the Prime Consultant requests a change to the Prime Consultant services to be provided under this agreement, the Prime Consultant shall initiate the request through a Change Request Document. Paragraph 6.6.1 applies to a request initiated by the Prime Consultant through a Change Request Document, with any necessary modifications.

6.7 Any work performed by the Prime Consultant outside the scope of Schedule A – Description of Services and Additional Services as amended within an approved Change Request Document shall be deemed to be gratuitous on the Prime Consultant's part, and Manitoba Housing and Government of Manitoba have no liability with respect to such work.

## **7 Certificate for Payment**

7.1 The issuance of a certificate for payment shall constitute a representation by the Prime Consultant to Manitoba Housing, based on the Prime Consultant's Field Review/General Review and on review of the contractor's schedule of values and application for payment, the Work has progressed to the value indicated; to the best of the Prime Consultant's knowledge, information and belief, the Work observed during the course of Field Review/General Review is in general conformity with the design and the Contract; and the Contractor is entitled to payment in the amount certified. Such certification is subject to:

7.1.1 review and evaluation of the Work as it progresses for general conformity as provided in the Basic Services outlined in Schedule A;

7.1.2 the results of any subsequent tests required by or performed under the Contract;

7.1.3 minor deviations from the Contract being corrected prior to completion; and

7.1.4 any specific qualifications stated in the certificate for payment.

7.2 The issuance of the certificate for payment shall not be a representation the Prime Consultant has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Contract Price, or the Contractor has discharged the obligations imposed on the Contractor by law, or requirements of The Workplace Safety and Health Act, C.C.S.M. W210 or The Workers Compensation Act, C.C.S.M. W200, or other applicable statute,

noncompliance with which may render Manitoba Housing personally liable for the Contractor's default.

## **8 Copyright and Use of Documents**

- 8.1 All information, documents and materials, including (without limitation) all architectural or engineering work and those Instruments of Services that are required deliverables under this agreement, and any other materials discovered or produced by the Prime Consultant, its Sub-consultants and any officers, employees, agents of the Prime Consultant or its Sub-consultants, in the performance of this agreement, and all copyright, patent and trademark rights therein, shall be the exclusive property of Manitoba Housing, and shall be delivered without cost to Manitoba Housing upon request.
- 8.2 The Prime Consultant waives, and shall ensure the Prime Consultant's employees, Sub-consultants and Sub-consultant's employees waive, in favour of Manitoba Housing, all moral rights pursuant to the Copyright Act (Canada) in respect of all information, documents and materials described in subsection 8.1 including the architectural or engineering work and those Instruments of Service that are required deliverables under this agreement.
- 8.3 Deliverables required by this agreement, in both hard copy and electronic form, and including any architectural or engineering drawings and renderings, become the property of Manitoba Housing upon the earliest of their delivery to Manitoba Housing or termination of the agreement.
- 8.4 While this agreement is in effect, and at all times thereafter, the Prime Consultant, its Sub-consultants and any officers, employees, agents of the Prime Consultant or its Sub-consultants, shall not use, publish or disclose any information, documents and materials, including (without limitation) all data, research, reports, drawings, photographs, design, specifications and other materials discovered or produced by the Prime Consultant in the performance of, or incidental to the performance of, this agreement without first obtaining written permission from Manitoba Housing.
- 8.5 Any equipment, materials, and supplies provided by Manitoba Housing to the Prime Consultant for use in the performance of this agreement shall remain the property of Manitoba Housing and shall be returned without cost to Manitoba Housing upon request.

## **9 Use of Manitoba Housing Premises**

- 9.1 When using the premises of Manitoba Housing, the Prime Consultant, its Sub-consultants and any officers, employees, agents of the Prime Consultant or its

Sub-consultants shall comply with all security regulations in effect from time to time.

9.2 Where the services are delivered in an occupied Manitoba Housing project or an occupied unit within a housing project, the Prime Consultant, its Sub-consultants and any officers, employees, agents of the Prime Consultant or its Sub-consultants, will respect the rights of the tenants so living there and will conduct themselves in a professional and respectful manner.

9.3 Where the services are delivered in an occupied Manitoba Housing project or an occupied unit within a housing project, The Prime Consultant shall obtain and maintain the Criminal Record Search and Child Abuse Registry Search prior to the delivery of services at occupied Manitoba Housing premises and provide to Manitoba Housing a signed Declaration Form stating the Prime Consultant, Sub-Consultant(s), and any officers, employees, or agents of the Prime Consultant or its Sub-Consultants(s) are clear of any pending charges and have acceptable record searches as defined below.

9.3.1 An acceptable Criminal Record Search may contain Summary Conviction Offences providing there are only two (2) or less convictions in the last two (2) year period and the Summary Convictions are not crimes against persons or theft. Indictable Offence Convictions of any nature are not acceptable.

9.3.2 An acceptable Child Abuse Registry Search must be clear of any convictions.

9.4 From time to time Manitoba Housing may choose to audit the Prime Consultant records for the purpose of verifying compliance to Section 9.3. Manitoba Housing will provide a minimum five (5) day notice for scheduling the on-site audit. Manitoba Housing reserves the right to deny the Prime Consultant's employees based on the requirements set out in this Agreement.

9.5 The Prime Consultant shall submit a complete list of names of the personnel who may be assigned from time to time during the term of the Agreement to perform Services for Manitoba Housing, including details regarding the work location(s) of each individual. The Prime Consultant shall provide Manitoba Housing with written notification of changes to the list of employees prior to performing the Services for Manitoba Housing.

## **10 Liability and Insurance**

10.1 Liability of the Prime Consultant

10.1.1 The Prime Consultant shall use due care in the performance of the obligations under this agreement to ensure no person is injured, no property is damaged or lost and no rights are infringed.

## 10.2 Non-Liability of Manitoba Housing

10.2.1 Manitoba Housing shall not be liable for any injury to the Prime Consultant or its Sub-consultants, or any officers, employees or agents of the Prime Consultant or its Sub-consultants, or for any damage or loss of property of the Prime Consultant or its Sub-consultants, or any officers, employees or agents of the Prime Consultant or its Sub-consultants, caused by or in any way related to the performance of this agreement.

10.2.2 Subsection 10.2.1 does not apply if the injury, damage or loss was caused by the wrongful or negligent act of an officer or employee of Manitoba Housing while acting within the scope of his or her employment.

## 10.3 Insurance

Editing note: confirm amounts and types of insurance coverage with insurance and risk management for every project.

10.3.1 Without restricting any obligations or liabilities under this agreement, the Prime Consultant agrees to obtain and maintain, at its cost, throughout the term of the agreement:

10.3.1.1 professional liability insurance against claims for personal and bodily injury, death or damage to property arising out of faulty design, maps, plans and specifications, or any other error, omission, mistake of a professional or technical nature committed or alleged to have been committed by or on behalf of the Prime Consultant or its Sub-consultants, and provide, at minimum, limits of liability of **Two Million Dollars (\$2,000,000.00)**. Dollars per occurrence or claim made, in a form satisfactory to Manitoba Housing; and

10.3.1.2 commercial general liability insurance covering claims for personal and bodily injury, death or damage to property arising out of the Prime Consultant, its Sub-consultants or their officers, employees, or agents providing Services under this agreement, or as a result of any negligent acts or omissions of the Prime Consultant, its Sub-consultants or their officers, employees or agents. Such insurance shall provide coverage of not less than **Two Million Dollars (\$2,000,000.00)** per occurrence; and

10.3.1.3 automobile public liability and property damage liability insurance on all licensed vehicles owned or operated by the Prime Consultant, its Sub-consultants or of any their officers, employees or agents, with minimum limits of liability of **Two Million Dollars (\$2,000,000.00)** per vehicle.

10.3.2 Without limiting or restricting the generality of subsection 10.3.1, such insurance shall:

- 10.3.2.1 name Manitoba Housing, The Government of Manitoba and their officers, employees and agents as additional insureds with respect to the commercial general liability insurance relating to the services provided under the agreement;
  - 10.3.2.2 be underwritten by insurers acceptable to Manitoba Housing;
  - 10.3.2.3 be maintained for twenty-four (24) months following completion of the Project if written on claims made basis; and
  - 10.3.2.4 require the insurer to give Manitoba Housing at least thirty (30) days prior written notice if it intends to cancel or significantly reduce the coverage under the policy.
- 10.3.3 The Prime Consultant agrees it will not cancel, materially alter, cause or allow the insurance coverage required under this agreement to lapse without giving thirty (30) days prior written notice to Manitoba Housing.
- 10.3.4 The Prime Consultant acknowledges it has the sole responsibility to determine the appropriate amounts and terms of insurance coverage required under subsection 10.4 and whether any other insurance is necessary or advisable but the amounts and terms must be consistent with the requirements of subsections 10.3.1 and 10.3.2.
- 10.3.5 The Prime Consultant shall ensure any Sub-consultants engaged by the Prime Consultant to perform the services under this agreement are insured under the Prime Consultant's policies, or alternatively, the Prime Consultant shall ensure any Sub-consultant engaged by the Prime Consultant to perform the services under the agreement obtains and maintains comparable coverage.
- 10.3.6 The Prime Consultant shall submit a certificate of insurance to Manitoba Housing as written evidence of the above insurance coverage before commencing services under this agreement and thereafter on the anniversary of the policy renewal date.
- 10.3.7 The Prime Consultant shall not do or omit to do or suffer anything to be done or omitted to be done which will in any way impair or invalidate such policy or policies.
- 10.4 Workers Compensation Coverage
- 10.4.1 During the term of this Agreement, the Prime Consultant shall be registered and in good standing with the Workers Compensation Board of Manitoba, and shall provide and maintain workers compensation coverage as required by The Workers Compensation Act (Manitoba). The Prime Consultant shall provide Manitoba Housing with evidence of its good standing upon request.

## 11 Suspension and Termination

### 11.1 Suspension

11.1.1 Manitoba Housing may suspend the Prime Consultant's services on the Project with fourteen (14) days written notice to the Prime Consultant. Upon notice to suspend, the Prime Consultant will immediately stop any further work on the Project.

11.1.2 The Prime Consultant may suspend services on the Project with fourteen (14) days written notice to Manitoba Housing if construction of the Work proceeds in the absence of a building permit or without an acceptable form of permission from the authority having jurisdiction, or, if the Prime Consultant becomes aware of an action taken by Manitoba Housing which violates applicable building codes and regulations. Manitoba Housing shall not have any claim against the Prime Consultant for any loss, cost, damage or expense incurred or anticipated to be incurred by Manitoba Housing as a result of the suspended services.

11.1.3 Where the Prime Consultant suspends services on the Project pursuant to subsection 11.1.2, the Prime Consultant shall not be liable for delay or damage occurring as a result of the suspension. Upon suspension, the Prime Consultant shall be paid for all services performed, together with Reimbursable Expenses then due up to the date of commencement of the suspension. The services of the Prime Consultant shall resume upon Manitoba Housing ensuring the deficiency which resulted in the suspension has been corrected.

11.1.4 If the Prime Consultant's services are suspended by Manitoba Housing for more than sixty (60) consecutive days, the Prime Consultant shall be paid for all services performed, together with Reimbursable Expenses then due up to the date of commencement of the suspension.

### 11.2 Termination

11.2.1 Manitoba Housing may terminate this agreement at any time by giving seven (7) days notice in writing to the Prime Consultant.

11.2.2 In addition to its rights under subsection 11.2.1, and without restricting any other remedies available, Manitoba Housing may, at its sole option, immediately terminate this agreement in writing if:

11.2.2.1 in the opinion of Manitoba Housing, the services provided by the Prime Consultant are unsatisfactory, inadequate, or are improperly performed; or

11.2.2.2 in the opinion of Manitoba Housing, the Prime Consultant has failed to comply with any term or condition of this agreement; or

11.2.2.3 the Prime Consultant is adjudged bankrupt or files for bankruptcy, becomes insolvent, makes a general assignment for the benefit of its

creditors, or has a receiver or liquidator appointed in respect of its assets; or

11.2.2.4 the Prime Consultant fails to comply with any Acts or regulations or municipal by-laws relating to the Project or services provided by the Prime Consultant under this agreement.

11.2.3 In the event of termination of this agreement, the Prime Consultant shall cease to perform any further work, and shall deliver to Manitoba Housing any finished work which has not been delivered and accepted prior to termination, together with any materials and work in progress relating to this agreement. Manitoba Housing shall be under no obligation to the Prime Consultant other than to pay, upon receipt of an invoice and supporting documentation satisfactory to Manitoba Housing,

11.2.3.1 such compensation as the Prime Consultant may be entitled to receive under this agreement for work completed to the satisfaction of Manitoba Housing up to the date of termination; and

11.2.3.2 if the termination is under subsection 11.2.1, termination expenses directly attributable to termination for which the Prime Consultant is not otherwise compensated.

## **12 Dispute Resolution**

12.1 Differences between Manitoba Housing and the Prime Consultant as to the interpretation, application or administration of this agreement or any failure to agree where agreement between Manitoba Housing and the Prime Consultant is called for ("disputes"), shall be settled in accordance with subsections 12.2, 12.3 and 12.4.

12.2 If Manitoba Housing and the Prime Consultant so agree, the dispute may be submitted to arbitration in accordance with The Arbitration Act, C.C.S.M. c. A120 (Manitoba).

12.3 Manitoba Housing and the Prime Consultant may jointly appoint a single arbitrator, or if they fail to agree on an arbitrator, shall appoint one person to an arbitral tribunal. These persons shall together appoint a chairman; the three persons so selected shall constitute the arbitral tribunal.

12.4 If Manitoba Housing and the Prime Consultant do not agree on arbitration, then either party may submit the dispute to such judicial tribunal as the circumstances may require.

## **13 Confidential Information**

13.1 While this agreement is in effect, and at all times thereafter, the Prime Consultant and its Sub-consultants, and all officers, employees and agents of the Prime Consultant and its Sub-consultants:

- 13.1.1 shall treat as confidential all information, documents and materials, including (without limitation) all data, research, reports, drawings, designs, plans, photographs and other materials, acquired or to which access has been given in the course of, or incidental to, the performance of this agreement;
- 13.1.2 shall not, without first obtaining written permission from Manitoba Housing,
- 13.1.2.1 use, or permit use of, the information, documents and materials described in paragraph 13.1 except for the proper performance of the Prime Consultant's obligations under this agreement, or
  - 13.1.2.2 disclose, or permit disclosure of, the information, documents and materials described in paragraph 13.1 to any person, corporation or organization; and
- 13.1.3 shall comply with any rules or directions made or given by Manitoba Housing with respect to safeguarding or ensuring the confidentiality of the information, documents and materials described in paragraph 13.1.1.

#### **14 Independent Contractor**

- 14.1 The Prime Consultant is an independent contractor, and this agreement does not create the relationship of employer and employee, or of principal and agent, between Manitoba Housing and the Prime Consultant or Manitoba Housing and a Sub-consultant, or between Manitoba Housing and any officers, employees or agents of the Prime Consultant or of a Sub-consultant.
- 14.2 The Prime Consultant is responsible for any deductions or remittances which may be required by law.
- 14.3 In the event it is determined the Prime Consultant is not an independent contractor and this agreement creates the relationship of employer and employee between Manitoba Housing and the Prime Consultant, the Prime Consultant agrees to be solely responsible and to save harmless and indemnify Manitoba Housing, its officers, employees and agents from and against all claims, liabilities, orders, costs and demands resulting from such a determination, to the extent such an indemnity is not prohibited by law. Should such a determination be made, the Prime Consultant agrees the amount Manitoba has paid to the Prime Consultant under this agreement shall constitute an all-inclusive payment of the Prime Consultant's wages, vacation pay, overtime pay, benefits or other remuneration whatsoever, regardless of the day of the week on which the services were performed or the number of hours worked in a day or week.
- 14.4 The Prime Consultant shall not incur any expenses or debts on behalf of, nor make any commitments for, Manitoba Housing without first obtaining written permission from Manitoba Housing.

## **15 REPRESENTATIONS AND WARRANTIES**

- 15.1 The Prime Consultant represents and warrants to Manitoba Housing:
- 15.1.1 the Prime Consultant and its Sub-consultants are duly registered and entitled to perform licensed professional services within the Province of Manitoba;
- 15.1.2 the Prime Consultant and its Sub-consultants are competent and shall perform the services under this agreement in accordance with the standard reasonably to be expected in Manitoba of a professional architect or engineer entitled to perform the scope of their services contemplated by this agreement, and the Prime Consultant and Sub-consultants have the necessary skills, expertise and experience to perform the services in accordance with the provisions of this agreement;
- 15.1.3 the Prime Consultant understands and will ensure each of its Sub-consultants understands Manitoba Housing's requirements under this agreement and will be able to satisfy these requirements.

## **16 Restriction on Advertising**

- 16.1 The Prime Consultant agrees it shall not refer to, or permit any references to the services or the agreement in any advertising or promotional material except with the prior written authorization of Manitoba Housing.

## **17 Manitoba Housing's Right of Review**

- 17.1 The Prime Consultant shall permit Manitoba Housing to review, comment upon, and critique the Prime Consultant's deliverables.
- 17.2 If Manitoba Housing directs the Prime Consultant to change a deliverable, the Prime Consultant shall promptly make the change, unless in the Prime Consultant's opinion, the change will compromise the Prime Consultant's legal or ethical obligations, in which case the Prime Consultant shall notify Manitoba Housing accordingly, in writing.
- 17.3 If Manitoba Housing directs the Prime Consultant to change a deliverable and the change is contrary to the Prime Consultant's best professional judgment, the Prime Consultant may notify Manitoba Housing accordingly, in writing, and thereby be relieved of any responsibility for the change.
- 17.4 Changes directed by Manitoba Housing under the provisions of this section 17 are not Additional Services.
- 17.5 Manitoba Housing may, at the completion of this agreement, review and evaluate the Prime Consultant's performance of the services and review the results of the evaluation with the Prime Consultant.

## **18 Errors and Omissions**

- 18.1 If there is an error or omission in the Prime Consultant's services, the Prime Consultant shall perform any remedial services requested by Manitoba Housing as a result of that error or omission at no additional cost. These remedial services are not Additional Services.

## **19 Hold Harmless**

- 19.1 The Prime Consultant shall indemnify and hold harmless Manitoba Housing and the Government of Manitoba from all third party claims, demands, actions or costs (including legal costs on a solicitor basis) for which the Prime Consultant is legally responsible, including those arising out of negligence or willful acts by the Prime Consultant or the Prime Consultant's employees or agents. This hold harmless provision survives this agreement.
- 19.2 Manitoba Housing shall indemnify and hold harmless the Prime Consultant from all third party claims, demands, actions or costs (including legal costs on a solicitor basis) for which Manitoba Housing is legally responsible, including those arising out of negligence or willful acts by Manitoba Housing or Manitoba Housing's employees or agents. This hold harmless provision survives this Agreement.

## **20 Sustainable Design Services**

Editing Note: This section applies to new builds only – remove for all other projects

- 20.1 The Prime Consultant acknowledges the Government of Manitoba has established a "Green Building Policy for Government of Manitoba funded projects. The Prime Consultant will follow the Green Building Policy as it pertains to Manitoba Housing.
- 20.2 The services provided by the Prime Consultant under this section 20 are included within the Prime Consultant's fee for Basic Services and are not Additional Services.

## **21 Notices**

- 21.1 Notices in writing between the parties shall be considered to have been received by the addressee on the date of delivery if delivered to the individual, or to a member of the firm, or to an officer of the corporation for whom they are intended, by courier or hand or by registered post; or if sent by regular post, to have been delivered five (5) working days from the date of mailing. Notices sent electronically, by email or facsimile, for example, are considered to be reliable for

the purpose of official notice. The addresses of the parties for notice are as follows:

**Manitoba Housing:**

<Insert name>

<Insert address>

**Prime Consultant:**

<Insert name>

<Insert address>

## 22 General

- 22.1 This agreement shall be governed by the law of the Province of Manitoba.
- 22.2 Manitoba Housing and the Prime Consultant respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this agreement. Except as otherwise provided herein, neither Manitoba Housing nor the Prime Consultant shall assign, sublet, or transfer an interest in this agreement without the written consent of the other.
- 22.3 This agreement represents the entire agreement between Manitoba Housing and the Prime Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This agreement may be amended only in writing signed by both Manitoba Housing and the Prime Consultant.
- 22.4 If any provision of this agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this agreement and the other provisions shall remain in full force and effect.

THIS AGREEMENT has been executed on behalf of Manitoba Housing by its duly authorized representative(s) and on by behalf of the Prime Consultant, by its duly authorized representative(s), on the dates noted below.

Signed in the presence of:

Insert name of Prime Consultant

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title of Person Signing

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title of Person Signing

Date: \_\_\_\_\_

Schedule A – Description of Services

[Insert Schedule A – Description of Services here]

SAMPLE

Schedule B – Basic Services Fee Submission

[Insert Schedule B – Basic Services Fee Submission]

SAMPLE

Schedule C – Additional Services Hourly Rates

[Insert Schedule C – Additional Services Hourly Rate]

SAMPLE

Schedule D – Prime Consultant’s Work Plan and Schedule

[Attach the Prime Consultant’s Work Plan and Schedule which was submitted as part of the Prime Consultant’s Proposal (as may be revised by negotiations)]

SAMPLE