

**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**BETWEEN:**                **GOVERNMENT OF PRINCE EDWARD ISLAND**, as represented by  
the **MINISTER OF SOCIAL DEVELOPMENT AND HOUSING**,  
  
(hereinafter referred to as "Government")

**OF THE FIRST PART;**

**AND:**                        \_\_\_\_\_  
of \_\_\_\_\_  
in \_\_\_\_\_ County, Province of \_\_\_\_\_  
  
(hereinafter referred to as the "Contractor")

**OF THE SECOND PART.**

**WHEREAS** Government wishes to engage the services of the Contractor to carry out the services described in Schedule "A" attached hereto;

**AND WHEREAS** the Contractor has agreed to provide Government with these services on certain terms and conditions as more particularly set out in this Agreement;

**NOW THEREFORE** in consideration of the mutual promises contained in this Agreement, the Parties agree that the terms and conditions of their relationship are as follows:

**Definitions**

1. In this Agreement, the following definitions apply:
  - (a) "Fiscal Year" means April 1, 2020 to March 31, 2021;
  - (b) "Work" has the meaning provided in paragraph 2.

**Covenants of the Contractor and Government**

2. The Contractor shall perform the services, assume all those responsibilities and diligently execute all those duties described in the attached Schedule "A" (the "Work"), in a manner satisfactory to Government.
3. (a) Subject to the termination clause contained in the Termination section of this Agreement, the term of this Agreement shall commence on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and end on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
  
(b) Subject to the termination clause contained in the Termination section of this Agreement and notwithstanding the date of signing of this Agreement, it is

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acknowledged by both Parties that the Contractor commenced the performance of the Work on the \_\_\_\_ day of \_\_\_\_, 20\_\_. It is further agreed that the amount of \$\_\_\_\_\_ is the maximum amount to be paid for the Work and includes all amounts which may be owed for the Work done since \_\_\_\_ day of \_\_\_\_, 20\_\_.

#### **Payments, Records and Accounts**

4. Government shall make payments to the Contractor in the following manner:
  - (a) Payment for the work rendered under this agreement shall be for a fixed lump sum of \$\_\_\_\_\_, inclusive of all applicable taxes. The payments described herein shall be paid upon the basis of the submission of an invoice by the Contractor. Such invoice shall be submitted to the Government and the Government shall pay the amount owing within 30 days of receipt.
  - (b) All payments are subject to a hold back of an amount equal to 15% of the amount billed. The hold back shall be paid upon the submission and acceptance of completion of the work.
  - (c) The Contractor shall keep proper accounts and records of the cost to the Contractor of the Work and of all expenditures or commitments made by the Contractor under this Agreement including the related invoices, receipts and vouchers. Such accounts, invoices, receipts and vouchers shall, at all times, be open to audit, copying, extracting information and inspection by the authorized representatives of Government. The Contractor shall provide all facilities for the audits, inspections, copying and extractions and shall provide Government and its authorized representatives with all information that is requested from the accounts, records, invoices, receipts and vouchers.
  - (d) Subject to statutory limitations, the Contractor shall not, without the written consent of Government, dispose of the accounts, records, invoices, receipts and vouchers related to this Agreement, but shall preserve and keep the same available for audit, copying, extracting information and inspections at any time.

#### **Conditions of Agreement**

5.
  - (a) The Parties agree that the Contractor shall act as an independent contractor and that it is entitled to no other benefits or payments whatsoever than those specified in the Payments, Records and Accounts section of this Agreement.
  - (b) The Parties agree that entry into this Agreement will not result in the appointment or employment of the Contractor, or any officer, clerk, employee or agent of the Contractor, as an officer, clerk, employee or agent of Government, nor shall the *Civil Service Act* R.S.P.E.I. 1988, Cap. C-8 apply.

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6.
  - (a) The Contractor agrees to accept sole responsibility to submit any applications, reports, payments or contributions for sales taxes, income tax, Canada Pension Plan, Employment Insurance, Workers Compensation assessments, goods and services tax, harmonized sales tax, or any other similar matter which the Contractor may be required by law to make in connection with the Work.
  - (b) The Contractor agrees to accept sole responsibility to comply with all federal, provincial and municipal legislation which may have application to the Work and agrees to comply with all provincial and federal legislation affecting conditions of work and wage rates including the *Employment Standards Act* R.S.P.E.I. 1988, Cap. E-6.2, the *Workers Compensation Act* R.S.P.E.I. 1988, Cap. W-7.1, or any other laws that impose obligations in the nature of employers' obligations. The Contractor agrees to follow the Public Service Commission Human Resource Policies 9.05 Violence in the Workplace Policy; 9.08 Drug, Alcohol, and Medication Policy; and 11.01 Policy for the Prevention and Resolution of Harassment in the Workplace while working on Government sites, in Government vehicles or alongside Government staff.
  - (c) The Contractor, before undertaking any Work shall provide to Government either a certificate of good standing by the Workers Compensation Board or written confirmation from the Workers Compensation Board that such certificate is not required.
  - (d) The Contractor agrees to accept the full cost of doing those things required under this paragraph, and will not charge or seek reimbursement from Government in any way, such costs having been taken into consideration and included in the rates of payment stipulated in Payments, Records and Accounts section of this Agreement.
7. Any payment under this Agreement is subject to a provincial appropriation for the payment being approved by the Legislative Assembly of Prince Edward Island for Government's Fiscal Year in which the payment is to be made.

### **Administration**

8. Subject to any specified time schedule or location where the Work is to be performed as may be set forth in Schedule "A" attached hereto, the Work is to be performed on Government property and the Contractor shall follow the same time schedule as applicable to employees of Government.
9. Government shall provide such support, direction, decisions and information to the Contractor as it deems necessary or appropriate under this Agreement and may appoint a person to administer this Agreement and communicate with the Contractor.

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## **Termination**

10. Notwithstanding other provisions of this Agreement, Government may terminate this Agreement in its entirety, or any part thereof, at any time by a notice in writing, signed by or on behalf of Government and delivered to the Contractor by hand delivery, mailed to the Contractor's last known place of business, facsimile transmission, or electronic communication. This Agreement shall be determined to have ended upon the date of delivery, sending by electronic communications or mailing of such notice in which event the Contractor shall have no further claim against Government, except that the Contractor will be paid pursuant to and in accordance with the provisions of the Payments, Records and Accounts section of this Agreement for the Work performed up to the date of termination by written notice. Such payment shall include all firm commitments made by the Contractor prior to the receipt of the notice and for which the Contractor is liable for payment, less any sums paid by Government to the Contractor on account.
11. Notice in this Agreement is deemed to have been effected on the day of delivery in person, facsimile, electronic communication, or upon mailing of the notice.

## **Confidentiality**

12. Any and all information, knowledge or data made available to the Contractor as a result of this Agreement shall be treated as confidential information. The Contractor shall not directly or indirectly disclose or use the information, knowledge or data for purposes unrelated to the Agreement at any time without first obtaining the written consent of Government, unless the information, knowledge or data is generally available to the public.

## **Conflict of Interest**

13. The Contractor warrants that as at the date of this Agreement, no conflict of interest, or any circumstance that might interfere with independent and objective exercise of judgment, exists or is likely to arise in relation to execution of this Agreement or its subject matter. The Contractor shall immediately notify Government, in writing, if any such actual or potential conflict of interest should arise at any time during the Term. In the event Government discovers or is notified by the Contractor of an actual or potential conflict of interest, Government, in its sole discretion, may either:
  - (a) allow the Contractor to resolve the actual or potential conflict to the satisfaction of Government; or
  - (b) terminate the Agreement in accordance with the Termination section of this agreement.

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### **Freedom of Information and Protection of Privacy Act**

14. The Contractor acknowledges that this Agreement, and information provided in respect of this Agreement, may be subject to release under the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988, Cap. F-15.01. The Contractor may be consulted prior to release of any information.
15. The Contractor acknowledges and agrees that, in the event the Work involves the collection or use of personal information, it is subject to the *Freedom of Information and Protection of Privacy Act*, and that personal information may not be released to any third party or unauthorized individual.

### **Indemnification and Insurance**

16. The Contractor shall indemnify and hold harmless Government, its agents, representatives and employees from and against all claims, demands, losses, costs, damages, actions, suits or proceedings of every nature and kind whatsoever arising out of or resulting from the performance of the Work (herein called the "Claim"), provided that any such Claim is caused in whole or in part by any act, error or omission, including, but not limited to, those of negligence, of the Contractor or anyone directly or indirectly employed by the Contractor or anyone for whom the Contractor may be liable.
17. The Contractor shall, without limiting its obligations or liabilities herein, and at its own expense, provide and maintain the following insurances in forms and amounts acceptable to Government:
  - (a) The Contractor shall have Commercial General Liability coverage in an amount not less than \$3,000,000.00 inclusive per occurrence against bodily injury and property damage. Government is to be added as an additional insured under this policy. Such insurance shall include, but not be limited to:
    - i. Blanket Written Contractual Liability;
    - ii. Personal Injury Liability;
    - iii. Non-owned Automobile Liability;
    - iv. Cross Liability;
    - v. Operation of Attached Machinery.

Commercial General Liability insurance shall be endorsed to provide Government with thirty (30) days advance written notice of cancellation or material change and fifteen (15) days notice in the event of non-payment;

- (b) Automotive liability coverage (Standard Automobile Policy) on all vehicles, the subject of this Agreement, owned, leased, operated or licensed in the name of the Contractor, in an amount not less than \$2,000,000.00;

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- (c) If the Work involves new construction or reconstruction of a property being repaired or maintained, the Contractor shall provide and maintain All Risk Course of Construction (Builder's Risk) to the full value of the work in the amount of the Contract Price. The policy will permit partial or complete use or occupancy by the Owner during the term of this insurance.
- 18. All the foregoing insurance shall be primary and not require the sharing of any loss by any insurer of Government nor by any other form of recovery available such as the Provincial Self Insurance and Risk Management Fund.
- 19. A Certificate(s) of Insurance and any renewals thereof, shall be furnished to Government prior to commencement of the Work by the Contractor and must be updated as required during the Term.
- 20. The policies required by this Agreement shall be in a form and with insurers satisfactory to Government. Default of delivery or receipt by Government shall not be construed as acknowledgment or concurrence that there has been compliance with the terms of this Agreement.

**Subcontractors**

- 21.
  - (a) The Contractor agrees that the list of names of subcontractors supplied prior to the signing of the Agreement, and attached as Schedule AB@ to this Agreement, is the list of subcontractors intended to be used to carry out those parts of the work noted thereon. Said list is subject to approval by Government, which approval shall not be unreasonably withheld. The Contractor shall not employ any subcontractor to whom Government may reasonably object.
  - (b) In the event that approval is obtained, the Contractor shall be responsible for ensuring that any and all subcontractors shall have the same insurance that the Contractor is required to have under this contract.
  - (c) If the change of any name on the subcontractor list is required by Government, and the work has to be awarded to a higher bidder, the contract sum shall be increased by the difference between the two bids.
- 22. The Contractor acknowledges that this Agreement does not create any contractual relations between Government and any subcontractor which the Contractor employs, and the Contractor shall make no such assertions or promises of that nature to any subcontractor.

**General**

- 23. Subject to the Subcontractors section of this Agreement, this Agreement shall not be assigned or subcontracted in whole or in part by the Contractor without the prior written consent of Government.
- 24. This Agreement shall enure to the benefit of and be binding upon the Parties hereto and, subject to the above assignment and subcontracting clause, their executors, administrators, successors and assigns.
- 25. This Agreement shall be interpreted and applied in accordance with the laws and in the Courts of the province of Prince Edward Island.
- 26. This Agreement, including Schedules “A” and “B”, constitutes and expresses the entire agreement of the Parties hereto and any amendment or addition thereto shall be in writing and signed by the respective Parties.
- 27. The headings are inserted in this Agreement for reference only and shall not form part of the Agreement.
- 28. The provisions of this Agreement which, by their terms, are intended to survive or which must survive in order to give effect to continuing obligations of the Parties, shall survive the termination or expiry of this Agreement.
- 29. If any provision of this Agreement is, for any reason, invalid, that provision shall be considered separate and severable from this Agreement, and the other provisions of this Agreement shall remain in force and continue to be binding upon the Parties as though the invalid provision had never been included in this Agreement.

**IN WITNESS WHEREOF** the Parties thereto have duly executed this Agreement as of the date first above written.

**SIGNED, SEALED & DELIVERED** )  
in the presence of: )  
)  
)  
)  
\_\_\_\_\_ )

**Government of Prince Edward Island,**  
as represented by the Minister of Social  
Development and Housing  
  
\_\_\_\_\_

**SIGNED, SEALED & DELIVERED** )  
in the presence of: )  
)  
)  
\_\_\_\_\_ )

**[Insert Contractor’s name here]**  
  
\_\_\_\_\_  
Authorized Signing Officer

**SCHEDULE "A"**

**TO AGREEMENT  
BETWEEN  
GOVERNMENT OF PRINCE EDWARD ISLAND  
AND  
THE CONTRACTOR**

**DATED THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_**

**STATEMENT OF WORK**

1. The Contractor shall provide all labour, materials and supplies to do parking lot resurfacing at Hemlock Court "A" Seniors Housing located at 19 Hemlock Court, PEI.
2. Sidewalks must be completed prior to the parking lot resurfacing.
3. The Government will mark out in paint all areas to be resurfaced.
4. The Contractor shall:
  - a. edge the areas where the grass and pavement intersect;
  - b. complete milling where the pavement meets with other surfaces;
  - c. remove any loose or broken asphalt areas in lots;
  - d. mechanically sweep the parking lot and apply tack coat over complete surface before the top coat is applied;
  - e. fill in any asphalt voids with base mix and roll;
  - f. install a ½" scratch coat over complete area to be paved;
  - g. install and roll to a smooth finish, a 1½" asphalt B mix top coat;
  - h. protect new asphalt from any car traffic for a minimum of 6 hours or until new asphalt is settled enough to allow traffic on it without causing damage;
  - i. draw a plan of all existing markings and lines in order to apply the same when paving is completed;
  - j. apply 2 coats of latex paint to match all previous markings in colour, size and spacing. This is to be completed 24 hours after asphalt has been installed;
  - k. protect newly painted markings from driving until dry;
  - l. repair grassed areas damaged during the completion of this Agreement;
  - m. install screened top soil and sow out with grass seed;
  - n. install 2' stakes with string and red plastic ribbon on string to protect newly seeded areas;
  - o. ensure new parking spaces will be stacked out and must be dug down 16" and 12" of select borrow and 6" of gravel compacted to 100% on the proctor scale. Apply 2.5" of base coat and 1.5" of B mix top coat.

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**General**

5. The Contractor shall:
- a. provide all protection of the works, property, and persons against accident or injury until the work is formally accepted, including the erection of temporary barricades, fencing or warning signals around the work site for the safe passage of persons to and from the buildings;
  - b. remove rubbish and debris from the site on a daily basis;
  - c. repair any damage to the building, units, tenant property or grounds resulting from the work of this Agreement;
  - d. clean the washrooms on a daily basis at the end of each day if used by the Contractor;
  - e. not use recreation rooms as a break room or lunch room;
  - f. contact the Government 3 days before work is to begin;

**SCHEDULE "B"**  
**TO AGREEMENT**  
**BETWEEN**  
**GOVERNMENT OF PRINCE EDWARD ISLAND**  
**AND**  
**THE CONTRACTOR**

DATED THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

**SUBCONTRACTORS**

1. The Contractor agrees that the following is the list of subcontractors in accordance with Clause 21 in this Agreement.

<b>Subcontractor</b>	<b>Work to be Provided</b>