



GOVERNMENT OF BERMUDA

Ministry of Works and Engineering

Department of Operations and Engineering

**Client / Consultant
Model Services Agreement**

For

**Structural Engineering and Quantity
Surveyor support Services**

SEPTEMBER 2022

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AGREEMENT

The Employer is the Ministry of Works and Engineering,
PO Box HM 525, Hamilton, HM CX, Bermuda

The Contractor is _____

The Employer desires the execution of certain Works known as Structural Engineering and
Quantity Surveyor Support Services

OFFER

The Contractor has examined the documents listed in the Appendix which forms part of this Agreement and offers to execute the Works in conformity with the Contract for the sum of
(in words) _____

(in figures) _____

Or such other sum as may be ascertained under the Contract.

This offer, of which the Contractor has submitted two signed originals, may be accepted by the Employer by signing and returning one original of this document to the Contractor before
(insert date) Month DD, 2022

The Contractor understands that the Employer is not bound to accept the lowest or any offer received for the Works.

Signature: _____ Authorized to sign on behalf of the Contractor

Name: _____ Date: _____

Capacity: _____

ACCEPTANCE

The Employer has by signing below, accepted the Contractor's offer and agrees that in consideration for the execution of the Works by the Contractor, the Employer shall pay the Contractor in accordance with the Contract. This Agreement comes into effect on the date when the Contractor receives one original of this document signed by the Employer.

Signature: _____ Authorized to sign on behalf of the Ministry of Works and Engineering

Name: Austin Kenny Date: _____

Capacity: Principal Structural Engineer

CONDITIONS OF CONTRACT

1.0 Client/Consultant Model Services Agreement GENERAL CONDITIONS

The Conditions of Contract are the **Client/Consultant Model Services Agreement, General Conditions, Fourth Edition, 2006**, published by the Federation Internationale des Ingenieurs-Conseils (FIDIC), attached under separate cover.

The General Conditions of Contract are amended by the Particular Conditions of Contract.

2.0 Client/Consultant Model Services Agreement PARTICULAR CONDITIONS

Preamble

These Particular Conditions supplement the General Conditions, and shall modify, delete and/or add to the General Conditions.

Where any clause, paragraph, or sub-paragraph in the General Conditions is supplemented by one of the following paragraphs, the provisions of such clause, paragraph, or sub-paragraph shall remain in effect and the supplemental provisions shall be considered as added thereto.

Where any clause, paragraph, or sub-paragraph in the General Conditions is amended, deleted or superseded by any of the following paragraphs, the provisions of such clause, paragraph, or sub-paragraph, not so amended, deleted or superseded shall remain in effect.

Clause numbers herein refer to the same clause numbers as in the General Conditions.

A. References from Clauses in the GENERAL CONDITIONS

1.0 General Provisions

1.1 Definitions

1.1.2. Add the following:

Project Name: Structural Engineering and Quantity Surveyor Support Services

1.2.3 Interpretation

1.2.3 This clause is deleted in its entirety and replaced with the following;

If there is a conflict between provisions of the Agreement Documents, the following shall apply:

1. Agreement
2. Letter of Acceptance
3. Client's Request for Proposal
4. Particular Conditions
5. General Conditions
6. Consultant's Proposal

1.4 Law and Language

1.4.1 Add the following:

Language of the Agreement: English
Ruling language: English
Law to which Agreement is subject: Law of Bermuda

Add the following clause:

1.4.2

The Agreement shall in all respects be construed and operated in conformity with the Laws of Bermuda and the respective rights and liabilities of the parties shall be in accordance with the Laws for the time being in force.

1.5 Change in Legislation

Add the following:

Consultant's principal place of business: Bermuda

1.8 Notices

1.8.1 Delete from the end of the last sentence:

"or by telex subsequently confirmed by letter"

Add the following clauses;

1.8.2

Client's address:

Ministry of Works and Engineering
Department of Operations and Engineering
P. O. Box HM 525
3rd Floor Post Office Building
56 Church Street, Hamilton HM12, Bermuda

Attention:

Contact Name: Austin Kenny
Phone: (441) 501-3153
E-mail: avkenny@gov.bm

1.8.3

Consultant's address:

Attention: _____

Contact Name: _____

Phone: _____

E-mail: _____

1.9 Publication

1.9.1 This clause is deleted in its entirety and replaced with the following clause;

The Consultant shall obtain the written consent of the Client before publishing or issuing any information or speaking to the public or media regarding any aspect of the Project.

2.0 The Client

2.7 Client's Representative

2.7.1 This clause is deleted in its entirety and replaced with the following clause;

For the administration of the Agreement the Client shall designate an official or individual to be his representative.

Client's Representative: Austin Kenny

2.7.2 Add the following;

The Client's Representative may delegate any duties to another and may at any such time revoke such delegation. Any such delegation or revocation of delegation shall be made in writing.

3.0 The Consultant

3.6 Representatives

3.6.1 Add the following:

Consultant's Representative: _____

The Consultant's Representative shall be approved by the Client in writing

4.0 Commencement, Completion, Variation & Termination

4.2 Commencement and Completion

4.2.1 Add the following:

Commencement Date: 01 September 2022

Completion Date: 31 August 2024 (option to renew for 1 year until 31 August 2025)

4.8 Exceptional Circumstances

4.8.2 Add the following sentence to the end of the clause:

“The extent of time is to be agreed by both parties and be evidenced in writing.”

5.0 Payment

5.1 Payment to the Consultant

5.1.2 In line 1 delete “Unless otherwise” and insert with

“Where previously”

and;

add the following sub-clause:

(c) or alternatively to sub clauses (a) and (b) where agreed by both parties in writing, a negotiated fixed fee.

5.2 Time and Payment

5.2.1 This clause is deleted in its entirety and replaced with the following clause;

The amount due to the Consultant shall be paid by the Client to the Consultant within 45 days of receipt of the request for payment.

5.3 Currencies of Payment

5.3.1 Add the following:

Currency of Agreement: Bermuda Dollars.

5.4 Third Party Charges on the Consultant

5.4.1 This clause is deleted in its entirety and replaced with the following clause;

The Consultant shall be required to pay Bermuda Taxes on all Equipment (except as described in the Fifth Schedule, Section 2 of the Bermuda Customs Tariff) materials and other things of whatsoever nature brought into Bermuda for the purposes of the Agreement.

5.6 Independent Audits

5.6.2 Delete the following from the second paragraph:

“... require that a reputable firm of accountants nominated by him, audit any amount ..”

Replace with

“... require that the Accountant General or his designated person audit any amount ...”

6.0 Liabilities

6.1 Liability and Compensation between the Parties

Add the following clause;

6.1.4

Neither the members nor the staff of the Client shall be in any way personally bound or liable for the acts or obligations of the Consultant under the Agreement or answerable for any default or omission in the observance or performance of any of the acts, matters or things which are herein contained.

6.2 Duration of Liability

Add the following clause;

6.2.2

Consultant's Professional Liability Insurance;
12 years reckoned from: Receipt of Final Report.

6.3 Limit of Compensation

Add the following clause;

6.3.4

Limit of Compensation;
One Million Bermuda Dollars (BD\$1,000,000)

6.4 Indemnity

This clause is deleted in its entirety and replaced with the following clauses;

6.4.1

The Consultant shall be liable for and shall indemnify the Client against any expense, liability, loss, claim or proceedings in respect of any loss of or injury or damage to any property, real or personal insofar as such loss injury or damage arises out of or in the course of or by reason of the negligent performance of the Services hereunder and to the extent that the same is due to any negligent breach of legal duty, omission or default of the Consultant, his employees or agents or of any person employed or engaged by the Consultant upon or in connection with the performance of the said Services or any part thereof by his employees or agents.

6.4.2

The Consultant warrants that they have fully satisfied themselves as to the scope and nature of the Services and of the obligations under this Agreement.

6.4.3

Without prejudice to the previous Clause, the Consultant shall at all times during the project maintain in force such policies of insurance with reputable insurers or underwriters approved by the Client and shall fully insure and indemnify the Client against all insurable liabilities which may be incurred under the said previous clause.

7.0 Insurance

7.1 Insurance for Liability and Indemnity

This clause is deleted in its entirety and replaced with the following clause;

7.1.1

The Consultant shall provide the following insurances;

- (i) Professional Liability Insurance.
- (ii) Public / Third Party Insurance to the value of:
One Million Dollars (\$1,000,000)

The Public / Third Party insurance policy shall include a cross liability clause such that the insurance shall apply to the Consultant and to the Client as separate insured.

7.1.2

The Consultant shall provide evidence to the Client prior to the commencement of the Services that the insurances required under the Agreement have been affected and shall provide copies of the broker's certificates to the Client within 28 days of the Commencement Date.

7.1.3

The Consultant shall ensure that coverage provided by all insurances required under the Agreement will not be changed or amended in any way nor cancelled by the Consultant until sixty (60) days after written notice of such change or cancellations has been personally delivered to the Client.

8.0 Disputes and Arbitration

8.3 Arbitration

This clause is deleted in its entirety and replaced with the following clauses;

8.3.2

Rules for Arbitration:

To be held in Bermuda as per the requirements of the Bermuda International Arbitration and Conciliation Act 1993.

8.3.3

No person shall be appointed to act as an arbitrator who is in any way interested, financially or otherwise, in the conduct of the Services on the Project or in the business or other affairs of either the Client or the Consultant.

B. Additional Clauses to be added to the GENERAL CONDITIONS

9.0 Strikes and Lockouts

9.1

The Consultant shall forthwith notify the Client of the commencing of any strike or lock-out and the Client on account of any delay caused thereby may grant such extension of time as he considers reasonable without prejudice to the right of the Client to exercise after the expiration of such reasonable extension of time the rights and powers under these Conditions in case of default by the Consultant.

10.0 Law, Regulations and Orders

10.1

The Consultant shall make himself fully acquainted with the Laws, Regulations and Orders of Bermuda and of any competent/statutory Authority and shall conform in all respects therewith during the continuance of the Agreement. He shall conform similarly with any such Laws, Regulations and Orders, which may come in to force after the proposal submission date.

11.0 Arithmetical Accuracy of Proposal

11.1

The Client accepts no responsibility for the arithmetical or other accuracy of the Consultant's Proposal should it transpire after the Agreement has been executed that there are arithmetical mistakes in the accepted Proposal which would have increased or decreased the total amount of the Proposal had such mistakes not been made, the items affected will be paid for in accordance with the actual measurements of Services performed and with the unit prices inserted against the said items.

12.0 Continuity of Supply and Connections to Existing Work

12.1

The Consultant shall carry out the Services so that there is the minimum of interruption to the supply of water, telephone, electricity and other services through existing mains and services. Services involving interference with existing works of any kind shall only be carried out with the permission of and during such times and in such a manner as are agreed in writing by the Client or competent Authority.

13.0 Consultants Offices, Yards, Stores, Etc.

13.1

The Consultant shall make his own arrangements for all local accommodation he may require for offices, yards, stores, labour, etc., all buildings and all services in connection therewith which are required for the efficient execution of the Services. The Consultant shall pay proper regard to the prevention of obstruction and the avoidance of nuisance to the public and to residents.

14.0 Approval by Other Authorities

14.1

Where the work of the Consultant is subject to the approval or review of an authority, department of Government, or agency other than the Client, such applications for approval or review shall be the responsibility of the Consultant, but shall be submitted through the

offices of the Client and unless authorised by the Client in writing, such applications for approval or review shall not be obtained by direct contact by the Consultant with such other authority, department of Government or agency.

14.2

The consultant shall ensure that a valid work permit is in place for all non-Bermudian staff working in Bermuda.

15.0 Patents

15.1

All concepts, products or processes produced by or resulting from the Services rendered by the Consultant in connection with the Project, or which are otherwise developed or first reduced to practice by the Consultant in the performance of his Services, and which are patentable, capable of trademark or otherwise, shall be and remain the property of the Consultant.

15.2

The Client shall have permanent non-exclusive royalty-free license to use any concept, product or process, which is patentable, capable of trademark or otherwise produced by or resulting from the Services by the Consultant in connection with the Project and for no other purpose or project.

16.0 Inspection

16.1

The Client, or persons authorized by the Client, shall have the right, at all reasonable times, to inspect or otherwise review the Services performed, or being performed, under the Project and the premises where they are being performed.

17.0 Confidential Data

17.1

The Consultant shall not divulge any specific information identified as confidential, communicated to or acquired by him or disclosed by the Client in the course of carrying out Services provided for herein. No such information shall be used by the Consultant on any other project without the approval in writing of the Client.

18.0 Debt Recovery

18.1

The Employer shall be entitled upon a certificate in writing of the Engineer to deduct the amounts so certified from any monies or otherwise due to the Contractor under this or any other contract or to recover the said amounts as a debt due or partly the one and partly the other as the Employer shall deem advisable.

19.0 Taxation

19.1

The Contractor shall be required to pay Bermudian Taxes on all Contractor's Equipment (except as described in the Fifth Schedule, Section 2 of the Bermuda Customs Tariff) materials and other things of whatsoever nature brought into Bermuda for the purpose of Contract.

20.0 Bribery

20.1

Any commission, advantage, gift, gratuity, reward, or bribe given, promised, or offered by or on behalf of the Contractor or his agent or servant or any person on his or their behalf to any officer, servant, representative, or agent of the Employer or of the Engineer or to any person on their behalf or on behalf of any of them in relation to the obtaining or to the execution of this or of any other Contract with the Employer shall in addition to any criminal liability which may be thereby incurred subject the Contractor to the cancellation of this and of all other contracts which he may have entered into with the Employer and also to the payment of any loss or damage resulting from such cancellation.

21.0 Construction of contract

21.1

The Contract shall in all respects be constructed and operated in conformity with the Laws of Bermuda and the respective rights and liabilities of the parties shall be in accordance with the Laws for the time being in force.

22.0 Members and Staff of Employer and Engineer not Personally Liable

22.1

Neither the members nor the staff of the Employer or the Engineer shall be in any way personally bound or liable for the acts or obligations of the Contractor under the Contract or answerable for any default or omission in the observance or performance of any of the acts, matters or things which are herein contained.

23.0 Rights and Remedies Not Waived

23.1

In no event shall the making by the Employer of any payment to the Consultant constitute or be construed as a waiver by the Employer of any breach of covenant, or any default which may then exist, on the part of the Consultant, and the making of any such payment by the Employer while any such breach or default exists shall in no way impair or prejudice any right or remedy available to the Employer in respect of such breach or default.