

REQUEST FOR QUOTATION

Public Art Repairs and Maintenance

RFQ ISSUE DATE: April 2, 2018

RFQ DEADLINE: April 23, 2018, 2:00 p.m.

The Town of High River invites quotations from qualified individuals with expertise in public art conservation to make necessary repairs and maintenance, conservation work, on two murals in the Town of High River in the spring of 2018.

Submission of Quotations

Please submit your quotation by e-mail to :

Town of High River

Attention: Kim Unger Parks Planning Supervisor

E-mail: kunger@highriver.ca

Quotations should be received by the Town on or before **April 23rd, 2018 2:00 p.m.**

Questions regarding this Request for Quotation ("RFQ") may be submitted by email to kunger@highriver.ca to the attention of Parks Planner or by calling (403-603-3533)

Legal Framework

This RFQ is not intended to be a tender or subject to the laws applicable to competitive bidding and is not subject to the New West Partnership Trade Agreement or the Agreement on Internal Trade. The town of High River does not intend to create any contractual relationship (either expressed or implied) or create any other legal duties or obligations, whether in contract, tort or other legal theory, with any person submitting a response to this RFQ.

High River is not responsible for any costs that you incur in responding to this Request for Quotations.

Conflict of Interest Disclosure

Interested parties responding to this RFQ should disclose any actual or potential conflicts of interest that may exist between the respondent, its management, employees or consultants and High River, its Councillors, employees or representatives, and the nature of such conflict of interest. If a respondent has no such conflict of interest, a statement to that effect should be included in its price quotation.

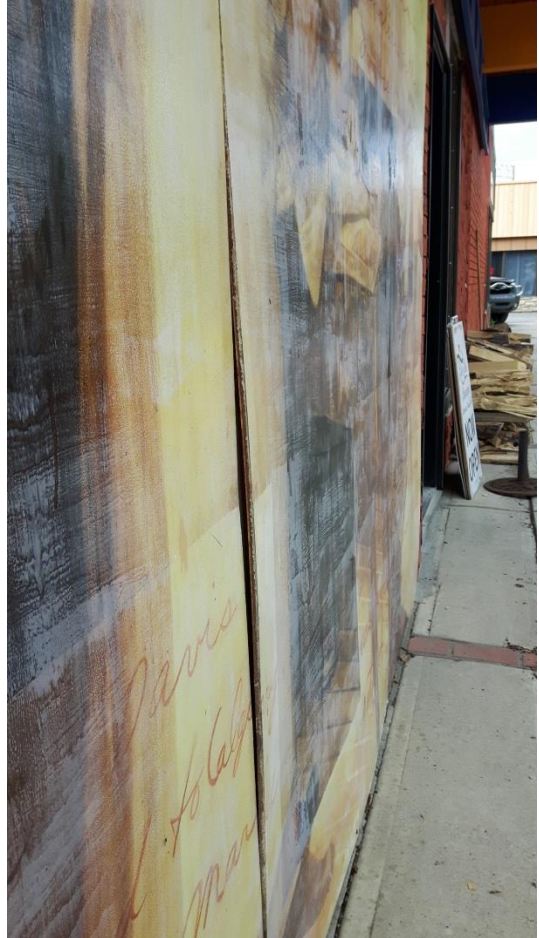
High River employees are ineligible to participate, directly or indirectly.

Confidentiality

Interested parties responding to this RFQ should identify any information in its quotation which it considers to be confidential or proprietary. Interested parties responding to this RFQ

acknowledge that High River and all materials in the High River's possession are subject to the Freedom of Information and Protection of Privacy Act (Alberta).

BACKGROUND



Portion of wood panel lifted



High River First Nurse 1996

Marie Meyer Davis was a trained nurse who lived and worked in the High River area from 1903 to 1939. She was an invaluable assistant to pioneer doctor Dr. G. D. Stanley and accompanied him to many out-of-town cases, often driving the horsedrawn vehicle while he slept. During the 1918 influenza epidemic, when the doctor was too busy to make all the calls, she often worked alone. This mural was a joint legacy project between the 1996 High River Science Festival Committee and Science Alberta, and it is a reminder of the significant contribution science makes to our everyday lives.



Fort Spitzee 1991

In the late 1800s, many whiskey traders from south of the border came to southern Alberta and set up trading forts, where they exchanged liquor, arms and ammunition for furs and buffalo hides. There were several forts on the Sheep and Highwood Rivers, but the largest was Fort Spitzee. There were at least two other posts also known as 'Spitzee'. These posts proved to be disastrous for the First Nations people.

SCOPE OF WORK

Conduct repairs and maintenance on two murals in downtown High River. These murals are High River's First Nurse and Fort Spitzee. Provide detail on how you propose to undertake the work.

Team

The Contractor shall assemble a qualified team with expertise in maintaining and repairing public art. If you are not a member of the Canadian Association of Conservators (CAC) or the Canadian Association of Professional Conservators (CAPC) you must consult with a qualified Conservator. Details of consultation and recommendations must be provided with your proposal.

Site Visit

Proponents are strongly encouraged to view the murals. The Town does not have documented specifications on materials used in these works.

Following the award of the Contract, Contractor shall meet with the Parks Planner to finalize a schedule for conservation work.

Fee

After the exact scope and fees have been agreed upon, there shall be no additional charges of any kind.

Timeline

Following the award of the Contract, the Contractor shall provide Town with a proposed timeline of work to be done. The Town anticipates the project will be awarded in late April of 2018, and requires the work completed by June 8, 2018.

Deliverables**RFQ SPECIFICATIONS**

FORMAT: The quotation can be submitted via email to kunger@highriver.ca

CONTENTS:

a. Qualifications: Include a brief history of your firm, list of similar collections for which your team has maintained and provided repairs to in the last five years and complete list of your skills and services, with regard to mural conservation. Where applicable, include examples of the type of repairs you have coordinated and completed. Include brief biographies of key project team members, including the person who will serve as the Town's main point of contact and the persons who the majority of routine conservation work will be undertaken in Town. For each person, indicate his or her role on the job, list relevant training and work experience and their roles on recent jobs. If you intend to subcontract any portion of the job, please indicate what portion and provide information on subcontractor firm.

b. Project Timeline: Based on the scope of work in this request for quotation, provide a proposed project timeline, including number of planned trips to High River and expected duration of each.

c. Fee/Budget: Provide a detailed cost breakdown for your services, including estimated work hours, materials costs and your firm's schedule of hourly rates. Include rates for consulting and emergency repairs, as well as for planned repairs/routine maintenance. Include travel charge per trip to High River. Include your desired payment schedule.

d. References: Provide contact information for three previous clients, including name, website, contact person, phone number and email address, along with a one sentence description of the services you provided to that client.

e. Prime contractor: Pursuant to the provisions of *The Occupational Health and Safety Act*, the awarded firm or individual will be designated Prime Contractor to ensure that all provisions of the said *Act* are complied with at the site where work is being carried out.

f. Contract: the successful proponent will enter into the Town of High River's Site Servicing Agreement, Contract template is attached as appendix A. The form of contract for this project will be Fixed Price.

APPENDIX A:

SITE SERVICES AGREEMENT

This Site Services Agreement is made as of the _____ day of _____, 20__

Between:

TOWN OF HIGH RIVER
("High River")

and **<NAME OF CONTRACTOR>**
(the "Contractor")

High River wishes to engage the Contractor to perform certain work for High River. Accordingly, High River and the Contractor agree as follows:

- 1. Work:** The Contractor shall perform the Work described in the attached Schedule 1 – Scope of Work in accordance with this Contract.
- 2. Payment:** High River agrees to pay the Contractor for the Work performed, the amounts set forth in the attached Schedule B – Contract Price, at the times and in the manner prescribed by this Contract.
- 3. Contract Documents:** The rights and obligations of High River and the Contractor are set forth in this Contract, and the following attached Schedules:

Schedule A - Scope of Work
Schedule B - Contract Price
[Appendix 1 – Rate Schedule]
[Appendix 2 – Estimate]
Schedule C - General Conditions

- 4. Counterparts:** This Contract may be executed in one or more counterparts and may be executed and delivered by facsimile or electronic mail, and all the counterparts taken together constitute one and the same instrument.
- 5. Notices:** All notices or other communications between the parties under this Contract shall be in writing and delivered to the address set out below:

High River:

<insert address>

Fax: (<area code>) <fax number>

Attention: <name or title>

Contractor:

<insert address>

Fax: (<area code>) <fax number>

Attention: <name or title>

- 6. Binding Agreement:** High River and the Contractor, intending to be legally bound, have signed this Contract.

TOWN OF HIGH RIVER

[CONTRACTOR]

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A – SCOPE OF WORK

Scope of the Work

[NTD: Provide a detailed description of the scope of the Work to be performed by the contractor. Any necessary drawings or maps should be attached as an exhibit and this section should include a list of these attachments.]

Site(s) of the Work

[NTD: List the Site(s) where the Work is to be performed.]

Standards of the Work

[NTD: Describe any standards and any other requirements applicable to the Work or the performance of the Work by the contractor. Any additional documents specifying standards should be either incorporated by reference or attached as an appendix and this section should include a list of these attachments or documents incorporated.]

[Term]

This Contract will commence on the date first written above and will continue in effect until the ____ day of _____, 20___. [This Contract may be renewed for an additional term of _____ at the option of High River, on the same terms and conditions specified in this Contract. High River may exercise its option by giving a notice in writing to the Contractor on or before _____.]

[OR]

[Schedule]

[NTD: Describe the schedule and any important milestones or deadlines related to the Work. Any detailed schedule agreed to should be incorporated by reference or attached as an appendix and this section should include a list of these attachments or documents incorporated.]

Related Deliverables and Work Product

[NTD: Describe any deliverables the contractor will be required to supply in connection with the Work (ie. manuals, drawings, documentation, third party warranties). If there are no applicable deliverables, delete this heading.]

Approved Subcontractors

The following are the approved Subcontractors for the Divisions or Sections of Work listed hereunder.

| Scope of Work | Subcontractor |
|---------------|---------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

SCHEDULE B – CONTRACT PRICE

1. Contract Price

1.1 The Contract Price to be paid by High River for the complete performance of the Work is:

fixed sum of \$<amount>.

-OR-

time and materials properly incurred by the Contractor, payable at the rates, prices and other terms set out in the Rate Schedule attached as Appendix 1 to this Schedule B – Contract Price.

-OR-

units of work performed by the Contractor, payable at the rates, prices and other terms set out in the Rate Schedule attached as Appendix 1 to this Schedule B – Contract Price.

1.2 The Contractor's charge-out rates set out in the Rate Schedule attached as Appendix 1 to this Schedule B – Contract Price may apply at High River's option to any agreed upon changes to the scope of Work set out in Schedule A – Scope of Work.

1.3 If the Contract Price is to be paid on a "time and materials" basis, the Contractor's estimate for completing the Work is set out in Appendix 2 to this Schedule B – Contract Price. **[NTD: Delete if not applicable]**

2. Invoicing

2.1 The Contractor may invoice High River:

upon complete performance of the Work.

-OR-

monthly in arrears, based on the value of the Work performed during the preceding month.

2.2 Invoices may be submitted electronically to ♦. Invoices shall be accompanied by such documentation and information, including time sheets, as High River may reasonably require in order to substantiate the Work performed to which the invoice relates.

2.3 The Contractor shall retain for at least two years after the completion of the Work, complete and accurate records of all of the Contractor's costs which are chargeable to High River on a reimbursable basis. High River shall have the right, at reasonable times, to inspect and audit those records for the reimbursable portion of any Work.

APPENDIX 1 – RATE SCHEDULE

| No. | Labour | Rate (CDN \$) |
|-----|-------------------|---------------------|
| 1 | <Insert Position> | \$<amount> per hour |
| 2 | <Insert Position> | \$<amount> per hour |

| No. | Equipment | Rate (CDN \$) |
|-----|--------------------|---------------------|
| 1 | <Insert Equipment> | \$<amount> per hour |
| 2 | <Insert Equipment> | \$<amount> per hour |

| No. | Material | Unit Rate (CDN \$) |
|-----|------------|-------------------------|
| 1 | <Material> | \$<amount> per <amount> |
| 2 | <Material> | \$<amount> per <amount> |

| | |
|---|------------------------|
| The rate for Materials where no "Unit Rate" is expressed above, will be the Contractor's actual out of pocket cost, plus a markup of: | <Markup on Materials>% |
| The rate for Equipment required in connection with the Work for which no rate is expressed above, will be the Contractor's actual out of pocket cost, plus a markup of: | <Markup on Equipment>% |

The Contractor's rates set out above are inclusive of:

- (a) in the case of labour rates, the cost of all payroll burdens, benefits, insurance, safety certifications, training, permits, and licenses; and
- (b) in the case of equipment rates, the cost of all insurance, licenses, shop supplies, wear and fuel.

Unless expressly set out in this Schedule B – Contract Price, no other costs are chargeable to High River in connection with the Contractor's performance of the Work.

| Units of Work | Quantity | Price per Unit (CDN \$) | Extended Unit Price (CDN \$) |
|-----------------------|----------|----------------------------|------------------------------------|
| <Description of Work> | | \$<amount> per <amount> | |
| <Description of Work> | | \$<amount> per <amount> | |
| <Description of Work> | | \$<amount> per <amount> | |

The Unit Price rates set out above are inclusive of all labour, materials, consumables, tools and equipment required to perform the Work described in the above table. Quantities specified are estimated quantities and are not actual quantities of work to be performed.

DRAFT

APPENDIX 2 – ESTIMATE

1. The Contractor's estimate for the total cost payable by High River for the complete performance of the Work is set out below.

[NTD: If the Contract Price is to be paid on a "time and materials" basis, include this Appendix 2 with the Contractor's estimate]

2. The Contractor acknowledges that High River is relying on this estimate as a good faith estimate of the total cost required to perform the Work.
3. The Contractor shall act diligently in performing the Work so as to minimize the total costs payable by High River to complete the Work.

DRAFT

SCHEDULE C – GENERAL CONDITIONS

ARTICLE 1: INTERPRETATION

1.1 Definitions

(1) In this Contract:

- (a) "**Claims**" means any claim, demand, action, cause of action, suit or proceeding;
- (b) "**Confidential Information**" means: (i) the terms and conditions of this Contract; (ii) all knowledge and information concerning the technical, commercial and business operations of High River; (iii) any third party proprietary information in the custody and control of High River; or (iv) any personal information as defined in the *Freedom of Information and Protection of Privacy Act* (Alberta); which may be acquired by the Contractor in the course of negotiation or performance of this Contract;
- (c) "**Contract**" means this Site Services Agreement, together with: (a) all of the schedules attached hereto and all documents incorporated by reference into those schedules; and (b) all other amendments from time to time, duly executed by the parties;
- (d) "**Contract Price**" means: (a) where the Work is performed on a "fixed sum" basis, the total contract price specified for the performance of the Work in Schedule B – Contract Price; or (b) where the Work is performed on a "time and materials" basis, the total contract price earned for performance of the Work, determined in accordance with Schedule B – Contract Price; or (c) where the Work is performed on a "unit price" basis, the total of the unit rates payable for the performance of the Work, determined in accordance with Schedule B – Contract Price;
- (e) "**Contractor Equipment**" means the tools, plant, equipment and materials used for execution of the Work, but not forming part of the Work;
- (f) "**Deliverables**" means the drawings, data, operation and maintenance manuals and all other documents and data that the Contractor is required to deliver to High River in accordance with this Contract in relation to the performance of the Work;
- (g) "**General Conditions**" means this Schedule C - General Conditions;
- (h) "**GST**" means the goods and services tax as provided for in the *Excise Tax Act* (Canada), or any successor or replacement Laws;
- (i) "**High River Personnel**" means the Town of High River and its Councillors, agents, officers, directors and employees, or any of them;
- (j) "**Laws**" means any applicable federal, provincial, or municipal law, regulation, bylaw, ordinance, rule, permit, license or code of every relevant jurisdiction that in any manner affects the Work or the performance of the Contractor's obligations under this Contract and any order, decree, authorization or approval, or other binding determination of any relevant governmental authority, body, tribunal or agency with jurisdiction over the foregoing;

- (k) **"Materials"** means all materials, machinery, equipment, systems, technology, licenses, processes, accessories, supplies and parts supplied by the Contractor as part of the Work;
- (l) **"Remedial Work"** means the repair, modification, replacement, or re-performance of any Work in breach of any condition, warranty, guarantee or covenant of this Contract, including removal and reinstallation of the defective Work or replacement Work, and any other corrective measures required;
- (m) **"Site"** means each location within the Town of High River where the Work is to be performed as identified in Schedule A – Scope of Work;
- (n) **"Subcontractor"** means an individual, firm, corporation or other entity engaged directly or indirectly by the Contractor to perform any portion of the Work, including, without limitation, the furnishing of any Materials; and
- (o) **"Work"** means the carrying out, doing and supply of all things and services that are to be done or supplied by the Contractor pursuant to this Contract and the end product of such activities including, without limitation: (a) the performance of all work set out in this Contract; (b) the supply of Deliverables and all Materials; (d) the performance of all Remedial Work; (e) the supply of all Contractor Equipment and labour necessary for the foregoing; and (f) any part, component or portion of the foregoing.

1.2 Rules of Interpretation

- (1) If there is a conflict or discrepancy between, among or within any provisions of this Contract, the more stringent requirement, specification, standard, drawing, criteria, or warranty governs.
- (2) If, in the performance of the Work, the Contractor discovers any conflict, discrepancy, error or omission in Schedule A – Scope of Work or any other part of this Contract, the Contractor shall immediately provide written notice to High River, requesting clarification pursuant to section 2.4.

1.3 Law of the Contract

The Laws of the Province of Alberta (excluding its conflict of laws rules) and the Laws of Canada applicable in Alberta govern the interpretation, validity and enforceability of this Contract. The Contractor agrees to submit to the jurisdiction of the courts of the Province of Alberta.

1.4 Entire Agreement

This Contract constitutes the entire and only agreement between the parties, and cancels all pre-existing agreements and understandings between the parties relating to the subject matter of this Contract.

ARTICLE 2: WORK

2.1 General Requirements

The Contractor shall: (a) have complete control over the proper performance of the Work and all persons involved in the Work, including any Subcontractors, and shall be entirely responsible for the compliance with this Contract by all such persons; (b) be responsible for the Work satisfying the

requirements set out in this Contract and in every other manner conforming with the specifications, standards, drawings, plans, and all other information or data relating to the Work which are either set forth or referred to in Schedule A – Scope of Work; (c) ensure that the performance of the Work at the Site does not interfere with High River's ongoing operations or use of the Site, except with High River's prior written consent; and (d) if any other contractors are performing work at the Site, cooperate with and co-ordinate its activities with the other contractors in the working area so that the work of all contractors proceeds with efficiency.

2.2 Remedial Work

Any Work not performed in accordance with the standards and specifications required by this Contract shall be re-performed by the Contractor at its expense.

2.3 Inspection of Site

The Contractor is responsible for investigating the Site before performing the Work, and informing itself of all conditions concerning the Work, including but not limited to accessibility, general character, surface conditions, utilities, and all other conditions.

2.4 Additional Instructions

High River may provide the Contractor with additional instructions as necessary for the performance of the Work. All such additional instructions must be consistent with the general scope and intent of this Contract, and the Work must be executed in conformity with such additional instructions.

2.5 Subcontracts

The Contractor shall not employ any Subcontractor to perform any Work without first obtaining High River's written consent. No subcontract by the Contractor, nor the granting of any approval or consent to subcontract by High River, relieves the Contractor of any of its liabilities or obligations under this Contract. The Contractor shall pay when due all proper invoices, claims and accounts of Subcontractors employed in connection with the Work.

2.6 Permits and Licenses

Except as expressly provided elsewhere in this Contract, the Contractor shall obtain, at its expense, all necessary permits and licenses and give all necessary notifications to governmental authorities for the performance of the Work.

2.7 Compliance with Laws

The Contractor shall, and shall cause all Subcontractors and personnel engaged in the performance of the Work to: (a) ensure that the Work is performed in accordance with applicable Laws; (b) comply with all applicable Laws in performing its obligations under this Contract; and (c) provide High River with evidence of compliance with Laws upon request.

2.8 Time for Performance

The Contractor agrees to perform the Services diligently at all times and within any timelines or schedule specified in Schedule A – Scope of Work.

ARTICLE 3 : PROTECTION OF PERSONS AND PROPERTY

3.1 Protection of Property

- (1) The Contractor shall take all necessary precautions to protect High River's property and the property of any other person located in, upon or about the Site from damage due to any cause related to the Work.
- (2) If the Contractor damages the Work or High River's property or the property of any other person in the course of performing the Work, the Contractor shall reimburse High River for any costs reasonably incurred by High River to make good such damage.

3.2 Site Policies and Procedures

Without limiting the Contractor's responsibility under section 2.7, the Contractor shall, and shall cause all Subcontractors and personnel engaged in the performance of the Work at the Site to comply with all rules, regulations and policies, as may be established and amended by High River from time to time.

3.3 Occupational Safety and Health

- (1) The Contractor shall have responsibility for the safety and health of all persons involved in the Work at the Site, and for compliance with occupational health and safety laws by all such persons.
- (2) The Contractor warrants that it is familiar with and understands the occupational health and safety Laws and hazards and potential hazards associated with the performance of the Work, and that its personnel have the training, expertise, capability, experience, and means required to provide the Services in compliance with occupational health and safety Laws. The Contractor shall be responsible for informing all persons involved in performing Work at the Site of such occupational health and safety Laws or hazards.
- (3) The Contractor shall take all necessary precautions to guard against any person being injured by the Work at or near the Site or by the condition of the area in which the Work is being performed at the Site.
- (4) The Contractor shall immediately forward to High River a written report of every loss, damage, injury or death which may occur during the performance of the Work and arising out of the Work at or near the Site.

3.4 Prime Contractor

The Contractor shall serve as "prime contractor" in connection with the Work for the purposes of workplace health and safety legislation applicable in the jurisdiction of the Work. The Contractor shall:

- (1) carry out all of the duties and responsibilities imposed on a prime contract under such workplace health and safety legislation applicable in the jurisdiction of the Work; and
- (2) ensure that all Subcontractors and personnel engaged in the performance of the Work comply with all directions of the prime contractor in relation to health and safety matters.

3.5 Hazardous Materials

The Contractor shall notify High River in advance of any hazardous materials that it intends to bring onto the Site and provide High River with the appropriate Material Safety Data Sheets for such materials.

ARTICLE 4: PAYMENT

4.1 Payment of Invoices

- (1) Subject to the amount of each invoice being verified and authenticated to High River's satisfaction, payment of all undisputed amounts of each invoice are due within 30 days after receipt of such invoice by High River.
- (2) If the amount of any invoice is disputed by High River, High River shall give prompt notice of the disputed amount with reasons, and will not delay payment of the remainder of the invoice.

4.2 Full Compensation

Except as otherwise expressly stated in this Contract, the Contractor accepts the Contract Price as full compensation for everything furnished and done by the Contractor under this Contract and fulfillment of all the Contractor's obligations under this Contract.

4.3 Taxes

- (1) All sales or use taxes which are required to be levied on the Contract Price shall be separately identified in all invoices delivered by the Contractor. Any taxes not so identified shall be deemed to be included in the Contract Price.
- (2) The Contractor shall: (a) comply with the *Excise Tax Act* (Canada) regarding the collection and remittance of all applicable GST; and (b) promptly pay or remit to the appropriate governmental authority when due all applicable GST (whether included in the Contract Price or collected from High River).
- (3) The Contractor shall indemnify and save harmless High River from and against liability for all sales taxes, excise taxes, goods and services taxes, workers' compensation assessments or other charges (including late interest and penalties) in relation to the performance of the Work that are payable by the Contractor to any governmental authority.

4.4 Set-off

Despite any other provision of this Contract, High River may withhold, set-off or deduct from any amount otherwise payable to the Contractor under this Contract, any amount that is reasonably necessary to reimburse, indemnify or protect High River from any loss or damage resulting from or attributable to the default by the Contractor in any obligation under this Contract, or to reimburse High River for any amounts otherwise due and payable by the Contractor to High River under or arising from this Contract, or from Claims by third parties against High River in respect of the Work.

ARTICLE 5: INSURANCE AND INDEMNITY

5.1 Insurance Coverage

The Contractor shall, without limiting its obligations or liabilities under the Contract, maintain and keep in force, at its own expense, the following insurance policies with limits not less than those stated below:

- (a) Commercial General Liability Insurance with a limit of not less than \$5,000,000 for each occurrence, covering all amounts that the Contractor becomes legally obligated to pay as damages arising from bodily injury, death, and property damage and including product liability coverage and an endorsement for contingent employers liability coverage or contingent liability coverage;
- (b) Automobile Liability Insurance covering owned, non-owned, and hired vehicles, with a limit of not less than \$5,000,000 for each occurrence of bodily injury, death, and property damage;
- (c) All-Risks Contractor's Equipment Insurance, covering loss or damage to Contractor Equipment owned, leased or rented by the Contractor and used in connection with the Work; and
- (d) any other types or amounts of insurance coverage which the Contractor is required by any Laws to provide or which may be required by High River from time to time, acting reasonably.

5.2 Terms of Insurance

- (1) The insurance obtained by the Contractor pursuant to this Contract must be provided in accordance with the following terms and conditions:
 - (a) The Contractor shall, prior to commencement of the Work and from time to time as further requested by High River, provide High River with a certificate of insurance evidencing that the insurance required under section 5.1 has been so obtained.
 - (b) Each insurance policy shall provide that 30 days' prior written notice shall be given to High River of any cancellation of such policy.
 - (c) The Contractor shall ensure that the High River Personnel are included as an additional insured regarding the Contractor's operations under this Contract for the Commercial General Liability Insurance.
 - (d) Each insurance policy shall specifically provide that the insurance is primary and non-contributing with any insurance carried by High River.
 - (e) The Contractor shall make each insurance policy available for inspection upon request by High River.
 - (f) Each insurance policy (excluding Automobile Liability Insurance) shall be endorsed to provide that the insurer will have no right of subrogation against High River.

- (g) Each insurance policy shall be maintained from the date of commencement of the Work until at least two years after final completion of the Work.
- (2) The Contractor waives any Claims it may have against the High River Personnel (and indemnifies the High River Personnel against any Claims by the Contractor's personnel, suppliers, labourers and Subcontractors) arising out of any loss or damage to any Contractor Equipment used by the Contractor or its Subcontractors in connection with the Work, whether such loss or damage, injury or death, is caused in whole or in part by High River.

5.3 Workers' Compensation

The Contractor shall ensure that workers' compensation covers all workers engaged in performing the Work at the Site in accordance with the *Workers' Compensation Act* (Alberta).

5.4 Contractor Indemnification

The Contractor shall indemnify and hold harmless the High River Personnel from and against all liability, damage, losses, expenses or costs (including, without limitation, legal fees and disbursements on a solicitor and his own client full indemnity basis), suffered or incurred as a result of Claims that are made, brought or prosecuted in any manner whatsoever against the High River Personnel by a third party, to the extent any such Claim is based upon, arises out of, results from or is attributable to: (a) the negligent acts or omissions, including, without limitation, gross negligence or willful, wanton or intentional misconduct of the Contractor, any Subcontractor or anyone for whose acts or omissions any of them may be liable in the performance of the Work; or (b) a breach of this Contract by the Contractor.

ARTICLE 6: TERMINATION

6.1 High River's Right to Terminate

High River may terminate this Contract by providing written notice to the Contractor, if the Contractor:

- (a) fails to comply with any of the terms or conditions of this Contract, or
- (b) becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, is subject to the appointment of a receiver, manager, trustee or liquidator, or has commenced dissolution, liquidation or winding up proceedings.

6.2 Cancellation by High River

High River may at its sole option cancel this Contract at any time, without cause, by providing written notice to the Contractor. Upon such cancellation, High River shall pay the Contractor for the Work completed, together with all actual direct expenses, charges and liabilities reasonably incurred by the Contractor as a result of such cancellation. High River shall have no further liability to the Contractor in relation to such cancellation.

ARTICLE 7: CONFIDENTIALITY

- (1) Without the prior written consent of High River, the Contractor shall: (a) keep all Confidential Information strictly confidential; (b) not divulge to any third party any Confidential Information; (c) not make any commercial use whatsoever of any Confidential Information; and (d) only use Confidential Information solely for the Contractor's performance of this Contract.
- (2) The Contractor acknowledges and agrees that all records created pursuant to this Contract are subject to the *Freedom of Information and Protection of Privacy Act* (Alberta). The Contractor shall provide to High River any records in its care or control (a) within five (5) days' of receipt of a request from High River therefor; and (b) upon the expiration or earlier termination of this Contract; at the sole cost and expense of the Contractor.

ARTICLE 8: GENERAL

8.1 Rights and Remedies

Unless otherwise expressly provided in this Contract, each party's rights and remedies specified in this Contract are cumulative and are not exclusive of any other rights or remedies that a party may have, whether under this Contract, at law, in equity or otherwise.

8.2 Independent Status of the Contractor

The Contractor is an independent contractor and not an agent or representative of High River. Nothing contained in this Contract creates any contractual relationship between High River and any Subcontractor nor an employment relationship between High River and any employee of the Contractor or any Subcontractor.

8.3 Waiver

No waiver by High River of any provision of this Contract, nor consent by High River to any departure therefrom, shall in any event be effective unless it is signed by an officer of High River, and then shall be effective only in the specific instance and for the purpose for which such waiver was given.

8.4 Modification

No revision, modification or waiver of this Contract is binding on High River unless expressly agreed to in writing signed by an authorized representative of High River.

8.5 No Assignment

This Contract may not be transferred or assigned in whole or in part by the Contractor without the prior written consent of High River. Such consent will not relieve the Contractor of its obligations and liabilities under this Contract.

8.6 Survival of Covenants, Representations and Warranties

All provisions of this Contract which expressly or by their nature survive the termination of this Contract or the completion of the Work will continue in full force and effect after any termination of this Contract or completion of the Work.

8.7 Enurement

This Contract enures to the benefit of and is binding upon the parties and their respective successors and assigns (in the case of the Contractor, permitted assigns).

ARTICLE 9: ADDITIONAL CONSTRUCTION AND REPAIR REQUIREMENTS

If the Work performed by the Contractor includes repair work or construction of improvements or other infrastructure at a Site, the additional provisions of this Article 9 shall apply.

9.1 Quality Requirements

The Contractor shall ensure that: (a) the Work and all Materials satisfy, in every manner, the requirements of this Contract; (b) unless otherwise stated in this Contract, all Materials incorporated into the Work are of good quality, new and undamaged; (c) the Work is free from defects in Materials and workmanship at the time the Work is completed; and (d) where not otherwise expressly provided in this Contract, the Work all workmanship is in accordance with prudent industry standards having regard to the requirements of this Contract.

9.2 Builders' Lien Act

Payment of invoices will be subject to: (a) where applicable, the holdbacks required by the *Builders' Lien Act* (Alberta); and (b) the Contractor providing valid clearance certificates for Alberta Workers' Compensation assessments.

9.3 Title

- (1) Subject to the Contractor's rights under the *Builders' Lien Act* (Alberta), the Contractor warrants that High River will obtain title to the Materials and all other aspects of the Work, free and clear of all liens, charges and encumbrances.
- (2) High River shall obtain title to the Materials and all other aspects of the Work upon the earlier of: (a) payment for the Materials or other aspect of the Work by High River in accordance with this Contract; or (b) delivery of the Materials to the Site.

9.4 Risk of Loss

Despite the passage of title to any portion of the Work, the Contractor shall bear all the risk of loss and be responsible for all:

- (a) Materials supplied by the Contractor or its Subcontractors prior to their permanent incorporation into the Work; and
- (b) Contractor Equipment used in the performance of the Work.

9.5 Liens

- (1) If High River receives written notice of any claim of lien from or if any claim of lien should be recorded by any Subcontractor, labourer or supplier, the Contractor shall promptly cause such written notice of claim or claim of lien to be discharged and removed or make such other financial arrangements so as to fully protect the interest of High River as High River may approve.
- (2) High River shall, after giving at least five business days' advance notice to the Contractor of its intention to do so, be entitled to employ any monies then due or to become due to the Contractor under this Contract in order to discharge every such lien by bond or posting of other security (including security for costs), or by paying the amount claimed into court or directly to the lien claimant.
- (3) The Contractor shall indemnify High River from any losses or expenses suffered or incurred by High River (including disbursements and legal fees on a solicitor and his own client full indemnity basis) in connection with any liens claimed or recorded by any Subcontractor, labourer or supplier in relation to the Work.

9.6 Changes to the Work

The Contractor shall not make any change to the Work, regardless of the reason, without first receiving a duly executed Change Order such change to the Work. Changes to the Work performed by the Contractor without a prior Change Order are at the Contractor's sole cost and expense and High River is in no way liable for any claim for compensation by the Contractor or a Subcontractor relating to the change to the Work.

9.7 Change Order

- (1) High River and the Contractor may from time to time, acting reasonably, agree in writing to alter, omit, add to or vary the Work (a "**Change Order**"). Each Change Order shall specify the agreed upon: (a) scope of the change to the Work; (b) adjustment to the Contract Price, if any; and (c) adjustment to the schedule for completing the Work, if any.
- (2) Except as specifically set forth in a Change Order, a change to the Work does not affect any other warranties, guarantees or obligations of the Contractor.

9.8 Warranty Repair

- (1) If any defect or deficiency in, or failure of, the Work occurs within 12 months after completion of the Work, however caused or arising (excluding normal wear and tear or High River's negligent maintenance or operation of the Work), the Contractor shall perform, at the Contractor's expense, all Remedial Work necessary to correct such defect, deficiency or failure.
- (2) If any defect or deficiency in, or failure of, any Remedial Work occurs within 12 months after the completion of the Remedial Work, the Contractor shall perform, at the Contractor's expense, all further Remedial Work necessary to correct such defect, deficiency or failure.
- (3) If the Contractor fails to proceed with the Remedial Work as promptly as possible after notice from High River and to diligently continue to perform such Remedial Work to its completion, or if the

Contractor has authorized High River to complete the Remedial Work, then High River may, at the Contractor's expense, take all necessary steps to have the Remedial Work completed.

9.9 Intellectual Property

The Contractor warrants that the Work and High River's use, maintenance and repair of the Work will not infringe on any existing or pending patent, copyright, industrial design or other intellectual property right. The Contractor shall indemnify and hold harmless High River from and against any Claims, damages, losses and, expenses, (including legal fees on a solicitor and his own client full indemnity basis and the cost of experts) arising from any assertion by any person that any portion of the Work infringes upon any intellectual property rights of any person, or any law relating thereto.

9.10 Termination

Upon termination by High River under section 6.1, the Contractor shall immediately deliver to High River all components and items of the Work as they exist on the date of termination, and specifically including all Deliverables. Despite any other provision in this Contract respecting passage of title, all right, title and interest of the Contractor in the Work, as the Work exists on the effective date of termination, immediately passes to and vests in High River.