

AGREEMENT

[Upgrading of Cane Access Roads] – 2020/2021 FY

THIS AGREEMENT is made this.....day of April 2021.

BETWEEN

Fiji Sugar Corporation (hereinafter referred to as the “**Client**”)

AND

..... (hereinafter referred to as “**Contractor**”).

WHEREAS:

The client wishes to engage the Works of the contractor and the contractor agrees to completely and comprehensively upgrade Cane Access Roads as assigned by the client under the terms and conditions set out in this agreement.

The Contractor shall upgrade the assigned roads according to the Scope of Works provided by the Client.

IT IS AGREED that the Client engages the Contractor to provide the Works according to the Terms of Agreement for Professional Works in **Appendix A**. The Contractor agrees to perform the Works in accordance with its accompanying proposed work plan presented in **Appendix B** (“**Work Plan**”).

In consideration of which, the Client agrees to pay the Contractor the fees, in the manner set out in **Appendix C**.

The following documents shall form part of this Agreement:

Appendix A - Terms of Agreement

Appendix B - Contractor’s Scope of Work

Appendix C - Payment Schedule

SIGNED by the Parties on the day and in the year first abovementioned.

For the Client:

Chief Executive Officer

In the Presence of

Signature of Witness

For the Contractor:

Details

In the Presence of

Signature of Witness

Appendix A

Terms of Agreement for Works

PART 1 - DEFINITIONS

Unless the context otherwise requires, then in construing the Agreement:

- “Agreement” : means the entire agreement between the parties and includes any variation and any other documents identified in the letter of acceptance as forming part of the Agreement.
- “Contractor” : means
- “Client” : means the Fiji Sugar Corporation
- “Fees” : means remuneration for Works performed.
- “Project” : means the work described in the Agreement in respect of which the Client has engaged the Contractor to provide Works.
- “Site” :Sector
- “The Works”: means those Works specifically described in the Scope of Work which the Contractor is contracted to do.
- “The Work Plan”: means the letter or other documents prepared by the Contractor in accordance with the Client’s instructions, and submitted to the Client to describe the scope of work to be undertaken, any correspondence between the Contractor and the Client that alters the terms and scope of the Contractor’s original submission and the personnel proposed to be utilised.

PART 2 - DURATION OF AGREEMENT

This Agreement shall become effective on the day of signing this agreement and shall terminate on 30th November 2021. However, nothing shall prevent the Contractor from carrying out the upgrading works in an expeditious and timely manner.

PART 3 -

ROLE OF THE CONTRACTOR

3.1 Roles & Responsibility

- a. Once selected for cane access road maintenance, contractor is expected to visit the field sector office immediately and familiarize themselves with the field staff and the process of cane access maintenance
- b. Contractor needs to quickly meet up with all the road committees of that sector and familiarize themselves with the road
- c. Contractors must ensure that the road is repaired as per the scope of work. It is requested that the contractor work together with the road committee and that good sense and harmonious relationship prevail during the maintenance period
- d. Contractor will mostly be dealing with the road President or whoever he nominates
- e. At times some cane access road will be prioritized as per the operational plans of the sectors so it might mean disturbing the work plans of the contractor
- f. Contractors must ensure that all machineries required for cane maintenance are available upon request by the road committees. All machineries must be in working condition and road worthy as per LTA regulations
- g. Any issue arising from the course of work should be relayed to the sector office as soon as possible to avoid conflicts or delay in work
- h. For each road, there is an allocated budget which represents 100% of the Government Grant. However, should there be additional requirements by the road committees, the cost of doing this work shall be borne by the road committee and paid directly to the contractor. Contractors are requested to invoice these jobs separately and a copy given to the road committee for their records. FSC will only pay according to the road allocations
- i. There may be additional works allocated at times which may require the use of additional machines such as bulldozers and diggers so contractors are requested to provide these machines as and when the need arises

3.2 Professional Standard of Care

In performing the Works, the Contractor shall exercise the degree of skill, care and diligence normally exercised by members of the Contractor's profession performing Works of a similar nature, in accordance with the ethics of the Contractor's profession; and shall maintain strict confidentiality throughout, further it shall not divulge any information it obtained during the performance of the Works under this Agreement at any time, without the written consent of the Client. Time is of essence in this Contract.

3.2 Knowledge of Client's Requirements

The Contractor shall use all reasonable efforts to inform himself of the Client's requirements for the Works required and for that purpose he shall consult the Client throughout performance of the Works. Contractor shall ensure all relevant machines and personnel are fully committed to the delivery of services.

3.3 Additional Information Documents and other Particulars

If the Contractor considers that the information, documents and other particulars made available to him by the client are not sufficient for the Contractor to provide the Works in accordance with this Agreement, the Contractor may advise the Client in writing who shall then provide such further assistance, information, or other particulars as necessary in the circumstances, within 2 business days.

3.4 Notice of Matters Likely to Change Scope or Timing of Works

If the Contractor becomes aware of any matter which will change and which has changed the scope of timing of the Works then he will give notice to the Client and the notice will contain as far as practicable in the circumstances, particulars of the change.

3.5 Assignment

The Contractor shall not assign any obligation under this Contract to other personnel or sub-contract any portion of the Works without the Client's prior written approval.

3.6 Insurance

The Contractor will be responsible for taking appropriate insurance coverage, if necessary, during the term of this contract period.

PART 4 - ROLE OF THE CLIENT

4.1 Arrange Access to Sites

The Client shall as soon as practicable make arrangements to enable the Contractor to have access to the relevant sites to allow the Contractor to perform the Works.

4.2 Give Notice of Matters Likely to Change Scope or Timing of Works

If the Client becomes aware of any matter which may be reasonably expected to change the scope or timing of the Works or the Project, the Client will give written notice to the Contractor.

4.3 Co-operate with Contractor

The Client shall render every assistance as is necessary to facilitate the Project and shall not wilfully or unnecessarily interfere with or obstruct the proper performance of the Works. For the avoidance of any doubt bona fide inquiries by the Client as to the proper performance of the Works shall not be construed as interference.

4.5 Appointment of Representatives

The Client may appoint one (1) official from the Client's Office who may work with the Contractor in the project at no cost to the Contractor. The Contractor will be notified in writing of the name of this appointee prior to the commencement of the agreement, should one be appointed.

PART 5 - PAYMENT TO CONTRACTOR FOR WORKS

5.1 Client to make Payment

In consideration of the promise by the Contractor to perform the Works, the Client promises to pay the Contractor the Fee at the times and in the manner set out in Appendix C.

5.2 Amount and the Method of Payment of Fee

The fixed fee for the Works is \$ _____ **VIP**. This sum includes the imposition of any provisional tax or VAT that may be imposed on this agreement. All other expenses incurred by the Contractor in connection with the provision of Works or otherwise shall be the responsibility of the Contractor.

Please note that this is a Performance Based Contract (PBC), the total paid will really depend on the progress and quality of work within the specified time as stated in the contract

Due to the urgency in carrying out this work, you are expected to commence work within five (5) working days from signing the contract. The contract also gives the freedom to the Client (FSC) to hire "roving contractors" should it feel that work is not progressing to their expectations

5.3 Failure of Client to Make Payment by Due Date

In the event that the Client fails to make payment in accordance with the road listings provided by the Client, the Contractor reserves the right to cease work.

5.4 Effect of Termination on Right to Payment

If the engagement of the Contractor is terminated by any reason other than for breach of this Agreement by the Contractor, the Contractor shall be entitled to pro rata payment for the Works carried out.

PART 6 - SCOPE OF LIABILITY

6.1 Duration of Liability

The Contractor shall be deemed to have been discharged from all liability in respect of the Works on the expiration of 1 (one) year from the date of acceptance by the Client that the Works is complete and to the satisfaction of the Client.

PART 7 - DISPUTE RESOLUTION.

7.1 Any dispute, controversy or claim arising out of or relating to this Agreement shall first be resolved amicably between the two parties.

7.2 Arbitrator

In the event of a dispute between the Client and the Contractor as to the interpretation of this Agreement or as to any matter arising in relation thereto cannot be amicably resolved, the parties agree that such dispute shall be submitted to an arbitrator pursuant to the provisions of the Arbitration Act, Cap 38, and the venue of this hearing shall be in Suva, Fiji.

7.3 Costs of Arbitration

The costs of any arbitration shall be borne as the arbitrator may direct.

PART 8 - TERMINATION OF WORKS.

8.1 Termination by Client

The Client may by notice in writing served on the Contractor terminate the Client's obligations under this Agreement:

- (i) upon a month's notice in writing to the Contractor; and/or
- (ii) if the Contractor is in material breach of the terms of this Agreement and the breach has not been remedied within seven (7) days (or longer period as the Client may allow) of the service by the Client on the Contractor of a notice requiring the breach to be remedied.

In any event, client reserves the right to immediately terminate this Agreement if the Contractor fails to commit the necessary machines and personnel to the project and if the Contractor does not perform to the satisfaction of the Client and if the contractor does not meet the stipulated timeframe.

8.2 Termination by Contractor

The Contractor may by notice in writing served on the Client terminate the Contractor's obligations under the Agreement:

- (iii) upon a month's notice in writing to the client; and/or
- (iv) if the Client is in material breach of any of the terms and conditions of this Agreement and the breach has not been remedied within seven (7) days (or longer period as the Contractor may allow) of the service by the Contractor on the Client of a notice requiring the breach to be remedied.

8.3 Termination not to Affect Rights in Respect of Prior Breaches

Termination shall be without prejudice to any claim which either party may have against the other in respect of any breach of the terms of the Agreement (which occurred) prior to the note of termination.

PART 9 - GENERAL MATTERS

9.1 Severability

If any provisions of this Agreement shall be determined by statute or any court having jurisdiction in relation thereto, to be illegal, invalid, void or voidable the legality or validity of the remainder of this Agreement shall not be affected and illegal, invalid, void or voidable provisions shall be deemed deleted hereto to the same extent and effect as if it had never been incorporated herein but the remainder of the Agreement shall continue in force and full effect.

9.2 Notices

A notice purported to be served under this Agreement shall be deemed to have been properly served if the same is in writing and is sent to the usual business address of the recipient by certified mail, telex message, personal delivery for which a receipt is obtained or facsimile for which acknowledgment of receipt has been obtained.

9.3 Moneys

All reference to moneys in the Agreement shall be deemed to be references to Fijian Currency, unless specified to the contrary in the Agreement.

9.4 Governing Laws

This Contract shall be governed by the Laws of Fiji.

9.5 Variation

This agreement shall not be amended without the prior approval of the Client.

9.6 Independent Contractor

The Contractor's relationship with the Client is one of independent contractor. Nothing in this Agreement shall create an employment or agency relationship, nor shall the contractor act as an agent or employee of the Client. The Contractor's services are to be performed solely by the Contractor. The Contractor shall not perform any contracted services in a manner which would be injurious to the reputation and goodwill of the Client.

9.7 Authority

The person signing this Agreement (including any amendments to this Agreement) has, at the time of such signing, the authority to sign such documents.

PART 10 - REPORTING REQUIREMENTS

10.1 Reporting

The Contractors will be responsible to the Client for the satisfactory completion of the Works through the submissions of the Completion Certificate

10.2 Monitoring

The Client shall undertake monitoring of the work being carried out by the contractor on a random or as and when required.

PART 11 - REVIEW PROCEDURE

11.1 Review

The Client will review the Contractor's Works from time to time and may change the scope of the Works. The parties must agree on any entailing change in the fee should the scope of the Works change in accordance with this clause.

11.2 Indemnity

The Contractor must indemnify Client against any claim or proceeding that is made or commenced against Client and any liability, loss (including consequential loss) damage and expense (including legal expenses on a full indemnity basis) that is incurred or suffered by Client, as a result of a breach of this Contract by the Contractor or by any negligence or other wrongful act or omission of Contractor, its employees, or any other persons for whose acts or omissions Contractor is vicariously liable.

11.3 Waiver of Liability

Client shall not be liable to Contractor on account of any personal injuries or property damage sustained by contractor in performance of services.

11.4 Penalties for incomplete Works

- i. The Contractor shall complete at its own costs any works that may be left incomplete during the upgrading process.
- ii. For the purposes of this Agreement, incomplete works means the non-fulfilment of the relevant scope of works for the roads assigned.
- iii. The Government reserves the right to withhold all payments to the Contractor until the Works in question are completed by the Contractor.

APPENDIX B

Part 1 **CONTRACTORS SCOPE OF WORK**

1.1 Grading and Gravelling

Scope of works includes: Using of Graders, Diggers and Bulldozers to:

- (a) run blade at least 4 times and remove all debris and grass from site
- (b) gravel is sprayed neatly on the road
- (c) gravel sizes to be 65mm less hard fill
- (d) road to be levelled and all big boulders to be removed
- (e) cut side drains along the road and ensure that drains have adequate water run ways; and
- (f) gravel road using river gravel – not river boulders or sand.

APPENDIX C

Part 1 PAYMENT SCHEDULE

In conducting this activity, the Contractor will be paid accordingly in the project activity outlined for the completion of upgrading of roads assigned.

The contractor shall submit a copy of delivery dockets together with the relevant invoices and Completion Certificate to the Client for payment. The contractor must include the following on his delivery dockets:

- a) Time of work started and ended
- b) Type of work done; whether grading or gravelling or both
- c) Name of the operator and signature
- d) Grower signature
- e) Hours of grading
- f) Number of load gravel dropped
- g) Volume of gravel dropped (m³)

PART 2 Payment Schedule and Structure

The contractor shall be paid after the completion of each Work Order after verification by the SCGC and FSC Sector Officers. Payment shall be paid to the contractor fourteen days (14) upon receiving of contractor invoices at FSC Head Office. The documents shall include:

- (a) Signed FSC Completion Certificate by all parties
- (b) Copy of the FSC Work Order
- (c) Copy of the FSC Purchase Orders
- (d) Original copy of Invoices from contractors
- (e) Copy of the FSC payment Voucher
- (f) Copy of delivery dockets where required

.....Sector: Payment of **FJD \$.....VIP** will be paid to the Contractor upon satisfactory completion of works.

Please note that this is a Performance Based Contract (PBC), the total paid will really depend on the progress and quality of work within the specified time as stated in the contract

Due to the urgency in carrying out this work, you are expected to commence work within five (5) working days from signing the contract. The contract also gives the freedom to the Client (FSC) to hire "roving contractors" should it feel that work is not progressing to their expectations