

**MINISTRY OF HEALTH
SECONDMENT AGREEMENT**

THIS AGREEMENT (herein called the "Agreement") dated for reference the 4th day of January, 2018

BETWEEN

Her Majesty The Queen In Right Of The Province Of British Columbia Represented by the
BC Ministry of Health (the "Province")

OF THE FIRST PART

AND

The Provincial Health Services Authority (the "PHSA")

OF THE SECOND PART

AND

Dr. Bonnie Henry (the "Secondee")

OF THE THIRD PART

WHEREAS the Secondee is currently the employee of the PHSA,

AND WHEREAS the Province wishes to utilize the services of the Secondee,

AND WHEREAS PHSA agrees to the secondment of the Secondee to the Province,

AND WHEREAS the parties hereto agree as follows:

APPOINTMENT, SERVICES, AND LOCATION

1. The Province retains the Secondee to provide the services of Provincial Health Officer as described in the job descriptions included in Schedule A to this Agreement (the "Services"); during the term commencing February 1, 2018; subject to the Secondee obtaining and keeping an Order in Council as a Provincial Health Officer; and subject to the Secondee maintaining the qualifications as set out in section 65 of the *Public Health Act* (included in Schedule A).

The work location will be at the Office of the Provincial Health Officer, s.15; s.19
s.15; s.19

The Seconded will report to the Deputy Minister for authorization for vacation and sick leave during the Secondment.

PAYMENT

2. The Province will pay to PHSA in full for the provision of the Services in the amount, manner and time as set out in Schedule B to this Agreement, and PHSA will accept the same as full payment and full reimbursement.
3. During the Secondment, PHSA will pay the Seconded the salary and benefits established pursuant to Schedule B.
4. During the Secondment, the Province will reimburse the Seconded for expenses as set out in Schedule B to this Agreement.
5. The Province agrees to forward to the PHSA an annual performance evaluation of the Seconded for the Provincial Health Officer services provided. Provision will be made within the evaluation document for the Seconded to indicate acceptance or disagreement with the evaluation.

RECORDS

6. In connection with the provision of the Services, PHSA and the Seconded will establish and maintain all records, books of account, invoices, receipts and vouchers (herein called the "Records") to verify compliance with Schedule A and Schedule B to this Agreement and will permit the Province free access at all reasonable times to the Records for the purposes of copying and/or auditing.

CONTRACTUAL RELATIONSHIP

7. The Seconded will, at all times, remain the employee of PHSA and not be a servant or employee of the Province. PHSA will, at all times, be responsible for and will pay and/or remit any and all taxes, Employment Insurance premiums, Canada Pension Plan premiums or contributions and any other statutory payments or assessment of any kind that are payable as a result of monies paid or payable to the Seconded by PHSA pursuant to this Agreement.
8. Neither PHSA nor the Seconded may commit or purport to commit the Province to any expenditure or financial or other liability without the express written permission of the Province.
9. The Provincial Health Officer provides advice in an independent manner; however to fulfill this role the PHO liaises with the Deputy Minister.

10. The Seconded will be bound by the terms, conditions and statements reflected in the Province's "Standards of Conduct for Public Service Employees" and "Oath of Employment". As such, the Seconded must swear or affirm the oath prescribed under s. 21 of the Public Service Act (see Schedule C) if not already done so. In addition, the Seconded will be required to maintain the qualifications and perform any statutory requirements set out in the *Public Health Act* in respect of the Provincial Health Officer appointment.
11. The Seconded is required to comply with the Province's policy on the use of the internet, the use of email, and other workplace policies expected of employees and agents of the Province.

OWNERSHIP

12. All material that is produced, received or acquired by, or provided by the Province to the Seconded as a result of this Agreement, whether complete or otherwise, including all findings, data, specifications, drawings, working papers, reports, tapes, films, documents and, without limiting the generality of the foregoing, computer software and other computer materials of whatsoever nature (herein called the "Material"), and any equipment, machinery or other property provided by the Province to the Seconded as a result of this Agreement will be:
 - a) the exclusive property of the Province, and
 - b) forthwith delivered by the Seconded to the Province upon the Province giving notice to the Seconded requesting delivery of same, whether such notice is given before, upon or after the expiration or sooner termination of the Agreement.
13. a. Without prejudice to any rights which may exist in the Province by virtue of any prerogative rights and powers or by virtue of the *Copyright Act (Canada)* as amended from time to time, the Seconded agrees that all present and future rights in the copyright in the Material are vested absolutely and immediately in the Province.
- b. The Seconded warrants that the Seconded is the only person who has or will have moral rights in the Material and the Seconded waives in favour of the Province all of the Seconded's moral rights, as provided for in the law of copyright, in the Material, and upon the Material coming into existence, the Seconded agrees to execute any document requested by the Province acknowledging the waiver of the Seconded's moral rights in the Material.

REPORTS

14. The Seconded will, upon the request of the Province:
 - a. fully inform the Province of the work done and to be done in connection with the provision of the Services outlined in Schedule A and
 - b. permit the Province at all reasonable times to inspect, examine, review and copy any and all Material.

CONFIDENTIALITY

15. The Seconded will treat as confidential and will not, without prior written consent of the Province, publish, release or disclose or permit to be published released or disclosed, before, upon or after the expiration or sooner termination of this Agreement, the Material or any information supplied to, obtained by, or which comes to the knowledge of the Seconded as a result of this Agreement except insofar as such publication, release or disclosure is necessary to enable the Seconded to fulfill their obligations under this Agreement.

ASSIGNMENT AND SUBCONTRACTING

16. The Seconded and PHSA will not assign, either directly or indirectly, this Agreement or subcontract any obligation of the Seconded or PHSA under this Agreement.

CONFLICT

17. The Seconded will not for the period of the secondment, perform a service for or provide advice to any person, firm, or corporation where the performance of the service or the provision of the advice may or does, in the reasonable opinion of the Province, give rise to a conflict of interest between the obligations of the Seconded to the Province under this Agreement and the obligations of the Seconded to such other person, firm, or corporation.

EXTENSION AND TERMINATION

18. This agreement may be terminated by any one of the Parties, provided that at least 90 days prior written notice is given by that Party to each of the other Parties.

Upon termination of this Agreement, the PHSA will not be required to provide the Seconded with a position. Should the Seconded terminate the Agreement, then the Seconded will be deemed to have resigned her employment with PHSA, and severance will not apply. The Ministry, should it terminate the Agreement, agrees to provide to the Seconded with notice, or severance in lieu of notice, based on the PHSA Terms and Conditions of employment, unless the termination is for just cause.

19. Notwithstanding any other provision of this Agreement, if the Seconded is unable to provide the Services for any reason or fails to comply with any provision of this Agreement then, in addition to any other remedy or remedies available to the Province the Province may, at its option, terminate this Agreement by the Province giving written notice of termination to the Seconded and PHSA.
20. This agreement may be terminated by any party without notice in the event that another Party fails to perform its obligations under this agreement or breaches any of its provisions.

NON-WAIVER

21. No provision of this Agreement and no breach of any provision of this Agreement by the Seconded or PHSA will be deemed to have been waived unless such waiver is in writing and signed by the Province.
22. A written waiver by the Province of any breach under paragraph 19 shall not be considered a waiver of the provision itself, which shall remain in full force and effect. Similarly, such a waiver will not be considered to be a waiver of any subsequent breach of the provision or any other provision of this Agreement.

APPROPRIATION

21. Notwithstanding any other provision of this Agreement, the payment of money by the Province to PHSA and, in turn, to the Seconded pursuant to this Agreement is subjected to:
 - a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, S.B.C. 1981, c.15 (the *Financial Administration Act* and every amendment made thereto being herein collectively called the "Act"), to enable the Province, in any fiscal year or part thereof when any payment of money by the Province to PHSA falls due pursuant to this Agreement, to make that payment; and
 - b) Treasury Board, as defined in the Act, not having controlled or limited, pursuant to the Act, an expenditure under any appropriation referred to in subparagraph (a) of this paragraph

REFERENCES

23. Every reference to the Province in this Agreement will include the Minister, the Deputy Minister, and any person designated by any of them to act for or on their respective behalf with respect to any provision or provisions of this Agreement.

NOTICE

24. Any notice, payment, or any or all of the Material that either party may be required or may desire to give or deliver to the other will be conclusively deemed validly given or delivered to and received by the addressee, if delivered personally on the date of such personal delivery or, if mailed, on the third business day after the mailing of the same in British Columbia by prepaid post addressed,

if to the Province:
Deputy Minister
Ministry of Health
s.15; s.19

if to PHSA:
Attention: Carl Roy
President and Chief Executive Officer
s.15

if to the Seconded:
Dr. Bonnie Henry
s.19; s.22

MISCELLANEO

US

25. Any party may, from time to time, advise the other by notice in writing of any change of address of the party giving such notice and from and after the giving of such notice the address therein specified will, for the purposes of clause 23, be conclusively deemed to be the address of the party giving such notice.
26. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
27. The Schedules to this Agreement are an integral part of this Agreement as if set out in length in the body of the Agreement.
28. This Agreement embodies the entire Agreement between the parties and no understanding or Agreement, verbal or otherwise, exists.
29. The headings appearing in this Agreement have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope of any provision of this Agreement.
30. No amendment or modification to this Agreement will be effective unless it is in writing and duly executed by the parties.
31. This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original and all such counterparts may be delivered by facsimile transmission and such transmission shall be considered an original.

INDEMNIFICATION

32. The Province agrees that for the purposes of this Secondment Agreement, the Seconded will be indemnified in the same manner and to the same extent as if the Seconded were an excluded employee of government and covered by the Excluded Employees (Legal Proceedings) Indemnity Regulation BC Reg 62/2012.

33. The Province shall indemnify and save harmless the PHSA against all costs and expenses reasonably incurred by it in defending, resisting or settling any proceeding, whether actual or threatened, to which it is made a party by reason of the actions of the Seconded in the performance of duties in connection with this Secondment Agreement or in satisfying any judgment or appeal arising in relation thereto, for any act or omission by the Province during the term of this Secondment agreement, notwithstanding that such claim is filed after the termination of this Secondment Agreement; if

- a. The Seconded acted honestly and in good faith in the performance or intended performance of his/her duties in connection with the secondment;
- b. PHSA is not otherwise entitled to indemnification from the Province;
- c. The costs or expenses do not relate, directly or indirectly, to the PHSA's liability to the Seconded under any arrangement by which the PHSA indemnifies or otherwise assumes liability to the Seconded;
- d. PHSA complies with the terms and conditions set out in section 34.

34. In order to be indemnified under section 33 PHSA shall comply with the following terms and conditions:

- a. To the extent that PHSA has a right of action against another person, whether for damages or indemnification or otherwise, in respect of a matter for which it claims indemnification from the Province, PHSA shall assign that right to the Province and subrogate the Province to that right to the extent of the amounts paid by the Province or for which the Province is liable hereunder;
- b. PHSA shall promptly give the Province written notice, with all available particulars of any proceeding, whether actual or threatened, in respect of which indemnity may be sought hereunder and of all claims made in it;
- c. PHSA shall promptly forward to the Province all documents, including letters, advice and writs, received by the person from or on behalf of a claimant in respect of the proceedings;
- d. PHSA shall not interfere in any way with the defense of the proceeding or any negotiations for the settlement of it by the Province;
- e. PHSA shall, whenever requested by the Province, aid in securing information and evidence and the attendance of any witnesses and cooperate with the Province, except in a pecuniary way, in the defense of the proceeding and any appeal in relation thereto; and,
- f. If the Province is not also a party to the proceedings, PHSA shall consent to any order or leave that may be applied for by or on behalf of the province to be added as a party or to be allowed to make representations on its own behalf without being a party.

The parties hereto have executed this Agreement on the day and year as set out above.

SIGNED AND DELIVERED on
behalf PHSA by an authorized
representative of PHSA.

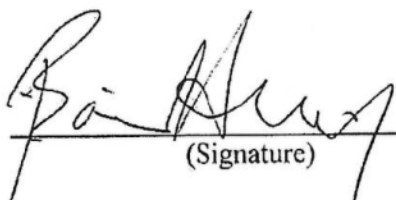


Carl Roy, President and CEO
PHSA

(Signature)

SIGNED AND DELIVERED by the
Secondee.

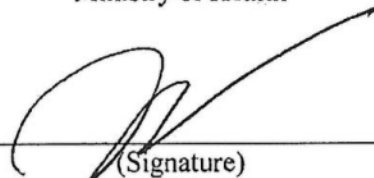
Dr. Bonnie Henry



(Signature)

SIGNED AND DELIVERED on
behalf of the Province by an authorized
representative of the Province.

Stephen Brown, Deputy Minister
Ministry of Health



(Signature)

SCHEDULE A SERVICES

See attached Job Description of the Provincial Health Officer and related Job Description of the Deputy Provincial Health Officer which form part of this schedule.

Public Health Act Excerpts

65 (1) The Lieutenant Governor in Council may appoint, under the *Public Service Act*, a person as the provincial health officer if the person is a medical practitioner and who

(a) is a Fellow of the Royal College of Physicians and Surgeons of Canada and holds a certificate in community medicine, or

(b) in the opinion of the minister, has equivalent training, knowledge, skills and experience to a person described in paragraph (a).

(2) If the Lieutenant Governor in Council appoints a deputy or a person to act for the provincial health officer, the appointed person must meet the requirements of subsection (1).

Duty to advise on provincial public health issues

66 (1) The provincial health officer must monitor the health of the population of British Columbia and advise, in an independent manner, the minister and public officials

(a) on public health issues, including health promotion and health protection,

(b) on the need for legislation, policies and practices respecting those issues, and

(c) on any matter arising from the exercise of the provincial health officer's powers or performance of his or her duties under this or any other enactment.

(2) If the provincial health officer believes it would be in the public interest to make a report to the public on a matter described in subsection (1), the provincial health officer must make the report to the extent and in the manner that the provincial health officer believes will best serve the public interest.

(3) The provincial health officer must report to the minister at least once each year on

(a) the health of the population of British Columbia, and

(b) the extent to which population health targets established by the government, if any, have been achieved, and may include recommendations relevant to health promotion and health protection.

(4) The minister must lay each report received under subsection (3) before the Legislative Assembly as soon as it is reasonably practical.

**SCHEDULE B
FEES AND EXPENSES**

1. Fees shall be payable to PHSA in quarterly payments and shall comprise the aggregate of the following amounts:
 - a. a sum equivalent to one-quarter the gross annual salary of \$301,078.00, based on the top of the band for Medical Health Officers (Area D), to the Seconded; This rate is based on the adjusted rate range for 2016. As per the 2014 Physician Master Agreement and the 2016 Alternative Payments Subsidiary Agreement, should the rates be modified over the term of this Agreement by any existing or future agreements between the Government and the BCMA, the commitment to the Physician (Secondee) will be amended to reflect the new rates.
 - b. the Ministry of Health public health on-call rate of \$12,000.00 to the Seconded;
 - c. a sum equivalent to the quarterly contributions for professional membership and licensing fees with the Canadian Medical Protective Association (CMPA), the College of Physicians and Surgeons of BC (CPSBC), and the Royal College of Physicians and Surgeons to a maximum of \$5,000 per annum; and
 - d. a sum equivalent to the quarterly contributions owed by PHSA respecting the Seconded for the following benefits calculated at 22% of salary:
 - i. Employment Insurance
 - ii. Canadian Pension Plan
 - iii. Pension Plan Contribution
 - iv. Employee benefits which include medical, dental, extended health care, disability and life insurance plans in which the Seconded is entitled to participate
2. The fees payable under paragraph 1 of this Schedule shall include any increase payable to the Seconded by PHSA during the Term, whether such increase is paid during or after the expiry of the Term of this Agreement.
3. Where requested, entitlement of up to seven (7) days of paid leave per annum for professional development/medical educational leave.
4. Where requested to travel during the Term, the Province will reimburse the Seconded for travel, accommodation and telecommunication expenses at Group II rates in accordance with government policy, provided the same are supported by receipts where required.
5. Notwithstanding any other provision of this Schedule, other than that set forth in paragraph 2, in no event will the fees payable to PHSA in accordance with paragraph 1 of this Schedule exceed, in the aggregate, \$384,316.00.

4. PHSA will submit to the Province on the 1st day of every quarter (or the next business day thereafter), and commencing no sooner than February 1, 2018, a written statement of account showing the calculation of all fees and expenses claimed for the preceding quarter.
5. All amounts payable to PHSA referred to in this Schedule shall be paid, upon receipt of an invoice in accordance with the current payment policies of the Province.
6. The Seconded will submit to the Province, via the government travel reimbursement system, all claims for expense reimbursement with attached receipts, where applicable. Within 30 days of receipt by the Province of any such expense claim, the expenses referred to in paragraph 3 of this Schedule will be paid to the Seconded.
7. The Seconded will be entitled to paid vacation (30 days) and sick leave days as per her entitlement at the PHSA, during the term of the Agreement. The Ministry agrees to provide the PHSA as and when required, with a record of any leave taken during the secondment period.
8. During the term of the Agreement, should the Seconded become eligible for, and opt for retirement the Seconded will be eligible for retirement benefits as they apply to PHSA employees and salaried physicians at that time. The Ministry agrees to reimburse PHSA, on a prorated basis, for any retiring allowances that the Seconded would have earned during the term of the Agreement.

SCHEDULE C
Public Service Act and Public Service Oath Regulation Excerpts

Public Service Act

Oaths

- 21** A person appointed to the public service and a person appointed under section 15 must swear or affirm an oath in the prescribed form.

Public Service Act

PUBLIC SERVICE OATH REGULATION

Note: Check the Cumulative Regulation Bulletin 2013 for any non-consolidated amendments to this regulation that may be in effect.

Form of oath

- 1** The prescribed form of oath for the purposes of section 21 of the *Public Service Act* is as follows:

As a member of the British Columbia Public Service, I,
,[*employee name*] do solemnly swear/affirm [*circle one*] that I will

- 1** loyally serve the people of British Columbia through their democratically elected government;
- 2** honour and faithfully abide by the Standards of Conduct for Public Service Employees, and
- 3** to the best of my ability,
 - (a) act with integrity, putting the interests of the public and the public service above my own personal interest and avoiding all conflicts of interest, whether real or perceived,

- (b) safeguard confidential information, not divulging it unless I am either authorized to do so or required to do so by law,
- (c) base my advice, recommendations and decisions on the objective evidence that is available to me,
- (d) serve the government impartially, and
- (e) conduct myself honestly and ethically, in a manner that maintains and enhances the public's trust and confidence in the public service and does not bring it into disrepute.

Sworn/Affirmed [*circle one*] by me, at, this
.....day of, 20.....

.....

Person administering Oath or Affirmation

.....

Person giving Oath or Affirmation

Note: *this regulation repeals B.C. Reg. 51/87.*

[Provisions of the *Public Service Act*, R.S.B.C. 1996, c. 385, relevant to the enactment of this regulation: sections 21 and 25]