



Notice to Potential Proponents Request for Proposals

RFP Date: October 6, 2022

RFP Title: 2022-013 Aquaplex MAU Replacement – Engineering Design
Services

Please review the attached document and submit your Proposal to the email address noted below by the closing deadline of 2:00 PM (as recorded by the receiver) on October 25, 2022.

Proposals will not be considered unless:

1. Received by the date and time specified above; and
2. Received at the Email address specified below
 - a. purchasing@drumheller.ca

Submission by hard copy or Facsimile will NOT be accepted.

Site Meeting Details: October 12, 2022 @ 1:30 PM (local time)

Deadline for Questions: Must be received in writing (email) prior to 2:00 PM (local time) on October 17, 2022

Town Contact: Kelcie Wilson, C.E.T.
Capital Project Manager
Town of Drumheller
702 Premier Way
Drumheller, Alberta, T0J 0Y4
403-334-0425
purchasing@drumheller.ca

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1.0 Overview

1.1 Project Background

The Town of Drumheller invites Proposals from qualified Mechanical and Electrical Engineering consultants interested in the provision of engineering design and construction administration services for the lifecycle replacement of 1 (one) Make-Up Air Unit (MAU) and its various components located at 100 Riverside Drive West also known as the Drumheller Aquaplex. The Town wishes to relocate the MAU from inside the enclosed mechanical room to outside on a new concrete slab.

1.2 Existing Conditions

The existing Make-Up Air Unit is approaching the end of its designed life cycle and as such the Town of Drumheller intends to replace it. The existing MAU is located in an enclosed Mechanical room above the Aquaplex.

1.3 Project Schedule

The schedule for this project is as follows:

Item	Date
RFP Issuance	October 6, 2022
Mandatory Site Meeting	October 12, 2022 @ 1:30 PM (local time)
Deadline for Questions	October 17, 2022 @ 2:00 PM (local time)
Closing Date	October 25, 2022 @ 2:00 PM (local time)
Notice of Award	November 8, 2022
Project Start or Delivery Date	November 15, 2022

1.4 Site Meeting

1. The mandatory site meeting for this project will commence at 1:30 PM on Wednesday, October 12, 2022 at Drumheller Aquaplex, 100 Riverside Drive West. Bidders are to meet outside the main Aquaplex doors. Only those interested Proponents attending the mandatory site meeting will be eligible to submit a Proposal.
2. Bidders must sign the sign-in sheet providing proof of Bidder attendance. Proposals received by “closing date and time” will be compared to sign-in sheets. Failure by Proponents to attend and sign the sign-in sheet will exclude your company’s Proposal submission.
3. The purpose of the mandatory site meeting is for Proponents to completely understand the scope of this project and gather any other relevant information of the existing Make-Up Air Unit.
4. Questions posted by Proponents and answered at the site meeting may not be further documented or disseminated. Questions which are taken under advisement at the meeting will be documented and the response shall be and distributed to the Proponents recorded as attending the meeting and posted as an Addendum to the Alberta Purchasing Connection and Town of Drumheller websites.
5. Mandatory PPE required for the site visit is steel toed boots and a safety vest.



2.0 Scope of Work & Submission Requirements

2.1 Scope of Work

The general construction and final deliverable for this project is:

- a. Removal/Replacement of the existing Make-Up Air Unit which includes, but is not limited to:
 - I. Mechanical components as required to complete the installation of the new Make-Up Air Handling Unit.
 - II. Electrical components as required to complete the installation of the new Make-Up Air Unit.
 - III. Structural components as required to complete the outside installation of the new Make-Up Air Unit.

The following is a summary of the expected work but should not be considered an exhaustive list. Tasks required to complete the deliverables but not listed here shall be included where necessary.

The scope of work for this RFP includes, but is not limited to, the following:

- a. Design Phase Engineering Services
 - I. Field Reviews, studies, and surveys as required to complete this project (The Town has As-builts of the Aquaplex when it was first constructed, upgrades completed in 2013 and 2016, the Town cannot guarantee the accuracy of this information)
 - II. Review of design alternatives
 - III. Pre-Design Services
 - IV. Issue IFR (30%) drawings
 - V. Develop Technical Specifications and schedule of quantities
 - VI. Pre-Design cost estimates
 - VII. Issued for Tender (IFT) Design
 - VIII. IFT Design Review
 - IX. Detail Specifications
 - X. Pre-Tender Cost Estimate
 - XI. Quality Assurance and Quality Control Design Checks
- b. Tendering Services
 - I. Creation of Tender Documents and Issuance for Tender
 - II. Coordination of all permits as required to complete the project
 - III. Technical support services during tender period including Addendum issuance as required
 - IV. Review of tenders and recommendation of award
- c. Construction Engineering Services
 - I. Project Management/Contract Administration



- II. Approvals
 - III. Issue IFC drawings and contract documents
 - IV. Quality Assurance and Quality Control
 - V. Construction Inspections
 - VI. Construction administration including progress payments, safety inspections, drawing review and interpretations, weekly progress meetings
 - VII. Daily Construction Progress Reports
 - VIII. Deficiency inspection and issuance of Construction Completion Certificate
- d. Post Construction Services
- I. Project Management/Contract Administration
 - II. Record Drawings
 - III. Deficiency List
 - IV. FAC Inspection and Certificate

Project Meetings

- a. It is anticipated that the project will require bi-weekly meetings in order to maintain the project schedule. Meetings will be held virtually for the majority of meetings, with two or three meetings being held in person. Meeting Agendas and Minutes shall be completed by the successful Proponent.
- b. Meeting in person shall include the Initial Kick-off meeting, 30% design review and Kick-off meeting with the successful contractor (once that stage is reached). If the Proponent deems more in person meetings are necessary, they shall state this within their Proposal submission. Meeting Agendas and Minutes shall be completed by the successful Proponent.

General Project Requirements:

- a. Obtain all necessary permits to meet all Regulations and Bylaws for Town of Drumheller.
- b. All final reports, drawings, contract documents and specifications are to be stamped by a Professional Engineer licensed in the Province of Alberta
- c. Provide project management, office staff, resident site inspection services, and other services as required to ensure the contract is executed in accordance with the plans, specifications and intent of the project.
- d. Review the contractors updated as-build drawings and confirm acceptability of these updates prior to final payment being recommended.
- e. Provide all inspection/testing services for construction materials and compaction.

Record Drawings

- a. Complete record drawings are to be provided to the Town in digital form no later than 3 months following completion of the project.
- b. Digital copies shall be provided in AutoCAD and PDF formats.



- c. Digital records must contain data attached to the network features which includes information relevant to the system being noted. This should include the materials, relative dimensions and elevations, and appropriate design information.

2.2 Terms and Conditions

2.2.1 General Information

Proponents should structure their Proposals in accordance with the instructions in this RFP. Where information is requested in this RFP, any response made in a Proposal should reference the applicable section numbers of this RFP.

All Proposals are to be in English only.

Any information provided through the RFP, and associated Addenda, is for information only and does not guarantee the accuracy of information or quantities. It is the Proponent's responsibility to obtain all the information necessary to prepare a Proposal in response to this RFP.

The Proponent will bear all costs associated with or incurred in the preparation and presentation of its Proposal, including, if applicable, costs incurred for interviews or demonstrations.

2.2.2 Communications During RFP

Proponents should promptly examine all of the documents comprising this RFP and may direct questions or seek additional information in writing by email to the RFP Contact on or before the Deadline for Questions. Information sent to any individual other than the RFP Contact will be deemed as not received and a response will not be provided.

Submitted queries will be answered by Addendum only. Questions may be answered in part, or in whole, at the discretion of the Town and not all queries will be responded to if deemed to not be relevant to the RFP submission.

If an Addendum is issued following the Deadline for Issuing Addenda, the Town may extend the Submission Deadline for a reasonable period of time.

2.2.3 Conflict of Interest

A Proponent may not have a direct or perceived Conflict of Interest with submitting a response to this RFP. This includes, but is not limited to: having access to confidential information not available to other Proponents; communications with any person with a view to influencing preferred treatment in the RFP process; or engaging in conduct that compromises, or could be seen to compromise, the integrity of the open and competitive RFP process.

The Town may disqualify a Proponent for any conduct, situation or circumstances, determined by the Town, in its sole and absolute discretion, to constitute a Conflict of Interest as defined above.

2.3 Submission Requirements

Proposals should be presented as a written document containing twenty (20) pages or less. Page count does not include appendices or title page and table of contents. The Proposal should outline the services which will be provided including the methods which will be used, the staff which will be utilized on the project and any subconsultants that may be hired. In addition, the Proposal must contain the cost of services, a project schedule, and a breakdown of effort for each team member. A breakdown of required content is provided in Appendix A.



In order to evaluate the staff being provide, the Proposal submitted should outline the roles of each person, their relative experience, and previous projects which are similar. Resumes of each individual may be included with the Proposal as an appendix.

In order to evaluate the company(s) as a whole, the Proposal should outline previous work done in similar capacity over the past 5 years.

Submissions must be provided as two (2) separate PDFs with the technical portion having no reference to costs and cost only to be opened upon evaluation of the technical Proposal. Both PDF's can be submitted to the Town within the same email. Refer to Section 2.3.2 Proposal Submittal Format.

It is to be noted that the Town of Drumheller's email receiving limit is 100MB and, as such, if multiple emails are required the subject line should note email *part # of #* and the next email's subject line is to include *part # of #*. This is to be added onto the subject line title as identified in Section 2.3.1 Proposal Submittal Location.

2.3.1 Proposal Submittal Location

Proposals must be submitted by email to:

purchasing@drumheller.ca

2.3.2 Proposal Submittal Format

Proponents should submit one (1) electronic copy, in PDF format. Submissions must be a maximum of 100MB in total. Zip files will not be accepted. The body of the email should not indicate the details of the Proposals, specifically the costs submitted.

The title of the email should be as follows:

RFP SUBMISSION – [COMPANY NAME] – [PROEJCT NAME]

The title of the PDF's should be as follows:

RFP TECHNICAL SUBMISSION - [COMPANY NAME] – [PROJECT NAME]

&

RFP COST SUBMISSION - [COMPANY NAME] – [PROJECT NAME]

2.3.3 Amendment of Proposals

Proponents may amend their Proposals prior to the submission deadline by submitting the amendment in an email with RFP title as set out above. Any amendment should clearly indicate which part of the Proposal the amendment is intended to amend or replace.

2.3.4 Withdrawal of Proposals

At any time throughout the RFP process until the execution of a written agreement, a Proponent may withdrawal a submitted Proposal. To withdraw a Proposal, a notice of withdrawal must be sent to the RFP contact and must be signed by an authorized representative of the Proponent. The Town is under no obligation to return withdrawn Proposals.

2.4 Bid Bond

A bid bond is not required with this RFP section.



2.5 Contractor Certifications

Any contractor entering into any agreement with the Town of Drumheller is expected to have COR/SECOR or TLC certification as issued by the Alberta Construction Safety Association.

3.0 Evaluation Process

3.1 Overview

The Town of Drumheller reserves the right to accept/reject any or all Proposals in whole or in part. Proponents may be required to provide supplementary information after the closing date to support their Proposal, when requested by the Town. The highest scoring or any Proposal will not necessarily be awarded. The lowest cost or any Proposal will not necessarily be awarded.

No Proponent shall have any claim for any compensation of any kind whatsoever (including, without limitation, the cost of preparing and submitting the Proposal, and any anticipated profits and contributions to overhead) against the Town as a result of participating in this process, and by submitting a Proposal each Proponent shall be deemed to have agreed that it has no claim. For greater certainty, the Proponent hereby waives any claim for damages or costs of any nature against the Town (including, without limitation, the cost of preparing and submitting the Proposal, and any anticipated profits and contributions to overhead) arising out of the Town's use of its discretion under the Proposal documents, and the Project Manager's advice to the Town.

3.2 Scoring Template

Proposals will be evaluated in two (2) parts. The Technical portion of the Proposal will be weighted the highest with the costs having a lesser impact on the scoring. Details as follows:

Item	Weighting
Technical Proposal	65
Cost Proposal	35

3.2.1 Technical Proposal Evaluation

The criteria that will be evaluated within the technical Proposal section will be as follows:

Technical Evaluation Criteria	
Proponent Profile and Qualifications	10
Work Plan & Deliverables	35
Project Management	10
Resources	10
Technical Evaluation Total	
	65

3.2.2 Cost Proposal Evaluation

The cost Proposals will be evaluated as follows:

Cost Proposal Evaluation		
Cost Proposal Calculated Score	Calculation to be adjusted to include only the Companies which pass the technical evaluation. Score = (Lowest Cost Submission/RFP Cost of Services) x 35	35



The Proposed total costs must include details of all professional and disbursement costs. This includes estimated hours and rates for all key personnel and technical resources as well as any sub-consultant costs and disbursements.

It is up to the Town's discretion whether or not to evaluate more than three (3) Proposals. If the Town chooses to do so they may determine a maximum technical evaluation total threshold that must be met instead and will evaluate all cost Proposals that meet or exceed that threshold.

3.3 Review by Committee

All Proposals will be evaluated through a comprehensive review and analysis by an evaluation committee.

The Evaluation Committee may, at its sole discretion, retain additional committee members or advisors.

The intention of the Evaluation Committee will be to select one Proposal which in its opinion meets the Town's requirements under this RFP and provides a satisfactory overall value to the Town.

By responding to this RFP, Proponents will be deemed to have agreed that the decision of the Evaluation Committee will be final and binding.

3.4 Clarifications

As part of the evaluation process the Evaluation Committee may make requests for further information with respect to the content of any Proposal and/or to ascertain the understanding and responsiveness of the Proponent and to any of the project information and requirements.

The Evaluation Committee may request further information from one or more Proponents and not from others.

3.5 Interview

A Proponent whose Proposal has received a high ranking may be invited to an interview with the Selection Committee, the results of which will be used by the Committee as a mechanism to revisit, revise, and finalize the score as necessary.

The representatives designated by the Selection Committee in its invitation to the Proponent must attend any interview scheduled as part of this evaluation process.

The representative of a Proponent at any interview scheduled is expected to be thoroughly versed and knowledgeable with respect to the requirements of this RFP and the contents of its Proposal, and must have the authority to make decisions and commitments with respect to matters discussed at the interview, which may be included in any resulting agreement

3.6 Evaluation Results

Upon conclusion of the evaluation process, a final recommendation will be made for award. Proposal evaluation results should be the property of the Town and will not be shared with any Proponents.

Proponents should be aware that Council and individual Councillors have the right to view the responses provided that their requests have been made in accordance with the Town's procedures.



4.0 Town of Drumheller Responsibilities

4.1 General

The Town's staff will provide assistance to the successful Proponent by reviewing all submitted documents within approximately one week of receipt, depending on the magnitude of the submission.

The Town will designate a Project Manager to this project upon completion of the evaluation of the RFP and award of the project.

Best efforts will be made by the Town to provide relevant and available past documents to assist in the success of the project.

5.0 Contract Details

5.1 Contract Type

The successful Proponent will engage into a Professional Services Contract with the Town of Drumheller. The Town will engage into a contract with only one company and any sub-consultants will be the responsibility of the successful Proponent and will be bound by the same requirements as the Town's contract. A draft version of the contract is included with Appendix C and is subject to legal review prior to finalization.

5.2 Liquidated Damages

Liquidated Damages will not be applied as part of this contract.

5.3 Insurances & Bonding

The Town of Drumheller requires that all Proposals include proof of \$5,000,000.00 Commercial Liability Insurance. Insurances must match that of the contract requirements (see item 2.4).

5.4 Warranty

Warranty will correlate with the Engineering responsibilities that are required as part of the Post-Construction services noted in Item 2.1

5.5 Negotiations & Agreement

Any award of an Agreement to a Proponent will be at the absolute discretion of the Town. The selection of a recommended Proponent will not oblige the Town to negotiate or execute an agreement with that recommended Proponent.

Any award of an Agreement resulting from this RFP will be in accordance with the bylaws, policies, and procedures of the Town.

The Town shall have the right to negotiate on such matter(s) as it chooses with any Proponent to which it has awarded an Agreement without obligation to communicate, negotiate, or review similar modifications with other Proponents. The Town shall incur no liability to any other Proponent as a result of such negotiation or alternative arrangements.

During negotiations, the scope of the service may be refined, issues may be prioritized, responsibilities among the Proponent, all staff provided by it and the Town may be settled and the issues concerning implementation may be clarified.



If negotiations between the Town and a successful Proponent do not result in an Agreement within thirty (30) days of receipt by the Proponent of notification of award, the Town may at its sole discretion terminate such negotiations and either enter into negotiations with one or more other Proponents or terminate the RFP process.

The Town shall be under no obligation to accept a Proposal without amendment, alteration, counter-offer, or any change that may result from negotiations with the Proponent submitting the Proposal.

The Town reserves the right to award a contract in whole or in part.

5.6 Payment

Payment for services will be made in a timely manner following receipt of the invoices subject to the invoice being submitted in an acceptable format and without conflicts to the original agreement. Payment will only be made on approved invoices as deemed by the Town of Drumheller.

For labour costs, payment will be on a time basis at approved hourly rates to the Upset Limit for each deliverable to be provided by the successful Proponent.

Payments for disbursements will be pro-rated based on the value of the work performed during a billable period.

For the Unit Price deliverables, payment will be at the unit price for each deliverable provided. The Town will determine how many of the “units” are required, once the project has progressed sufficiently to make the decision.

Prices and staff rates submitted in a Proposal are to be firm for the duration of the RFP process and the term of any resulting Agreement. Rates shall be inclusive of all burdens or deductions as applicable to the work.

All invoices must clearly show GST as a separate value and GST “registrant” number indicated.

The Town shall not be responsible for any unauthorized additional costs.



Appendix A: Submission Details

The Proponent must submit through a 2-PDF system the following information:

Technical Proposal

A maximum of 20 pages, plus appendices, which includes the following minimum requirements:

- Cover Letter, signed by a person with the relevant authority for your company
- Project Overview
- Project Team
- Project Schedule
- Relevant Experience

Appendices may include:

- Resumes
- Gantt Chart Schedule
- Corporate Brochures
- Workers Compensation Board (WCB) Coverage Letter
- Provide Copy of Town of Drumheller Business License – to be obtained within three (3) business days upon award of project.

Cost Proposal

A maximum of five (5) pages, plus appendices, which includes the following pages.



Upset Limit Cost Breakdown

Task/Description	Total
Design Phase Engineering Services	\$
Tendering Services	\$
Construction Engineering Services	\$
Post-Construction Services	\$
Project Total	

The above prices are excluding GST. Each scope of work is mutually exclusive of the other and the Town reserves the right to award some or all of the scopes of work.



Appendix B: Relative Documents

The following information is attached to the RFP as additional information:

NA



Appendix C: Sample Contract

An example of the contract which the successful Proponent will be expected to sign is attached here for information.

TOWN OF DRUMHELLER



PROFESSIONAL SERVICES CONTRACT

PROJECT:

PROJECT NAME
RFP # ##-YYY-DIS

DATE: [SELECT DATE]

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THIS CONTRACT ("Contract") made the [day] day of [month], 20[year].

BETWEEN:

TOWN OF DRUMHELLER
(hereinafter referred to as the "Town")

- and -

"CONSULTANT LEGAL NAME"
(hereinafter referred to as the "Consultant")

WHEREAS the Consultant is in the business of providing consulting services of the following kind:

Professional Engineering Services

AND WHEREAS the Town wishes to retain the Consultant to perform certain services for the Town as more particularly outlined in the Town's Request for Proposal (RFP # ##-YYY-DIS) to carry out work generally described as:

INSERT PROJECT NAME

(hereinafter referred to as the "Project")

NOW THEREFORE, in consideration of the promises, mutual terms, covenants and conditions contained herein, the parties hereto agree as follows:

1. GENERAL PURPOSE STATEMENT

- 1.1 The intent of this Contract is to clarify the requirements of the Consultant to provide professional services to the Town and does not include any construction agreement between the Town and a contractor, even if these agreements have commonalities or overlaps.

2. SERVICES

- 2.1 The Consultant shall provide the Services as described in the Consultant's Proposal dated INSERT DATE (the "Proposal") submitted in reply to the RFP and such other services necessarily included by implication (hereinafter referred to as the "Services").

- 2.2 The Town and the Consultant, by agreement in writing, may from time to time alter, add to or deduct from the scope of the Services. In such case the time for completion shall be adjusted accordingly.
- 2.3 The Consultant, during the time of this Contract, shall exercise the degree of care, skill and diligence normally provided by a qualified professional consultant in the performance of services of a similar nature to the Services required under this Contract, and shall ensure that the Services are carried out in a professional and businesslike manner.
- 2.4 No payment shall be made to the Consultant as compensation for damages for any delays or hindrances resulting from the Services or scheduling of the work necessary in order to perform the Services unless otherwise specified within this Contract.
- 2.5 The Consultant shall have complete control of the Services and shall effectively direct and supervise the Services in accordance with the terms and conditions of this Contract.
- 2.6 The Consultant shall comply with all reasonable requirements established by the appointed Town representative for the Project or their designate (hereinafter called the "Project Manager") for the performance of the Services.
- 2.7 The Consultant represents and warrants that if and to the extent that this Contract is the result of any verbal or written presentations, proposals or negotiations to or with the Town (the "Presentations"); (i) all statements and representations of fact made by the Consultant in, or during the course of, the Presentations were true and accurate; (ii) all opinions expressed by the Consultant therein or in the course thereof were genuinely held; and (iii) there were, in or in respect of the Presentations, no omissions, misstatements or understatements of any material facts or matters which if known to the Town might reasonably be expected to have materially influenced the decision of the Town to enter into this Contract upon the within terms or at all. The Consultant acknowledges that in entering into this Contract and in the Consultant's performance thereof, the Town was and is necessarily reliant upon the good faith of the Consultant and agrees that a duty of good faith on the part of the Consultant is owed to the Town.
- 2.8 The Consultant shall immediately disclose to the Town any information which may place the Consultant in a conflict of interest with its obligations to the Town under this Contract, or which may create a reasonable perception of such a conflict of interest.

3. CONTRACT DOCUMENTS

- 3.1 and the Consultant's Proposal, including project costs, are incorporated by reference and form part of this Contract, as set out in ***Schedule "A"***.
- 3.2 event of a conflict between the terms of this Contract, and the RFP and the Consultant's Proposal, this Contract will prevail.

4. TERM

- 4.1 Consultant shall commence the Services no later than **DATE** and the Project shall be delivered to the Town by the Consultant in accordance with the time limitation set out in the Proposal for the total price of **\$DOLLAR AMOUNT**(exclusive of Goods and Services Tax) upon performance of the Services to the satisfaction of the Town.

5. PAYMENT

- 5.1 In consideration of the proper performance by the Consultant of the Services pursuant to this Contract, and subject to verification by the Town of the actual Services having been provided by the Consultant, the Town shall pay the Consultant the amount set out in the Consultant's invoice within thirty (30) days from the date of receipt by the Town of an invoice from the Consultant.
- 5.2 Payment for services will be made on a time and material bases to the upset price as noted in Clause 4.1 or as adjusted based on the processes set out within.
- 5.3 The Town shall not under any circumstances be obligated to pay the Consultant any amount exceeding the sum set out in Clause 4.1 unless prior written authorization has been obtained by the Consultant from the Town. Without limiting the generality of the foregoing, the Town shall not be required to make payment for any cost or disbursement incurred by or on behalf of the Consultant for the purpose of rectifying errors or omissions for which, in the reasonable opinion of the Town, the Consultant is responsible.
- 5.4 All amounts payable by the Town to the Consultant for Services hereunder shall be exclusive of any Goods and Services Tax ("GST") payable thereon and the Town shall, in addition to the amounts payable, pay to the Consultant all amounts of GST applicable thereon.
- 5.5 The Consultant shall provide documentation to support any request for payment, including but not limited to, all applicable invoices for materials, time sheets, government remittance records and such other material as the Town, acting reasonably, may require.
- 5.6 Where changes have been made to the scope of the Services in accordance with Clause 3.2, the Town may adjust the Consultant's fee accordingly and reimburse the Consultant for specific expenses incurred by the Consultant in the discharge of its obligations hereunder. Such expenses shall only be paid when approved in writing by the Town prior to expenditure and thereafter supported by proper receipts, invoices or vouchers submitted to the Town within thirty (30) days from the date upon which such expenses are incurred.
- 5.7 If the Town and the Consultant cannot agree to the terms of the adjustment as set out within Clause 5.6, then the dispute may be submitted to arbitration as set out in this Contract. The Consultant shall have no other claim against the Town for any adjustment to the Consultant's fee as a result of any change to the Services, except as set out within Clause 5.6.

6. CONSULTANT OBLIGATIONS

- 6.1 In carrying out its obligations hereunder, the Consultant shall be bound by and observe all applicable federal, provincial and municipal legislation and related regulations, which, without limiting the generality of the foregoing, shall comply with the provisions of the *Occupational Health and Safety Act, 2017*, Chapter 0-2.1 and amendments thereto and Regulations thereunder or any successive legislation, and shall at all times ensure that all the Consultant's employees comply with the requirements of the said Act and regulations thereunder. The Consultant shall be the general representative and agent to the Town for the purposes of general compliance with safety regulations for its own employees. The Consultant shall bring to the attention of its own employees the provisions of the *Occupational Health and Safety Act* and Regulations thereunder. The Consultant acknowledges that it is an "employer" as defined in the Alberta *Occupational Health*

and Safety Act, and that without limiting any other duties arising in relation to the Consultant under such legislation, the Consultant agrees that it shall have the duties of a “prime contractor” as defined in such legislation. Notwithstanding Section 6.1 the Consultant shall not have control or charge of and shall not be responsible for operations, maintenance or construction, means, methods, techniques, sequences, procedures, or for safety precautions or programs in connection with the operations, maintenance or construction, or for the acts or omissions of the Town, Town’s contractors, other subcontractors other subcontractors of other contractors, or any other persons performing any operations, maintenance or construction.

- 6.2 At all times during the term of this Contract, the Consultant shall be and remain in good standing pursuant to the *Workers’ Compensation Act*, 2000, Chapter W-15 and shall ensure that all coverage required for the Consultant and its employees are in place.
- 6.3 The Consultant shall, upon the request of the Town and at any time during the term of this Contract, provide evidence of compliance with the provisions of the *Workers’ Compensation Act* in the form of a current compliance certificate issued by the Workers’ Compensation Board for Alberta.
- 6.4 At all times during the term of this contract, the Consultant shall be a holder of a Certificate of Recognition (COR) through the Alberta Construction Safety Association (ACSA).
- 6.5 The Consultant shall be responsible for the payment of all income tax, Canada Pension, employment insurance and all other required payments, contributions or deductions that arise or may hereafter arise with respect to the Services performed by the Consultant under this Contract.
- 6.6 The Consultant hereby represents and warrants to the Town that it will provide qualified employees to provide the Services required under this Contract. The Consultant will provide a representative for the management and administration of the Services required by this Contract. Unless otherwise permitted by the Town in writing, the Consultant agrees that it shall provide the services of the individual(s) set out in **Schedule “B”** to this Contract in performing the Services.
- 6.7 The Consultant shall be responsible for all fees, licenses, permits, filings, and all other costs incidental to the performance of the Consultant's obligations under this Contract. Where in order to provide the Services, the Consultant or its employees, agents or subconsultants are required to be registered with a professional regulatory body in Alberta or Canada, the Consultant shall ensure that all such registration remain in place and in good standing during the Term; the Consultant shall forthwith advise the Town where such registrations are not in place or are not in good standing.
- 6.8 The Consultant hereby represents and warrants to the Town, and acknowledges that the Town is relying upon such representation and warranty, that the Consultant is in compliance with all laws and regulations of any public authority relating to the conduct of its business and has all required approvals, permits, licenses, certificates and authorizations necessary to carry on its business and to carry out its obligations hereunder and there are not any proceedings whatsoever, actual or pending, and whether concerning cancellation, extension or otherwise, relating to the said approvals, permits, licenses, certificates or authorizations.

- 6.9 The Consultant will report on a regular basis, as required by the Town, on the Services to be provided pursuant to this Contract. The Consultant will make available such information, including data, reports, and documents, as the Town may require from time to time relating to the obligations of the Consultant to allow the Town to evaluate the quality and progress of the Services to be provided under this Contract.
- 6.10 The Consultant shall not, without prior written consent of the Town, assign or in any way transfer its interest in or obligations under this Contract to any other party. The Consultant acknowledges and accepts that the Town has chosen the Consultant to perform the Services based on the reputation of the Consultant and the qualifications of the persons identified in the Proposal, and the consultant therefore agrees that the Town may in its absolute discretion refuse to accept any assignment or transfer of the Consultant's interest in or obligations hereunder, even if such refusal may be construed to be arbitrary or unreasonable.
- 6.11 The Consultant has no authority to assume or create any obligation whatsoever, expressed or implied, on behalf of or in the name of the Town, nor to bind the Town in any manner whatsoever.
- 6.12 Any deficiencies in the Services shall be rectified promptly and entirely at the Consultant's expense.

7. TOWN OBLIGATIONS

- 7.1 The Town shall furnish to the Consultant such information in its possession reasonably required for the proper performance of the obligations of the Consultant and shall provide reasonable cooperation in order for the Consultant to be able to perform the Services required pursuant to this Contract in a satisfactory manner. Nothing in this article shall relieve the Consultant of its duties as set out in this Contract.

8. SUBCONSULTANTS

- 8.1 The Consultant may, upon first obtaining the written approval of the Town, retain the services of one or more Subconsultants as may be required to perform the Services. The consultant shall obtain the approval of the Town before changing any Subconsultant. The Town's approval may be subject to such terms and conditions as the Town determines.
- 8.2 The Consultant shall remain fully responsible for the performance of the Services even if the Subconsultant retained are approved pursuant to Clause 8.1 by the Town.
- 8.3 The Consultant shall take all necessary measures to bind all Subconsultants to the terms of this Contract.

9. INDEPENDENT CONTRACTOR

- 9.1 Nothing in this Contract shall be construed as:
- (a) constituting either party as the agent, employer or representative of the other party;
 - (b) creating a partnership; or
 - (c) imposing upon either party any partnership duty, obligation or liability to the other party.

The relationship created by this Contract between the Town and the Consultant is that of independent contractor.

10. DEFAULT BY THE CONSULTANT

10.1 Where the Town determines that the Consultant is in default of its obligations as set out in this Contract, the Town shall, by written Notice of Default, require the Consultant to remedy such default, at the Consultant's sole expense, within forty-eight (48) hours of the delivery of the Notice of Default to the Consultant. The Consultant shall be in compliance with the Town's instructions if:

- (a) the Consultant corrects the default within the time specified in the Notice of Default; or
- (b) if the default cannot be corrected within the time specified in the Notice of Default, the Consultant commences the correction of the default within the time specified in the Notice of Default; and
 - (ii) the Consultant provides a schedule to correct default acceptable to the Town; and
 - (iii) the Consultant corrects the default within the time set out in the schedule agreed to by the Town.

10.2 In the event that the default is not corrected in accordance with Clause 10.1, or in the event of urgent circumstances where the giving of a written Notice of Default is impossible, or impracticable, as may be determined by the Town in its sole and unfettered discretion, or where the default of the Consultant is a material default making the continuance of the contractual relationship impossible, impractical or inadvisable for the Town, the Town may, without prejudice to any other right that the Town has pursuant to this Contract, or at law;

- (a) terminate the Consultant's right to continue with the provision of the Services of this Contract, in whole or in part; or
- (b) terminate the Contract forthwith; or
- (c) correct the default at the Consultant's expense and deduct the cost of same from any amount of monies that may be, or become, due and owing to the Consultant, or
- (d) complete the Services or allow another independent consultant to provide the uncompleted portion of the Services if results are not satisfactory to the Town or in the event that the schedule for the performance of the Services is not being met by the Consultant.

The sum of all damages, expenses, fees, costs, including but not limited to solicitor and client legal costs, incurred or suffered by the Town as a result of the Consultant's failure to correct the default, or the termination of the Consultant's right to continue with the provision of the Services of this Contract, in whole or in part, or the termination of the Contract forthwith, shall be a debt immediately due and owing by the Consultant to the Town which debt may be offset by the Town against any monies payable to the Consultant pursuant to this Contract or any other monies payable by the Town to the Consultant. The exercise by the Town of the rights pursuant to this clause shall not limit any other remedy the Town may have pursuant to this Contract or at law.

11. DEFAULT BY TOWN

11.1 If the Town is shown to be in default in the performance of any of the Town's material obligations set forth in this Agreement, including payment of the Consultant's fee as required herein, then the consultant may, by written notice to the Town, require such default be corrected. If, within 30 days after receipt of such notice, such default has not been corrected, the Consultant may, without limiting any other right or remedy they may have, immediately terminate this Agreement. In such an event, the Consultant shall not be liable for delay or damages as a result of the suspension or termination and the Town shall pay the Consultant for

all Services performed and for all disbursements incurred by the Consultant pursuant to this Agreement.

12. TERMINATION OF CONTRACT

12.2 This Contract may be terminated for convenience by the Town at any time by giving seven (7) days written notice hand delivered to the address given in Clause 14.1 (or as changed pursuant to Clause 14.1) of termination for convenience to the Consultant. The effective date of the termination for convenience shall be set out in the Notice of Termination for Convenience. The Consultant's right to consideration shall be limited to payment for Services provided and not previously paid for up to the effective date as set out in the Notice of Termination for Convenience. The Consultant specifically agrees that the Notice of Termination for Convenience and consideration set forth in this clause constitutes reasonable, fair and equitable notice and compensation for damages, if any, which may be suffered by the Consultant as a result of the termination for convenience of this Contract. In the event this Contract is terminated for convenience, the Consultant shall provide the Services required by this Contract up to and including the effective date set out in the Notice of Termination for Convenience and shall, upon request, provide the Town with a written report on the Services rendered to the time of termination for convenience. Except for any such report, the Consultant shall not provide any further Services subsequent to the effective date set out in the Notice of Termination for Convenience.

12.3 The Consultant shall, upon termination, forthwith deliver to the Town a reproducible copy of all materials used by the Consultant or prepared by the Consultant in relation to this Project.

13. INDEMNITY AND INSURANCE

13.1 The Consultant shall indemnify the Town, its elected council, officers and employees from and against all liabilities, losses, injuries, costs, damages, legal fees (on a solicitor and his own client full indemnity basis), disbursements, expenses, claims, demands and proceedings lawfully brought or made by any person against the Town, its directors, officers and employees may sustain, pay or incur or which may be brought or made against all or any of them, and incurred in connection with the Services and claims or demands relating to, resulting from or arising out of all or any of the following:

- (a) the negligent act or omission, of the Consultant and/or any of those persons for whom the Consultant is responsible at law (including, without limitation, any of its employees or Subconsultants);
- (b) any breach, violation or non-performance of any representation, warranty, obligation, covenant, condition, term or agreement in this Contract set forth and required on the part of the Consultant to be fulfilled, kept, observed or performed, as the case may be; or
- (c) any damages to third parties caused by, resulting at any time from or arising out of any negligent act or omission, of the Consultant, breach of contract by the Consultant, and/or any of those persons for whom the Consultant is responsible at law (including, without limitation, any of its employees or Subconsultants).

- 13.2 These provisions are in addition to and shall not prejudice any other rights of the parties at law or in equity. These provisions shall survive the termination or expiry of this Contract for any reason whatsoever.
- 13.3 No Consequential Damages; The Liability of each party with respect to a claim from the other arising under or in connection with this Contract, whether in contract, tort (including negligence) or any other legal theory, is limited to direct losses and damages only and neither party will have any liability whatsoever for consequential damages (such as, but not limited to, claims for loss of profit, revenue, production, business, contracts, or opportunity and increased costs of capital, funding or overhead) incurred by the other part.
- 13.4 Without in any way limiting the liability of the Consultant under this Contract, the Consultant shall obtain and maintain in force, with insurers licensed in the Province of Alberta, at the Consultant's own expense, during the existence of this Contract, or any extension thereof, and shall provide evidence of the existence of same to the Town prior to commencing any of the Services the following insurance:
- 13.4.1 Comprehensive General Liability Insurance in respect to the Services and operations of the Consultant for bodily injury and / or property damage with policy limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence. Such insurance shall name the Town as an additional insured, shall be primary and non-contributory to any other insurance available to the Town, and contain a waiver of subrogation provision in favour of the Town. Policy to be confirmed by the Town of DRUMHELLER Insurer.
- 13.4.2 Professional Liability Insurance in respect to the Services with policy limits of not less than One Million Dollars (\$1,000,000.00) per claim.
- 13.5 The aforementioned insurance shall be in a form and with insurers acceptable to the Town's Insurance Broker. Certificates of Insurance shall be provided to the Town by the Consultant or the Consultant's broker prior to commencement of work, and evidence of renewal shall be provided to the Town not less than thirty (30) days prior to the expiry dates of the policies. The Consultant shall be liable for the cost of all of the insurance and bonding required to be held by the Consultant as set forth herein and for payment of all deductible amounts from the policies of insurance.

14 RESOLUTION OF DISPUTES

- 14.1 The parties agree all reasonable efforts shall be made to resolve all disputes under this Contract by negotiation and agree to provide, without prejudice, open and timely disclosure of relevant facts, information and documents to facilitate these negotiations. The parties agree that any dispute not resolved through negotiation shall be submitted for arbitration in accordance with the provisions of this Contract.
- 14.2 In the event that the parties are unable to resolve a dispute, through negotiation, as to the interpretation, application, operation or alleged violation of this Contract or any of the provisions hereof, such dispute shall be determined by arbitration in accordance with the following terms and conditions:
- 14.2.1 The party desiring to refer a dispute for arbitration shall notify the other party in writing of the details of the nature and extent of the dispute and the desire of the notifying party to refer the matter to arbitration. Thereafter the following steps shall apply.

- 14.2.2 Within seven (7) days of receipt of such notice, the receiving party shall, by written notice, advise the party requesting the arbitration of its position with respect to all matters set forth in the initial notice. The receiving party's notice may admit responsibility and propose remedial action, for some or all of the matters raised in the initial notice, and the receiving party shall then forthwith undertake such remedial action.
- 14.2.3 The terms of reference for arbitration shall be those areas of dispute referred to in the initial notice in respect of which the receiving party has not admitted responsibility or taken remedial action.
- 14.2.4 The Town and the Consultant shall, within seven (7) days of the establishment of the terms of reference, each appoint an arbitrator and the two arbitrators shall, within seven (7) days of their appointment, appoint a third member to the Arbitration Committee to be known as the Chairman.
- 14.2.5 If the two arbitrators fail to appoint a Chairman within the time period hereinbefore limited for that purpose, then both parties or either of them may apply to a Justice of the Court of Queen's Bench of Alberta to have the Chairman appointed.
- 14.2.6 If either party fails to appoint an arbitrator within the seven (7) day period as outlined herein, then the arbitrator appointed by the one party shall be deemed to be the Arbitration Committee and the decision of that Arbitrator shall be final and binding upon the parties hereto.
- 14.2.7 Within thirty (30) days of the establishment of the Arbitration Committee, or such further period as may be agreed upon by the parties, the Arbitration Committee shall resolve all matter in dispute in accordance with the terms of reference.
- 14.2.8 The decision of the majority of the Arbitration Committee shall be the decision of the Committee. If no majority decision is reached, the decision of the Chairman shall be the decision of the Committee.
- 14.2.9 The decision of the majority of the Arbitration Committee shall be final and binding upon the parties.
- 14.2.10 The costs of the Arbitration Committee shall be borne by each party as specified by the Arbitration Committee.
- 14.2.11 Except as hereby modified, the provision of the *Arbitration Act*, 2000, Chapter A-43, as amended (or any successor legislation thereto) shall apply to the arbitration procedure.
- 14.3 Unless instructed otherwise in writing by the Town, the Consultant shall continue to carry out the Services during any arbitration proceedings.

15 CONFIDENTIAL INFORMATION

- 15.1 The Consultant acknowledges that, during the term of this Contract, the Consultant may be exposed to information that the Town considers to be proprietary or confidential ("Confidential Information"). Confidential Information shall include, but shall not be limited to, any government, municipal council, business, technical, marketing, financial or other information, whether in electronic, visual, oral or written form, and all memoranda, summaries, notes, analyses, compilations, studies or other records prepared by the Consultant that contain, are based on, or

reflect any such information. The Consultant shall not use such Confidential Information except in the normal course of performing the Services and shall not disclose to others any Confidential Information of the Town unless the Consultant has the prior written authorization of the Town. The Consultant shall, where the Town has approved the use of a Subconsultant, ensure that any sub-contract documents contain confidentiality provisions that are at least as restrictive as those set out in this Contract, and that such sub-contract be executed prior to the disclosure of any Confidential Information. Consultant shall be liable for any unauthorized disclosure of any Confidential Information by any Subconsultant. The Consultant's obligation of confidentiality shall continue following the termination of this Contract.

- 15.2 The Consultant acknowledges that the Town is subject to the *Freedom of Information and Protection of Privacy Act*, 2000, Chapter F-25. Records compiled or created under this Contract may be subject to disclosure in accordance with the provisions of such legislation or other laws. The Consultant also acknowledges that information and records compiled or created under this Contract, which are in the custody of the Consultant, are also subject to the *Act*. If the Town receives a request for information under the *Act*, which includes information provided by the Consultant, the Town may give the Consultant notice of such request where required by law and the Consultant will respond to such notice in accordance with the *Act*. If the Town's response to a request under the *Act* is appealed to the Office of the Information and Privacy Commissioner, the Consultant shall be responsible for the burden of proof as to exception from disclosure as defined under the *Act*.
- 15.3 The Consultant shall be responsible for all costs related to confidentiality requirements. As applicable, for Town records and information under its care, the Consultant shall bear the burden and associated costs of records management practices required under the *Act*. As well, the Consultant shall be responsible to provide for the protection of confidential Town records and information as required by the *Act*.
- 15.4 The Consultant shall employ such data storage and data protection methods as are required in order to protect the Town's Confidential Information and other data supplied by the Town as are consistent with industry best practice, and that are in any even equal to or greater than those data storage and data protection methods utilized by the Town at the time that this Contract is executed. The Consultant shall not, without prior written consent of the Town, store any Confidential Information outside of Alberta in either electronic or paper form.

16 OWNERSHIP OF WORK

- 16.1 The Consultant agrees that the Town shall be the sole and exclusive owner of all right, title and interest in and to all Work Product. To the extent, if any, that the Consultant has any rights in any Work Product, the Consultant hereby irrevocably assigns to the Town, all right, title and interest in and to such Work Product. Any moral rights in the Work Product are hereby waived in favour of the Town.
- 16.2 For the purposes of this Contract, "Work Product" means all work product created by the Consultant or Subconsultants in connection with the performance of the Services, including but not limited to all deliverables, documentation, reports, designs, data, drawings and all other works products created by the Consultant or Subconsultant for delivery to Company in providing Services, but does not include draft materials or the Consultant's file contents.
- 16.3 The Consultant warrants that all its personnel and Subcontractors have by written agreement waived and assigned any and all rights or claims they may have to all Work Product and the

Consultant agrees to indemnify the Town from and against any liability, claim, damage, cost or expense (including reasonable legal fees) arising from or relating to any and all such rights or claims.

- 16.4 The Consultant represents and warrants to the Town that neither the Work Product nor the Town's use of the Work Product will infringe or misappropriate the patent, copyright, trademark, trade secret or other intellectual property rights of any third party. This non-infringement warranty shall not apply to the extent that an infringement claim arises as a result of the Town's use of the Work Product in combination with other products or systems which could not be reasonably anticipated.

17 RETURN OF PROPERTY

- 17.1 Upon the termination of this Contract or at any time before the termination of this Contract when requested by the Town, the Consultant shall immediately deliver to the Town all Confidential Information and Town property and equipment.
- 17.2 Consultant agrees that it shall, upon request of the Town, execute or cause an authorized officer of the Consultant to execute a statutory declaration confirming that the Consultant (and any Subconsultant) and its employees have complied with the obligations in relation to Confidential Information and Return of Property.

18 NOTICE

- 18.1 For the purposes of this Contract, the addresses of the parties are:

Town of Drumheller

702 Premier Way
Drumheller, Alberta T0J 0Y4

Attention: Kelcie Wilson C.E.T.
Capital Project Manager
Cell: 403.334.0425
kwilson@drumheller.ca

AND

Consultant Ltd.

ADDRESS LINE 1
ADDRESS LINE 2

Attention: Consultant contact
Contact Title
Contact Phone Number
Email:

Any communication notice or service of documents required to be made during the course of this Contract will be good and sufficient if delivered to, or posted by prepaid registered mail addressed to, the above addresses. Notice given in any such manner shall be deemed to have been received by the party on the day of delivery or upon the 3rd day after the date of mailing provided that normal postal service is in existence at the time of mailing and for three (3) days thereafter. Any party may change its address for service from time to time upon written notice to that effect. In the event of disruption of normal postal work, any party giving notice hereunder shall be required to deliver the same.

19 NO HIRE

19.1 For the term of this Contract and for a period on 12 months after the termination or expiration of this Contract, the Consultant shall not directly or indirectly (a) induce any employee or independent contractor of the Town or its contractors to leave the employment or service of the Town or (b) induce any employee or independent contractor of the Town to take up employment or service with any other person while such employee or independent contractor is in the employment or service of the Town or for a period of twelve (12) months thereafter..

20 GENERAL

20.1 The parties acknowledge and agree that the provisions of this Contract, which, by their context, are meant to survive the termination of this Contract, shall survive the termination or expiration of this Contract and shall not be merged therein or therewith.

20.2 No consent or waiver, express or implied, by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of obligations hereunder by such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

20.3 The laws of the Province of Alberta shall govern the interpretation of this Contract and the jurisdiction for any proceeding relating to any matters hereunder shall be Alberta.

20.4 The obligations of the Consultant performed pursuant to this Contract shall only be performed by the Consultant or an employee or a party acting on behalf of the Consultant who has been approved in advance in writing by the Town, such approval which may be arbitrarily withheld and which may be terminated or revoked at any time in the discretion of the Town.

20.5 This Contract and its Schedules constitutes the entire Contract between the parties hereto and the parties acknowledge and agree that there are no covenants, representations, warranties, contracts or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Contract save as expressly set out in this Contract.

- 20.6 This Contract may not be altered or amended in any of its provisions, except where any such changes are reduced to writing and executed by the parties.
- 20.7 This Contract shall ensure to the benefit of and be binding upon the parties herein and their respective heirs, successors and assigns.
- 20.8 Time is of the essence in this Contract, and if either party shall fail to perform the covenants on its part to be performed at fixed times or alternatively within a reasonable time for the performance thereof under the terms of this Contract, the other party may elect to terminate this Contract.
- 20.9 If any term, covenant or condition of this Contract or the application thereof to any party or circumstances shall be invalid or unenforceable to any extent, the remainder of this Contract or application of such term, covenant or condition to a party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Contract shall be valid and shall be enforceable to the fullest permitted by law.
- 20.10 This Contract may be executed and delivered in any number of counterparts, by a facsimile copy, by electronic or digital signature or by any other written acknowledgment of consent and agreement to be legally bound by its terms as set forth herein. Each counterpart when executed and delivered will be considered an original with all counterparts taken together constitute one and the same instrument.

IN WITNESS WHEREOF the parties have executed this Contract as of the date first above written.

TOWN OF DRUMHELLER

Representative #1

Representative #2

INSERT NAME OF CONSULTING COMPANY

Representative #1

Representative #2

SCHEDULE "A"

Consultant's Proposal for:

PROJECT TITLE
RFP # ##-YYY-DIS

SCHEDULE "B"

Consultant Project Team: