

APPENDIX D**MASTER ENGINEERING SERVICES AGREEMENT**

THIS AGREEMENT entered into this [redacted] day of [redacted], 20[redacted]

BETWEEN:

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

AND:

Being a body corporate governed by the laws of Alberta and having a registered office located at

(the "Engineer")

WHEREAS the Town issued a request for proposals in order to select qualified engineering firms to be available to provide engineering services on an as-needed, non-exclusive basis on anticipated project(s);

AND WHEREAS the Town and the Engineer wish to establish a standing supply arrangement for the provision of certain engineering services to the Town as may be required, subject to the terms and conditions herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the covenants and other good and valuable consideration herein contained, the parties hereto agree as follows:

1. Contract Documents

1.1 The Town and the Engineer agree to perform their respective obligations subject to and in accordance with the Contract Documents. This Contract consists of the following documents which are incorporated by reference and form part of this Contract:

Schedule 1 -	Form of Service Order
Schedule 2 -	Contract Charges
Schedule 3 -	Payment Procedures
Schedule 4 -	General Conditions
Schedule 5 -	Site Rules

1.2 All capitalized terms used in this Contract or any of the above Schedules, and not otherwise defined, shall have the meanings given to such terms in the Schedule of General Conditions.

2. Service Orders

2.1 The Town may initiate an order for Services by issuing and delivering a written Service Order to the Engineer by facsimile, electronic mail or otherwise which, as applicable, specifies:

- (a) the scope of the Services required;
- (b) the time in which the Services are to be completed; and
- (c) any other relevant commercial terms.

2.2 The Engineer may accept a Service Order by signing the Service Order or otherwise acknowledging its acceptance of the Service Order and delivering the signed Service Order or other acknowledgement to the Town. The Engineer will be deemed to have accepted a Service Order by commencing the performance of the Services specified in such Service Order.

3. Performance of Services

3.1 The Engineer shall perform the Services described in any completed Service Order attached to this Contract, and any future Service Order issued by the Town and accepted by the Engineer from time to time.

3.2 Nothing in this Contract commits the Engineer to perform any services until a Service Order has been issued by the Town and accepted by the Engineer.

4. Allocation of Assignments

4.1 This Contract does not guarantee that the Engineer will be engaged to provide any Services to the Town. The Engineer acknowledges that the Town may allocate assignments in its sole discretion. The Engineer acknowledges that the Town may also request further proposals for specific assignments from the Engineer.

4.2 Nothing in this Contract is intended to limit the Town's ability to engage any other engineer to perform any services for the Town, or to undertake any other procurement or selection process in respect of identifying and engaging any other engineer to perform any services for the Town.

5. Time for Performance of the Services

The Engineer agrees to perform the Services in a diligent and timely manner and in accordance with the milestones contemplated in this Contract, including in any Service Order.

6. Compensation

The Town agrees to pay the Engineer the Contract Charges for performing the Services, in accordance with the terms of this Contract.

7. Term

This Contract shall remain in effect until the day of , 20 , unless terminated earlier or renewed in accordance with its terms. The termination or expiry of this Contract shall not affect any Service Order then in effect, and all such Service Orders shall remain subject to all of the terms and



conditions of this Contract. No termination or expiration of this Contract shall release either the Town or the Engineer from any obligation or claims arising prior to termination or expiration.

8. Notices

All notices of claims or any notice terminating or cancelling this Contract or a Service Order shall be by personal delivery, by courier, by fax or by email to the addresses, fax numbers and email addresses set out below:

To the Town:

Town of Drumheller
224 Center Street
Drumheller, AB T0J OY4

Cell: 403-334-0425
Email: kwilson@drumheller.ca

Attention: Kelcie Wilson, Capital
Project Manager

To the Engineer:

●

Fax: ●
Email: ●

Attention: ●

9. Counterparts

This Contract may be executed in one or more counterparts and may be executed and delivered by facsimile or electronic mail. All the counterparts taken together constitute one and the same instrument when each of the Parties has signed a copy of it, whether the same or different copies.

THE PARTIES have executed this Contract as of the day and year written above.

TOWN OF DRUMHELLER

[ENGINEER]

By:

By:

Name: Dave Brett

Name:

Title: Director of Infrastructure

Title:

SCHEDULE 1

Form of Service Order

The Services provided by **[INSERT NAME OF ENGINEER]** (the "Engineer") under this Service Order are subject to and governed by the Master Engineering Services Agreement dated between the Town of Drumheller (the "Town") and the Engineer.

1. Description of Services:

[NTD: Describe services here or on attached document.]

2. Time for Completing Services:

Milestone/Deliverable	Completion/Delivery Date
1. Commencement of Services	<date>
2. <Insert Milestone/Deliverable>	<date>
3. <Insert Milestone/Deliverable>	<date>
4. Completion of Services	<date>

3. Amount Payable for Services: (select one)

lump sum price of \$ _____;

– OR –

reimbursable hours properly incurred by the Engineer, payable at the rates set out in the Schedule of Contract Charges attached to the Master Engineering Services Agreement;

Position	# Of hrs.
<Insert Position>	<hrs.>
<Insert Position>	<hrs.>
<Insert Position>	<hrs.>

– OR –

percentage fee of _____% of the cost of construction of the Works.

4. Invoicing: The Engineer may invoice the Town: (select one)

upon complete performance of the Services;

– OR –

monthly in arrears, based on the reimbursable hours properly incurred by the Engineer during the preceding month;

– OR

upon completion of the "Milestone/Deliverables" identified below, for the corresponding "Payment Amount."

Milestone/Deliverable	Completion/Delivery Date	Payment Amount
5. <Insert Milestone/Deliverable>	<date>	\$<amount>
6. <Insert Milestone/Deliverable>	<date>	\$<amount>
Total		\$<amount>

5. Other Terms:

5.1 Lead Personnel

The following are the lead Personnel assigned to perform the Services:

Position	Name
1. <Insert Position>	<Insert Name>
2. <Insert Position>	<Insert Name>

5.2 Sub-consultants

The following are the Sub-consultants authorized by the Town to perform the Services:

Sub-consultant	Services
1. <Name of Sub-consultant>	<Services>
2. <Name of Sub-consultant>	<Services>

[NTD: Insert any other applicable terms. List any additions or exclusions to Reimbursable Expenses (Schedule 2, Section 2)]



The Town and the Engineer have agreed to this Service Order on _____, 20__.

TOWN OF DRUMHELLER

By: _____
Name:
Title:

[NAME OF ENGINEER]

By: _____
Name:
Title:

[NTD: Revise/adapt the Service Order as needed.]

SCHEDULE 2

Contract Charges

1. Fees

Unless otherwise specified in a Service Order, the Town shall pay the Engineer for the reimbursable hours properly incurred by the Engineer in performing the Services at the following rates:

Position	Rate
<Insert Position>	\$<amount> per hour
<Insert Position>	\$<amount> per hour

2. Reimbursable Expenses

2.1 Unless otherwise specified in a Service Order, the Town shall reimburse the Engineer for the following expenses reasonably incurred in the performance of the Services, at the Engineer's out-of-pocket cost, without mark-up:

- (a) transport, subsistence, and lodging in connection with the Services beyond <insert distance> kilometres of the Engineer's office;
- (b) use of vehicles charged at \$<amount> per kilometre;
- (c) long-distance telephone and facsimile communications;
- (d) reproduction of information, drawings, specifications, and other documents necessary to the Services;
- (e) courier and messenger services; and
- (f) other costs reasonably incurred by the Engineer where the Engineer has obtained the Town's prior written approval.

3. Cost Control

3.1 Where the Services are not being performed on a lump-sum basis, the Engineer shall perform the Services so as to minimize the Contract Charges payable to the Engineer by the Town, and all other costs to the Town in completing the Works.

SCHEDULE 3**Payment Procedures****1. Currency**

All references to currency in this Contract, unless otherwise specified, are references to the legal tender of Canada.

2. Invoices

- 2.1** The Engineer shall submit its invoices to the Town in a form satisfactory to the Town and shall submit with each invoice any further documentation and information, including, without limitation, timesheets and expense reports, as the Town reasonably requires.
- 2.2** If required by the Town, the Engineer shall, at the time of submitting its invoice, deliver a progress schedule in writing describing all the Services completed during the period in respect of which the application for payment is made.
- 2.3** Subject to the Town's right to question in good faith the Engineer's invoice, payment for the Services will be due 30 days following the receipt by the Town of the Engineer's invoice, together with correct and complete backup documentation, provided the Engineer is otherwise in compliance with this Contract.
- 2.4** If the Town disputes any item in the Engineer's invoice, the Town shall not be obligated to pay the Engineer for the value of the disputed item until the parties have resolved the dispute.

3. Builders' Lien Holdback

Where the *Builders' Lien Act* (Alberta) applies to the Services, each payment to the Engineer is subject to a 10% builders' lien holdback. the Town shall retain and release the holdback subject to and in accordance with the *Builders' Lien Act* (Alberta) and this Contract.

4. Taxes

- 4.1** The Contract Charges are exclusive of any applicable GST required to be levied on the Contract Charges.
- 4.2** If the Engineer is not a licensed GST registrant, the Town shall self-assess and remit all applicable GST.
- 4.3** If the Engineer is a licensed GST registrant, the Engineer shall: (a) specify any applicable GST on each invoice; (b) promptly pay or remit to the appropriate governmental authority when due all applicable GST; (c) provide the Town upon request with appropriate clearance certificates regarding the payment of all such GST from time to time; and (d) indemnify and save harmless the Town from all such GST including interest and penalties.
- 4.4** The Engineer shall indemnify and save harmless the Town from and against liability incurred by the Town for all excise taxes, duties, workers' compensation assessments or other charges

(including penalties and interest) relating to the performance of the Services that are payable by the Engineer to any Authority.

5. Full Compensation

Except as otherwise expressly provided in the Contract Documents, the Engineer accepts the Contract Charges as full compensation for everything furnished and done by the Engineer under this Contract and fulfillment of all of the Engineer's obligations under this Contract, including all Services required but not included in the specifically mentioned items of Services.

6. Records

The Engineer shall maintain books and records:

- 6.1 in accordance with generally accepted accounting methods, timesheets pertaining to the Services performed on an hourly rate basis and records of reimbursable expenses; and
- 6.2 of Services performed pursuant to Service Orders, including but not limited to records of quotations, contracts, correspondence, invoices, vouchers.

The Engineer shall make its records available for the Town's audit and inspection upon request for a period of 2 years following the later of the completion of any Service Orders and termination or expiration of this Contract. The Town shall be entitled to take and retain copies of such books and records.

7. Set-off

Notwithstanding any other provision of this Contract, the Town may withhold, set off or deduct from any amount otherwise due to the Engineer on any application for payment or make demand under any security available, any amount that is reasonably necessary to reimburse, indemnify or protect the Town from any loss or damage resulting from or attributable to the Engineer's breach of this Contract, or to reimburse the Town for any amounts otherwise due and payable by the Engineer to the Town under or arising from this Contract.

SCHEDULE 4**General Conditions****1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

In this Contract, unless the context otherwise requires

(1) "**Authority**" means any:

- (a) government or government department;
- (b) municipality, local government authority or council;
- (c) government or statutory authority;
- (d) judicial body, commission, board, tribunal or agency; or
- (e) other person or body;

having jurisdiction or authority in any way over the subject matter of this Contract including a right to impose a requirement or whose consent is required with respect to the Works;

(2) "**Business Day**" means a day that is not a Saturday, Sunday, or statutory holiday in the Province of Alberta;

(3) "**Change to the Services**" means any addition, deletion or modification of, or to, part or all of the Services that is consistent with the general scope of the Contract Documents;

(4) "**Change Order**" means the document executed by the Parties for the purpose of documenting Changes to the Services;

(5) "**Claim**" means any demand, claim, action, suit or legal proceeding of any nature;

(6) "**Confidential Information**" means the Contract Documents, any Town Material and any information (in whatever form) which relates to the business, affairs, technologies, systems or activities of the Town or the design, functionality, equipment, management, costs, procurement or progress of the Work and the Services, and including all information of third parties provided by or on behalf of the Town to the Engineer or its Personnel;

(7) "**Contract**" or "**Contract Documents**" means the Signed Contract, together with:

- (a) all of the schedules attached to the Signed Contract and all documents incorporated by reference or referred to in those schedules;
- (b) all Service Orders issued by the Town and accepted by the Engineer;

- (c) all Change Orders; and
 - (d) all other amendments to the Contract Documents from time to time, executed in accordance with section 11.4;
- (8) "**Contract Charges**" means: (a) for Services performed on a "time and materials" basis, those fees and reimbursable expenses identified in the Schedule of Contract Charges earned by the Engineer for the performance of the Services; (b) for Services performed on a "lump sum" basis, the "lump sum price" set out in the corresponding Service Order; and (c) for Services performed on a "percentage of construction cost" basis, the percentage set out in the corresponding Service Order;
- (9) "**Contract Date**" means the effective date of this Contract set forth in the Signed Contract;
- (10) "**Contract IP**" means all Intellectual Property Rights created, discovered or conceived of by the Engineer's Personnel and coming into existence pursuant to, as a result of, or for the purpose of, or in connection with, or used in the performance of the Services or performance of the Contract, including without limitation, any of the Engineering Material;
- (11) "**Design Criteria**" means the performance requirements, specifications and budgets used for the basis of the design for the Works which are either set forth in, annexed to, or referred to in the Contract Documents (including any Service Order) or otherwise provided to the Engineer by or on behalf of the Town;
- (12) "**Engineering Material**" means all drawings, surveys, specifications, designs, data, plans, reports, studies, calculations or other documents, whether in physical or electronic form, which are collected, compiled, produced, prepared or delivered by or on behalf of the Engineer under this Contract;
- (13) "**GST**" means the tax payable under Part IX of the *Excise Tax Act* (Canada);
- (14) "**Intellectual Property Rights**" includes all industrial and intellectual property rights whether protected or protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist on or after the Contract Date in copyrightable works, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how and rights in relation to designs (whether or not registerable);
- (15) "**Laws**" includes:
- (a) federal, provincial and local government legislation including regulations and by-laws;
 - (b) legislation of any jurisdiction other than those referred to in section 1.1(15)(a) with which the Engineer must comply;
 - (c) common law and equity;

- (d) judgments, decrees, writs, administrative interpretations, guidelines, building codes, policies, injunctions, orders or the like, of any Authority with which the Engineer is legally required to comply; and
 - (e) Authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals);
- (16) "**Party**" means either the Town or the Engineer as the context dictates and "**Parties**" means both the Town and the Engineer;
- (17) "**Personnel**" means:
- (a) in relation to the Engineer, any of its directors, officers, employees, agents, Sub-consultants and the Sub-consultants' directors, officers, employees or agents and shall include the lead Personnel; or
 - (b) in relation to the Town, any of its directors, officers, employees or agents;
- (18) "**Services**" means all (or part, where the context requires) of the services that the Engineer is required by the Contract Documents to perform in order to comply with all of its contractual obligations, including all of the services and obligations described in any ServiceOrder;
- (19) "**Service Order**" means an order for the Services substantially in the form set out in the Schedule of Form of Service Order, issued by the Town and accepted by the Engineer in accordance with section 2 of the Signed Contract;
- (20) "**Signed Contract**" means the formal instrument of agreement forming part of this Contract;
- (21) "**Site**" means any premises owned or controlled by the Town where the Services are to be performed;
- (22) "**Site Services**" has the meaning given in section 1 of the Schedule of Site Rules;
- (23) "**Sub-consultant**" means any registered professional engineer, architect, other specialist, or any other sub-consultant engaged by the Engineer in connection with the provision of the Services;
- (24) "**Town Material**" means any Design Criteria, drawings, data, plans, reports, studies, or other documents, whether in physical or electronic form, provided by or on behalf of the Town to the Engineer for the purposes of this Contract (including any such documents provided on behalf of the Town by other third parties);
- (25) "**Works**" means the physical works that are to be constructed or supplied by the Works Contractor in accordance with the Engineering Material; and
- (26) "**Works Contractor**" means the contractor engaged by the Town to construct or supply the Works in accordance with the Engineering Material.

Other terms defined and employed herein shall, except where the contrary is specifically indicated, have the meaning ascribed to them elsewhere in the Contract Documents.

1.2 Interpretation

Unless the context otherwise requires, in this Contract:

- (1) a reference to a section means a section of the particular Contract Document in which the reference occurs;
- (2) a reference to this Contract includes any schedule, appendix or exhibit to this Contract;
- (3) the word "including" means "including without limitation" and "include" and "includes" will be construed similarly;
- (4) the singular includes the plural and conversely;
- (5) a gender includes all genders;
- (6) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of it, a legislative provision substituted for it and any regulation, subordinate legislation or other statutory instrument issued under that legislation or legislative provision;
- (7) headings are for convenience only and do not affect interpretation of this Contract;
- (8) the Contract Documents are complementary, and what is required by one will be binding as if required by all;
- (9) words and abbreviations with well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings; and
- (10) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward this Contract or any part of it.

2. THE SERVICES

2.1 General Requirements

The Engineer shall:

- (a) have control over the proper performance of the Services and all its Personnel involved in the Services, including approved Sub-consultants, if any, and shall be entirely responsible for the compliance with this Contract by all such Personnel;
- (b) properly perform and complete the Services with diligence, skill and care to their completion within the time set forth in any applicable Service Order;
- (c) ensure that the Services are performed under the supervision of appropriately qualified and experienced Personnel and ensure that all Personnel engaged in performing the

Services will be appropriately qualified and experienced for the tasks assigned to them;

- (d) not change any of the lead Personnel assigned to perform the Services, as indicated in the applicable Service Order, without the Town's consent, which consent shall not be unreasonably withheld;
- (e) at all times act in good faith and in the best interest of the Town in the performance of the Services;
- (f) comply with the terms of the Schedule of Site Rules to the extent that Services are being performed at a Site;
- (g) to the extent that the Town has paid all undisputed amounts of the Contract Charges in accordance with the Schedule of Payment Procedures, pay and satisfy or cause to be paid and satisfied all proper invoices, claims and accounts of Sub-consultants, and any and all other persons, firms or corporations employed, directly or indirectly, by the Engineer or Sub-consultants in connection with the Services; and
- (h) do and fulfill all things indicated or reasonably contemplated by this Contract.

2.2 Design and Quality Requirements

The Engineer acknowledges and agrees that:

- (a) all engineering and design Services will be performed in a professional, well-engineered and well-designed manner: (i) in accordance with the degree of care, skill and diligence which is normally exercised by leading industry professionals providing comparable services in respect of projects of a similar nature; and (ii) consistent with the Town's objective and design requirements for the Works indicated in the Contract Documents or the Design Criteria;
- (b) the Engineering Material must conform to and satisfy the Design Criteria;
- (c) the Engineering Material must be free from defects in design;
- (d) the Engineering Material must be complete and sufficient so as to permit construction or supply of the Works by the Works Contractor;
- (e) the Works, if constructed or supplied in accordance with the Engineering Material, will satisfy the Design Criteria and will be fit and suited for the Town's purpose and use specified in the Contract Documents; and
- (f) all Services, other than engineering and design Services, must be performed by the Engineer in accordance with the requirements of the Contract Documents and currently accepted prudent industry standards and practices for comparable services in respect of projects of a similar nature and having regard to the requirements of this Contract.

2.3 Compliance with Laws

The Engineer shall:

- (a) ensure that the Engineering Material complies with applicable Laws;
- (b) comply with all applicable Laws in performing the Services and its obligations under this Contract; and
- (c) provide the Town with evidence of compliance with Laws when the Town reasonably requests.

2.4 Verification of the Town Material

- (1) The Engineer shall review, verify and satisfy itself as to the accuracy, sufficiency and completeness of all the Town Material except any the Town Material the Engineer is directed in writing by the Town not to review or verify.
- (2) Where the Engineer becomes aware of any, or the real likelihood of any, inaccuracy, incompleteness, error, ambiguity, inconsistency or any other deficiency in any the Town Material, the Engineer must give notice to the Town as soon as reasonably practicable setting out the details of the inaccuracy, incompleteness, error, ambiguity, inconsistency or deficiency in the Town Material.

2.5 Preparation and Review of Engineering Material

- (1) The Engineer must ensure that where required by Laws, all Engineering Material is prepared or accepted by Personnel with appropriate professional qualifications and membership in appropriate professional associations. Without limiting the foregoing, all Engineering Material must, to the extent required by Laws, be reviewed, sealed or stamped by professional engineers registered to practise professional engineering in the Province of Alberta.
- (2) The Engineer must:
 - (a) give the Town copies of all Engineering Material (including amended versions) in an orderly and timely fashion as directed by the Town to facilitate the Town's review of such Engineering Material;
 - (b) unless otherwise specified in the Contract Documents, allow not less than 7 days for the Town to review the Engineering Material; and
 - (c) if any Engineering Material is rejected, submit amended Engineering Material to the Town for review, in which case this section 2.5(2) will reapply.
- (3) No review of, comments upon, approval or rejection of, or failure to review or comment upon or approve or reject, any aspect of the Services or any Engineering Material by or on behalf of the Town shall:

- (a) relieve the Engineer from, or alter or affect, the Engineer's liabilities or responsibilities whether arising out of or in connection with this Contract or otherwise according to Laws; or
- (b) prejudice the Town's rights against the Engineer whether arising out of or in connection with this Contract or otherwise according to Laws.

2.6 Additional Information

The Engineer acknowledges that, other than as expressly provided elsewhere in the Contract, it is the Engineer's responsibility to make all enquiries and obtain all information relevant to and necessary for the performance of the Services.

2.7 Additional Instructions

The Town may provide the Engineer with additional instructions as necessary for the performance of the Services. All such additional instructions must be consistent with the general scope and intent of the Contract Documents and the Services must be performed in accordance with such additional instructions. In giving such additional instructions, the Town may make minor changes in the Services, not inconsistent with the general scope and intent of the Contract Documents.

2.8 Reporting Obligations

The Engineer shall give the Town such reports concerning the progress of the Services in such form and within such time as the Town may reasonably require.

2.9 Limitation of Engineer's Responsibility

The Engineer shall not be responsible for:

- (a) the Works Contractor's failure to supply or construct the Works in accordance with the Engineering Materials; and
- (b) the construction methods, means, techniques, sequences or procedures of the Works Contractor in constructing the Works;

provided, however, the limitations listed in this section 2.9 shall not excuse the Engineer from its own negligence, the negligence of its Personnel or any breach of this Contract by the Engineer.

2.10 Inspection

During the Engineer's performance of the Services and during construction or execution of the Works, the Town shall be entitled at all times to inspect and review the performance of the Services, but such inspection and review shall not relieve the Engineer from its responsibilities for the proper performance of the Services.

2.11 Remedial Services

During the Engineer's performance of the Services and during construction or execution of the Works, the Engineer shall, at the Engineer's expense, re-perform any Services necessary to correct any errors, omissions, defects or deficiencies in the Services, including in the Engineering Material.

2.12 Removal of Personnel or Sub-consultants

The Town may require the Engineer to remove and replace any of its Personnel or Sub-consultants performing any part of the Services, whom, in the Town's reasonable opinion is not qualified or competent to perform the job to which they have been assigned, is engaging in improper conduct, or is not following an applicable Contract provision.

2.13 Qualifications of the Engineer

The Engineer hereby represents and warrants with and to the Town, and acknowledges that the Town is relying upon such representation and warranty, that the Engineer is in compliance with all Laws of any Authority relating to the conduct of its business and has all the 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.

3. CHANGES TO THE SERVICES

3.1 Changes

- (1) Subject to the limitations of this Article 3, the Town may, by Change Order, make Changes to the Services to be performed by the Engineer under a Service Order.
- (2) The Engineer shall proceed promptly with any Change to the Services authorized in accordance with this Article 3, unless otherwise provided in the Change Order.
- (3) Except as specifically set forth in a Change Order, a Change to the Services does not affect any other warranties, guarantees or obligations of the Engineer.
- (4) The Engineer shall not make any Change to the Services under a Services Order, regardless of the reason, without first receiving a duly executed Change Order relating to such Change to the Services. Changes to the Services performed by the Engineer without a prior Change Order are at the Engineer's sole cost and expense and the Town is in no way liable for any claim for compensation by the Engineer or a Sub-consultant relating to the Change to the Services.
- (5) Unless the Town and the Engineer agree otherwise, the Engineer shall perform the Services required by a Change Order at the applicable rates identified in the Schedule of Contract Charges.
- (6) Upon delivery of a duly executed Change Order in accordance with this Article 3, the Contract shall be deemed amended to incorporate the Change to the Services.

3.2 Change Orders

- (1) Upon the Town's request for a Change to the Services to be performed under a Service Order, the Engineer shall promptly provide the Town with a written Change Order proposal respecting all aspects of the Change to the Services, including, without limitation, the:
 - (a) scope of the Change to the Services;
 - (b) estimated total Contract Charges associated with the Change to the Services, as applicable; and
 - (c) impact on the time for performance of the Services, if any.
- (2) Written Change Order proposals must be accompanied by all backup documentation reasonably required for the Town to be able to understand and evaluate the accuracy of the assessment and make a decision regarding the applicable Change to the Services.
- (3) If the Parties agree on all aspects of the Change to the Services for which a Change Order proposal is made, the Parties shall execute a written Change Order evidencing the agreed-upon Change to the Services.

3.3 Scope Reduction

- (1) Notwithstanding any other provision of the Contract, the Town may unilaterally reduce the scope of Services to be performed by the Engineer under a Service Order by delivering a written direction to that effect to the Engineer.
- (2) If the scope of Services under a Service Order is reduced by the Town pursuant to section 3.3(1), the Engineer shall be entitled to payment of the compensation earned and reimbursable expenses incurred, if applicable, to the date of the written notice delivered pursuant to section 3.3(1) on account of the Services which were removed from the scope of Services, together with any expenses arising from the termination of Sub-consultants necessitated by the scope of Services reduction.
- (3) Except for the right to receive the compensation specified in section 3.3(2), the Engineer shall have no other Claim against the Town for losses it may suffer or incur in relation to the reduction in the scope of Services.

4. INTELLECTUAL PROPERTY

4.1 Contract IP

- (1) The Engineer agrees that all the Contract IP, if any, will be vested in the Town and will be the Town's property as and when created, discovered or conceived of by or on behalf of the Engineer. The Engineer assigns all rights, title and interest in and to the Contract IP including the Engineering Material (whether created before, on or after the Contract Date) to the Town.

- (2) The Engineer waives, and shall ensure that its Personnel waive, in favour of the Town, all moral rights pursuant to the *Copyright Act* (Canada) or otherwise, in respect of any Contract IP produced pursuant to the Contract.
- (3) On the Town's request, the Engineer must execute any formal assignment or other document required to give effect to this section 4.1.

4.2 Engineer Warranty

The Engineer warrants that the Engineering Material will not infringe the Intellectual Property Rights of any third party. The Engineer must obtain from any third party involved in the creation, discovery or conception of, or whose Intellectual Property Rights forms part of, the Contract IP or Engineering Material, all necessary consents to ensure the Town do not infringe any Intellectual Property Rights.

4.3 Indemnity

The Engineer shall indemnify the Town and its members of Council and Personnel against any Claim, whether direct or indirect, by any person against the Town, members of Council or its Personnel alleging that the Contract IP and/or the Engineering Material and/or the use thereof by the Town, or by another person at the direction of the Town, infringes any Intellectual Property Right.

5. CONFIDENTIALITY

5.1 Obligation and Confidentiality

Each Party undertakes and agrees to hold in strict confidence all Confidential Information received from the other Party and not to:

- (a) disclose or permit or cause that Confidential Information to be disclosed to any person other than any of its own Personnel or professional advisors who reasonably require access to the Confidential Information, except and solely to the extent permitted or required by the Contract; and
- (b) to make use of that Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except and solely to the extent permitted or required by the Contract;

unless the Party receiving the Confidential Information has obtained the prior written consent of the Party disclosing it to do so (which consent may be withheld by the disclosing Party in its discretion or given on such terms as it sees fit).

5.2 Exceptions

Section 5.1 does not apply to:

- (a) Confidential Information that is publicly available at the Contract Date; or

- (b) Confidential Information that becomes publicly available after the Contract Date without breach of the Contract; or
- (c) Confidential Information that the receiving Party obtained from a third party without breach by that person of any obligation of confidence concerning that Confidential Information; or
- (d) Confidential Information that was already in the receiving Party's possession (as evidenced by written records) when provided to it by or on behalf of the disclosing Party or which was independently developed (as evidenced by written records) by the receiving Party without the Confidential Information disclosed by the disclosing Party; or
- (e) the disclosure of Confidential Information by the receiving Party in order to comply with any applicable Laws or legally binding order of any Authority, as long as: (i) prior to such disclosure the receiving Party gives notice to the disclosing Party with full particulars of the proposed disclosure; (ii) the receiving Party only discloses such Confidential Information as it is advised by legal counsel is legally required to be disclosed; and (iii) the receiving Party takes reasonable steps to obtain assurances that confidential treatment will be afforded the Confidential Information so disclosed.

A Party receiving Confidential Information may only rely on one of the above exceptions if it first provides the disclosing Party with 10 days written notice of its intention to rely on a specified exception including, where applicable, written support for its reliance on the specified exception.

5.3 *Freedom of Information and Protection of Privacy Act*

Notwithstanding any other provision within this Contract or the termination or expiry of this Contract, the Engineer acknowledges that all information and records compiled or created under this Contract that are in the custody of the Engineer are subject to the provisions of the ***Freedom of Information and Protection of Privacy Act*** (Alberta). If a request is received for any of these records from the Town, the Engineer shall forward all responsive information and records to the Town within five (5) calendar days of receipt of notice from the Town.

6. TERMINATION AND CANCELLATION

6.1 Termination for Cause

- (1) The Town may terminate this Contract or any Service Order immediately by providing written notice to the Engineer if the Engineer:
 - (a) has made an assignment in bankruptcy; or
 - (b) is in default in the performance of any of its obligations set forth in this Contract or a Service Order and within 10 Business Days of receipt of notice of default from the Town, such default has not been corrected, or the Engineer has not submitted a schedule acceptable to the Town for correcting such default, or the Engineer has not provided written notice that it disputes that it is in default of this Contract.

- (2) If the Town terminates this Contract or any Service Order pursuant to section 6.1(1), or if the Engineer repudiates this Contract, then the Engineer's entitlement to receive any further payment on account of the Contract Charges shall be subject to any other rights the Town may have under this Contract or at law or in equity.
- (3) The Engineer may terminate this Contract immediately by providing written notice to the Town if the Town is in default in the performance of any of its obligations set forth in this Contract other than its obligations to pay the Engineer, and within 10 Business Days of receipt of notice of default from the Engineer such default has not been corrected, or the Town has not submitted a schedule acceptable to the Engineer for correcting such default, or the Town has not provided written notice that it disputes that it is in default of this Contract.

6.2 Cancellation by the Town

The Town may cancel this Contract or any Service Order, without cause, by providing written notice to the Engineer. Upon such cancellation, the Town shall pay to the Engineer the Contract Charges earned and reimbursable expenses incurred, as applicable pursuant to the relevant Service Order, to the date of cancellation. The Town will have no further liability to the Engineer in relation to such cancellation.

6.3 Rights on Termination or Cancellation

Upon termination or cancellation of this Contract or any Service Order, the Engineer shall immediately deliver to the Town all Engineering Material relating to the Service Order(s) being terminated, as the case may be, as they exist on the date of termination (as the case may be) or in such other form as the Town may reasonably require. The Engineer's obligations under this section 6.3 shall survive the termination or expiration of this Contract for any reason whatsoever.

6.4 Limitation of Liability for Termination

Except as otherwise expressly provided elsewhere in this Contract, the Town is in no way liable to the Engineer for any loss or damages in any manner based upon, arising out of, resulting from or attributable to any cancellation of this Contract or any Service Order or any termination by the Town of this Contract or any Service Order, including, without limitation, for any damages for loss of profit, loss of revenue or loss of anticipated business suffered or incurred by the Engineer.

7. INSURANCE

7.1 Engineer's Insurance

- (1) The Engineer agrees to maintain in force during the performance of the Services and for three (3) years after completion or termination of the Services, at its own expense, the following insurance policies with limits not less than those stated below:
 - (a) Corporate professional liability insurance, with a limit of not less than \$5,000,000 per claim and \$5,000,000 in the aggregate within any policy year;
 - (b) Automobile liability insurance, with a combined single limit of not less than \$5,000,000 for each occurrence of bodily injury (including passenger hazard), and

property damage. Such insurance shall cover all owned, hired or non-owned motor vehicles;

- (c) Commercial general liability insurance, with a limit of not less than \$5,000,000 for each occurrence of personal injury, bodily injury (and death) and property damage; and
 - (d) Additional coverage in such form and amounts as the Town may reasonably require from time to time.
- (2) The insurance obtained by the Engineer pursuant to section 7.1(1) shall be provided in accordance with the following terms and conditions:
- (a) The Engineer shall provide the Town with a certificate of insurance prior to commencement of the Services evidencing that the insurance required under section 7.1(1) has been obtained, with reliable insurers satisfactory to both Parties and evidencing all applicable endorsements required pursuant to this section 7.1(2);
 - (b) Each insurance policy shall provide that 30 days prior written notice shall be given to the Town of any cancellation of any such policy or policies;
 - (c) The Town, its members of Council and its Personnel will be included as an additional insured with respect to the insurance policies described in section 7.1(1)(c) and the Engineer's operations under this Contract.
 - (d) The Engineer shall make the policies of insurance which it carries pursuant to section 7.1(1) available to the Town upon request.

8. LIENS

8.1 Discharge of Liens

If the Town receives written notice of any lien or charge, or if any lien is recorded by any of the Engineer's Personnel or Sub-consultants against a Site, the Engineer shall promptly cause the lien or charge to be discharged and removed or make other financial arrangements so as to fully protect the interest of the Town as the Town approves.

8.2 Notification and Indemnity

The Engineer shall promptly inform the Town of any lien made by any of the Engineer's Personnel, whether recorded or otherwise, or any pending lien of which it becomes aware. The Engineer shall indemnify and protect the Town against any liability, losses, costs, damages and expenses incurred in connection with any such lien or charge claimed or recorded. The Engineer's obligations under this section shall survive the termination or expiration of this Contract for any reason whatsoever.

8.3 The Town's Right to Make Payments

The Town shall, after giving at least 5 days written notice to the Engineer of its intention to do so, be entitled to employ any money then due or to become due to the Engineer under this Contract in order

to discharge such lien or charge by: (a) posting a bond or other security (including security for costs); (b) paying the amount claimed into court; or (c) payment directly to the lien or charge claimant of the undisputed amount of the lien; provided that such lien does not arise as a direct result of the Town's failure to pay the Engineer in accordance with the terms of this Contract. The Town's use of money to discharge any lien or charge as claimed or recorded, discharges the Town's liability under this Contract to pay the Engineer the Contract Charges, to the extent of the money so used.

9. DISPUTE RESOLUTION

9.1 Dispute Resolution

- (1) Unless specifically described herein to the contrary, the following provisions shall apply to the resolution of conflicts between the parties as they arise:
 - (a) The Engineer and the Town agree to utilize all reasonable efforts to resolve any dispute, whether arising during the Term or at any time after its expiration promptly and in an amiable manner by direct negotiations between the parties.
 - (b) The Engineer and the Town shall continue to perform their respective obligations during the resolution of any dispute or disagreement, including during any period of mediation and arbitration, unless and until this Contract is lawfully terminated according to its terms.
 - (c) If a dispute cannot be resolved by the parties via mutual agreement within a time period that is reasonably satisfactory to the party raising the issue under consideration, either party may submit the dispute for mediation. Either party may, on notice to the other party, request that mediation take place and the parties shall select a mediator whose qualifications are appropriate to the matter to be mediated. The mediator shall designate a place for a meeting of the mediator with representatives of the parties. During the mediation process, no action will be taken by either party to commence or continue arbitration proceedings under this Contract. The cost of the mediator will be equally shared by the parties. Any mediation which takes place will be strictly confidential. No proposal or concession made by either party in the course of mediation may be used by either party in any subsequent proceedings. The mediator may not be called by either party as a witness in any subsequent proceedings.
 - (d) Should mediation fail to result in a resolution of the dispute between the parties within fifteen (15) days after the parties initially attempted to mediate the dispute, either party may submit the dispute for arbitration as provided in Subsection (e) below. The determination arising out of the arbitration process shall be final and binding upon the parties.
 - (e) Arbitration shall be conducted in accordance with the following terms:
 - (i) The arbitration shall be carried out by a single arbitrator pursuant to the provisions of this Section;
 - (ii) If the parties are unable to agree on a single arbitrator, the party desiring arbitration shall nominate one (1) arbitrator and shall notify the other party in

writing of the nomination. The notice shall set forth a brief description of the matter submitted for arbitration. The other party shall, within ten (10) days after receiving such notice, nominate an arbitrator and the two (2) arbitrators shall select a chairman of the arbitration tribunal to act jointly with them. The parties will act reasonably and in good faith to select arbitrators who are objective and who are suitably qualified by education or professional experience to deal with the matters which are the subject of arbitration. If the nominated arbitrators are unable to agree on the selection of a chairman within ten (10) days after the second arbitrator is nominated, the parties or either one of them may apply to the Alberta Court of Queen's Bench to have the chairman appointed;

- (iii) If the party receiving the notice of the nomination of an arbitrator by the party desiring arbitration fails with ten (10) days to nominate an arbitrator, then the arbitrator nominated by the party desiring arbitration may proceed alone to determine the dispute in such a manner and at such time as he shall think fit and his decision shall, subject to the provisions of this Contract, be binding upon the parties;
- (iv) Any arbitration conducted pursuant to this Contract shall take place in the City of Calgary and, subject to the provisions of this Contract, the decision of the arbitrators and chairman, or any of the two (2) of them, in writing, shall be binding upon the parties both in respect of procedure and the conduct of the parties during the proceedings and final determination of the issue. Any written award or decision of the arbitrators shall not repeat or recite any evidence which is proprietary or confidential to either party;
- (v) The costs of arbitration shall be borne by the parties as may be specified in the arbitrator's decision; and
- (vi) Except as modified herein, the provisions of the Alberta *Arbitration Act*, as amended from time to time, shall govern the arbitration process.

10. ASSIGNMENT AND SUB-CONSULTANTS

10.1 No Assignment by Engineer

- (1) This Contract is not assignable, in whole or in part by the Engineer (including any subcontract, except for any Sub-consultant expressly identified in the Contract Documents), without the prior written consent of the Town. Any attempt to assign the rights, duties or obligations of this Contract without the Town's prior written consent is void.
- (2) The Engineer's liability and obligations under this Contract are not diminished or otherwise affected by any permitted subcontracting of the performance of any part of the Services. The Engineer is liable to the Town for the acts and omissions of its Personnel, including any Sub-consultant permitted by this Contract, as if they were acts and omissions of the Engineer.

11. MISCELLANEOUS

11.1 Notice

- (1) Unless otherwise specified in the Contract, any notice, demand, consent or other communication ("Notice") given or made pursuant to the Contract must be in writing, signed by an authorized representative and delivered in accordance with Article 9 of the Signed Contract.
- (2) A Notice will be taken to be duly given:
 - (a) in the case of personal delivery or delivery by courier, when delivered;
 - (b) if mailed, on the date three (3) Business Days after the date of dispatch;
 - (c) in the case of facsimile, on receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages and the correct destination fax machine number or name of the recipient and indicating that the transmission has been made without error; or
 - (d) in the case of email, only when receipt of the email is acknowledged by an addressee,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or the Notice is sent or is later than 4:00 pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day.

11.2 Nature of the Relationship

- (a) The Engineer acknowledges that except as otherwise expressly provided in the Contract Documents, or with the prior written approval of the Town, the Engineer has no authority to bind the Town.
- (b) Except as otherwise expressly provided in the Contract Documents, at all times when performing its obligations under this Contract, the Engineer is deemed to be an independent contractor and not an employee or agent of the Town.
- (c) The Engineer must not act outside the scope of the authority (if any) conferred on it under this Contract in performing any Services.

11.3 Conduct and Conflict of Interest

- (1) None of the Engineer's Personnel shall conduct themselves professionally or personally in such a manner as to bring the Town, or its representatives or officers, into public disrepute or ridicule.
- (2) The Engineer shall ensure that it and each of its Personnel are at all times free from conflict of interest or the appearance of a conflict of interest. The Engineer shall immediately declare any

actual or potential conflict of interest in writing to the Town upon becoming aware of the same.

- (3) The Engineer and its Personnel:
- (a) shall conduct their duties related to this Contract and any Service Order with impartiality and shall, if they exercise inspection or other discretionary authority over others in the course of those duties, disqualify themselves from dealing with anyone with whom a relationship between them could bring their impartiality into question.
 - (b) shall not influence, seek to influence, or otherwise take part in a decision of the Town, knowing that the decision might affect their private interests.
 - (c) shall not accept any commission, discount, allowance, payment, gift or other benefit that is connected, directly or indirectly, with the performance of their duties related to this Contract or any Service Order or, that causes, or would appear to cause, a conflict of interest; and
 - (d) shall have no financial interest in the business of a third party that causes, or would appear to cause, a conflict of interest in connection with the performance of their duties related to this Contract or any Service Order, and if such financial interest arises during the term of this Contract or any Service Order, the Engineer shall promptly declare it to the Town.

11.4 Amendment

Any term or condition of this Contract may be amended or added by exchange of letters signifying mutual agreement between the parties to amend or add such term and condition and all other terms and conditions of this Contract shall remain unchanged.

11.5 Law of the Contract

This Contract shall be governed by the laws of the Province of Alberta and the laws of Canada applicable in Alberta.

11.6 Entire Agreement

This Contract constitutes the entire agreement between the Parties in respect of its subject matter and supersedes all prior agreements, proposals or tender submissions, quotation requests, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter (if any) made or given prior to the Contract Date.

11.7 Survival

All provisions of this Contract which expressly or by their nature survive the termination of this Contract or the completion of the Services will continue in full force and effect after any termination, cancellation or expiration of this Contract or a Service Order, or completion of the Services.

11.8 Severability

If any provision in this Contract is unenforceable, illegal or void then it is severed and the rest of this Contract remains in force. Where a provision of this Contract is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with applicable Laws and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to this Contract.

11.9 Remedies Cumulative

Except as may be otherwise specifically provided in this Contract, the rights and remedies under this Contract are cumulative and are not exclusive of any rights or remedies the Parties may have, whether under this Contract, at law, in equity or otherwise.

SCHEDULE 5**Site Rules****1. Site Services Conditions**

To the extent any of the Engineer's Personnel must attend the Site to perform any Services ("Site Services"), the following provisions apply.

- (1) The Engineer shall, and shall require its Personnel to, use and provide reasonable precautions, safeguards and protection against damage to any property or injuries to any person during or resulting from the Services performed at the Site, and comply with the Town's safety policies and procedures and Site rules communicated to the Engineer in writing, as well as all reasonable directions and instructions from the Town about such matters as are given from time to time. Should the Engineer or any Sub-consultant damage any of the Town's property, the Engineer shall reimburse the Town for any costs reasonably and necessarily incurred by the Town to remedy such damage.
- (2) The Engineer shall, and shall require its Personnel to, observe, keep, perform and comply with all Laws applicable to the performance of the Services.
- (3) The Engineer shall have complete control and responsibility for the safety and health of its Personnel engaged in the performance of the Services at the Site. The Engineer shall forward to the Town a report of every loss, damage, injury or death that occurs during the performance of the Services at the Site or that arises out of the Services. The Engineer shall indemnify and save harmless the Town from and against all fines or penalties suffered or incurred by the Town as a result of the failure of the Engineer or its Personnel to comply with all Laws while performing Services at the Site.
- (4) The Engineer shall ensure that the performance of the Services at the Site does not interfere with the Town's ongoing operations except as is specifically authorized by the Town in writing.
- (5) If the Works Contractor or other persons are performing work at the Site, the Engineer shall co-operate with and co-ordinate its activities with the Works Contractor or other persons in the working area so that the work of all contractors proceeds promptly and efficiently.

2. Removal from Site

The Town may require, in writing, the Engineer to remove and replace any person employed by the Engineer or a Sub-consultant from performing any part of the Services at the Site, whom, in the Town's reasonable opinion, is not competent or qualified to perform the job to which such person has been assigned, is engaging in improper conduct, or is not following an applicable Contract provision or other Site-related policies or procedures of general applicability.

3. Workers' Compensation

The Engineer shall ensure that workers' compensation covers all workers engaged in performing any Services at the Site in accordance with the *Workers' Compensation Act* (Alberta) ("Act"). If any

individual who performs any Services at the Site would not ordinarily be considered a "worker" under the Act, the Engineer shall ensure that such individual obtains voluntary coverage under the Act so that the Act will apply to such individual as a "worker" and such individual has a valid personal identification card at all times while performing any Services or is otherwise present at the Site.