



## **Notice to Potential Proponents Request for Proposals**

RFP Date: April 25, 2023

RFP Solicitation #2023-046

RFP Title: **Managed Print Services 2023-2025**

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 May 11, 2023.

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](mailto:purchasing@drumheller.ca)

Submission by hard copy or Facsimile will NOT be accepted.

Site Meeting Details: No Meeting Required

Deadline for Questions: Must be received in writing (email) prior to 4:30 pm (local time) on May 4, 2023.

Town Contact: Mr. Ashley Uwins-Bancroft  
[purchasing@drumheller.ca](mailto:purchasing@drumheller.ca)



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## 1.0 Overview

### 1.1 Project Background

This Request for Proposal (RFP) is an invitation by the Town of Drumheller (the Town) to prospective Proponents to submit non-binding Proposals for the provision of managed print services, including the supply of consumables on an as needed basis. Full scope of services are described in Section 2 – Scope of Work.

The Town intends to award a three (3) year contract for 2023-2025. The anticipated start date is June 1, 2023 and the contract end date is December 31, 2025. Upon agreement by both parties, the contract may be extended for an additional one (1) year.

### 1.2 Existing Conditions

The Town's current technical environment consists of:

- a Hyper V virtual server environment, with Windows 2019 servers
- Endpoint hardware running Windows 10 Enterprise/Professional
- Microsoft Office 365
- Corporate local area network and wide area network connections are 1Gbit compliant

### 1.3 Project Schedule

The schedule for this project is as follows:

Item	Date
RFP Issuance	April 25, 2023
Deadline for Questions	May 4, 2023 at 4:30 pm local time
Closing Date	May 11, 2023 at 2:00 pm local time
Notice of Award	May 25, 2023
Project Start Date	June 1, 2023

## 2.0 Scope of Work and Submission Requirements

### 2.1 Scope of Work

The Town's current fleet of multifunction equipment (print, copy, scan, fax, email, etc.) is primarily owned by the Town and is a mixture of current, aging, near or at end of life. Refer to Appendix C – Relative Documents.

The general supply and deliverable for this project is:

- a. Managed Print Services for Multi-Function Printers (Shared) and Plotter Printers

Optional Pricing may be provided for:

- b. Multi-Function and Desktop Individual Printers and Receipt/Label Printers

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

The Town intends to engage a single external service provider to provide the hardware, management, reporting systems and onsite support services to meet the Town's print, copy, scan, and fax needs in a Managed Print Services or MPS model (MPS Services).



The Town is interested in the provision of solutions that are inclusive of hardware, consumables (e.g.: toner, print heads), installation, disposal of existing printers, and service for its multifunction fleet.

By partnering with a single MPS provider (Provider) the Town intends to move to an efficient, sustainable, and managed model.

This includes:

- Planning for and provision of replacement units for the Town's fleet of printers
- Removal of old print hardware
- Supply chain management for print consumables
- Buyout of existing print support contracts and continued support of the larger printers
- Onsite maintenance as required and onsite servicing in the event of hardware failure

Further, the Town is looking for a solution that will provide flexibility over the course of the agreement to "right size" devices, add or delete devices based on need without penalty, and all with a coterminous end date.

In addition, a print strategy is desired by the Town and that the Provider assist the Town with minimizing high cost single function printers with work group solutions or other strategies to reduce the Town's operating costs to print, including but not limited to, reducing waste and non-essential colour printing.

## **2.2 Innovation and Value Added Services**

Given the Town's objectives and the Proponent's best practices experience, the Proponent may have additional project offerings that will ensure the overall short and long term success of the Town's project as defined in this RFP.

The Proponent may include ideas beyond the scope of the RFP that provide added benefit to the Town not specifically asked for in this RFP and what the Proponent is prepared to supply and provide as part of the Agreement.

Unless otherwise stated, it is understood that there will be no extra costs for these items.

However, if the Proponent identifies any additional costs pertaining hereto, the summary and explanation of the value added costs should be included and identified in the Fee Schedule.

## **2.3 Town's Solution Requirements**

The Town operates a range of large format plotters, shared multi-function printers, label printers, and some individual desktop printers. When proposing replacements, Proponents should consider the following:

### All devices:

- a) are within a sustainable and secure solution
- b) maintain or exceed the existing functionalities and specifications
- c) are new; refurbished or remanufactured devices will not be considered
- d) have the following certifications: EcoLogo, Energy Star
- e) when current devices have additional paper capacity capabilities, the replacement devices should also provide similar capacity
- f) must include ethernet connectivity as standard



Multi-Function Printers (Individual):

- a) include Letter and Legal sized scanning and printing
- b) include document feeders
- c) include multiple scan functionalities: scan to network drive and scan to email

Multi-Function Printers (Shared):

- a) include Letter, Legal and Tabloid /Ledger sized scanning and printing
- b) include Document feeders
- c) include multiple scan functionalities: scan to network drive and scan to email
- d) fax capability will need to be retained in limited areas
- e) most devices will require finisher/sorter appropriate to the need; some devices may need more advanced finishers

Plotter Printers:

- a) large format printing is required (e.g.: Tabloid / Ledger and larger)
- b) large format scanning is required

Appendix C – Relative Documents, identifies by device the existing functionality and specifications.

## **2.4 Terms and Conditions**

### **2.4.1 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.

### **2.4.2 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.



### **2.4.3 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.

## **2.5 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 subcontractors 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 – Submission Details.

In order to evaluate the staff being provided, 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 as a whole, the proposal should outline previous work done in similar capacity over the past five (5) years.

### **2.5.1 Proposal Submittal Location**

It is to be noted that the Town of Drumheller's email receiving limit is 100MB. Proposals must be submitted by email to:

[purchasing@drumheller.ca](mailto:purchasing@drumheller.ca)

### **2.5.2 Proposal Submittal Format**

Proponents should submit one (1) electronic copy, in PDF format. Submissions must be a maximum of 100 MB in total size. 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] – [PROJECT NAME]

### **2.5.3 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.

### **2.5.4 Withdrawal of Proposals**

At any time throughout the RFP process until the execution of a written agreement, a Proponent may withdraw 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.



## 2.6 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. A copy of the safety policy and a copy of the table of contents of the safety manual may be submitted in lieu of 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	60
Cost Proposal	40

#### 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	15
Work Plan and Deliverables (includes specifications, service and support)	30
Professional References	15
Technical Evaluation Total	60

#### 3.2.2 Cost Proposal Evaluation

The cost proposals will be evaluated as follows:

Cost Proposal Evaluation		
Cost Proposal Calculated Score	(Lowest Cost Submission/RFP Cost of Services) x 40	40



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.

### **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 Town intends to enter into a services contract with the successful Proponent on or before June 1, 2023. The draft contract is provided in Appendix E. The Town desires to have the MPS Services operational by June 1, 2023.

### **5.2 Insurance**

The Town of Drumheller requires that all Proposals include proof of \$ 5,000,000.00 Commercial Liability Insurance.

### **5.3 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 matters 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 successful Proponent must obtain a valid Town of Drumheller business licence upon three (3) days of project award. If the Proponent does not obtain a valid Town of Drumheller business licence, the Town at its sole discretion may terminate the contract.

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.



#### **5.4 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

Proponents should see Section 2.3.2 on how to title the email and associated PDF.

### Technical Proposal

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

- All pages of this Request for Proposal
- All issued Addenda
- Certificate of Recognition (COR), Small Employer Certificate of Recognition (SECOR) or Temporary Letter of Certification (TLC)
- List of applicable Safe Work Procedures (SWP)
- Table of Contents of the Corporate Safety Manual
- Workers Compensation Board (WCB) Coverage Letter
- Proof of Commercial Liability Insurance
- Town of Drumheller Business Licence – to be obtained within three (3) business days upon award of project
- Cover Letter, signed by a person with the relevant authority for your company
- Project Overview - provide detailed project information including scope, budget and schedule performance and client reference details (phone number and email) for the referenced experience projects. The Town may contact these or other references without prior notice to the Proponent. Proponents who, in the opinion of the Town, receive unsatisfactory references may be rejected.
- Implementation Plan - provide a comprehensive 'Implementation Plan' for the proposed solution that addresses the following:
  - Implementation methodology, including:
  - Allocation of required resources, project timelines and estimated transition time;
  - Identification of the work effort that will be the responsibility of the Town to complete;
  - A schedule of project timelines, meetings, status reporting and documentation & communication plans; and
  - Progress reporting throughout the implementation.

#### Training:

- Recommend and identify the quantity and format of staff training time required during implementation. The Town requires technical staff to be trained by the Provider to understand the equipment and solution.
- Identify training strategies designed to encourage and support environmentally friendly practices.



- Operational Model - describe the Proponent's operational model that addresses the following:

Service:

- Service request processes for Town staff, primarily the Town's IT provider;
- Ability to provide onsite servicing during the business hours of 8:00 am to 4:30 pm (Monday to Friday);
- After-hours servicing provided;
- Escalation matrix for project delivery issues and post implementation servicing;
- Practices and/or programs utilized to minimize the impact on the environment; and
- Training resources that will be provided for new staff that will be using the equipment (e.g., documentation, web guides, video etc.).

Consumables:

- Monitoring practice to ensure devices do not run out of toner;
- Procedure to deliver and remove toner that incorporates device and location identification;
- Environmental and/or recycling programs to minimize the environmental impact.

Service Levels:

Identify the Proponent's guaranteed service levels including but not limited to 'turn-around times' for:

- Service requests that require on site support and/ or maintenance; and
  - Replacement of faulty equipment including any and all equipment.
- Project Team - describe the roles and responsibilities of the Proponent and any of its agents, employees and sub-contractors who will be involved in providing the Deliverables, together with the identity of those who will be performing those roles and their relevant respective expertise
  - Project Schedule - project timelines and estimated transition time
  - Relevant Experience - include a description of the Proponent's knowledge, skills and experience relevant to the Deliverables
  - Describe the Proponent's previous history with similar projects. At least two (2) similar projects completed in the immediate five (5) years prior is preferred
  - Include a description of the Proponent and corporate profile including but not limited to company history and number of years in business
  - Identify the corporate head office and any local offices that may be involved in Project delivery and coordination

Appendices may include:

- All pages of this Request for Proposal
- All issued Addenda



- Certificate of Recognition (COR), Small Employer Certificate of Recognition (SECOR) or Temporary Letter of Certification (TLC). A copy of the safety policy and a copy of the table of contents of the safety manual may be submitted in lieu of COR/SECOR or TLC certification as issued by the Alberta Construction Safety Association.
- List of applicable Safe Work Procedures (SWP)
- Table of Contents of the Corporate Safety Manual
- Workers Compensation Board (WCB) Coverage Letter
- Proof of Commercial Liability Insurance
- Town of Drumheller Business Licence – to be obtained within three (3) business days upon award of project
- Resumes
- Gantt Chart Schedule
- Corporate Brochures

### Cost Proposal

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



## Appendix B: Cost Proposal Submission Form

The following Cost Proposal Submission form must be filled out in its entirety and signed by a representative authorized by the company to do so.

Values indicated below consist of all necessary labour, equipment, materials, and associated costs to complete the work in its entirety. Work includes, but is not limited to, any disposals, materials, and supervisions as required per the specifications. Proposal pricing must be all-inclusive to include costs to complete delivery which must include, but is not limited to: warranty services, packaging, shipping, handling, unloading, duty, customs, brokerage fees, insurance charges, disposal surcharges, environmental/recycling surcharges, travel, subsistence, and any other applicable costs.

**Company Name:** \_\_\_\_\_

**Addendum #s Received:** \_\_\_\_\_

Proposal submission price shall be in effect for **60** calendar days from date of acceptance from the Town of Drumheller.

The prices below 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.

### Project Costs

#### 1.0 MANDATORY Print Devices:

Multi-Function Printers (Shared) and Plotter Printers

Total Cost per year			Total Cost for 3 years
2023	2024	2025	2023-2025
\$	\$	\$	\$

#### 2.0 OPTIONAL Print Devices:

Multi-Function and Desktop Individual Printers and Receipt/Label Printers

Total Cost per year			Total Cost for 3 years
2023	2024	2025	2023-2025
\$	\$	\$	\$



**Company Certification:**

The following verifies that the information provided with this submission is accurate and inclusive of all requirements of the Request for Tender. The document must be signed by an authorized representative of the company in order to be accepted for consideration.

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## Appendix C: Relative Documents – Current Fleet

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

- MANDATORY** – pricing is required for management of the print devices listed in the tables below.

### Multi-Function Printers (Shared)

Manufacturer	Model Number	Quantity
Canon	C776/iR-ADV C7765	1
Konica Minolta	bizhubC558	1
Konica Minolta	bizhub C458	1
Sharp	MX-3570N	1
Xerox	WorkCentre 7845	1

### Plotter Printers

Manufacturer	Model Number	Quantity
HP	HP DesignJet Z6810 60in	1
HP	HP DesignJet T2300 PostScript	1

- OPTIONAL** – pricing may be provided for management of the print devices listed in the tables below.

### Multi-Function and Desktop Individual Printers

Manufacturer	Model Number	Quantity
HP	LaserJet MFP M227fdw	1
HP	LaserJet MFP M477fdn	3
HP	LaserJet PRO M428f-M429f	1
HP	LaserJet MFP M182nw	1
HP	LaserJet M402dw	1
HP	LaserJet MFP M426fdw	1
HP	LaserJet Pro MFP M428fdw	1
Samsung	M288x Series	1
Brother	MFC-L3770CDW	1

### Receipt/Label Printers

Manufacturer	Model Number	Quantity
Brother	QL-1060N	1
Epson	TM-U675	2





## Appendix D: Project References

Project Experience #1	
Client Name:	
Contact Name:	
Contact Phone Number:	
Contact Email:	
Dates Project Undertaken:	
Proposed Key Personnel on Project:	
Project Information: Scope, Budget, Schedule Performance, Outcome, etc.	

Project Experience #2	
Client Name:	
Contact Name:	
Contact Phone Number:	
Contact Email:	
Dates Project Undertaken:	
Proposed Key Personnel on Project:	
Project Information: Scope, Budget, Schedule Performance, Outcome, etc.	



<b>Project Experience #3</b>	
Client Name:	
Contact Name:	
Contact Phone Number:	
Contact Email:	
Dates Project Undertaken:	
Proposed Key Personnel on Project:	
Project Information: Scope, Budget, Schedule Performance, Outcome, etc.	



## **Appendix E: Sample Contract**

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

**APPENDIX D****MASTER MANAGED PRINT 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 "Provider")**

**WHEREAS** the Town issued a Request for Proposals in order to select qualified Providers to be available to provide Managed Print Services on an as-needed, non-exclusive basis on anticipated project(s);

**AND WHEREAS** the Town and the Provider wish to establish a standing supply arrangement for the provision of certain Provider 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 Provider 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 Provider 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 Provider 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 Provider 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 Provider 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 Provider from time to time.

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

### **4. Allocation of Assignments**

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

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

### **5. Time for Performance of the Services**

The Provider 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 Provider 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 31 day of December, 2025, 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 Provider 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

Tel.: XXXX  
Email: xxxx

Attention: XXXX,  
Project Manager

To the Provider:

•

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**

**[PROVIDER]**

By:

By:

Name: Darryl E. Drohomerski

Name:

Title: Chief Administrative Officer

Title:

**SCHEDULE 1**

**Form of Service Order**

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

**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 Provider, payable at the rates set out in the Schedule of Contract Charges attached to the Master Provider 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 Provider 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 Provider 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 Provider have agreed to this Service Order on \_\_\_\_\_, 20\_\_.

**TOWN OF DRUMHELLER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[NAME OF PROVIDER]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

DRAFT

**SCHEDULE 2**

**Contract Charges**

**1. Fees**

Unless otherwise specified in a Service Order, the Town shall pay the Provider for the reimbursable hours properly incurred by the Provider 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 Provider for the following expenses reasonably incurred in the performance of the Services, at the Provider's out-of-pocket cost, without mark-up:

- (a) transport, subsistence, and lodging in connection with the Services beyond <insert distance> kilometres of the Provider'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 Provider where the Provider 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 Provider shall perform the Services so as to minimize the Contract Charges payable to the Provider 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 Provider 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 Provider 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 Provider's invoice, payment for the Services will be due 30 days following the receipt by the Town of the Provider's invoice, together with correct and complete backup documentation, provided the Provider is otherwise in compliance with this Contract.
- 2.4 If the Town disputes any item in the Provider's invoice, the Town shall not be obligated to pay the Provider 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 Provider 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 Provider is not a licensed GST registrant, the Town shall self-assess and remit all applicable GST.
- 4.3 If the Provider is a licensed GST registrant, the Provider 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 Provider 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 Provider to any Authority.

**5. Full Compensation**

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

**6. Records**

The Provider 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 Provider 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 Provider 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 Provider's breach of this Contract, or to reimburse the Town for any amounts otherwise due and payable by the Provider 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 Provider 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 Provider;

- (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 Provider 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 Provider'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 Provider 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 Provider by or on behalf of the Town;
- (12) "**Provider 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 Provider 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 Provider 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 Provider 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 Provider as the context dictates and "**Parties**" means both the Town and the Provider;
- (17) "**Personnel**" means:
- (a) in relation to the Provider, 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 Provider 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 Provider 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 Provider, architect, other specialist, or any other sub-consultant engaged by the Provider 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 Provider 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 Provider Material; and
- (26) "**Works Contractor**" means the contractor engaged by the Town to construct or supply the Works in accordance with the Provider 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 Provider 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 Provider 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 Provider acknowledges and agrees that:

- (a) all Provider and design Services will be performed in a professional 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 Provider Material must conform to and satisfy the Design Criteria;
- (c) the Provider Material must be free from defects in design;
- (d) the Provider 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 Provider 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 Provider and design Services, must be performed by the Provider 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 Provider shall:

- (a) ensure that the Provider 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 Provider shall review, verify and satisfy itself as to the accuracy, sufficiency and completeness of all the Town Material except any the Town Material the Provider is directed in writing by the Town not to review or verify.
- (2) Where the Provider 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 Provider 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 Provider Material**

- (1) The Provider must ensure that where required by Laws, all Provider Material is prepared or accepted by Personnel with appropriate professional qualifications and membership in appropriate professional associations. Without limiting the foregoing, all Provider Material must, to the extent required by Laws, be reviewed, sealed or stamped by professional Providers registered to practise professional Provider in the Province of Alberta.
- (2) The Provider must:
  - (a) give the Town copies of all Provider Material (including amended versions) in an orderly and timely fashion as directed by the Town to facilitate the Town's review of such Provider Material;
  - (b) unless otherwise specified in the Contract Documents, allow not less than 7 days for the Town to review the Provider Material; and
  - (c) if any Provider Material is rejected, submit amended Provider 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 Provider Material by or on behalf of the Town shall:

- (a) relieve the Provider from, or alter or affect, the Provider'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 Provider whether arising out of or in connection with this Contract or otherwise according to Laws.

## **2.6 Additional Information**

The Provider acknowledges that, other than as expressly provided elsewhere in the Contract, it is the Provider'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 Provider 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 to the Services, not inconsistent with the general scope and intent of the Contract Documents.

## **2.8 Reporting Obligations**

The Provider 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 Provider's Responsibility**

The Provider shall not be responsible for:

- (a) the Works Contractor's failure to supply or construct the Works in accordance with the Provider 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 Provider from its own negligence, the negligence of its Personnel or any breach of this Contract by the Provider.

## **2.10 Inspection**

During the Provider'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 Provider from its responsibilities for the proper performance of the Services.

## **2.11 Remedial Services**

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

## **2.12 Removal of Personnel or Sub-consultants**

The Town may require the Provider 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 Provider**

The Provider hereby represents and warrants with and to the Town, and acknowledges that the Town is relying upon such representation and warranty, that the Provider 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 Provider under a Service Order.
- (2) The Provider 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 Provider.
- (4) The Provider 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 Provider without a prior Change Order are at the Provider's sole cost and expense and the Town is in no way liable for any claim for compensation by the Provider or a Sub-consultant relating to the Change to the Services.
- (5) Unless the Town and the Provider agree otherwise, the Provider 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 Provider 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 Provider under a Service Order by delivering a written direction to that effect to the Provider.
- (2) If the scope of Services under a Service Order is reduced by the Town pursuant to section 3.3(1), the Provider 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 Provider 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 Provider 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 Provider. The Provider assigns all rights, title and interest in and to the Contract IP including the Provider Material (whether created before, on or after the Contract Date) to the Town.

- (2) The Provider 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 Provider must execute any formal assignment or other document required to give effect to this section 4.1.

#### **4.2 Provider Warranty**

The Provider warrants that the Provider Material will not infringe the Intellectual Property Rights of any third party. The Provider 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 Provider Material, all necessary consents to ensure the Town do not infringe any Intellectual Property Rights.

#### **4.3 Indemnity**

The Provider 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 Provider 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 Provider acknowledges that all information and records compiled or created under this Contract that are in the custody of the Provider 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 Provider 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 Provider if the Provider:
  - (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 Provider has not submitted a schedule acceptable to the Town for correcting such default, or the Provider 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 Provider repudiates this Contract, then the Provider'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 Provider 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 Provider, and within 10 Business Days of receipt of notice of default from the Provider such default has not been corrected, or the Town has not submitted a schedule acceptable to the Provider 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 Provider. Upon such cancellation, the Town shall pay to the Provider 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 Provider in relation to such cancellation.

## **6.3 Rights on Termination or Cancellation**

Upon termination or cancellation of this Contract or any Service Order, the Provider shall immediately deliver to the Town all Provider 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 Provider'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 Provider 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 Provider.

## **7. INSURANCE**

### **7.1 Provider's Insurance**

- (1) The Provider 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 Provider pursuant to section 7.1(1) shall be provided in accordance with the following terms and conditions:
- (a) The Provider 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 Provider's operations under this Contract.
  - (d) The Provider 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 Provider's Personnel or Sub-consultants against a Site, the Provider 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 Provider shall promptly inform the Town of any lien made by any of the Provider's Personnel, whether recorded or otherwise, or any pending lien of which it becomes aware. The Provider 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 Provider'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 Provider of its intention to do so, be entitled to employ any money then due or to become due to the Provider 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 Provider 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 Provider 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 Provider 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 Provider 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 chairperson 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 chairperson 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 chairperson 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 chairperson, 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 Provider**

- (1) This Contract is not assignable, in whole or in part by the Provider (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 Provider'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 Provider 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 Provider.

## **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 Provider acknowledges that except as otherwise expressly provided in the Contract Documents, or with the prior written approval of the Town, the Provider 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 Provider is deemed to be an independent contractor and not an employee or agent of the Town.
- (c) The Provider 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 Provider'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 Provider 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 Provider shall immediately declare any

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

(3) The Provider 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 Provider 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.

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## **SCHEDULE 5**

### **Site Rules**

#### **1. Site Services Conditions**

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

- (1) The Provider 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 Provider 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 Provider or any Sub-consultant damage any of the Town's property, the Provider shall reimburse the Town for any costs reasonably and necessarily incurred by the Town to remedy such damage.
- (2) The Provider shall, and shall require its Personnel to, observe, keep, perform and comply with all Laws applicable to the performance of the Services.
- (3) The Provider 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 Provider 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 Provider 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 Provider or its Personnel to comply with all Laws while performing Services at the Site.
- (4) The Provider 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 Provider 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 Provider to remove and replace any person employed by the Provider 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 Provider 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 Provider 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.

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