

**ENGINEERING SERVICES AGREEMENT**

**SIGNED CONTRACT**

THIS AGREEMENT IS MADE AS OF THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

BETWEEN:

**THE CITY OF MOOSE JAW**, being a municipal corporation incorporated pursuant to the provisions of *The Cities Act* (Saskatchewan) (the "City")

AND:

**<NAME OF ENGINEER>**, a corporation incorporated under the laws of \_\_\_\_\_ (the "Engineer")

INTRODUCTION:

- A. The City wishes to engage the Engineer to perform engineering services to complete a \_\_\_\_\_ and other activities as outlined in the document titled "Request for Proposals for \_\_\_\_\_ Services for \_\_\_\_\_" issued by the City of Moose Jaw.
- B. The Engineer has represented to the City that it possesses the expertise and personnel to perform the required Services.
- C. The Engineer agrees to accept the engagement and perform the Services on the terms contained in the Contract.

NOW THEREFORE the City and the Engineer agree as follows:

**1. Contract Documents**

The City 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 - General Services Standards Requirements
- Schedule 2 - Service Order for \_\_\_\_\_
- Schedule 3 - Form of Service Order
- Schedule 4 - Payment Procedures
- Schedule 5 - General Conditions
- Schedule 6 - Site Rules

All capitalized terms used in this Signed 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 City initiated the order for Services relating to \_\_\_\_\_ by issuing and delivering to the Engineer the Service Order in the Form attached hereto as Schedule 2 and the Engineer has accepted such Service Order on the date hereof.

- 2.2 The City may initiate further orders 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.
- 2.3 The Engineer may accept a further 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 City. 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 City 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 City 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 other Services to the City. The Engineer acknowledges that the City may allocate assignments in its sole discretion. The Engineer acknowledges that the City may also request further proposals for specific assignments from the Engineer.
- 4.2 Nothing in this Contract is intended to limit the City's ability to engage any other engineer to perform any services for the City, or to undertake any other procurement or selection process in respect of identifying and engaging any other engineer to perform any services for the City.

### **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 City agrees to pay the Engineer the Contract Charges for performing the Services, in accordance with the terms of this Contract.

### **7. Term and Termination**

This Contract shall remain in effect until the \_\_\_\_ day of \_\_\_\_\_, 2019, unless terminated earlier or renewed in accordance with its terms. The termination or expiry of this Contract shall not affect any Service Orders 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 City or the Engineer from any obligation or claims arising prior to termination or expiration.

**8. Option to Extend**

Subject to the satisfactory performance of the Engineer, the City may, at its sole option, elect to extend the term of this Contract for up to an additional two years. The City shall provide the Engineer with notice in writing of its intention to extend the term.

**9. 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 City:

To the Engineer:

\_\_\_\_\_

\_\_\_\_\_

Fax:

Fax:

Email:

Email:

Attention:

Attention:

**10. 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.

**THE CITY OF MOOSE JAW**

**[ENGINEER]**

By:

By:

\_\_\_\_\_

\_\_\_\_\_

Name:

Name:

Title:

Title:

## **SCHEDULE 1**

### **General Services Standards and Requirements**

<Ie: The Engineer is expected to perform all work in compliance with Municipal, Provincial, and Federal Laws and Regulations.>

**SCHEDULE 2**

**Service Order for Engineering Services and Detailed Design for The New Hot Water System**

The Services provided by [INSERT NAME OF ENGINEER] (the "Engineer") under this Service Order are subject to and governed by Engineering Services Agreement dated \_\_\_\_\_ between the City of Moose Jaw (the "City") and the Engineer.

**1. Description of Services:**

The Services described in the Scope of Services Schedule attached to this Service Order.

**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:**

Percentage fee of \_\_\_\_\_% of the cost of construction for the Works paid to the Works contractor (exclusive of any value-added taxes and any construction costs associated with any change order resulting from the Engineer's errors or omissions) in respect of the Services described in the Scope of Services Schedule;

– AND –

Reimbursable hours properly incurred by the Engineer, payable at the rates set out in the Rate Schedule attached to this Service Order in respect of any Additional Services.

**4. Reimbursable Expenses**

The City 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) reproduction of information, drawings, specifications, and other documents necessary to the Services;
- (b) courier and messenger services; and
- (c) other costs reasonably incurred by the Engineer where the Engineer has obtained the City's prior written approval.

The City will not reimburse the Engineer for any of the following expenses:

- (a) transport, subsistence, and lodging;
- (b) use of vehicles; or
- (c) long distance telephone and facsimile communications.

**5. Invoicing:** The Engineer will invoice the City:

In respect of percentage fee charged for the Services, monthly in arrears, in proportion to the Services performed

– AND –

Monthly in arrears, based on the reimbursable hours properly incurred by the Engineer during the preceding month in respect of any Additional Services, and.

**6. Other Terms:**

**6.1 Key Personnel**

The following are the key personnel assigned to perform the Services:

<b>Position</b>	<b>Name</b>
1.	
2.	

**6.2 Sub-consultants**

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

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

The City and the Engineer have agreed to this Service Order on \_\_\_\_\_, 2016.

**THE CITY OF MOOSE JAW**

**[NAME OF ENGINEER]**

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

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

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

**SCHEDULE 3**

**Form of Service Order**

The Services provided by [INSERT NAME OF ENGINEER] (the "Engineer") under this Service Order are subject to and governed by Engineering Services Agreement dated \_\_\_\_\_ between the City of Moose Jaw (the "City") and the Engineer.

**1. Description of Services:**

**2. Time for Completing Services:**

<b>Milestone/Deliverable</b>	<b>Completion/Delivery Date</b>
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 Rate Schedule attached to this Service Order.

- OR -

percentage fee of \_\_\_\_\_% of the cost of construction for the Works paid to the Works contractor (exclusive of any value-added taxes and any construction costs associated with any change order resulting from the Engineer's errors or omissions)

**4. Reimbursable Expenses**

The City 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) reproduction of information, drawings, specifications, and other documents necessary to the Services;
- (b) courier and messenger services; and
- (c) other costs reasonably incurred by the Engineer where the Engineer has obtained the City's prior written approval.



The City will not reimburse the Engineer for any of the following expenses:

- (a) transport, subsistence, and lodging;
- (b) use of vehicles; or
- (c) long distance telephone and facsimile communications.

**5. Invoicing:** The Engineer may invoice the City: (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
1. <Insert Milestone/Deliverable>	<Date>	\$<Amount>
2. <Insert Milestone/Deliverable>	<Date>	\$ <Amount>
Total		\$ <Amount>

**6. Other Terms:**

**6.1 Key Personnel**

The following are the key personnel assigned to perform the Services:

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

**6.2 Sub-consultants**

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

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

The City and the Engineer have agreed to this Service Order on \_\_\_\_\_, 20\_\_.

**THE CITY OF MOOSE JAW**

**[NAME OF ENGINEER]**

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

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

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

## **SCHEDULE 4**

### **Payment Procedures**

#### **1. Currency**

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

#### **2. Invoices**

- (1) The Engineer may invoice the City in accordance with the applicable invoicing provisions set out in a Service Order.
- (2) The Engineer shall submit its invoices to the City in a form satisfactory to the City and shall submit with each invoice any further documentation and information, including, without limitation, time sheets and expense reports, as the City reasonably requires.
- (3) If required by the City, 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.
- (4) Subject to the City'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 City of the Engineer's invoice, together with correct and complete backup documentation, provided the Engineer is otherwise in compliance with this Contract.
- (5) If any part of an invoice submitted by the Engineer is contested by the City, the City shall give prompt written notice with reasons and shall not delay payment of the undisputed remainder of the invoice.

#### **3. Builders' Lien Holdback**

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

#### **4. Taxes**

- (1) The Contract Charges are exclusive of any applicable PST and GST required to be levied on the Contract Charges.
- (2) If the Engineer is not a licensed Saskatchewan PST vendor, the City shall self-assess and remit all applicable PST.
- (3) If the Engineer is not a licensed GST registrant, the City shall self-assess and remit all applicable GST.
- (4) If the Engineer is a licensed Saskatchewan PST vendor or GST registrant (or both), the Engineer shall: (a) specify any applicable PST or GST (or both) on each invoice; (b) promptly pay or remit

to the appropriate governmental authority when due all applicable PST and GST; (c) provide the City upon request with appropriate clearance certificates regarding the payment of all such PST or GST (or both) from time to time; and (d) indemnify and save harmless the City from all such PST and GST including interest and penalties.

- (5) The Engineer shall indemnify and save harmless the City from and against liability incurred by the City for all PST, excise taxes, duties, withholding taxes, 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.
- (6) If the Engineer is a "non-resident of Canada," as defined in the *Income Tax Act* (Canada) and performs any services in Canada under this Contract, unless the Engineer provides the City with a waiver exempting the Engineer from remitting the prescribed withholding tax pursuant to the *Income Tax Act* (Canada) in respect of such services provided in Canada, the City shall be entitled to retain and remit the prescribed percentage withholding tax based on: (a) the portion of the Contract Charges allocated to the value of the services being performed in Canada; or (b) the entire Contract Charges where this Contract does not allocate a specific value to the services performed in Canada. The Engineer shall indemnify and save harmless the City from and against all liability for the payment of withholding taxes, penalties and interest payable by the City pursuant to the *Income Tax Act* (Canada) that relate to the performance of the services in Canada.

## **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, by generally accepted accounting methods, time sheets and records of reimbursable expenses. The Engineer shall make its books and records pertaining to the Services performed on an hourly rate basis and reimbursable expenses available for the City's audit and inspection upon request for a period of two years following completion of the Services or termination of this Contract. The City shall be entitled to take and retain copies of such books and records.

## **7. Set-off**

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

## SCHEDULE 5

### General Conditions

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this Contract, unless the context otherwise requires

- (1) "**Additional Services**" means those professional services which are not contemplated at the time of execution of the Contract, but which with the written consent of the City and Engineer are subsequently added to, or which adjust, the scope of Services outlined any Scope of Services Schedule;
- (2) "**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 (excluding the City);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;
- (3) "**Business Day**" means a day that is not a Saturday, Sunday, or statutory holiday in the Province of Saskatchewan;
- (4) "**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;
- (5) "**Change Order**" means the document executed by the Parties for the purpose of documenting the provision of any Additional Services;
- (6) "**City 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 City to the Engineer for the purposes of this Contract (including any such documents provided on behalf of the City by other third parties);
- (7) "**Claim**" means any demand, claim, action, suit or legal proceeding of any nature;
- (8) "**Confidential Information**" means the Contract Documents, any City Material and any information (in whatever form) which relates to the business, affairs, technologies, systems or activities of the City or the design, functionality, equipment, management, costs or progress of the Project, and including all information of third parties provided by or on behalf of the City to the Engineer or its Personnel;

- (9) "**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 City 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 10.5;
- (10) "**Contract Charges**" means: (a) for Services performed on a "time and materials" basis, those fees and reimbursable expenses identified in the Service Order 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 amount calculated by multiplying the percentage fee by the cost of construction as set out in the corresponding Service Order;
- (11) "**Contract Date**" means the effective date of this Contract set forth in the Signed Contract;
- (12) "**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 Engineering Material;
- (13) "**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 City or developed by the Engineer;
- (14) "**Engineer IP**" means the Intellectual Property Rights of the Engineer which are in existence at the Contract Date;
- (15) "**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;
- (16) "**GST**" means the tax payable under Part IX of the *Excise Tax Act* (Canada);
- (17) "**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);
- (18) "**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(18)(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);
- (19) "**Party**" means either the City or the Engineer as the context dictates and "**Parties**" means both the City and the Engineer;
- (20) "**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;
  - (b) in relation to the City, any of its members of City council, officers, employees or agents;
- (21) "**PST**" means the tax payable under *The Provincial Sales Tax Act* (Saskatchewan);
- (22) "**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 Service Order;
- (23) "**Service Order**" means an order for the Services substantially in the form set out in the Schedule of Service Order for Replacement of Water Mains or Schedule of Form of Service Order, issued by the City and accepted by the Engineer in accordance with section 2 of the Signed Contract;
- (24) "**Signed Contract**" means the formal instrument of agreement forming part of this Contract;
- (25) "**Site**" means any premises owned or controlled by the City where the Services are to be performed;
- (26) "**Site Services**" has the meaning given in section 1 of the Schedule of Site Rules;
- (27) "**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;
- (28) "**Works**" means the physical works that are to be constructed or supplied by the Works Contractor in accordance with the Engineering Material; and
- (29) "**Works Contractor**" means the contractor engaged by the City 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) a reference to "\$", "CAD" or "dollar" is to the currency of Canada;
- (8) a reference to time is to local time in Moose Jaw, Saskatchewan;
- (9) headings are for convenience only and do not affect interpretation of this Contract;
- (10) the Contract Documents are complementary, and what is required by one will be binding as if required by all;
- (11) words and abbreviations with well-known technical or trade meanings are used in the Contract Documents in accordance with such recognised meanings; and
- (12) 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:

- (1) have complete 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;
- (2) properly perform and complete the Services with diligence, skill and care to their completion within the time set forth in any applicable Service Order;
- (3) 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;



- (4) not change any of the key personnel assigned to perform the Services, as indicated in the applicable Service Order, without the City's consent, which consent shall not be unreasonably withheld;
- (5) at all times act in good faith and in the best interest of the City in the performance of the Services;
- (6) comply with the terms of the Schedule of Site Rules to the extent that Services are being performed at a Site;
- (7) to the extent that the City 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;
- (8) where the Services are not being performed on a lump-sum basis or percentage fee basis, shall perform the Services so as to minimize the Contract Charges payable to the Engineer by the City, and all other costs to the City in completing the Works; and
- (9) do and fulfill all things indicated or reasonably contemplated by this Contract.

## **2.2 Design and Quality Requirements**

The Engineer acknowledges and agrees that:

- (1) all engineering and design Services will be performed in a professional, well-engineered and well-designed manner: (a) in accordance with the degree of care, skill and diligence which is normally exercised by good industry professionals providing comparable services in respect of projects of a similar nature; and (b) consistent with the City's objective and design requirements for the Works indicated in the Contract Documents or the Design Criteria;
- (2) the Engineering Material must conform to and satisfy the Design Criteria;
- (3) the Engineering Material must be free from defects in design;
- (4) the Engineering Material must be complete and sufficient so as to permit construction or supply of the Works by the Works Contractor;
- (5) 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 City's purpose and use specified in the Contract Documents; and
- (6) 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:

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

#### **2.4 Verification of City Material**

- (1) The Engineer shall review, verify and satisfy itself as to the accuracy, sufficiency and completeness of all City Material except any City Material the Engineer is directed in writing by the City 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 City Material, the Engineer must give notice to the City as soon as reasonably practicable setting out the details of the inaccuracy, incompleteness, error, ambiguity, inconsistency or deficiency in the City 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 practice professional engineering in Saskatchewan.
- (2) The Engineer must:
  - (a) give the City copies of all Engineering Material (including amended versions) in an orderly and timely fashion as directed by the City to facilitate the City's review of such Engineering Material;
  - (b) unless otherwise specified in the Contract Documents, allow not less than 7 days for the City to review the Engineering Material; and
  - (c) if any Engineering Material is rejected, submit amended Engineering Material to the City 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 City 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 City'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 City 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 City 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 City such reports concerning the progress of the Services in such form and within such time as the City may reasonably require.

## **2.9 Limitation of Engineer's Responsibility**

The Engineer shall not be responsible for:

- (1) the Works Contractor's failure to supply or construct the Works in accordance with the Engineering Materials; and
- (2) 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 City 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. Such remedial Services are not considered Additional Services.

## **2.12 Removal of Personnel**

The City may require the Engineer to remove and replace any of its Personnel from performing any part of the Services, whom, in the City's reasonable opinion is not qualified to perform the job to which they

have been assigned, is engaging in improper conduct, or is not following an applicable Contract provision.

### **3. CHANGES TO THE SERVICES**

#### **3.1 Additional Services**

- (1) Before proceeding with any Additional Services, the Engineer shall obtain the City's written approval in the form of a Change Order or an amendment to this Contract. The City is not liable for payment for Additional Services without a Change Order or written amendment to this Contract.
- (2) Unless the City and the Engineer agree otherwise, the Engineer shall perform the Additional Services required by a Change Order at the hourly rates identified in the applicable Service Order.

#### **3.2 Scope Reduction**

- (1) Notwithstanding any other provision of the Contract, the City 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 City pursuant to section 3.2(1), the Engineer shall be entitled to payment of fees earned and reimbursable expenses incurred, to the date of the written notice delivered pursuant to section 3.2(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 3.2(2), the Engineer shall have no other Claim against the City 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 City and will be the City'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 City.
- (2) The Engineer waives, and shall ensure that its Personnel waive, in favour of the City, 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 City's request, the Engineer must execute any formal assignment or other document required to give effect to this section 4.1.

## **4.2 Engineer IP**

- (1) Notwithstanding section 4.1, the City acknowledges that the Engineer remains the owner of all the Engineer IP and that nothing in the Contract prevents, limits or restricts the Engineer's subsequent use or exploitation of the Engineer IP.
- (2) The Engineer grants to the City a fully paid, non-exclusive, transferable, worldwide, royalty free, irrevocable, perpetual right and license to use the Engineer IP for the purposes of constructing, using, operating, repairing, making or having made, maintaining, upgrading, enhancing, altering or otherwise dealing with the Works (or any part of the Works) or any purpose associated with the further development of improvements on the Site.

## **4.3 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 the Engineering Material, all necessary consents to ensure the City does not infringe any Intellectual Property Rights.

## **4.4 Indemnity**

The Engineer shall indemnify the City and its Personnel against any Claim, whether direct or indirect, by any person against the City or its Personnel alleging that the Contract IP or the Engineering Material and/or the use thereof by the City, or by another person at the direction of the City, 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:

- (1) 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
- (2) 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:

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

- (2) Confidential Information that becomes publicly available after the Contract Date without breach of the Contract; or
- (3) 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
- (4) 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
- (5) the disclosure of Confidential Information by the receiving Party in order to comply with any applicable Laws or legally binding order of any Authority or rule of any recognised stock exchange on which it or any of its Affiliates is listed, 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.

Confidential Information shall not be deemed subject to any of the above exceptions merely because such Confidential Information may be included within more general disclosures in the public knowledge or literature or in the possession of the receiving Party. Confidential Information shall not be deemed subject to any of the above exceptions merely because all discrete parts or portions thereof are separately in the public knowledge or literature or in the possession of the receiving Party.

### **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 which are in the custody of the Engineer are subject to the provisions of *The Local Authority Freedom of Information and Protection of Privacy Act* (Saskatchewan). If a request is received for any of these records from the City, the Engineer shall forward all responsive information and records to the City within 5 calendar days of receipt of notice from the City.

## **6. TERMINATION AND CANCELLATION**

### **6.1 Termination for Cause**

- (1) The City may terminate any Service Order by providing written notice to the Engineer if the Engineer fails to comply with this Contract.
- (2) If the City terminates a Service Order pursuant to this section 6.1, 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 City may have under this Contract or at law or in equity.

## **6.2 Cancellation by the City**

The City may cancel any Service Order, without cause, by providing written notice to the Engineer. Upon such cancellation, the City shall pay to the Engineer the portion of the Contract Charges earned and reimbursable expenses incurred to the date of cancellation. The City 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 any Service Order, the Engineer shall immediately deliver to the City all Engineering Material relating to the Service Order 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 City 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 City 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 City 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. LIENS**

### **7.1 Discharge of Liens**

If the City receives written notice of any lien or charge, or if any lien is recorded by any of the Engineer's Personnel 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 City as the City approves.

### **7.2 Notification and Indemnity**

The Engineer shall promptly inform the City 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 City against any liability, losses, costs, damages and expenses incurred in connection with any such lien or charge claimed or recorded.

### **7.3 The City's Right to Make Payments**

The City 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 City's failure to pay the Engineer in accordance with the terms of this Contract. The City's use of money to discharge any lien or charge as claimed or recorded, discharges the City's liability under this Contract to pay the Engineer the Contract Charges, to the extent of the money so used.

## **8. INSURANCE AND LIABILITY**

### **8.1 Engineer's Insurance**

- (1) The Engineer agrees to maintain in force during the performance of the Services and for at least three 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; and
  - (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.
- (2) The insurance obtained by the Engineer pursuant to section 8.1(1) shall be provided in accordance with the following terms and conditions:
  - (a) The Engineer shall provide the City with a certificate of insurance prior to commencement of the Services evidencing that the insurance required under section 8.1(1) has been obtained, with reliable insurers satisfactory to both Parties and evidencing all applicable endorsements required pursuant to this section 8.1(2);
  - (b) Each insurance policy shall provide that 30 days prior written notice shall be given to the City of any cancellation of any such policy or policies;
  - (c) The City and its Personnel will be included as an additional insured with respect to the insurance policies described in sections 8.1(1)(b) and 8.1(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 8.1(1) available for inspection upon request by the City.

### **8.2 Limitation of Liability**

- (1) The Engineer's liability for Claims for acts or omissions constituting professional negligence which the City has or may have against the Engineer or the Engineer's Personnel arising in any way out of or related to the professional duties or responsibilities of the Engineer pursuant to this Contract, whether such Claims arise in contract, tort, negligence, or under any other theory of liability, shall be limited to the amount specified in section 8.1(1)(a) of this Contract.
- (2) The liability of each Party with respect to a Claim against each other is limited to direct damages only and neither Party will have any liability whatsoever for consequential or indirect loss or damage (such as, but not limited to, claims for loss of profit, revenue, production, business, contracts or opportunity and increased cost of capital or financing) incurred by the other Party.



## **9. ASSIGNMENT AND SUB-CONSULTANTS**

### **9.1 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 City. Any attempt to assign the rights, duties or obligations of this Contract without the City'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 City 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.

### **9.2 Assignment by the City**

- (1) The City may assign this Contract to any third party, without prior written approval of the Engineer, if:
  - (a) the proposed assignee agrees in writing with the Engineer to comply with, and be bound by, this Contract as if it were an original party to this Contract; and
  - (b) all outstanding amounts properly due and owing to the Engineer at that time have been paid.
- (2) Any assignment of this Contract by the City shall release the City from all obligations or liabilities to the Engineer under this Contract which arise on or after the effective date of the assignment.

## **10. GENERAL**

### **10.1 Law of the Contract**

- (1) This Contract is governed by the Laws in force in Saskatchewan and the laws of Canada applicable in Saskatchewan.
- (2) Each Party:
  - (a) irrevocably and unconditionally submits to and accepts the exclusive jurisdiction of the courts exercising jurisdiction in Saskatchewan, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Contract, subject to the right to enforce a judgement obtained in any of those courts in any other jurisdiction; and
  - (b) irrevocably waives any objection to the venue of any legal process commenced in the courts of Saskatchewan on the basis that the process has been brought in an inconvenient forum.

## **10.2 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 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.

## **10.3 Nature of the Relationship**

- (1) Except as otherwise expressly provided in the Contract Documents, nothing in this Contract constitutes a joint venture, agency, partnership or other fiduciary relationship between the City and the Engineer.
- (2) The Engineer acknowledges that except as otherwise expressly provided in the Contract Documents, or with the prior written approval of the City, the Engineer has no authority to bind the City.
- (3) 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 City.
- (4) The Engineer must not act outside the scope of the authority (if any) conferred on it under this Contract in performing any Services.

## **10.4 Severability**

- (1) If any provision in this Contract is unenforceable, illegal or void then it is severed and the rest of this Contract remains in force.
- (2) 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.

## **10.5 Amendment and Variation**

Except as expressly provided otherwise in this Contract, this Contract may not be amended, modified, varied or supplemented except in writing signed by the Parties.

## **10.6 Conflict of Interest**

The Engineer and its Personnel:

- (1) 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;
- (2) shall not influence, seek to influence, or otherwise take part in a decision of the City, knowing that the decision might affect their private interests;
- (3) 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
- (4) 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 City.

## **10.7 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.

## **10.8 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.

## **10.9 Survivorship**

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 or cancellation of this Contract or a Service Order, or completion of the Services.

## **SCHEDULE 6**

### **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 City's safety policies and procedures and Site rules communicated to the Engineer in writing, as well as all reasonable directions and instructions from the City about such matters as are given from time to time. Should the Engineer or any Sub-consultant damage any of the City's property, the Engineer shall reimburse the City for any costs reasonably and necessarily incurred by the City 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 City 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 City from and against all fines or penalties suffered or incurred by the City 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 City's ongoing operations except as is specifically authorized by the City 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 City 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 City's reasonable opinion, is not qualified to perform the job to which such person has been assigned, or is not following any 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, 2013* (Saskatchewan) ("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 Plant Site.