

**REQUEST FOR PROPOSAL - PROFESSIONAL ENGINEERING SERVICES**

**for**

**Town of Peace River**

**Neighbourhood Infrastructure Renewal 2023**

**Sample Agreement**

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## SAMPLE AGREEMENT

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

BETWEEN:

THE TOWN OF PEACE RIVER (hereinafter referred to as the “Town”)

OF THE FIRST PART

- and -

\_\_\_\_\_ (hereinafter referred to as the “Consultant”) “

OF THE SECOND PART

Engineering Services – Town of Peace River – Neighbourhood Infrastructure Renewal 2023

WHEREAS the Town requires the services of the Consultant as an independent Consultant, in connection with the provision of Engineering Services - Town of Peace River – Neighbourhood Infrastructure Renewal 2023 as per Schedules as note herein.

AND WHEREAS the Town and the Consultant have reached an agreement with respect to the terms and conditions under which the Consultant will provide such services to the Town;

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

### 1.0 DEFINITIONS

1.1 In this Agreement:

- .1 **Additional Work** means services requested by the Town of Peace River not listed within this agreement;
- .2 **Fees** means the fees to be paid by the Town to the Consultant as set forth in Schedule “B” hereto;
- .3 **Force Majeure** means any act of God, major storms, civil disturbance or any similar major event or occurrence not within the control of a party and which by the exercise of due diligence by such party could not have been prevented, but lack of funds on the part of such party shall be deemed not to be a Force Majeure;
- .4 **Hazardous Substances** means any substance which is hazardous to persons or property and includes, without limiting the generality of the foregoing:
  - .1 any form of radioactive materials;



- .2 explosives;
- .3 any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water to the extent that it is detrimental to its use by man or by any animal, fish or plant;
- .4 any solid, liquid, gas or odor or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air that:
  - .1 endangers the health, safety or welfare of persons or the health of animal life;
  - .2 interferes with normal enjoyment of life or property; or
  - .3 causes damage to plant life or to property; and
  - .4 substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority having jurisdiction over the parties hereto.
- .5 **Project** means provision of Engineering Services for Town of Peace River Building Canada Water and Sewer Projects.
- .6 **Record** means a record of information in any form, including books, documents, maps, drawing, photographs, letters, vouchers, papers, electronic mail and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records.
- .7 **Services** means those activities identified in Schedule “A” hereto;
- .8 **Term** means the period of time commencing on \_\_\_\_\_ and ending on 31 Dec 2023, or a date agreed upon by both parties as per Instructions to Consultants, in the Request for Proposals, subject to extension or earlier termination as set forth herein.
- .9 **Town Property** means all information, records or materials, regardless of form, and including, but not limited to, any copyright, patent, industrial design process or trademark, acquired or produced under this Agreement by the Consultant, or provided by the Town for use by the Consultant;

## 2.0 PREAMBLE AND SCHEDULES

- 2.1 The parties hereby confirm and ratify the matters contained and referred to in the Preamble to this Agreement and agree that same and the various schedule(s) hereto are expressly incorporated into and form part of this Agreement:



SCHEDULE	DESCRIPTION
A	Services
B	Description of Project
C	Fees
D	Indemnification
E	Site Photos, Drawings and Sketches
F	Supplementary Data

2.2 The Town appoints Mr. Jim McCuaig, Director of Engineering and Infrastructure, or such other person as the Town may from time to time designate in writing, as his authorized representative to communicate with the Consultant and to issue directives to the timely and satisfactory performance of the Services.

2.3 The rate and basis for calculation of the actual amount payable under this Agreement are as set out in the Consultant's proposal attached as Schedule "B".

2.4 The total amount payable under this Agreement shall not exceed:

\_\_\_\_\_, *(exclusive) of G.S.T.*

### 3.0 CONSULTANT'S OBLIGATIONS

3.1 The Consultant shall:

.1 Designate a person acceptable to the Town to act as liaison on behalf of the Consultant, in respect of any required or desirable communication with the Town under this Agreement.

.2 Commence and complete the Services to be provided under this Agreement as per the Term set out in Clause 1.8 of this Agreement.

.3 While this Agreement is in effect, all or any of the monies remaining to be paid may be withheld if the Town deems that the Consultant fails to perform the Services in accordance with the terms and conditions of this Agreement, fails to complete the Services or to supply any materials required under this Agreement on or before the work completion date prescribed in or pursuant to Section 3 of this Agreement.

.4 When the Town is satisfied that the Services were performed in accordance with the terms and conditions of this Agreement, the Town will cause to be paid to the Consultant, any amount held back by the Town under clause (3.3) above.



- .5 Perform the Services in accordance with and subject to the terms and conditions contained in this Agreement;
- .6 Use only competent personnel to perform the Services;
- .7 Shall be responsible for the payment of all costs and benefits payable by or on behalf of his employees, including if applicable, holiday pay, sick time allowance, unemployment insurance, Worker's Compensation, Canada Pension Plan or any other pension plan contributions, health care insurance premiums, liability insurance or group life insurance.
- .8 Undertake that the Services will be performed efficiently, in a good and workmanlike manner, and in accordance with Department of Fisheries & Oceans, Alberta Environment, Alberta Transportation and other government organizations and departments, unless higher standards have been specified in the proposal or are required by the Town in writing ancillary to this Agreement.
- .9 Be bound by and observe all applicable federal, provincial and municipal legislation and related regulations, which, without limiting the generality of the foregoing, shall include the provisions of the Freedom of Information and Protection of Privacy Act and the AEPEA, all as amended from time to time, and the Consultant shall cause all of its employees and approved sub-consultants to be so bound;
- .10 Obtain and maintain at its sole expense all necessary permits, licenses, consents, approvals and rights-of entry to land or other estates or interests in land necessary for the Consultant to perform the Services in addition to any authorizations, consents, licenses, rights-of-entry or other estates or interests in land that have been obtained by the Town and approvals required by all authorities having jurisdiction incidental to the performance of the Consultant's obligations under this Agreement;
- .11 Pay all fees and all other costs incidental to the performance of the Consultant's obligations under this Agreement;
- .12 Provide all such written and verbal reports as required by the Town on the progress of the Services. The Consultant will make available such information, including data and documents, as the Town may require from time to time to allow the Town to evaluate the quality and progress of the Services; and
- .13 Upon receipt of request from the Town, provide evidence of full compliance with all requirements of the Workers' Compensation Act to and including the dates of such requests, such evidence to include the Consultant and any and all sub-consultants.



## 4.0 HAZARDOUS SUBSTANCES

- 4.1 Without limiting any of the foregoing, the Consultant hereby represents, covenants and warrants to and in favour of the Town that in carrying out its obligations hereunder:
- .1 The Consultant shall not utilize any Hazardous Substance, nor allow any Hazardous Substance to be placed, held, located or disposed of on, under or at any lands (including any lands owned by the Town, or under the Town's care, control or management), without the prior written consent of the Town, which consent may be arbitrarily withheld;
  - .2 The Consultant shall not allow any lands (including any lands owned by the Town, or under the Town's care, control or management) to be utilized in any manner in contravention of any applicable laws intended to protect the environment, including without limitation, laws respecting the handling, disposal and emission of Hazardous Substances;
  - .3 To the extent that any Hazardous Substance is utilized, placed, held, located or disposed of on, under or at any lands (including lands owned by the Town or under the Town's care, control or management) in accordance with the terms hereof, the Consultant shall:
    - .1 Comply with, or cause to be complied with, all applicable laws and regulations relating to the use, storage and disposal of the Hazardous Substance, as well as all terms or conditions required by the Town;
    - .2 At the request of the Town, provide evidence to the Town or compliance with all applicable laws, regulations and other requirements, such evidence to include inspection reports and such tests as the Town may reasonably require, all at the Consultant's expense.

## 5.0 TOWN'S OBLIGATIONS

- 5.1 The Town shall:
- .1 following receipt of an invoice satisfactory to the Town relating to the cost of the Services performed and subject to the proper discharge of the Consultant's obligations under this Agreement, pay the amount stipulated in the invoice within forty-five (45) days of receipt of the invoice.

## 6.0 TAXES AND DEDUCTIONS

- 6.1 The Consultant shall be responsible to collect, remit, and pay all source deductions, Canada Pension contributions, unemployment insurance premiums, taxes and GST and all other required payments, contributions or deductions under all applicable laws and authorities

including, but not limited to, any assessments levied pursuant to the Workers' Compensation Act (Alberta) which arise or may hereafter arise with respect to the performance of the obligations of the Consultant under this Agreement and the Town shall have no liability for the same.

## **7.0 RELEASE OF AND AUDIT**

- 7.1 Notwithstanding any other provision contained herein to the contrary, the Consultant shall retain all statements, invoices, accounts, receipts and any other records pertaining to the performance of its obligations under this Agreement and, upon demand, the Consultant shall produce any or all of the same to the Town or any person designated by the Town within Thirty (30) days of receipt of the demand.
- 7.2 The Town shall, upon request at all reasonable times, have access to any land or buildings owned by or under the control of the Consultant in which the Consultant keeps any documents referred to in the above paragraph; and the Consultant shall assist in exercising any entry to any land or building for the purpose of examining such documents in accordance with the above paragraph.

## **8.0 ADDITIONAL WORK**

- 8.1 The Town may authorize the performance of Additional Work by the Consultant. Upon the receipt of written notice from the Town, the Consultant shall perform the Additional Work at the Additional Work rate specified by the Consultant in the Proposal. The Consultant hereby acknowledges that any Additional Work shall be performed as specified by the Town in its written notice and in accordance with the terms and conditions contained in this Agreement.

## **9.0 RIGHT OF THE CONSULTANT TO ACCEPT CONCURRENT RETAINERS**

- 9.1 The Consultant may accept concurrent contracting retainers from other parties during the Term

## **10.0 WARRANTIES AND REPRESENTATIONS**

- 10.1 The Consultant hereby represents and warrants with and to the Town, and acknowledges that the Town is relying upon such representation and warranty, that the Consultant is in compliance with all laws and regulations of any public authority relating to the conduct of its business and has all required approvals, permits, licenses, certificates and authorizations necessary to carry on its business and to carry out its obligations hereunder and there are not any proceedings whatsoever, actual or pending, and whether concerning cancellation, extension or otherwise, relating to the said approvals, permits, licenses, certificates or authorizations





## 11.0 INSURANCE

11.1 The Consultant shall obtain and maintain in force during the Term the following insurance, all satisfactory of the Town, acting reasonably;

- .1 standard automobile, bodily injury and property damage insurance providing coverage of at least Two Million (\$2,000,000.00) Dollars inclusive and in respect of any one claim for the injury to or death of one or more persons or damage to or destruction of property;
- .2 a comprehensive general liability insurance policy providing coverage of at least Two Million (\$2,000,000.00) Dollars inclusive and in respect of any one claim for injury to or death of any one or more persons or damage to or destruction of property.  
Coverage to include:
  - .1 non-owned automobiles;
  - .2 contractual liability including this Agreement;
  - .3 broad form property damage endorsement;
  - .4 sudden and accidental pollution liability; and
  - .5 products and completed operations.
- .3 Workers' Compensation coverage for all employees, if any, engaged by the Consultant in accordance with the laws of the Province of Alberta; and shall submit to the Town a certificate from the Worker's Compensation Board showing that the Consultant is registered and is in good standing with the Board. The Consultant will remain in good standing with the Board throughout the entire term of this Contract.
- .4 employer's liability insurance respecting employees, if any, of the Consultant with limits of liability of not less than Two Million (\$2,000,000.00) Dollars per employee for each accident, accidental injury or death of an employee or any sub-Consultant engaged by the Consultant; and
- .5 such other insurance as the Town may from time to time reasonably require.

11.2 The Consultant shall ensure that all insurance coverage maintained by the Consultant in accordance with this Agreement shall name the Town and any other party designated by the Town as an additional insured, contain a severability of interests or cross liability clause, and shall provide that no such insurance policy may be cancelled without the insurer provided no less than thirty (30) days' written notice of such cancellation to the Town. The Consultant shall, prior to signing of contracts, furnish written documentation, satisfactory to the Town, evidencing the required insurance coverage. The cost of all of the insurance required to be held by the Consultant as set forth herein shall be borne by the Consultant.



- 11.3 The Consultant shall:
- .1 prior to signing of contracts, furnish written documentation to the Town evidencing Workers' Compensation coverage.
- 11.4 The Consultant shall ensure that any subcontractors it hires in relation to the Project have insurance coverage as set out in this agreement. The Consultant shall ensure that the subcontractor's insurance complies with the provisions as noted in this agreement.

## 12.0 INDEMNITY BY THE CONSULTANT

- 12.1 The Consultant shall at all times and without limitation, indemnify and save harmless the Town, its Councilors, directors, officers and employees and those consultants, agents and representatives listed in Schedule "C" to this Agreement from and against all liabilities, losses, costs, damages, legal fees, disbursements, fines, penalties, expenses, all manner of actions, causes of action, claims, demands and proceedings, all of whatever nature and kind which any of the Town, its Councilors, directors, officers and employees and those consultants, agents and representatives listed in Schedule "C" to this Agreement may sustain, pay or incur or which may be brought or made against all or any of them, and whether or not incurred in connection with any action or other proceedings or claims or demands made by third parties, with respect to any occurrence, event, incident or matter caused by a direct or indirect result of:
- .1 The misconduct, negligent action or negligent failure to act, as the case may be, of the Consultant and/or any of those persons for whom the Consultant is responsible at law (including, without limitation, any of its employees or sub-consultants); or
  - .2 The costs of repairs, clean-up or restoration paid by the Town and any fines levied against the Town or the Consultant; or
  - .3 Any breach, violation or non-performance of any representation, warranty, obligation, covenant, condition or agreement in this Agreement set forth and contained on the part of the Consultant to be fulfilled, kept, observed or performed, as the case may be; or
  - .4 Damages to third parties caused by, resulting at any time from, arising out of or in consequence of the misconduct, negligent action or failure to act of the Consultant and/or any of those persons for whom the Consultant is responsible at law (including, without limitation, any of its employees or sub-consultants).
- 12.2 The provisions of this Section are in addition to and shall not prejudice any other rights of the Town at law or in equity. This Section shall survive the termination or expiry of this Agreement for any reason whatsoever.



### 13.0 INDEMNITY BY THE TOWN

13.1 The Town shall indemnify and save harmless the Consultant, its directors, officers and employees from and against any claim, liability or cost which the Town, directors, officers and employees may sustain, pay or incur or which may be brought or made against all or any of them arising out of any reuse or modification:

- .1 by the Town of any professional drawings provided by the Consultant; or
- .2 by any person who obtains the professional drawings from or through the Town

### 14.0 CONFIDENTIAL INFORMATION

14.1 All information and data received and compiled by the Consultant, while performing the Services, shall be treated as confidential for the benefit of the Town constitutes a part of Town Property and shall not be disclosed or made known to any other person except as authorized by the Town.

- .1 The Consultant acknowledges and agrees that the Town is the sole legal and beneficial owner of any and all of the Town Property. The Consultant shall unconditionally deliver any and all Town Property to the Town within 60 (sixty) days of the expiry or termination of this Agreement.
- .2 This Section shall survive the termination or expiry of this Agreement.

### 15.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

15.1 Definitions

- .1 **Contract** is the process by which a public body enters into a contract enforceable in law where a legal obligation is defined between the government and another party or parties.
- .2 **Control** means that the public body has the authority to manage the record including restricting, regulating, and administering its use, disclosure and disposition. A public body will often exert control over records created under a contract even though the records may be in the possession of the Consultant.
- .3 **Custody** means that the record is in the possession of the public body and the public body has a right to deal with the record and some responsibility for its care. It may be important for a public body to ensure continuity of custody over a record to meet legal requirements or to state clearly in a contract that this custody is being transferred to another party.
- .4 **Personal Information** is defined in Section 1 (1) (n) of the FOIP Act as recorded



information about an identifiable individual.

- .5 **Record** is defined in Section 1(1)(q) of the FOIP Act as "recorded information in any form, and includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records."
- .6 **Transitory Record** means a record (as defined above) containing information of temporary value, which does not have some future administrative, financial, legal, research, or historical value to the government. This would include such information as duplicate records, draft documents, working materials, publications, blank forms, and temporary notes that do not have long-term value.

#### 15.2 Complying with FOIP

- .1 The Consultant acknowledges that the Freedom of Information and Protection of Privacy Act applies to all information and records relating to, or obtained, created or collected under this Contract.
- .2 All documents submitted to the Town of Peace River are governed by access and privacy provisions of the Freedom of Information and Protection of Privacy Act. While this Act allows persons a right of access to records in the Town of Peace River's custody or control, it also prohibits the Town of Peace River from disclosing your personal information or confidential business information. This prohibition takes effect if disclosure would be significantly harmful to your business interests or would be an unreasonable invasion of your personal privacy as defined in Sections 15 and 16 of the Act. Consultants are encouraged to identify those portions of their submissions which they are submitting in confidence and which, if revealed, would harm the business interests of the company.

#### 15.3 Responding to FOIP Requests

- .1 Notwithstanding the termination or expiry of this Agreement, the Consultant acknowledges that information and records compiled or created under this Agreement which are in the custody of the Consultant are subject to the Freedom of Information and Protection of Privacy Act. If a request is received for any of these records, the Consultant shall forward the information and records, at the Consultant's expense, to the Town within fifteen (15) calendar days of official notification by the Town.

#### 15.4 Transfer of Records and Conditions of Management

- .1 The Town shall furnish to the Consultant such information in its possession



reasonably required for the proper performance of the obligations of the Consultant, and shall, in every way provide such cooperation as is reasonable in order for the Consultant to be able to perform the Services.

- .2 Except as otherwise agreed to in writing by the Town, upon completion or termination of this Agreement, all data, documents, surveys, plans, reports, results of tests, design notes and calculations, examinations, analyses and other information acquired or produced in connection with or as a result of the performance of the Services and paid for by the Town become the sole property of the Town without further compensation or payment to the Consultant, and the Consultant shall transfer possession of the data and other mentioned matters to the Town.

#### 15.5 Segregation of Records

- .1 The Consultant must keep separate from all its other records and databases all personal information transferred to it by The Town of Peace River or collected or compiled under this contract.

#### 15.6 Ownership of Records

- .1 The Consultant acknowledges that all (or specific) documents, surveys, plans, reports, examinations, analysis, master plates for a final report, and any and all other materials related to the services provided under this Contract are the property of the Town of Peace River. They must be given to the Town of Peace River immediately upon request or when the contract ends, whichever occurs first.

#### 15.7 Records Retention

- .1 The records required to be created, obtained and maintained for the Town of Peace River under this contract become and remain the property of the Town of Peace River and are to be delivered to the Town at the Consultant's expense.
- .2 Transitory records as defined under this contract may be disposed of when they are no longer required, unless the Town of Peace River advises the Consultant to retain certain transitory records because a FOIP request has been received. Destruction must be done according to all rules and regulations, which are now or may hereafter be established by the Government of Alberta.

#### 15.8 Offences and Penalties

- .1 The Consultant acknowledges that Section 86 of the Freedom of Information and Protection of Privacy Act specifies that a person who:
  - .1 request for access to records; or



.2 willfully collects, uses or discloses personal information in violation of Part 2 of the Act or gains or attempts to gain access to such personal information in violation of the Act;

.2 is guilty of an offence and is liable to a fine or not more than \$10,000.00.

#### 15.9 Responsibilities of Employees and Agents

.1 The Consultant agrees to notify each employee, officer and other person who may see or obtain access to the personal information of the duties and obligations established by Part 2 of the Freedom of Information and Protection of Privacy Act and any specific processes and duties specified in the contract.

.2 The Consultant is responsible for ensuring the complete compliance of its employees and agents with all terms and conditions related to protection of privacy. In the event that the Consultant becomes aware of a breach of any of these terms of conditions, it must notify the Town of Peace River immediately in writing and take all reasonable measures to prevent any further breaches of these terms or conditions.

#### 15.10 Collection of Personal Information

.1 The Consultant may not collect personal information pursuant to this contract, for the public body, unless the collection is authorized under the contract or the public body authorizes the collection.

.2 Where personal information is collected for the Town of Peace River the Consultant must collect it directly from the individual the information is about and must inform the individual of:

.1 The purpose for which the information is being collected; and

.2 The specific legal authority for the collection; and

.3 The title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.

#### 15.11 Accuracy and Completeness

.1 The Consultant, its employees and agents will make every reasonable effort to ensure that personal information that is or is to be used to make a decision that directly affects an individual is both complete and accurate.

#### 15.12 Correction

.1 The Consultant acknowledges that individuals or their representatives have the right



to request the Minister to correct personal information that the Consultant, its employees and agents may have either received from the public body or collected or compiled about an individual. The Consultant must undertake to make any corrections or annotation required by the Minister within five (5) working days of receiving notice and direction to do so by the Town of Peace River.

#### 15.13 Protection of Personal Information

- .1 The Consultant must protect personal information in its custody by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal of personal information. Specific measures include (state specific measures for physical, personnel and information technology security).

#### 15.14 Use and Disclosure of Personal Information

- .1 The Consultant must ensure that no use or disclosure may be made of the personal information obtained by or provided to the Consultant for any purpose other than what is needed to carry out this contract unless the Consultant has received the prior express written authorization for doing so from The Town of Peace River.

#### 15.15 Hold Harmless

- .1 The Consultant agrees to hold harmless the Town of Peace River from any and all third-party claims, demands, or actions for which the Consultant is legally responsible, including those arising out of negligence, willful harm, or crimes by the Consultant of the Consultant's employees or agents. This hold harmless shall survive this Agreement.

### **16.0 SET OFF RIGHT TO BENEFIT OF THE TOWN**

- 16.1 Where the Town determines that the performance of the obligations of the Consultant is not in accordance with this Agreement, the Town may require the Consultant by written notice to remedy such deficiency at the Consultant's sole expense and within such time as stipulated by the Town.
- 16.2 If such deficiency is not remedied to the satisfaction of the Town, the Town shall have the right, but shall be under no obligation, to remedy the deficiency to the Town's satisfaction at the sole expense of the Consultant.
- 16.3 The Consultant shall be liable for all costs incurred by the Town to remedy such deficiency including, but not be limited to, all legal fees and disbursements on a solicitor and his own client full indemnity basis.



- 16.4 Any amount paid or incurred by the Town under this Section shall constitute a debt due and owing to the Town and such amount may, without further action or notice, be set-off against any sum of money owed by the Town to the Consultant, as such may exist from time to time, until all amounts owing to the Town have been completely set off.
- 16.5 The exercise by the Town of the rights set out in this Section shall not limit or prejudice any other rights of the Town, howsoever arising and the Town's rights set out in this Section shall survive the expiry or termination of this Agreement.

## 17.0 TERMINATION

- 17.1 The Town may, in its sole discretion, abandon the Project in respect of which all or any part of the Services are required, or any part of the Project at any stage or time while this Agreement is in effect. If the Project or part of the Project is abandoned, this Agreement or such part thereof as the Town prescribes in writing, terminates and ceases to be in effect on and after the date of service of a notice of abandonment by the Town or the Consultant.
- 17.2 This Agreement may be terminated at any time by the Town by giving seven (7) days written notice to the Consultant, and the Consultant's right to consideration shall be limited to payment for the Services performed and not previously paid for. The Consultant specifically agrees that the notice and consideration set forth in this paragraph constitutes reasonable, fair and equitable notice and compensation for damages, if any, that may be suffered by the Consultant as a result of the termination of this Agreement.
- 17.3 If such notice is given, the Consultant shall perform the Services up to and including the effective date of termination specified in the notice and shall, upon request, provide the Town with a written report on the Services rendered to the time of termination.
- 17.4 Except for any such report, the Consultant shall not perform any further Services subsequent to the effective date of termination.

## 18.0 FORCE MAJEURE

- 18.1 If the parties shall fail to meet their respective obligations hereunder within the respective time prescribed therefore and such failure shall be directly caused or materially contributed to by Force Majeure, such failure shall be deemed not to be a breach of the obligations of such party, provided however, in such event, such party shall use its best efforts to put itself in a position to carry out its obligations hereunder as soon as reasonably possible.





## 19.0 GENERAL

### 19.1 Notices

- .1 Whether or not so stipulated herein, all notices, communication, requests and statements (the “Notice”) required or permitted hereunder shall be in writing. Notice shall be served by one of the following means:
  - .1 Personally, by delivering it to the party on whom it is to be served at the address set out herein, provided such delivery shall be during normal business hours. Personally delivered Notice shall be deemed received when actually delivered as aforesaid and addressed as specified in subsection 19.1.3 below; or
  - .2 By telecopier or by any other like method by which a written or recorded message may be sent, directed to the party on whom it is to be served at that address set out herein. Notice so served shall be deemed received on the earlier of:
    - .1 upon transmission with answer back confirmation if received within the normal working hours of the business day; or
    - .2 at the commencement of the next ensuing business day following transmission with answer back confirmation thereof; or
    - .3 by mailing via first class registered post, postage prepaid, to the party on whom it is served. Notice so served shall be deemed to be received five (5) days after the date it is postmarked. In the event of postal interruption, no notice sent by means of the postal system during or within seven (7) days prior to the commencement of such postal interruption or seven (7) days after the cessation of such postal interruption shall be deemed to have been received unless actually received;
- .2 Except as herein otherwise provided, notice required to be given pursuant to this Agreement shall be deemed to have been received by the addressee on the date received when served by hand or courier, or five (5) days after the same has been mailed in a prepaid envelope by single registered mail to:

THE TOWN OF PEACE RIVER  
Box 6600  
Peace River, Alberta T8S 1S4  
Attention: Chief Administrative Officer

or to such other address as each party may from time to time direct in writing.



## 19.2 Governing Law

- .1 This Agreement shall be construed and governed by the laws of the Province of Alberta and the laws of Canada applicable therein and the parties hereto irrevocably attorn to the exclusive jurisdiction of the Courts of the Province of Alberta.

## 19.3 Time of Essence

- .1 Time shall be of the essence of this Agreement.

## 19.4 Headings

- .1 The headings, captions, paragraph numbers, sub-paragraph numbers, article numbers and indices appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit, construct or enlarge the scope or meaning of this Agreement or any provisions hereof.

## 19.5 Relationship between Parties

- .1 Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party, as creating the relationship of employer and employee, principal and agent, partnership, or of a joint venture between the parties hereto, it being understood and agreed that none of the provisions contained herein nor any act of the parties hereto shall be deemed to create any relationship between the parties hereto other than an independent service agreement between the two parties at arm's length.

## 19.6 No Authority

- .1 Except as may from time to time be expressly stated in writing by the one party, the other party has no authority to assume or create any obligation whatsoever, expressed or implied, on behalf of or in the name of the other party, nor to bind the other party in any manner whatsoever.

## 19.7 Agreement Entire Relationship

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



#### 19.8 Further Assurances

- .1 Each of the parties do hereby agree to do such things and execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with their true intent.

#### 19.9 Amendments

- .1 This Agreement may not be altered or amended in any of its provisions, except where any such changes are reduced to writing and executed by the parties.

#### 19.10 Waiver

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

#### 19.11 Counterparts

- .1 This Agreement may be executed in several counterparts each of which when so executed shall be deemed to be an original, and such counterpart shall constitute the one and same instrument and notwithstanding their date of execution shall be deemed to bear date as of the date first above written.

#### 19.12 Statutory Reference

- .1 Any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto and promulgated thereunder with all amendments made thereto and in force from time to time and any final judicial decisions interpreting the same, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto.

#### 19.13 Unenforceability

- .1 If any term, covenant or condition of this Agreement or the application thereof to any party or circumstances shall be invalid or unenforceable to any extent, the



remainder of this Agreement or application of such term, covenant or condition to a party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Agreement shall be valid and shall be enforceable to the fullest permitted by law.

#### 19.14 Survival

- .1 The parties acknowledge and agree that the provisions of this Agreement which, by their context, are meant to survive the termination or expiry of the Term shall survive the termination or expiry of the Term and shall not be merged therein or therewith.

#### 19.15 Remedies Generally

- .1 Mention in this Agreement of any particular remedy of a party in respect of a default by the other party does not preclude the first party from any other remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this Agreement. No remedy shall be exclusive or dependent upon any other remedy, but a party may from time to time exercise any one of more of such remedies generally or in combination, such remedies being cumulative and not alternative.

#### 19.16 Payment of Monies

- .1 The parties acknowledge and agree that any payment of monies required to be made hereunder shall be made in Canadian funds and that any proposal of monies or documents hereunder may be made upon the solicitors acting for the party upon whom the proposal is desired and it shall be sufficient that a negotiable bank draft is provided instead of cash.

#### 19.17 GST Exclusive

- .1 All amounts payable by the Town to the Consultant hereunder will be exclusive of any goods and services tax ("GST") and the Town will, in addition the amounts payable hereunder, pay to the Consultant all amounts of GST applicable thereon.

#### 19.18 Singular, Plural and Gender

- .1 Wherever the singular, plural, masculine, feminine or neuter is used throughout this Agreement the same shall be construed as meaning the singular, plural, masculine, feminine, neuter, body politic or body corporate where the fact or context so requires and the provisions hereof.



19.19 Binding Effect

- .1 This Agreement shall endure to the benefit of and be binding upon the successors and permitted assigns of each of the parties.

19.20 Assignment

- .1 Neither party shall assign its interest in this Agreement, or any part hereof, in any manner whatsoever without having first received written consent from the other party, such consent which shall not be unreasonably withheld.

19.21 Requests for Consent

- .1 Each party shall provide any decision with regard to a request for consent in a timely manner.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first written above.

SIGNED, SEALED and DELIVERED

by

FOR THE CONTRACTOR	FOR THE TOWN OF PEACE RIVER
<b>Signature</b>	<b>Signature</b>
Name (Please Print):	Barbara Miller, CPA, CGA, CLGM
	CAO
<b>Witness Signature</b>	<b>Signature</b>
Witness Name (Please Print):	Jim McCuaig, P. Eng.
	Director of Engineering and Infrastructure