

## AGREEMENT FOR CONSTRUCTION SERVICES

**BETWEEN:**

**THE CITY OF RED DEER**

(referred to as the “City”)

**AND:**

**TO BE DETERMINED**

(referred to as the “Contractor”)

In consideration of their respective agreements set out herein, the parties covenant and agree as follows:

### **1. Contract Documents**

The contract between the parties in respect of:

#### **Spruce Drive Home Demolition – 2025**

is comprised of the following documents, which are collectively referred to as the “Contract”:

- (a) this Agreement;
- (b) the Schedule of Deliverables, Rates and Specific Provisions, attached hereto as Schedule 1;
- (c) the Supplementary Terms and Conditions, attached hereto as Schedule 2;
- (d) the Standard Terms and Conditions, attached hereto as Schedule 3;
- (e) the **Spruce Drive Home Demolition – 2025 RFP 2025-061**, including any addenda (the “Solicitation Document”), attached hereto as Schedule 4
- (f) excerpts from the documentation submitted by the Contractor in response to the Solicitation Document (the “Contractor’s Submission”), attached hereto as Schedule 5; and
- (g) Project Forms.

## 2. Interpretive Value of Contract Documents

Any ambiguity, conflict or inconsistency between or among the documents comprising the Contract will be resolved by giving precedence to the express terms of the documents in the order in which they appear above, so that a first mentioned document shall prevail notwithstanding any term or aspect of a later mentioned document.

## 3. Execution

This agreement may be executed and scanned or otherwise signed electronically and delivered by electronic transmission and when so executed will be deemed an original and binding on the parties. This agreement may be executed in one or more counterparts, each of which taken together, shall constitute only one legal instrument.

The parties to this Agreement have signed by the hands of their proper authorized officers and/or representatives.

### THE CITY OF RED DEER

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
DATE

### I HAVE THE AUTHORITY TO BIND THE CITY OF RED DEER

#### COMPANY NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
DATE

### I HAVE THE AUTHORITY TO BIND COMPANY NAME

## Schedule 1 – Schedule of Deliverables, Fees and Specific Provisions

### A. Description of Deliverables

The Deliverables are as described in Schedule 4 -The Solicitation Document.

### B. Fees

#### B.1 Maximum Fee

Notwithstanding anything else in the Contract, the total amount payable by the City to the Supplier under the Contract shall not exceed [\*maximum contract amount\*] (\$xxx), unless prior written authorization has been obtained by the Supplier from The City.

#### B.2 Personnel and Rates

The following individuals are responsible for the provision of the Deliverables. The rates for these individuals are set out below and shall remain fixed during the Term of this Contract:

[\*personnel and rate information or replace this section with other applicable form of rate breakdown\*]

### C. Payment Terms

The payment terms for the Contract are as follows:

- (a) Invoices are to be addressed to the Financial Services Department, Attention: Accounts Payable, The City of Red Deer, PO Box 5008, Red Deer, Alberta, T4N 3T4 or to [accountspayable@reddeer.ca](mailto:accountspayable@reddeer.ca).
- (b) The purchase order number must be shown on all related invoices, shipping papers, transportation bills, packages, packing lists and correspondence.
- (c) Goods and Services Tax (GST) must be shown separately on the invoice.
- (d) Only an invoice for the value of the goods and/or services delivered to the City shall be submitted and be payable.
- (e) The City will pay invoices in full within 30 days of receipt.

### D. Client and Supplier Representatives

The City Representative and contact information for the Contract is:

The City of Red Deer

Purchasing Section  
Box 5008, T4N 3T4  
purchasing@reddeer.ca

The Supplier Representative and contact information for the Contract is:

[\*name and title of Supplier representative in charge of the contract and contact details, including mailing address and email address\*]

**E. Term of Contract**

The Contract commences on the date of the last signature (the “**Effective Date**”) and ends upon completion of the Deliverables to the full satisfaction of the City, which completion shall not be later than **August 31, 2025**.

**F. Project Specific Provisions**

**F.1 Warranty Period**

The “Warranty Period” is two (2) years from the date of substantial completion.

If, in the sole opinion of the City, deficiencies or problems appear during the Warranty Period, the Supplier shall immediately remedy, replace, re-perform or correct the Services at no cost to the City within a time fixed by the City.

If the Supplier fails to respond or remedy, replace, re-perform or correct the Services with the time fixed by the City, the City may re-perform or correct the Services, and any damage arising from it, by whatever means it chooses and the cost of same shall be paid by the Supplier.

The Supplier further warrants that any Services which have to be re-performed, replaced, remedied or corrected shall be free of defects.

**F.2 Time is of the Essence**

Subject to reasonable time extensions for delays not caused by the Supplier, time is to be of the essence in this Contract and the completion timelines set out in the Contract shall be strictly enforced. The City may withhold 20% of the Supplier’s fees until such time as performance and timelines are judged acceptable.

Where as-built drawings are required, they shall be submitted in the approved format to the City within 90 days of issuing the Substantial Completion Certificate. The City will withhold 5% of the Supplier’s earned fees until as-built drawings are received.

**F.3 Prime Contractor**

The Supplier is the prime contractor under applicable safety legislation.

#### **F.4 Safety**

The Supplier shall be aware of and observe all requirements of the Occupational Health and Safety Act and the Workers Compensation Act.

Any Supplier performing work for The City will be required to provide either:

- (a) a current copy of an issued COR or SECOR endorsed by the Government of Alberta, or an equivalent certificate or designation under an equivalent program in a jurisdiction other than Alberta;
- (b) a Temporary Letter of Certification endorsed by the Government of Alberta, or an equivalent certificate or designation under an equivalent program in a jurisdiction other than Alberta; or
- (c) a detailed safety program. The City reserves the right to accept or deny this submission.

The Supplier shall appoint a representative to be responsible for communication with the City, the Supplier's workers, and Alberta Occupational Health and Safety with respect to health and safety issues.

The Supplier shall provide the Deliverables with the utmost regard for the safety and welfare of workers and the public, taking all necessary safety precautions as required at law.

Non-compliance with any of these Safety provisions is a material breach of the Contract.

## Schedule 2 – Supplemental Conditions

### A. Holdbacks

#### 1. Definitions

- .1 **"Prompt Payment and Construction Lien Act"** means the Prompt Payment and Construction Lien Act, R.S.A 2000. Ch P-26.4.
- .2 **"Lien Fund"** means the amount of money required to be held back from all payments due to the Contractor under the Contract in accordance with the requirements of the Prompt Payment and Construction Lien Act.
- .3 **"Certificate of Substantial Performance"** means a certificate issued by the Contractor or a Subcontractor who is of the opinion that his Contract or Subcontract is substantially performed.
- .4 **"Construction Completion Certificate"** means the document issued by the City certifying that performance of all Work is completed in accordance with the Contract including the remedy or correction of Deficiencies, except for seasonal Work and ongoing obligations related to Warranty Work.
- .5 **"Construction Period"** means the period of time set out for which invoices and applications for payment may be issued by the Contractor to the City.
- .6 **"Construction Period Invoice"** means an invoice issued by the Contractor for Work performed by the Contractor during one or more Construction Periods and includes an invoice for the Lien Fund.
- .7 **"Construction Period Payment"** means a payment made by the City to the Contractor for Work performed by the Contractor during a Construction Period.
- .8 **"Deficiency"** means a defect or deficiency in the Work caused by defective performance in workmanship or defective Materials incorporated into the Work, or a failure of any part of the Work to meet all requirements of the Agreement.
- .9 **"Materials"** means all materials, supplies, machinery, equipment, and fixtures, excluding construction equipment, which are or will be permanently incorporated into the Work.
- .10 **"Project"** has the meaning given in the Contract Letter.
- .11 **"Project Price"** means the total sum of money set out in the Contract that is to be paid to the Contractor for completing all Work and any Change to the Work, as described in, or approved under, the Contract.
- .12 **"Project Site"** means the land upon which the Project is located and where the Work will occur.
- .13 **"Substantial Performance Certificate"** means the document issued by the City with the City Representative verifies that Substantial Performance of the Work and been achieved.
- .14 **"Substantial Performance"** has the meaning given to that phrase in the Prompt Payment and Construction Lien Act, but will not be deemed to have been achieved for the purpose of this Contract until the Contractor has issued a Certificate of Substantial Performance.
- .15 **"Work"** means all work to be performed by the Contractor under this Contract.

## 2. Application of Prompt Payment and Construction Lien Act

- .1 In accordance with the Prompt Payment and Construction Lien Act, the City will hold back a Lien Fund from all payments due and payable to the Contractor under the Contract. The City will not pay any interest to the Contractor on the Lien Fund.
- .2 If the City is not required to hold back a Lien Fund, the City may nevertheless, at its discretion, hold back an equivalent amount of money as would be held back in the Lien Fund from each payment made under the Contract to the Contractor until the Construction Completion Certificate is issued for the Project.
- .3 Subject to the Prompt Payment and Construction Lien Act, the City will release the holdback if:
  - .i a Certificate of Substantial Performance is issued for the Work and is posted in a conspicuous place on the Project Site within three days of being issued;
  - .ii 60 Days have expired after the date on which the Certificate of Substantial Performance was issued;
  - .iii a Substantial Completion Certificate is issued by the City for the Work;
  - .iv the Contractor has provided to the City an executed statutory declaration in the City's standard form in Appendix A evidencing that payment has been made in full, other than applicable holdbacks or amounts in dispute and disclosed to the City, to the Contractor's employees and Subcontractors for all services and Materials relating to the Work;
  - .v the Contractor has provided to the City a certificate of title for the Project Site, dated no earlier than the 61st day after the Certificate of Substantial Performance was issued showing that no liens are registered or filed against the Project Site;
  - .vi the Contractor has provided an invoice to the City for the amount of the Lien Fund to be released by the City;
  - .vii the Contractor has provided to the City a current Workers' Compensation Board Clearance Certificate; and
  - .viii any other applicable requirements under the Prompt Payment and Construction Lien Act have been satisfied;
  - .ix the Contractor has provided any other information, documentation, or Performance Security as may be required by the City as a condition of the release of the portion of the Lien Fund; and
  - .x the Contractor has complied with any other applicable requirements under the Prompt Payment and Construction Lien Act.

Notwithstanding the above, the Contractor must protect all Work throughout the Term, and is responsible for the repair or replacement of any Deficiencies and for any Work not performed, regardless of whether the Deficiencies or incomplete Work were apparent when a Certificate of Substantial Performance for that portion of the Work performed under a subcontract was issued.

- .4 No payment made by the City under this Contract, or partial or entire use or occupancy of the Work by the City, shall constitute an acceptance of Work or products, which are not in accordance with the requirements of the Contract Documents.
- .5 All certificates issued by the City shall be correct and complete to the best of his knowledge, information, and belief. By issuing any certificate, the City does not guarantee correctness or completeness of the Work.
- .6 The acceptance by the Contractor of final payment after issuance of the Construction Completion Certificate shall constitute a waiver and release by the Contractor of all claims against the City; except any claims previously made and remaining unsettled at that time.
- .7 The maintenance period will commence on the date of Substantial Completion of the Work.

### **3. Applications for Payments**

- .1 Upon execution of the Contract, the City will issue a purchase order for the Project Price to authorize payment to the Contractor. All invoices submitted by the Contractor under the Contract must reference the purchase order number.
- .2 Applications for payment on account may be made monthly as the Work progresses. Applications for payment shall be dated the last day of the agreed monthly payment period and the amount claimed shall be for the value, proportionate to the amount of the Contract, of Work performed, and materials delivered to the place of work at that date.
- .3 The Contractor shall submit to the City, at least 14 days before the first application for payment, a balanced schedule of values for the Construction Period, aggregating the total amount of the Contract price so as to facilitate evaluation of applications for payment. This schedule shall be made out in such form and supported by such evidence as to its correctness as the City may require; and when approved by the City, it shall be used as the basis for applications for payment, unless it is found to be in error.
- .4 When making applications for payment for the Construction Period, the Contractor shall submit a Construction Period Invoice based upon the schedule, together with a statutory declaration in the City's standard form, as set out in Appendix A (Project Forms), stating that any amounts due to all Subcontractors have been paid to the



end of the previous Construction Period for which the invoice is submitted; and, a Workers' Compensation Board Clearance Certificate.

- .5 Subject to funds held back by the City in the Lien Fund, the City will issue the Construction Period Payment within 28 days following the date the City issues the Construction Period Payment Certificate.
- .6 If the City, acting in good faith, disputes all or part of any Construction Period Invoice, it will provide Notice to the Contractor of that part of the Construction Period Invoice which the City disputes and request from the Contractor the supporting documentation that is reasonably required to justify and confirm the Contractor's claim. The Parties will use commercially reasonable efforts to resolve the dispute in question within 14 days after the day on which the Notice was sent. If the Parties fail to resolve the dispute within 14 days, the dispute may be referred for resolution in accordance with Section 9.03 of this Contract. Following resolution of the dispute, any amount that has been paid by the City, and is determined not to have been payable, will be paid by the Contractor to the City and any amount that has been withheld by the City, and is determined to have been payable, will be paid by the City to the Contractor.
- .7 If the Contractor has incurred any liability to the City, whether arising from or under the Contract or arising from or under any other agreement between the City and the Contractor, the City may set off the amount of the liability against any amounts due or payable by the City to the Contractor under the Contract.
- .8 The Contractor acknowledges and agrees that, in accordance with Applicable Law, after a lien has been filed or registered against the Project Site by reason of Work supplied or claimed to have been supplied by a Subcontractor, the City cannot make further Construction Period Payments until the liens have been released or removed.

#### **B. Bonds**

- .1 The successful Contractor shall provide a Performance Bond, certified cheque or Letter of Credit in the name of The City for fifty (50) percent of the Contract Price to assure the faithful performance of the Contract.
- .2 The successful Contractor shall also provide a Labour and Material Payment Bond, certified cheque or Letter of Credit in the name of The City for fifty (50) percent of the Contract Price, to assume faithful payment of monies to parties in contract with the Contract.
- .3 It is considered that the cost of the Bond, Certified Cheque or Letter of Credit is included in the Quoted Price.

#### **C. Liens**

- .1 The Contractor shall remove or cause to be removed all Affidavits of lien or liens filed or registered against the lands and premises on which the Work is being performed or has been performed which claim of Lien or Liens arise out of anything done or to be done under this Contract. Such removal shall be affected by the Contractor

forthwith upon demand by the Owner or the Engineer.

- .2 Article C.1. does not apply to Liens filed by the Contractor.
- .3 Notwithstanding any other provisions herein, the Contractor shall indemnify and hold harmless the Owner from all demands, damages, costs, losses, and actions arising in any way out of a lien or liens which arise out of anything done or to be done under the Contract; and if the contractor fails to remove all liens promptly, the Owner shall be at liberty to remove same in any manner he chooses at the expense of the Contractor.

**PREVIEW**

YOU MUST BE A REGISTERED PLAN TAKER  
TO DOWNLOAD AN UNMARKED VERSION OF THIS FILE  
[WWW.BIDSANDTENDERS.COM](http://WWW.BIDSANDTENDERS.COM) – ORIGINAL DOCUMENT SOURCE

## Schedule 3 - Standard Terms and Conditions

### Index

#### Article 1 - Interpretation

- 1.01 Defined Terms

#### Article 2 - General Provisions

- 2.01 No Indemnities from City
- 2.02 Entire Contract
- 2.03 Severability
- 2.04 Failure to Enforce Not a Waiver
- 2.05 Changes by Written Amendment Only
- 2.06 Force Majeure
- 2.07 Notices by Prescribed Means
- 2.08 Governing Law

#### Article 3 – Relationship Between City and Contractor

- 3.01 Contractor's Power to Contract
- 3.02 Representatives May Bind Parties
- 3.03 Contractor Not a Partner, Agent or Employee
- 3.04 Non-Exclusive Contract, Work Volumes
- 3.05 Responsibility of Contractor
- 3.06 No Subcontracting or Assignment
- 3.07 Duty to Disclose Change of Control
- 3.08 Conflict of Interest
- 3.09 Contract Binding

#### Article 4 – Performance by Contractor

- 4.01 Commencement of Performance
- 4.02 Deliverables Warranty
- 4.03 Health and Safety
- 4.04 Notification by Contractor to City
- 4.05 Shipment of Goods
- 4.06 Performance by Specified Individuals Only
- 4.07 Use and Access Restrictions
- 4.08 City Premises
- 4.09 Change Requests
- 4.10 Pricing for Requested Changes
- 4.11 Time
- 4.12 Rights, Remedies & Obligations Not Limited

#### Article 5 - Payment for Performance and Audit

- 5.01 Payment According to Contract Fees
- 5.02 Hold Back or Set Off
- 5.03 No Expenses or Additional Charges
- 5.04 Payment of Taxes and Duties
- 5.05 Withholding Tax
- 5.06 Interest on Late Payment
- 5.07 Document Retention and Audit

#### Article 6 – Confidentiality

- 6.01 Confidentiality and Promotion Restrictions
- 6.02 City Confidential Information
- 6.03 Restrictions on Copying
- 6.04 Notice of Breach
- 6.05 Injunctive and Other Relief
- 6.06 Notice and Protective Order
- 6.07 FOIP Records and Compliance
- 6.08 Survival

#### Article 7 - Intellectual Property

- 7.01 City Intellectual Property
- 7.02 No Use of City Insignia
- 7.03 Ownership of Intellectual Property
- 7.04 Contractor's Grant of License
- 7.05 No Restrictive Material in Deliverables
- 7.06 Third-Party Intellectual Property
- 7.07 Survival

#### Article 8 - Indemnity and Insurance

- 8.01 Contractor Indemnity
- 8.02 Insurance
- 8.03 Proof of Insurance
- 8.04 Workplace Safety and Insurance

#### Article 9- Termination, Suspension, Expiry and Extension

- 9.01 Immediate Termination of Contract
- 9.02 Dispute Resolution by Rectification Notice
- 9.03 Alternative Dispute Resolution
- 9.04 Termination on Notice
- 9.05 Contractor's Obligations on Termination
- 9.06 Contractor's Payment Upon Termination
- 9.07 Termination in Addition to other Rights
- 9.08 Suspension of Contract
- 9.09 Expiry and Extension of Contract

## ARTICLE 1 – INTERPRETATION

### 1.01 Defined Terms

When used in the Contract, the following words or expressions have the following meanings:

**“Authority”** means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over the Contract; and **“Authorities”** means all such authorities, agencies, bodies and departments;

**“Business Day”** means any working day, Monday to Friday inclusive, but excluding statutory holidays and other days on which the City has elected to be closed for business;

**“City Representative”** is as set out in Schedule 1 (Schedule of Deliverables, Fees and Specific Provisions);

**“City Confidential Information”** means all information of the City that is of a confidential nature, including all confidential information in the custody or control of the City, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Contractor in connection with the Contract. For greater certainty, City Confidential Information shall: (a) include: (i) all new information derived at any time from any such information whether created by the City, the Contractor or any third-party; (ii) all information (including Personal Information) that the City is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law; but (b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Contractor of any duty of confidentiality owed by the Contractor to the City or to any third-party; (ii) the Contractor can demonstrate to have been rightfully obtained by the Contractor, without any obligation of confidence, from a third party who had the right to transfer or disclose it to the Contractor free of any obligation of confidence; (iii) the Contractor can demonstrate to have been rightfully known to or in the possession of the Contractor at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Contractor; but the exclusions in this subparagraph shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Contract or at law;

**“Conflict of Interest”** includes, but is not limited to, any situation or circumstance where (a) in relation to the procurement process, the Contractor had an unfair advantage or engaged in conduct, directly or indirectly, that may have given it an unfair advantage, including but not limited to (i) having access to information that is confidential to the City and not available to other bidders or proponents; (ii) communicating with any person with a view to influencing preferred treatment in the procurement process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive procurement process; or (b) in relation to the performance of the Contract, the Contractor’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;

**“Contractor Representative”** is as set out in Schedule 1 (Schedule of Deliverables, Fees and Specific Provisions);

**“Contractor’s Intellectual Property”** means Intellectual Property owned by the Contractor prior to its performance under the Contract or created by the Contractor during the Term of the Contract independently of the performance of its obligations under the Contract;

**“Deliverables”** means everything developed for or provided to the City in the course of performing under the Contract or agreed to be provided to the City under the Contract by the Contractor or its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors, as further defined, but not limited by, Schedule 1, including but not limited to any goods or services or any and all Intellectual Property and any and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided;

**“Effective Date”** is as set out in Schedule 1 (Schedule of Deliverables, Fees and Specific Provisions);

**“Fees”** means the applicable price, in Canadian funds, to be charged for the applicable Deliverables, as set out in Schedule 1 (Schedule of Deliverables, Fees and Specific Provisions);

**“FOIP”** means the *Freedom of Information and Protection of Privacy Act*, Revised Statutes of Alberta 2000, Chapter F-25, as amended;

**“Indemnified Parties”** means the City and the City’s directors, officers, agents, employees and volunteers;

**“Industry Standards”** include, but are not limited to (a) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in Canada and; (b) adherence to commonly accepted norms of ethical business practices, which shall include the Contractor establishing and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by the City;

**“Intellectual Property”** means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity;

**“Newly Created Intellectual Property”** means any Intellectual Property created by the Contractor in the course of performance of its obligations under the Contract;

**“Person”** if the context allows, includes any individuals, persons, firms, partnerships or corporations or any combination thereof;

**“Personal Information”** means recorded information about an identifiable individual or that may identify an individual;

**“Proceeding”** means any action, claim, demand, lawsuit, or other proceeding;

**“Record”**, for the purposes of the Contract, means any recorded information, including any Personal Information, in any form: (a) provided by the City to the Contractor, or provided by the Contractor to the City, for the purposes of the Contract; or (b) created by the Contractor in the performance of the Contract;

**“Requirements of Law”** mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations, directions, and agreements with all Authorities that now or at any time hereafter may be applicable to either the Contract or the Deliverables or any part of them;

**“Term”** is as set out in Schedule 1 (Schedule of Deliverables, Fees and Specific Provisions); and

**“Third-Party Intellectual Property”** means any Intellectual Property owned by a party other than the City or the Contractor.

## ARTICLE 2 – GENERAL TERMS

### 2.01 **No Indemnities from the City**

Notwithstanding anything else in the Contract, any express or implied reference to the City providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the City beyond the obligation to pay the Fees in respect of Deliverables accepted by the City, whether at the time of entering into the Contract or at any time during the Term, shall be void and of no legal effect.

### 2.02 **Entire Contract**

The Contract embodies the entire agreement between the parties with regard to the provision of the Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the Deliverables, existing between the parties at the Effective Date of the Contract.

### 2.03 **Severability**

If any term or condition of the Contract, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition to the parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

### 2.04 **Failure to Enforce Not a Waiver**

Any failure by the City to insist in one or more instances upon strict performance by the Contractor of any of the terms or conditions of the Contract shall not be construed as a waiver by the City of its right to require strict performance of any such terms or conditions, and the obligations of the Contractor with respect to such performance shall continue in full force and effect.

### 2.05 **Changes by Written Amendment Only**

Any changes to the Contract shall be by written amendment signed by the parties. No changes shall be effective or shall be carried out in the absence of such an amendment. Any such written changes shall be included in the definition of Contract.

### 2.06 **Force Majeure**

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or



delays relating to supplies or services. If a party seeks to excuse itself from its obligations under this Contract due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Contract by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Contract, at law or in equity.

**2.07 Notices by Prescribed Means**

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or email and shall be addressed to, respectively, the City Representative and the Contractor Representative. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery or email one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery or by email. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

**2.08 Governing Law**

The Contract shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

**ARTICLE 3 – RELATIONSHIP BETWEEN CITY AND CONTRACTOR**

**3.01 Contractor's Power to Contract**

The Contractor represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other Person which would in any way interfere with the rights of the City under this Contract.

**3.02 Representatives May Bind the Parties**

The parties represent that their respective representatives have the authority to legally bind them to the extent permissible by the Requirements of Law.

**3.03 Contractor Not a Partner, Agent or Employee**

The Contractor shall have no power or authority to bind the City or to assume or create any obligation or responsibility, express or implied, on behalf of the City. The Contractor shall not hold itself out as an agent, partner or employee of the City. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between the City and the Contractor (or any of the Contractor's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors).

**3.04 Non-Exclusive Contract, Work Volumes**

The Contractor acknowledges that it is providing the Deliverables to the City on a non-exclusive basis. The City makes no representation regarding the volume of goods and services required under the Contract. The City reserves the right to contract with other parties for the same or similar goods and services as those provided by the Contractor and reserves the right to obtain the same or similar goods and services internally.

**3.05 Responsibility of Contractor**

The Contractor agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors. This paragraph is in addition to any and all of the Contractor's liabilities under the Contract and under the general application of law. The Contractor shall advise these individuals and entities of their obligations

under the Contract and shall ensure their compliance with the applicable terms of the Contract. In addition to any other liabilities of the Contractor pursuant to the Contract or otherwise at law or in equity, the Contractor shall be liable for all damages, costs, expenses, losses, claims or actions arising from any breach of the Contract resulting from the actions of the above mentioned individuals and entities. This paragraph shall survive the termination or expiry of this Contract.

**3.06 No Subcontracting or Assignment**

The Contractor shall not subcontract or assign the whole or any part of the Contract or any monies due under it without the prior written consent of the City. Such consent shall be in the sole discretion of the City and subject to the terms and conditions that may be imposed by the City. Without limiting the generality of the conditions which the City may require prior to consenting to the Contractor's use of a subcontractor, every contract entered into by the Contractor with a subcontractor shall adopt all of the terms and conditions of this Contract as far as applicable to those parts of the Deliverables provided by the subcontractor. Nothing contained in the Contract shall create a contractual relationship between any subcontractor or its directors, officers, employees, agents, partners, affiliates or volunteers and the City.

**3.07 Duty to Disclose Change of Control**

In the event that the Contractor undergoes a change in control the Contractor shall immediately disclose such change in control to the City and shall comply with any terms and conditions subsequently prescribed by the City resulting from the disclosure.

**3.08 Conflict of Interest**

The Contractor shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to the City without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the City to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the City may immediately terminate the Contract upon giving notice to the Contractor where: (a) the Contractor fails to disclose an actual or potential Conflict of Interest; (b) the Contractor fails to comply with any requirements prescribed by the City to resolve a Conflict of Interest; or (c) the Contractor's Conflict of Interest cannot be resolved to the satisfaction of the City. This paragraph shall survive any termination or expiry of the Contract.

**3.09 Contract Binding**

The Contract can be enforced by and is binding upon the parties and their successors, executors, administrators and their permitted assigns.

**ARTICLE 4 – PERFORMANCE BY CONTRACTOR**

**4.01 Commencement of Performance**

The Contractor shall commence performance upon receipt of written instructions from the City.

**4.02 Deliverables Warranty**

The Contractor hereby represents and warrants that the Deliverables (i) shall be provided fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations; and (ii) shall be free from defects in material, workmanship and design, suitable for the purposes intended, in compliance with all applicable specifications and free from liens or encumbrance on title; and furthermore that all Deliverables shall be provided in accordance with: (a) the Contract; (b) Industry Standards; and (c) Requirements of Law. If any of the Deliverables, in the opinion of the City, are inadequately provided or require corrections, the



Contractor shall forthwith make the necessary corrections at its own expense as specified by the City in a rectification notice.

**4.03 Health and Safety**

Without limiting the generality of section 4.02, the Contractor warrants and agrees that it has complied with and will comply with, and ensure that any subcontractors comply with, all applicable occupational health and safety laws and regulations in relation to the performance of the Contractor's obligations under the Contract. The Contractor shall provide the City with evidence of the Contractor's compliance with this section upon request by the City.

**4.04 Notification by Contractor to the City**

During the Term, the Contractor shall advise the City promptly of: (a) any contradictions, discrepancies or errors found or noted in the Contract; (b) supplementary details, instructions or directions that do not correspond with those contained in the Contract; and (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Contract and Requirements of Law.

**4.05 Shipment of Goods**

To the extent that the Deliverables include the shipment of goods to the City, all such goods shall be Delivered Duty Paid (DDP) (Incoterms 2010) to the City's place of business or such other location as may be specified in the Contract. No transportation or delivery charges of any kind, including, without limitation, packing, boxing, storage, cartage or customs brokerage charges, shall be paid by the City, unless specifically agreed by the City in writing. The Deliverables will be suitably packed in such a manner as will ensure their safe transportation undamaged to their destination. The Deliverables will remain at the risk of the Contractor until the Deliverables are received by the City. Receipt of the Deliverables at the City's location does not constitute acceptance of the Deliverables by the City. The Deliverables are subject to the City's inspection and acceptance within a reasonable period of time after delivery. If any of the Deliverables, in the opinion of the City, are inadequately provided or require corrections, the Contractor shall make the necessary corrections at its own expense as specified by the City in a rectification notice.

**4.06 Performance by Specified Individuals Only**

The Contractor agrees that to the extent that specific individuals are named in the Contract as being responsible for the provision of the Deliverables, only those individuals shall provide the Deliverables under the Contract. The Contractor shall not replace or substitute any of the individuals named in the Contract without the prior written approval of the City, which may not arbitrarily or unreasonably be withheld. Should the Contractor require the substitution or replacement of any of the individuals named in the Contract, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Contract. The Contractor shall not claim fees for any replacement individual greater than the Fees established under the Contract.

**4.07 Use and Access Restrictions**

The Contractor acknowledges that unless it obtains specific written preauthorization from the City, any access to or use of the City property, technology or information that is not necessary for the performance of its contractual obligations with the City is strictly prohibited. The Contractor further acknowledges that the City may monitor the Contractor to ensure compliance with this paragraph. This paragraph is in addition to and shall not limit any other obligation or restriction placed upon the Contractor.

#### 4.08 **City Premises**

To the extent that the Deliverables are performed on the City's premises, the Contractor shall provide the Deliverables in an orderly manner with:

- (a) the utmost regard for the safety and welfare of workers and the public, taking all necessary safety precautions as required at law and by the City; and
- (b) the least possible interference or disturbance to occupants, members of the public, and normal use of the premises.

The Contractor will ensure the City's premises are kept clean during and after providing the Deliverables and, upon completion will remove its materials, waste products and debris.

#### 4.09 **Change Requests**

The City may, in writing, request changes to the Contract, which may include altering, adding to, or deleting any of the Deliverables. The Contractor shall comply with all reasonable City change requests and the performance of such request shall be in accordance with the terms and conditions of the Contract. If the Contractor is unable to comply with the change request, it shall promptly notify the City and provide reasons for such non-compliance. In any event, any such change request shall not be effective until a written amendment reflecting the change has been executed by the parties.

#### 4.10 **Pricing for Requested Changes**

Where a City change request includes an increase in the scope of the previously contemplated Deliverables, the City shall set out, in its change request, the proposed prices for the contemplated changes. Where the Fees in effect at the time of the change request (a) include pricing for the particular type of goods or services contemplated in the change request, the Contractor shall not unreasonably refuse to provide those goods or services at prices consistent with those Fees; or (b) are silent to the applicable price for the particular goods or services contemplated in the change request, the price shall be negotiated between the City and the Contractor within a reasonable period of time and in any event, such change request shall not become effective until a written amendment reflecting the change has been executed by the parties.

#### 4.11 **Time**

Time is of the essence.

#### 4.12 **Rights, Remedies and Obligations Not Limited**

The express rights and remedies of the City and obligations of the Contractor set out in the Contract are in addition to and shall not limit any other rights and remedies available to the City or any other obligations of the Contractor at law or in equity.

### **ARTICLE 5 – PAYMENT FOR PERFORMANCE AND AUDIT**

#### 5.01 **Payment According to Contract Fees**

The City shall, subject to the Contractor's compliance with the provisions of the Contract, pay the Contractor for the Deliverables provided at the Fees established under the Contract.

#### 5.02 **Hold Back or Set Off**

The City may hold back payment or set off against payment if, in the opinion of the City acting reasonably, the Contractor has failed to comply with any requirements of the Contract.

**5.03 No Expenses or Additional Charges**

There shall be no other charges payable by the City under the Contract to the Contractor other than the Fees established under the Contract.

**5.04 Payment of Taxes and Duties**

Unless otherwise stated, the Contractor shall pay all applicable taxes, including excise taxes incurred by or on the Contractor's behalf with respect to the Contract.

**5.05 Withholding Tax**

The City shall withhold any applicable withholding tax from amounts due and owing to the Contractor under the Contract and shall remit it to the appropriate government in accordance with applicable tax laws. This paragraph shall survive any termination or expiry of the Contract.

**5.06 Interest on Late Payment**

If a payment is in arrears through no fault of the Contractor, the interest charged by the Contractor, if any, for any late payment shall not exceed the Bank of Canada's prime rate, in effect on the date that the payment went into arrears.

**5.07 Document Retention and Audit**

For seven (7) years after the Expiry Date or any date of termination of the Contract, the Contractor shall maintain all necessary records to substantiate (a) all charges and payments under the Contract and (b) that the Deliverables were provided in accordance with the Contract and with Requirements of Law. During the Term, and for seven (7) years after the Term, the Contractor shall permit and assist the City in conducting audits of the operations of the Contractor to verify (a) and (b) above. The City shall provide the Contractor with at least ten (10) Business Days prior notice of its requirement for such audit. The Contractor's obligations under this paragraph shall survive any termination or expiry of the Contract.

**ARTICLE 6 – CONFIDENTIALITY**

**6.01 Confidentiality and Promotion Restrictions**

Any publicity or publications related to the Contract shall be at the sole discretion of the City. The City may, in its sole discretion, acknowledge the Deliverables provided by the Contractor in any such publicity or publication. The Contractor shall not make use of its association with the City without the prior written consent of the City. Without limiting the generality of this paragraph, the Contractor shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Contract unless it has first obtained the express written authorization to do so by the City.

**6.02 City Confidential Information**

During and following the Term, the Contractor shall: (a) keep all City Confidential Information confidential and secure; (b) limit the disclosure of City Confidential Information to only those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any City Confidential Information (except for the purpose of providing the Deliverables, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the City and (ii) in respect of any City Confidential Information about any third-party, the written consent of such third-party; (d) provide City Confidential Information to the City on demand; and (e) return all City Confidential Information to the City before the end of the Term, with no copy or portion kept by the Contractor.

**6.03 Restrictions on Copying**

The Contractor shall not copy any City Confidential Information, in whole or in part, unless copying is essential for the provision of the Deliverables. On each copy made by the Contractor, the Contractor must reproduce all notices which appear on the original.

**6.04 Notice of Breach**

The Contractor shall notify the City promptly upon the discovery of loss, unauthorized disclosure, unauthorized access or unauthorized use of City Confidential Information.

**6.05 Injunctive and Other Relief**

The Contractor acknowledges that breach of any provisions of this Article may cause irreparable harm to the City or to any third-party to whom the City owes a duty of confidence, and that the injury to the City or to any third-party may be difficult to calculate and inadequately compensable in damages. The Contractor agrees that the City is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

**6.06 Notice and Protective Order**

If the Contractor or any of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors become legally compelled to disclose any City Confidential Information, the Contractor will provide the City with prompt notice to that effect in order to allow the City to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the City and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Contractor will disclose only that portion of City Confidential Information which the Contractor is legally compelled to disclose, only to such person or persons to which the Contractor is legally compelled to disclose, and the Contractor shall provide notice to each such recipient (in co-operation with legal counsel for the City) that such City Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Contract and, if possible, shall obtain each recipient's written agreement to receive and use such City Confidential Information subject to those terms and conditions.

**6.07 FOIP Records and Compliance**

The Contractor and the City acknowledge and agree that FOIP applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Contractor agrees (a) to keep Records secure; (b) to provide Records to the City within seven (7) calendar days of being directed to do so by the City for any reason including an access request or privacy issue; (c) not to access any Personal Information unless the City determines, in its sole discretion, that access is permitted under FOIP and is necessary in order to provide the Deliverables; (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the City; (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so; (f) to restrict access to Personal Information to those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by a City representative to have such access for the purpose of providing the Deliverables; (g) to implement other specific security measures that in the reasonable opinion of the City would improve the adequacy and effectiveness of the Contractor's measures to ensure the security and integrity of Personal Information and Records generally; and (h) that any confidential information supplied to the City may be disclosed by the City where it is obligated to do so under FOIP, by an order of a court or

tribunal or pursuant to a legal proceeding and the provisions of this paragraph shall prevail over any inconsistent provisions in the Contract.

**6.08 Survival**

The provisions of this Article shall survive any termination or expiry of the Contract.

**ARTICLE 7 – INTELLECTUAL PROPERTY**

**7.01 City Intellectual Property**

The Contractor agrees that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by the City to the Contractor shall remain the sole property of the City at all times.

**7.02 No Use of the City Insignia**

The Contractor shall not use any insignia or logo of the City except where required to provide the Deliverables, and only if it has received the prior written permission of the City to do so.

**7.03 Ownership of Intellectual Property**

The City shall be the sole owner of any Newly Created Intellectual Property. The Contractor irrevocably assigns to and in favour of the City and the City accepts every right, title and interest in and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time and irrevocably waives in favour of the City all rights of integrity and other moral rights to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time. To the extent that any of the Deliverables include, in whole or in part, the Contractor's Intellectual Property, the Contractor grants to the City a licence to use that Contractor Intellectual Property in the manner contemplated in this Article, the total consideration for which shall be payment of the Fees to the Contractor by the City.

**7.04 Contractor's Grant of License**

For those parts of the Deliverables that are Contractor Intellectual Property, the Contractor grants to the City a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and license: (a) to use, modify, reproduce and distribute, in any form, those Deliverables; and (b) to authorize other Persons, including agents, contractors or sub-contractors, to do any of the former on behalf of the City.

**7.05 No Restrictive Material in Deliverables**

The Contractor shall not incorporate into any Deliverables anything that would restrict the right of the City to modify, further develop or otherwise use the Deliverables in any way that the City deems necessary, or that would prevent the City from entering into any contract with any contractor other than the Contractor for the modification, further development of or other use of the Deliverables.

**7.06 Third-Party Intellectual Property**

The Contractor represents and warrants that the provision of the Deliverables shall not infringe or induce the infringement of any Third-Party Intellectual Property rights. The Contractor further represents and warrants that it has obtained assurances with respect to any Contractor Intellectual Property and Third-Party Intellectual Property that any rights of integrity or any other moral rights associated therewith have been waived.

**7.07 Survival**

The obligations contained in this Article shall survive the termination or expiry of the Contract.

## ARTICLE 8 – INDEMNITIES AND INSURANCE

### 8.01 Contractor Indemnity

The Contractor hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively, "Claims"), by whomever made, sustained, incurred, brought or prosecuted, including for breaches of confidentiality or privacy or Intellectual Property rights or for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Contractor, its subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the Contractor's obligations under, or otherwise in connection with, the Contract. The Contractor further agrees to indemnify and hold harmless the Indemnified Parties for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, by any person, entity or organization, including, without limitation, the City, claimed or resulting from such Claims. The obligations contained in this paragraph shall survive the termination or expiry of the Contract.

### 8.02 Insurance

The Contractor hereby agrees to put in effect and maintain insurance for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Contractor would maintain including, but not limited to, the following:

- (a) commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than **\$5,000,000** per occurrence and including products and completed operations liability. The policy is to include the following:

- the City as an additional insured with respect to liability arising in the course of performance of the Contractor's obligations under, or otherwise in connection with, the Contract
- contractual liability coverage
- cross-liability and severability of interests clause
- employers liability coverage
- 30 day written notice of cancellation, termination or material change
- tenants legal liability coverage (if applicable and with suitable sub-limits)
- non-owned automobile coverage with blanket contractual coverage for hired automobiles

The insurance limit as specified for commercial general liability may be met by utilizing any combination of primary or umbrella liability insurance policies.

- (b) automobile liability with:
- limit of liability not less than **\$5,000,000**
  - coverage for all vehicles owned, leased or rented

The insurance limit as specified for automobile liability may be met by utilizing any combination of primary or umbrella liability insurance policies.



- (c) Umbrella liability insurance, if utilized, shall be excess of the commercial general liability, automobile liability, and employer's liability policies listed. This coverage shall follow form over the underlying primary policies.

**8.03 Proof of Insurance**

The Contractor shall provide the City with proof of the insurance required by this Contract in the form of valid certificates of insurance that reference this Contract and confirm the required coverage. The Contractor shall provide the City with renewal replacements on or before the expiry of any such insurance. Upon the request of the City, a copy of each insurance policy shall be made available to it. The Contractor shall ensure that each of its subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the subcontractor would maintain and that the City and Indemnified Parties are named as additional insured with respect to any liability arising in the course of performance of the subcontractor's obligations under the subcontract for the provision of the Deliverables.

**8.04 Workers Compensation Insurance**

The Contractor warrants and agrees that it has complied and will comply with all applicable workplace safety and insurance laws and regulations and, if the Contractor is subject to the Workers' Compensation Act, will provide proof of valid coverage by means of a current Workers' Compensation Board clearance letter to the City upon request. The Contractor covenants and agrees to pay when due, and to ensure that each of its subcontractors pays when due, all amounts required to be paid by it and its subcontractors under the Workers' Compensation Act during the Term. The Contractor further agrees to indemnify the City for any and all liability, loss, costs, damages and expenses (including legal fees) or other charges in connection with the Contractor's failure to comply with any applicable workplace safety and insurance laws or related to the Contractor's status with the Workers' Compensation Board.

**ARTICLE 9 – TERMINATION, SUSPENSION, EXPIRY AND EXTENSION**

**9.01 Immediate Termination of Contract**

The City may immediately terminate the Contract upon giving notice to the Contractor where (a) the Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Contractor's insolvency; (b) the Contractor breaches any provision in Article 6 (Confidentiality); (c) the Contractor breaches the Conflict of Interest paragraph in Article 3 (Nature of Relationship Between City and Contractor); (d) the Contractor, prior to or after entering into the Contract, makes a material misrepresentation or omission or provides materially inaccurate information to the City; (e) the Contractor undergoes a change in control which adversely affects the Contractor's ability to satisfy some or all of its obligations under the Contract; (f) the Contractor subcontracts for the provision of part or all of the Deliverables or assigns the Contract without first obtaining the written approval of the City; or (g) the Contractor's acts or omissions constitute a substantial failure of performance and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

**9.02 Rectification Notice**

Subject to the above paragraph, where the Contractor fails to comply with any of its obligations under the Contract, the City may issue a rectification notice to the Contractor setting out the manner and timeframe for rectification. Within seven (7) Business Days of receipt of that notice, the Contractor shall either: (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to the City. If the Contractor fails to either comply with that rectification notice or provide a satisfactory rectification plan, the City may immediately terminate the Contract. Where the Contractor has been given a prior rectification notice, the same subsequent type of non-compliance by the Contractor shall allow the City to immediately terminate the Contract.

### 9.03 **Alternative Dispute Resolution**

The parties will make reasonable efforts to resolve any dispute, claim, or controversy arising out of this Agreement or related to this Agreement ("Dispute") using the dispute resolution procedures set out here.

- (a) The parties will make reasonable efforts to resolve any Dispute by amicable negotiations between the City's Project Manager and the Contractor's representative and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.
- (b) If no resolution is reached after the negotiations between the City's Project Manager and the Contractor's representative, negotiations will be elevated to the Project Manager's Director at the City and the Contractor's management representative who has the authority to make decisions to resolve disputes.
- (c) If no resolution is reached after the negotiations between the Director and the Contractor's management representative, negotiations will be elevated to the City Manager and the Contractor's management representative.
- (d) If all or any portion of a Dispute cannot be resolved under the process outlined in subparagraphs (a) through (c) above, by good faith negotiations within 30 days, either party may by notice to the other party refer the matter to mediation. Within seven days of delivery of the notice, the parties will mutually appoint a mediator. The parties will continue to negotiate in good faith to resolve the Dispute with the assistance of the mediator. The place of mediation will be the central offices of the City. Each party will equally bear the costs of the mediator and other out-of-pocket costs, and each party will bear its own costs of participating in the mediation.
- (e) If within 90 days of the request for mediation the Dispute is not settled, or if the mediator advises that there is no reasonable possibility of the parties reaching a negotiated resolution, then either party may without further notice commence litigation.

### 9.04 **Termination on Notice**

There are no implied obligations in this Contract.

This contract may be terminated for convenience by the City at any time by giving forty-eight (48) hours written notice of termination for convenience to the Contractor.

Termination for convenience is at the City's sole and unfettered discretion. The City does not require any reason or justification, including but not limited to good faith, policy re-direction, or cause, for invoking the termination for convenience clause.

The effective date of the termination for convenience shall be set out in the Notice of Termination for Convenience.

The Contractor's rights to consideration shall be limited to payment for services performed and not previously paid for up to the effective date as set out in the Notice of Termination for Convenience. The Contractor specifically agrees that the Notice of Termination for convenience and consideration set forth in this clause constitutes reasonable, fair and equitable notice and compensation for damages, if any, which may be suffered by the Contractor as a result of the termination for convenience of this Contract.

In the event this Contract is terminated for convenience, the Contractor shall perform the services required by this Contract, up to and including the effective date set out in the Notice of Termination for Convenience and shall, upon request, provide the City with a written report on the services rendered to the time of termination for convenience. Except for any such report, the



Contractor shall not perform any further services subsequent to the effective date set out in the Notice of Termination for Convenience.

**9.05 Contractor's Obligations on Termination**

On termination of the Contract, the Contractor shall, in addition to its other obligations under the Contract and at law (a) at the request of the City, provide the City with any completed or partially completed Deliverables; (b) provide the City with a report detailing: (i) the current state of the provision of Deliverables by the Contractor at the date of termination; and (ii) any other information requested by the City pertaining to the provision of the Deliverables and performance of the Contract; (c) execute such documentation as may be required by the City to give effect to the termination of the Contract; and (d) comply with any other instructions provided by the City, including but not limited to instructions for facilitating the transfer of its obligations to another Person. This paragraph shall survive any termination of the Contract.

**9.06 Contractor's Payment Upon Termination**

On termination of the Contract, the City shall only be responsible for the payment of the Deliverables provided under the Contract up to and including the effective date of any termination. Termination shall not relieve the Contractor of its warranties and other responsibilities relating to the Deliverables performed or money paid. In addition to its other rights of hold back or set off, the City may hold back payment or set off against any payments owed if the Contractor fails to comply with its obligations on termination.

**9.07 Termination in Addition to Other Rights**

The express rights of termination in the Contract are in addition to and shall in no way limit any rights or remedies of the City under the Contract, at law or in equity.

**9.08 Suspension of Contract**

The City may at any time and at its sole discretion suspend the Services for a specified or unspecified time by written notice to the Contractor. The City shall pay all fees due to the Contractor accrued to the time of suspension, payment of all other fees may at the City's sole discretion be suspended.

Upon receiving notice of suspension the Contractor shall immediately suspend all operations. The City shall not be responsible to pay any fees incurred by the Contractor during the period of any suspension unless the Contractor satisfies The City, before incurring any such fees, of the necessity for the same and provides the City with such documentation as may be required by the City in support of the claim for fees.

**9.09 Expiry and Extension of Contract**

The Contract shall expire on the original Expiry Date, unless the City exercises its option to extend the Contract, Any extension will be upon the same terms (including the Fees in effect at the time of extension), conditions and covenants contained in the Contract or revised terms at the City's discretion. The option shall be exercisable by the City giving notice to the Contractor not less than thirty (30) days prior to the original Expiry Date. The notice shall set forth the precise duration of the extension.

Change Order  
Construction Completion Certificate  
Final Acceptance Certificate  
Safety Notice  
Statutory Declaration by a Contractor  
Substantial Completion Certificate

**PREVIEW**

YOU MUST BE A REGISTERED PLAN TAKER  
TO DOWNLOAD AN UNMARKED VERSION OF THIS FILE  
[WWW.BIDSANDTENDERS.COM](http://WWW.BIDSANDTENDERS.COM) – ORIGINAL DOCUMENT SOURCE

**CONTRACT CHANGE ORDER**

Date Issued \_\_\_\_\_

Contract No. \_\_\_\_\_

Change Order Number \_\_\_\_\_

City Purchase Order No. \_\_\_\_\_

Contract \_\_\_\_\_

Contractor \_\_\_\_\_

When authorized by the Engineer, this Change Order modifies the above noted Contract as follows:

**NOTE: THIS CHANGE ORDER IS NOT EFFECTIVE UNTIL AUTHORIZED BY THE ENGINEER**

ITEM	DESCRIPTION OF CHANGE	COST OF CHANGE (Excluding G.S.T.)
<b>TOTAL VALUE OF THIS CHANGE ORDER</b>		
Total of all Previous Change Orders (if any)		
Total of all Change Orders to Date		
Original Contingency Amount (Excluding G.S.T.)		
<b>REMAINING CONTINGENCY AMOUNT (Excluding G.S.T.)</b>		
Original Contract Price (Excluding G.S.T.)		
<b>REVISED CONTRACT PRICE</b>		
Statement of Contract Time		Number of Days      Date
Original Completion Date		
Time Extension for this Change Order		
Total Time Extension all Previous Change Orders (if any)		
Revised Date for Completion		

Except as otherwise modified by Contract Change Order(s) \_\_\_\_\_ all other Terms and Conditions remain the same per the Original Contract.

Authorized by Engineer \_\_\_\_\_ Date \_\_\_\_\_

Signed by Contractor \_\_\_\_\_ Date \_\_\_\_\_

Signed by Dept. Manager or Director \_\_\_\_\_ Date \_\_\_\_\_

**ORIGINAL:** City Representative  
**COPY TO:** Contractor, Consultant, Purchasing

**CONSTRUCTION COMPLETION CERTIFICATE**

Contract: \_\_\_\_\_  
\_\_\_\_\_

This Certificate is issued pursuant to Article 50 of the General Conditions of the Contract dated the \_\_\_\_\_ day of \_\_\_\_\_ A. D. \_\_\_\_\_, between The City of Red Deer (Owner) and \_\_\_\_\_ (the Contractor).

The Contractor, by receipt of the sum indicated on Certificate of Payment Number \_\_\_\_\_, waives all claims against the Owner under this Contract; except those made in writing prior to the Contractor's application for payment upon construction completion and those still unsettled.

This Certificate has been made to the best of the Engineer's knowledge, information, and belief. It does not constitute an acceptance of any work not in accordance with the requirements of the Contract (and not listed as a deficiency on the attached list) whether or not such defect or deficiency could have been observed or discovered during construction.

The sum of \$ \_\_\_\_\_ has been retained by the City for the outstanding items of works listed below or attached hereto:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The maintenance period and the period for correction of faulty materials and workmanship required by the Contract Documents shall commence as of \_\_\_\_\_, and terminates after two years or upon the issuance of the Final Acceptance Certificate, whichever comes last.

**Recommended by:**

\_\_\_\_\_  
Consulting Firm (please print)

\_\_\_\_\_  
Project Engineer

\_\_\_\_\_  
Date

**Granted by:**

\_\_\_\_\_  
Department Manager

\_\_\_\_\_  
Date

**ORIGINAL:** City Representative  
**COPY TO:** Contractor, Consultant, Purchasing

**FINAL ACCEPTANCE CERTIFICATE**

Contract: \_\_\_\_\_  
\_\_\_\_\_

All defects or deficiencies in the Work observed or discovered within the maintenance period preceding the date of this Certificate having been rectified, this Certificate is issued pursuant to the General Conditions of the Contract dated the \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_ between The City of Red Deer (Owner) and \_\_\_\_\_

\_\_\_\_\_  
(Contractor)

This Certificate has been made to the best of the Engineer's knowledge, information, and belief. It does not constitute an acceptance of any work not in accordance with the Contract requirements, whether or not such defect or deficiency could have been observed or discovered prior to the date hereof.

**Recommended by:**

\_\_\_\_\_  
Consulting Firm (please print)

\_\_\_\_\_  
Project Engineer

\_\_\_\_\_  
Date

**Granted by:**

\_\_\_\_\_  
Department Manager

\_\_\_\_\_  
Date

**ORIGINAL:** City Representative

**COPY TO:** Contractor, Consultant, Purchasing

# THE CITY OF RED DEER

BOX 5008  
RED DEER, ALBERTA T4N 3T4  
403-342-8111

## NOTICE OF ACKNOWLEDGEMENT OF PRIME CONTRACTOR FOR SAFETY DESIGNATION

DATE ISSUED:	PROJECT SITE LOCATION(S) (refer to attached plan or drawing, if applicable):
CITY DEPARTMENT:	
CITY REPRESENTATIVE:	PROJECT TITLE:
CONTRACTOR:	Contract Number:
CONTRACTOR'S SAFETY DESIGNATE:	CONTRACTOR'S PROJECT SITE DESIGNATE: (if applicable)
<p>1. Pursuant to the provisions of the Occupational Health &amp; Safety Legislation, the <i>Contractor</i> or Contractor's Representative hereby acknowledges the <i>Contractor</i> will act in the role of designated <i>Prime Contractor for Safety</i> for the <i>Project Site</i>.</p> <p>2. By executing this Acknowledgement, the <i>Contractor</i> agrees to actively manage, coordinate, and monitor the <i>Work</i> performed at the <i>Project Site</i> to ensure all requirements of Occupational Health &amp; Safety Legislation are met. This Acknowledgement must be completed in full prior to the actual commencement of any <i>Work</i> at the <i>Project Site</i> (except for the return of Prime Contractor status section, to be completed when Prime Contractor status changes), and a copy of the completed Acknowledgement must be posted on the <i>Project Site</i>.</p> <p>3. Should the individual named in this Acknowledgement as <i>Contractor's Representative</i> leave the employment of the <i>Contractor</i>, or is no longer responsible for the <i>Project</i>, or otherwise changes, then a new Acknowledgement must be completed, executed, and posted.</p> <p>4. If the <i>Project Site</i> is large or geographically spread over a large area, then additional Acknowledgements must be posted in conspicuous locations around the <i>Project Site</i>. If a <i>Project</i> has multiple locations, then an Acknowledgement must be posted at each location.</p> <p>5. If the <i>Project Site</i> location changes, then a new Acknowledgement must be completed, executed, and posted.</p> <p>6. By signing this Acknowledgement, the <i>Contractor</i> agrees that no change to the designation of <i>Prime Contractor for Safety</i> shall be effective without having obtained the prior written authorization of The City's Representative.</p>	
<b>PRIME CONTRACTOR STATUS ASSUMED BY THE CONTRACTOR</b>	<b>PRIME CONTRACTOR STATUS RETURNED TO THE CITY OF RED DEER</b>
DATE ASSUMED:	DATE RETURNED:
<b>AUTHORIZATION</b>	<b>AUTHORIZATION</b>
<b>CONTRACTOR'S REPRESENTATIVE</b>	<b>CONTRACTOR'S REPRESENTATIVE</b>
PRINT NAME DATE	PRINT NAME DATE
TITLE	TITLE
SIGNATURE I have the legal authority to bind the Contractor.	SIGNATURE I have the legal authority to bind the Contractor.
<b>CITY REPRESENTATIVE</b>	<b>CITY REPRESENTATIVE</b>
PRINT NAME DATE	PRINT NAME DATE
SIGNATURE	SIGNATURE
<p>Note: All italicized terms and expressions used on this form are defined in The City of Red Deer's most recent <i>General Conditions</i>. In the event that there is a conflict in the defined terms, the meanings as ascribed in the <i>Agreement</i> shall prevail.</p>	
<p><b>ORIGINAL:</b> Business Unit <b>COPY TO:</b> Contractor, Consultant, Purchasing</p>	

**SAMPLE STATUTORY DECLARATION OF PROGRESS  
PAYMENT DISTRIBUTION BY A CONTRACTOR**

To be made by the Contractor **prior to payment** when required as a condition for either:

- ☐ The second and subsequent progress payments; or
- ☐ The release of holdback.

Name of Contract (Location and Description of the Work as it appears in the Contract)			
Date of Contract	Day	Month	Year
Name of Owner			
Name of Contractor			
Name of Declarant			
Position or Title			
The last application for progress payment for which the Declarant has received payment is			
No.	dated the	Day of	in the Year .

I DO SOLEMNLY DECLARE THAT, as of the date of this declaration, I am an authorized signing officer, partner, or sole proprietor on the Contractor named in the Contract identified above, and as such have authority to bind the contractor, and have personal knowledge of the fact that all accounts for labour, subcontracts, products, services, construction machinery and equipment, and other indebtedness which may have been incurred directly by the Contractor in the performance of the Work as required by the Contract, and for which the Owner might in any way be held responsible have been paid in full under the said Contract up to and including the latest progress payment received, as identified above, except for the following:

- i) holdback monies properly retained,
- ii) payments deferred by agreement, and
- iii) accounts withheld by reason of legitimate dispute.

I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath

Declared before me in \_\_\_\_\_  
City/Town and Province

this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.

\_\_\_\_\_  
Signature of Declarant

\_\_\_\_\_  
A Commissioner for Oaths in and for the Province of Alberta

**SUBSTANTIAL COMPLETION CERTIFICATE**

Contract: \_\_\_\_\_  
\_\_\_\_\_

This Certificate is issued pursuant to Article 50 of the General Conditions of the Contract dated the \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_, between The City of Red Deer (Owner) and \_\_\_\_\_ (the Contractor).

The sum of \$ \_\_\_\_\_ has been retained by the Owner for the outstanding items of work listed below or appended hereto.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The maintenance period and the period for correction of faulty materials and workmanship required by the Contract Documents shall commence as of \_\_\_\_\_, and terminates two years thereafter or upon the issuance of the Final Acceptance Certificate, whichever comes last.

This Certificate has been made to the best of the Engineer's knowledge, information and belief. It does not constitute an acceptance of any work not in accordance with the requirements of the Contract (and not listed as a deficiency on the attached list) whether or not such defect or deficiency could have been observed or discovered during construction.

**Recommended by:**

\_\_\_\_\_  
Consulting Firm (please print)

\_\_\_\_\_  
Project Engineer

\_\_\_\_\_  
Date

**Granted by:**

\_\_\_\_\_  
Department Manager

\_\_\_\_\_  
Date

**ORIGINAL:** City Representative  
**COPY TO:** Contractor, Consultant, Purchasing