

**ATTENTION BIDDERS:**

TOWN OF DRUMHELLER HAS MOVED EXCLUSIVELY TO EMAIL BID SUBMISSIONS, INCLUDING DIGITAL BID BONDS.

HARD COPY SUBMISSIONS WILL NOT BE ACCEPTED.

REFER TO SECTION 1, BID SUBMISSION, FOR MORE INFORMATION.



**TENDER NO.: 2023-03-28**

for

**DRUMHELLER RESILIENCY AND FLOOD MITIGATION  
DOWNTOWN DIKE PROJECT**

Volume 1 of 3

Location: Downtown Drumheller, Town of Drumheller

Non-Mandatory Pre-Bid Meeting and Site Inspection  
April 11, 2023, at 10:00 am  
Resiliency and Flood Mitigation Office, 702 Premier Way, Drumheller, Alberta T0J 0Y0.

**Closing Date and Time: Before 4:01:00 pm, Tuesday, May 9, 2023, local time.**

Tender Question Deadline: Before 4:01:00 pm, Monday, April 25, 2023, local time.

**Tender Submission**

**Email Address:**

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

**Inquiries Contact:**

**[campbell@sweet-tech.ca](mailto:campbell@sweet-tech.ca)**

(include Tender Number in subject line)



**TENDER NO.: 2023-03-28**

for

**TOWN OF DRUMHELLER  
DOWNTOWN DIKE PROJECT**

Volume 2 of 3: Contract Information Documents



**TENDER NO.: 2023-03-28**

for

**TOWN OF DRUMHELLER  
DOWNTOWN DIKE PROJECT**

Volume 3 of 3: Contract Drawings



**TENDER NO.: 2023-03-28  
TOWN OF DRUMHELLER  
DOWNTOWN DIKE PROJECT**

**Prime Consultant:**

SweetTech Engineering Consultants  
210 – 5940 Macleod Trail SW  
Calgary, AB T2H 2G4

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## PREAMBLE

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The format of these Specifications is based on "MasterFormat" published jointly by Construction Specifications Canada and The Construction Specifications Institute. This Table of Contents generally reflects the "MasterFormat" division and section arrangement.

Where it is indicated that a division of "MasterFormat" is "Not Used", or where a division heading is omitted entirely, this means only that the division has not been included in the Specification. It does not necessarily mean that the work normally specified in that division is not required.

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## SEPARATE VOLUMES

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The Specifications [and Contract Information Documents] for this contract are bound in separate volumes as follows:

Volume 1 of 3: Specifications, Divisions 00 to 02  
Volume 2 of 3: Contract Information Documents  
Volume 3 of 3: Drawings

The Drawings in the Contract Documents as per Section 00015 – List of Drawings are bound separately.

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**END OF LIST OF DRAWINGS**

## 1. BID SUBMISSION

- .1 Bidders must submit tenders by email to the Town of Drumheller (in the Instructions to Bidders referred to as the “Department” or “Alberta Transportation” or the “Minister”) at the email address identified on the cover page of the tender (“Tender Submission Email Address”) only.
- .2 The subject line of the email must follow the following format: “2023-03-28 DRFM – Downtown Dike Project Bid Submission – [Contractor Name]”
- .3 Tenders must be received before the bid closing date and time identified on the cover page of the tender (“Closing Date and Time”).
- .4 The official time of receipt shall be determined by the time and date stamp of the Submission Email Address system.
- .5 The Bidder is solely responsible for ensuring that its tender submission is received in its entirety before the tender Closing Date and Time at the Tender Submission Email Address. The Department assumes no responsibility for server availability, incompatibility of programs or files or any other technical problem, issue or delay that prevents the tender submission from being received by, or opened after, the tender Closing Date and Time.
- .6 The Bidder acknowledges, agrees and assumes all risks, responsibility, and liability associated with using electronic communications and submitting bids electronically, including, without limitation:
  - a) any lack of security;
  - b) any unreliability of delivery;
  - c) the possible loss of confidentiality;
  - d) the receipt of a garbled, corrupted or incomplete bid;
  - e) the incompatibility between the sending and receiving equipment;
  - f) any delay in transmission or receipt of the bid; or
  - g) the potential illegibility of the bid.
- .7 Bidders can acquire copies of the tender documents as set out in Instructions to Bidders clause 15, Availability of Bid Documents.

## 2. FORMAT OF TENDER SUBMISSION

- .1 A tender submitted by the Bidder shall comply with the following requirements:
  - .1 The tender shall include all pages entitled “Tender Forms” and any attachments thereto in **one** single e-mail with a maximum email size of 25MB.
  - .2 If submissions are larger than 25MB, an email submission with a link to a cloud-based file sharing account is acceptable. It is the responsibility of the contractor to ensure the client can access all files at the time of the deadline, as posted on the cover page. The client will then download all files and documents immediately after the deadline.
  - .3 The email shall include the Tender Number and Bidder Name in the subject title of the email submission.
  - .4 The tender shall be signed and sent in an unprotected Portable Document Format (PDF).
  - .5 The tender shall be accompanied by a bid bond in a digital format as outlined in Section 00210, Bid Security.
  - .6 All files included in the tender submission shall be in file formats that can be opened by Adobe Acrobat Reader, unless otherwise instructed in the tender documents. The Owner will NOT be accepting compressed files (i.e. .zip, .7z).
  - .7 All Tender Forms submitted shall be as issued by the Town of Drumheller without any additions, alterations or changes, other than the addition of information requested. Any required information that is missing, omitted or illegible, any alterations to the text, or any conditions added on or submitted with the Tender Forms, may cause the tender to be declared invalid and rejected.

## 3. DEPARTMENT NAME CHANGE

- .1 Due to government reorganization, the department’s name has changed. As a result, some specifications, drawings, plans and other documents in this contract may continue to reference Alberta Infrastructure and Transportation, Alberta Infrastructure, or Alberta Transportation and Utilities. Please be advised that any references to Alberta Infrastructure and Transportation, Alberta Infrastructure or Alberta Transportation and Utilities shall mean Alberta Transportation.
- .2 Alberta Transportation Civil Master Works Specification format has been adopted for use with this project. **Where applicable, Town of Drumheller is referred to as “The Owner” herein. References to “the Minister”, “the Department”, or “the Province” shall be read as “the Owner”.**

#### **4. BASIS OF BID – UNIT PRICE**

- .1 Bids shall be on a unit price and fixed price basis.
- .2 The unit prices, lump sums and allowances stated in the Schedule of Prices shall form the basis of the bid price.
- .3 Make entries in the Schedule of Prices in figures only. Ensure that figures are legible.
- .4 Where, in the Owner's opinion, there is a question as to the legibility of figures entered by the Bidder, the Owner will make a determination as to legibility. The Owner may, at the Owner's sole discretion, declare as invalid and reject any bid that contains figures which, in the Owner's opinion, are illegible or open to dispute.
- .5 Extensions of unit prices and addition of extended unit prices, lump sums and allowances entered in the Schedule of Prices will be checked by the Owner. If arithmetical errors are discovered, the unit prices shall be considered as representing the Bidder's intentions and the unit price extensions and the total amount entered in the Schedule of Prices and the Bid Form will be corrected by the Owner. The Bidder shall be bound to such corrected amounts.
- .6 If no unit price is stated for an item, but an extended amount is stated, a unit price determined by dividing the extended amount by the estimated quantity shall be considered as representing the Bidder's intentions.
- .7 The total amount of the bid shall be the arithmetically correct sum of the arithmetically correct unit price extensions, lump sums and allowances in the Schedule of Prices.
- .8 Prices must not exceed two decimal places. If a submitted unit price contains prices exceeding two decimal places, the Owner will round to the nearest two decimal places with .005 being rounded upwards. Bidders will be bound to such rounded amounts.
- .9 Each unit price stated in the Schedule of Prices shall be a reasonable price for that item of work.
- .10 Unless otherwise indicated, quantities specified in the Schedule of Prices are estimated quantities and shall not be considered as actual quantities of work to be performed. Subject to Contract terms, unit prices stated in the Schedule of Prices shall be applied to actual quantities of work performed as measured in accordance with the Contract.

#### **5. SUFFICIENCY OF BID**

- .1 The submission of a bid shall constitute an incontrovertible representation by the Bidder that:
  - .1 the Bidder has complied with all bidding requirements,
  - .2 the Bidder is qualified and experienced to perform the Work in accordance with the Bid Documents,
  - .3 the bid is based upon performing the Work in accordance with the Bid Documents, without exception, and

- .4 the price or prices stated in the bid cover all the Bidder's obligations under the Contract and all matters and things necessary for the performance of the Work in accordance with the Bid Documents

## **6. BID DOCUMENTS**

- .1 The Bid Documents are the documents issued or made available to Bidders by the Owner for the purpose of preparing a bid. The Bid Documents consist of the following:
- Instructions to Bidders
  - Bid Modification Form
  - Bid Security
  - Pre-Bid Meeting
  - Bid Form and Bid Form Supplements
  - Agreement Form
  - Definitions
  - Payment Conditions
  - Statutory Declarations
  - Contract Performance Security
  - Security for Payment of Claims
  - Insurance Conditions
  - General Conditions of Contract
  - Supplementary Conditions
  - Public Works Act Claims
  - Specifications, Divisions 00 to 02
  - Drawings
  - Addenda issued during the bid period
  - Contract Information Documents



## 7. BID FORM

- .1 Fill in all the blanks in the Bid Form and sign as follows:
  - .1 Limited Corporation: Print or type in the space provided the full name of the corporation and the name(s) and status of authorized signing officer(s). Authorized signing officer(s) shall sign.
  - .2 Joint Venture: not permitted.
  - .3 Partnership: Print or type in the space provided the firm's name and the name(s) of person(s) signing. One or more of the partners who have the ability to bind the partnership shall sign.
  - .4 Sole Proprietorship: Print or type in the space provided, the business name and the name of the sole proprietor. The sole proprietor shall sign.
- .2 Complete the Bid Form in its entirety. Any required information that is omitted or illegible, any alterations to the text, or any conditions added on or submitted with the Bid Form, may cause the bid to be declared invalid and rejected.
- .3 For all Bidders, the legal name, address, and e-mail address to which all notices or letters are to be mailed and e-mailed must be given in addition to the signature of the individual or one of the officers of the partnership, corporation or company with authority to bind the Bidder.

## 8. BID FORM SUPPLEMENTS

- .1 Prepare and submit each of the following bid form supplements together with the Bid Form:
  - .1 Section 00431 - Schedule of Prices: Complete the Schedule in its entirety, including all extensions and additions, and attach it to the Bid Form.
  - .2 Section 00441 - List of Subcontractors: Enter the names of the Subcontractors and Suppliers in the spaces provided.
  - .3 Section 00441 – Relevant Experience: indicate previous project experience completed by the bidder that are relevant to this project.
  - .4 Section 00441 – Local Content: indicate the local contractors and workers that will be used for the project.
  - .5 Proposed Construction Execution Schedule
  - .6 Equipment and Services List Rate Sheet

- .2 Any required information that is omitted or illegible, any alterations to the text, or any conditions added or submitted with a bid form supplement, may cause the bid to be declared invalid and rejected.
- .3 The Owner may, after the bid closing time and before contract award, require any Bidder to submit, in a form prescribed by or acceptable to the Owner, supplementary information about any aspect of the Bidder's bid which, in the Owner's opinion, is necessary for bid evaluation purposes.

## 9. BID MODIFICATION

- .1 A Bidder wishing to make changes to its tender before the time set for receiving tenders may withdraw the tender submission and the modified tender may then be resubmitted in compliance with Instructions to Bidders Section 1, Bid Submission, up to the bid Closing Date and Time. Bidders are advised that requests for withdrawal of tender submissions must comply with Instructions to Bidders Section 12, Bid Withdrawal and Acceptance.
- .2 If the changes to its tender are only an amendment to the unit price schedule, the Bidder may send a completed copy of the "TENDER AMENDMENT FORM" included in the tender document to the email address as shown on the Tender Amendment Form. The email subject title shall contain the following:

### **Tender No. 2023-03-28 – Tender Amendment – Name of Bidder**

- .3 To be acceptable, the form must be completed in full including the legal name of the Bidder and the changes to be made, and it must be signed by an authorized officer of the Bidder and received before the tender Closing Date and Time in accordance with the Instructions to Bidders Section 1, Bid Submission. The form must also be submitted in an unprotected portable document format (PDF).
- .4 The Bidder is responsible for ensuring its modifications are received before the time fixed for receiving tenders and are legible, clear as to the intent, unambiguous, and comply with the terms of the tender document. Failure of the Bidder to do the foregoing will render these modifications null and void. The Owner assumes no responsibility or liability for the content of modifications, or for modifications that are, for any reason, delayed, illegible, unclear as to intent, ambiguous, contrary to these instructions, or otherwise improperly received. The Owner, at its sole discretion, may reject modifications in accordance with the terms of the Tender Amendment Form or may reject the tender in accordance with the Instructions to Bidders Section 13, Irregularities.
- .5 Prices must not exceed two decimal places. If a submitted unit price schedule change contains prices exceeding two decimal places, the Owner will round to the nearest two decimal places with .005 being rounded upwards. Bidders will be bound to such rounded amounts.
- .6 The "Tender Amendment Form", if applicable, must be completed by identifying only the changes required, as follows:
  - .1 Estimated Quantity Changes

- .1 For bid items where the unit price is fixed and the Bidder is required to provide an estimated quantity (for example site occupancy), show the amount of the increase or decrease of the quantity in the “Estimated Quantity Changes + or -” column and the total value of the change in the “Net Change to Total Bid + or -” column. Use the unit price as it appears in the unit price schedule as the unit price in the Tender Amendment Form.
  - .2 In case of discrepancy, the estimated quantity figure in the “Estimated Quantity Changes + or -” column will take precedence over the amount in “Net Change to Total Bid + or -” column, and the unit price in the unit price schedule will take precedence over the unit price in the Tender Amendment Form;
- .2 Unit Price Changes
- .1 For bid items where the Bidder is required to provide a unit price, show the amount of the change to the unit price in the “Unit Price Changes + or -” column, and the total for each change in the “Net Change to Total Bid + or -” column. Use the estimated quantity as it appears in the unit price schedule as the estimated quantity in the Tender Amendment Form.
  - .2 In case of discrepancy, the change to the unit price figure in the “Unit Price Changes + or -” column will take precedence over the total change in the “Net Change to Total Bid” column;
- .3 Lump Sum Changes
- .1 For bid items where the Bidder is required to provide a lump sum, leave a blank space in the “Unit Price Changes + or -” column, and enter the amount of the lump sum change in the “Net Change to Total Bid + or -” column; and
- .4 Net Change to Total Bid
- .1 Show the sum of all items in the “Net Change to Total Bid + or -” column in the space after “Increase (+) or Reduce (-) Total Tender By”.
- .7 If arithmetical errors are discovered, the changed estimated quantities or unit prices, as applicable, will be considered as representing the Bidder's intentions; and the net change to total bid price extensions and the change to total tender amount entered in the Tender Amendment Form will be corrected accordingly by the Owner. The Bidder will be bound to such corrected amounts.

## 10. BID WITHDRAWAL AND ACCEPTANCE

- .1 A Bidder may withdraw its tender by submitting a request in writing signed by an authorized officer of the Bidder. Such request may be in the form of an e-mail. The request must be received in accordance with clause 1, Bid Submission, prior to the tender Closing Date and Time. A bid may not be withdrawn at or after the tender Closing Date and Time and shall be open to acceptance by the Owner until:
  - .1 some other Bidder has entered into a contract with the Owner for the Work specified in these tender documents and provided the required security and evidence of insurance coverage in accordance with Section 00612, Contract Performance Security, Section 00616, Security for Payment of Claims, and Section 00625, Insurance Conditions, which must be satisfactory to the Owner and in compliance with clause 7 of Section 00425, Unit Price Bid Form, or
  - .2 thirty-five (35) calendar days after the time fixed for receiving tenders unless the Owner has notified the bidder that they are the successful bidder;whichever occurs first.
- .2 The 35 day period referred to above will commence at 11:59:00 p.m. of the date of the bid closing and will terminate at 11:59:00 p.m. of the 35th day thereafter. If the 35th day falls on a weekend or statutory holiday, such day(s), and any subsequent contiguous holidays, will be omitted from the computation.
- .3 The 35 day acceptance period referred to above may be extended at the Owner's request and subject to the Bidder's written agreement to the extension.
- .4 The Owner is not required to accept the lowest cost bid, and may reject any or all bids.
- .5 The Owner may negotiate contract terms with the Bidder submitting the lowest valid bid, provided that the negotiated changes to the Bid Documents result in either no change to the bid price or a reduced bid price. Such changes may be formalized in the form of a post-bid addendum that, upon written acceptance by the Bidder, will form part of the Contract Documents.
- .6 Contracts will not be awarded to any government agency including but not limited to the government of Canada, the government of a province or territory of Canada, any agency thereof, or any municipality or other unit of local government within any province or territory of Canada.
- .7 "Government Agency" means a branch, unit, subsidiary or other form of entity, owned or controlled by a government agency and includes any subsidiaries or entities owned or controlled by that agency.
- .8 Contracts will only be awarded to Bidders registered with Service Alberta, Corporate Registry.
- .9 Only one tender per Bidder will be considered. Reasonable grounds for believing that any Bidder is interested in more than one tender for the Work, in the capacity of the Contractor, may cause the rejection of all tenders in which such Bidder is interested.
- .10 Any or all tenders will be rejected if there is reason to believe that collusion exists among the Bidders, and none of the participants in such collusion will be considered in future tenders.

- .11 The lowest priced compliant bidder may be required to supply evidence of experience, equipment, ability and financial capability before the Contract is executed. Lack of any of these will be considered sufficient cause for rejecting the tender.

## **11. IRREGULARITIES**

- .1 Submitted tenders must substantially comply with the requirements of the tender documents. Bidders are advised to pay careful attention to the wording used throughout the tender documents. Failure to satisfy any term, condition or mandatory requirement may result in rejection of the Bidder's tender. Further, in submitting a tender, the Bidder understands and acknowledges that ambiguous, unclear, unreadable, or qualified tenders may be rejected.
- .2 The Owner may waive an irregularity with the requirements of the tender documents where the irregularity is minor or inconsequential. The determination of what is or is not a minor or inconsequential irregularity, and the determination of whether to waive or not waive the irregularity is at the Owner's sole discretion.

## **12. TENDER DATE CHANGES AND CANCELLING OF TENDERS**

- .1 The Owner may extend the date and time for receiving tenders, or the Owner may amend, suspend, postpone or cancel this tender at any time.

## **13. SAFETY PREQUALIFICATION**

- .1 As a precondition to contract award, the Bidder must have a valid Certificate of Recognition (COR) or a valid Temporary Letter of Certification (TLC) for a standard COR, or a COR Equivalency Letter (COREL) for out of province bidders, as issued by the Alberta Construction Safety Association (ACSA) or another certifying organization authorized by Alberta Ministry of Labour to issue CORs.
- .2 Bidders may be required to submit evidence of safety qualifications by the earlier of:
  - .1 The date that the Owner may request in writing, or
  - .2 Seven days before expiry of the tender acceptance period.
- .3 The Owner will confirm that the Bidder possesses a COR or valid TLC or COREL through the Alberta Construction Safety Association.
- .4 Bidders are advised that a small employers' certificate of recognition (SECOR) (for employers with less than 10 employees) is not acceptable.
- .5 It is the Bidder's responsibility to ensure its registration in the program is properly documented with the issuing certifying partner. The Owner will assume no liability for errors or omissions in this regard.
- .6 The Bidder must maintain a valid registration throughout the course of the Contract.

- .7 Prospective Bidders who do not possess a COR, and wish to obtain information about obtaining a COR, TLC or COREL are advised to contact: The Alberta Construction Safety Association, 225 Parsons Rd. SW, Edmonton, AB, T6X 0W6, [www.acsa-safety.org](http://www.acsa-safety.org), [edmonton@acsa-safety.org](mailto:edmonton@acsa-safety.org), 780-453-3311.

#### **14. AVAILABILITY OF BID DOCUMENTS**

- .1 The Bid Documents (Volume 1), Contract Information Documents (Volume 2), and Contract Drawings (Volume 3) are available for free download from the Alberta Purchasing Connection website at the following link: [www.purchasingconnection.ca](http://www.purchasingconnection.ca). They are also available at [www.drumheller.ca/do-business/tenders](http://www.drumheller.ca/do-business/tenders).
- .2 The Owner will assume no responsibility or liability for the completeness of any tender documents obtained from any other source.
- .3 In the event of a discrepancy between tender documents downloaded from the Alberta Purchasing Connection website and documents obtained from any other source, the tender documents downloaded from the Alberta Purchasing Connection website shall be deemed to be correct.
- .4 Bidders shall promptly notify the contact identified on the cover page of the tender upon discovery of any such discrepancies.

#### **15. REFERENCE DRAWINGS**

- .1 Electronic (PDF) copies of all reference drawings listed in the Tender document may be viewed and/or downloaded, free of charge, from the Alberta Purchasing Connection at [www.purchasingconnection.ca](http://www.purchasingconnection.ca). They are also available at [www.drumheller.ca/do-business/tenders](http://www.drumheller.ca/do-business/tenders).
- .2 Copies of these drawings will be included with the Contract Documents presented to the successful bidder.

#### **16. EXAMINATION OF BID DOCUMENTS AND THE SITE**

- .1 Bidders shall, before submitting a bid:
  - .1 examine and read the Bid Documents thoroughly,
  - .2 visit the Site and its surroundings and other locations to become familiar with local and other conditions affecting the Work,
  - .3 consider the effect of Regulatory Requirements applicable to the Work,
  - .4 study and correlate the Bidder's site observations with the Bid Documents,
  - .5 immediately notify the Owner of all perceived omissions and discovered conflicts, errors and discrepancies in the Bid Documents, and

- .6 understand the Bid Documents and be competent to undertake and complete the Work.
- .2 Before submitting a bid, each Bidder shall, at the Bidder's expense, make or obtain any additional examinations, investigations, explorations, tests and studies and obtain any additional information and data that pertain to the conditions at, under, or contiguous with the site, which may affect performance of the Work and which the Bidder deems necessary to determine its bid for performing the Work in accordance with the Bid Documents. Bidders shall obtain the Owner's prior approval for access to the site for the purpose of carrying out any such activities. Bidders shall restore the site to a condition acceptable to the Owner upon completion of such activities.
- .3 Lands upon which Work is to be performed, rights of way and easements for access thereto and other lands designated for use by the Contractor in performing the Work are identified in the Bid Documents. Additional lands and access thereto required for performance of the Work shall be provided by the Contractor.

**17. PRE-BID MEETING AND SITE INSPECTION – NON-MANDATORY ATTENDANCE**

- .1 Submit Form 00250A – Confirmation of Non-Mandatory Pre-Bid Attendance as specified in Section 00250 – Pre-Bid Meeting.

**18. BID SECURITY**

- .1 Provide and submit the bid security specified in Section 00210 - Bid Security.

**19. CONTRACT PERFORMANCE SECURITY**

- .1 Provide and include in the bid price for the security specified in Section 00612 - Contract Performance Security.

**20. SECURITY FOR PAYMENT OF CLAIMS**

- .1 Provide and include in the bid price for the security specified in Section 00616 - Security for Payment of Claims.

**21. EVALUATION AND QUALIFICATION**

- .1 Tender submissions from each qualified Tender will be evaluated and the contract will be awarded to the contractor with the lowest bid price.

- .2 All bids are encouraged, where possible, to use local resources. Bidders are encouraged, where possible, to hire local contractors as subcontractors for portions of the work, and labour be obtained from a local contractor or from local employment departments.
- .3 To qualify as a local contractor, they must have a Town of Drumheller business license.
- .4 For a directory of potential local, Town of Drumheller contractors, bidders can reference the list found at the following link: <https://www.drumhellerchamber.com/member-directory#/action/Category/cid/1723/id/201/listingType/O>
- .5 Throughout all stages of the evaluation process the Owner may, at its discretion, seek additional clarification on any aspect of the tender submission, and perform reference checks as required to verify or clarify the information provided.

## **22. ALLOWANCE**

- .1 Include in the bid price all allowances specified in Section 01210 - Allowances.

## **23. PRODUCT OPTIONS AND SUBSTITUTIONS**

- .1 During the bid period, it is the sole responsibility of each Bidder to determine whether a substitution meets the requirements specified in Section 01621 – Product Options and Substitutions.
- .2 The Owner will not consider requests for approval of substitutions from Bidders during the bid period.
- .3 Substitutions will be evaluated and approved or rejected by the Owner after the contract award.

## **24. AGREEMENT**

- .1 The successful Bidder will be required to enter into a formal Agreement with the Owner for the performance of the Work.

## **25. DIVISION OF WORK**

- .1 Work specified in the Specifications is divided into divisions and sections for reference purposes only. Except as may be otherwise specified in the Bid Documents, the division of the Work among the Contractor, Subcontractors, Sub subcontractors and suppliers is the Bidders' responsibility.



## **26. CONFLICTS OF INTEREST**

- .1 As required by the Conflicts of Interest Act (Alberta) no Member of the Legislative Assembly or person directly associated with a Member, as defined in the Act, shall submit a bid for this Contract. Additionally, no Federal, Provincial, or Municipal officials, or persons directly associated with said officials, shall submit a bid for this Contract.
- .2 Bidders must fully disclose to the contact listed on the cover page of the tender, in writing, the circumstances of any actual, possible or perceived conflict of interest in relation to the Bidder or any employee, sub-contractor or agent, if the Bidder were to become the Contractor pursuant to this tender process. The Owner will review any submissions by Bidders under this provision and may reject any tender where, in the opinion of the Owner, the Bidder or any, employee, sub-contractor or agent is, could be, or could be perceived to be in a conflict of interest if the Bidder were to become the Contractor pursuant to this tender process.

## **27. INTERPRETATION AND MODIFICATION OF BID DOCUMENTS**

- .1 Submit questions about the meaning and intent of the Bid Documents to the person named on the cover of the Bid Documents. Interpretations and modifications considered necessary by the Owner in response to such questions will be issued by the Owner in writing in the form of an addendum.
- .2 Addenda may also be issued by the Owner to modify the Bid Documents as considered necessary by the Owner.
- .3 Submit questions as early as possible in the bid period. The Owner may not respond to questions received too close to the bid closing date to permit the issuance of an addendum.
- .4 It is the Bidder's responsibility to notify the Owner, in writing, of any ambiguity, divergence, error, or omission, oversight, contradiction, or item subject to more than one interpretation in these tender documents, as it is discovered, and to request any instruction, decision, or direction required for the Bidder to bid.
- .5 If an inquiry requires an interpretation or revision of the tender documents, the response to that inquiry will be issued in the form of a written addendum, to ensure that all bidders base their bids on the same information.
- .6 Replies to questions, interpretations and modifications made in a manner other than by written addenda will not be binding.

## **28. ADDENDA**

- .1 Addenda, when issued, will become part of the Bid and Contract Documents.
- .2 Each Bidder shall ascertain before tender submission that it has obtained all addenda issued by the Owner and by signing the Tender Form or submitting a Tender Amendment Form, each Bidder acknowledges that all issued addenda have been examined, read, and considered in their tender.

- .3 During the tendering period, all addenda issued by the Owner will be posted and available for free download from the Alberta Purchasing Connection Website [www.purchasingconnection.ca](http://www.purchasingconnection.ca) and at [www.drumheller.ca/do-business/tenders](http://www.drumheller.ca/do-business/tenders).

## **29. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT**

- .1 The Bidder acknowledges that:
- .1 The Freedom of Information and Protection of Privacy Act of Alberta (“FOIP Act”) applies to all information and records relating to, or obtained, generated, created, collected or provided under, the tender documents and which are in the custody or under the control of the Owner. The FOIP Act allows any person a right of access to records in the Owner’s custody or control, subject to limited and specific exceptions as set out in the FOIP Act; and
- .2 If Personal Information, as defined in the FOIP Act, is expressly required in the tender documents, the purpose of collecting the Personal Information is to enable the Owner to ensure the accuracy and reliability of the information, to evaluate the tender, and for other related purposes of the Owner. Authority for this collection is the Government Organization Act (Alberta), as amended from time to time and section 33 (c) of the FOIP Act. Before disclosing to the Owner any Personal Information about any individual who is providing or will provide the services, the Bidder shall obtain the consent of the affected individual. The consent must be in writing, and it must specify to whom the Personal Information can be disclosed; and how the Personal Information can be used. The Bidder shall provide such consents to the Owner for confirmation and review upon the Owner’s request.

## **30. POSTING OF TENDER RESULTS AND AWARD INFORMATION**

- .1 Tender results and award information will be made available on the Alberta Purchasing Connection website [www.purchasingconnection.ca](http://www.purchasingconnection.ca) and at [www.drumheller.ca/do-business/tenders](http://www.drumheller.ca/do-business/tenders).

## **31. CONFIDENTIALITY**

- .1 Subject to clause 29, Freedom of Information and Protection of Privacy Act, the Bidder and their employees, subcontractors, and agents shall:
- .1 keep strictly confidential all information concerning the Owner or third parties, or any of the business or activities of the Owner or third parties acquired as a result of participation in this tender process; and
- .2 only use, copy or disclose such information as necessary for the purpose of submitting a tender or upon written authorization from the Owner.
- .2 The Bidder shall maintain security standards, including control of access to data and other information consistent with the highest standards of business practice in the industry.

- .3 No press release or other public announcement relating to this tender shall be issued without the prior written consent of the Owner.
- .4 If a Bidder becomes aware of any situation whereby a breach of confidentiality may have or has occurred, the Bidder shall notify and provide details to the person named on the coverpage of the tender, as soon as practicable. The Bidder shall cooperate with the Owner with respect to any directions provided.

## **32. GOVERNING LAW**

- .1 This bid process will be governed and interpreted in accordance with the laws in force in the Province of Alberta and the Bidder irrevocably attorns to the exclusive jurisdiction of the Courts of Alberta.

## **33. LANGUAGE**

- .1 All tenders, including attachments and other information, must be in English.

## **34. INQUIRIES**

- .1 Direct inquiries during the bid period to the person named on the cover of the Bid Documents.

## **35. HIRING OF APPRENTICES**

- .1 The Government of Alberta encourages all bidders to consider employing apprentices on public sector construction projects. To find out more about hiring an apprentice and the supports available for their training, please visit <http://tradesecrets.alberta.ca/>.

**END OF SECTION**



## 1. BID SECURITY

- .1 Each bid must be accompanied by a bid bond in its original digital format made out to the Town of Drumheller equal to 10% of the tender amount. Tenders not accompanied by an immediately verifiable digital bid bond using the bid bond's electronic content verification process will be rejected as non-compliant.
- .2 Bid bonds shall be issued by a duly incorporated surety company authorized to transact business of suretyship in the Province of Alberta in a form acceptable to the Owner.
- .3 The bid bond shall be submitted as its own PDF document, separate from the other tender submission documents in its original electronic format. Scanned or altered PDF copies of the original bid bond in either paper or digital format will be deemed invalid and will cause the Bid to be rejected.
- .4 Verification of the bid bond may be conducted by the Department at any time immediately after Closing Date and Time, or at any time during the life of the bid bond and at the discretion of the Owner with no requirement for additional electronic copies of the bid bond, passwords or fees.

### .1 ELECTRONIC BONDING CRITERIA

- .1 The bid bond submitted by the Bidder must be verifiable with respect to the totality and wholeness of the bond form and the security which it represents, including but not limited to:
  - .1 the content of the bid bond;
  - .2 any details required for accessing and authenticating the bid bond, either via a verification tag or link that provides immediate access to the bond;
  - .3 all signatures and seals affixed thereto;
  - .4 encrypted digital signatures creating a secure electronic document; or
  - .5 anything that may prevent the enforcement and/or realization of the bid bond by the Owner in accordance with clause 1.3, Electronic Bonding Enforceability.by the Owner with the Surety Company, or an approved verification service provider of the Surety Company.

**.2 ELECTRONIC BONDING ENFORCEABILITY**

- .1 The bid bond shall be enforceable for the earlier of the tender acceptance period as specified in clause 12, Bid Withdrawal Acceptance, or until the bond's principal enters into the Contract and provides the required security and evidence of insurance coverage in accordance with Section 00625, Insurance Conditions, Section 00612, Contract Performance Security, and Section 00616, Security for Payment of Claim, which must be satisfactory to the Owner and in compliance with clause 7 of Section 00425, Unit Price Bid Form.

**2. DEFAULT BY BIDDER**

- .1 If a Bidder whose Bid is accepted by the Owner in writing, without qualification, and within the acceptance period specified in the Bid Documents, refuses or fails after the Contract is received, and the Contract is received when opened if delivered by email, or when delivered if using any other means:
- .1 within seven (7) calendar days, to sign and return the Contract to the Owner for the performance of the Work and/or the supplying of material covered by this tender, and
  - .2 within fourteen (14) calendar days, to provide the required security and evidence of insurance coverage in accordance with Section 00625, Insurance Conditions, Section 00612, Contract Performance Security, and Section 00616, Security for Payment of Claim, satisfactory to the Owner,

the tender security is subject to forfeiture to the Owner, and if a Contract for the project(s) is then entered into with some other party for a greater amount, the Bidder is liable to the Owner in the amount equal to the difference between the amount of its tender and the amount of the Contract actually entered into, the maximum liability not exceeding the amount of the tender security required under Section 00210, Bid Security.

**END OF SECTION**

- 1. PRE-BID MEETING AND SITE INSPECTION – NON-MANDATORY ATTENDANCE**
- .1 A pre-bid meeting and site inspection will be held at the time and place specified on the cover of the Bid Documents.
  - .2 The purpose is to provide Bidders an opportunity to familiarize themselves with the Work and with existing conditions.
  - .3 Attendance at the time and place specified is not mandatory for all Bidders and is not a condition of contract award. Major subcontractors are strongly advised to attend. Others are invited to attend.
  - .4 No information provided by the Owner at the pre-bid meeting and site inspection shall be binding, unless such information is included in an addendum.

**END OF SECTION**

## 1. CONTRACT INFORMATION DOCUMENTS

- .1 Contract Information Documents listed in clause 4.1 are incorporated into the Contract.
- .2 The Bidder is entitled to rely upon the factual information or factual data contained in Contract Information Documents, or parts thereof, which have been obtained principally for the purposes of study and design and are believed to be correct, within normal limits inherent in gathering such information and data, but the Bidder shall draw its own conclusions from such factual information or factual data and shall not rely on opinions or interpretations contained therein.
- .3 Contract Information Documents shall not be considered a representation or warranty that information contained therein is complete or appropriate for construction.
- .4 Information contained in Contract Information Documents may be time sensitive and dates and times shall be considered when interpreting such information.
- .5 The Bidder is encouraged to obtain specialist advice with respect to Contract Information Documents. The Owner assumes no responsibility for such interpretations and conclusions.
- .6 Some information included as Contract Information Documents, such as historical records, weather data, etc., have been prepared by persons other than the Owner. Use of any Contract Information Document shall be only for the purpose of the construction contract with which it is provided.

## 2. INFORMATION PREPARED FOR THE OWNER

- .1 When reading the Contract Information Documents consider the following in planning and implementing construction methods and procedures. Field investigations, laboratory testing, classifying and logging, are performed principally for the purposes of study and design. Unless otherwise noted, information prepared by, or for, the Owner is prepared in accordance with generally accepted professional practices with consideration for the type of information needed, current practices, the location of the work, and the date and time, etc. when the information is prepared.
- .2 Soils and Bedrock Information
  - .1 Investigations are carried out for the purpose intended at the time of the investigation. Samples of soils and bedrock are recovered from drillholes, test pits, or other exploration methods. Samples are identified and classified and the data recorded. Samples taken may not be continuous and extrapolation may be used to complete the information. The data are true only for the sample and its unique location. Classification of soils and bedrock is subjective and is based on observations and laboratory testing.
  - .2 Classification of soils follows the Modified Unified Soil Classification system, unless noted otherwise. Classification of bedrock follows normally accepted geologic practice.



- .3 The nature and thickness of the material between adjacent soils or bedrock zones may be a blend of the classified materials. Consequently, the location of the horizon between one zone and another may vary between excavations, or with logs prepared by another person. Different exploration methods may also give variations in the information. The foregoing is also true for bedrock investigations and logging.
  - .4 Stratigraphic drawings show extrapolation of testhole information between testhole locations. The extrapolations are subject to the variations associated with them therefore, actual conditions may differ from that shown on stratigraphic drawings.
  - .5 Soils and bedrock properties can change rapidly after exposure to elements such as air, frost, and moisture. Soils and bedrock properties can change with changes in moisture content, which may vary over time. Recorded conditions may vary after the date of investigation.
- .3 Laboratory Testing
    - .1 Laboratory testing used for classifying soils and bedrock follows industry standards, unless otherwise noted. Recorded test results show some, but not necessarily all, properties of the soils or bedrock material. The sample tested may contain some, but not necessarily all, of the properties of the soils or bedrock adjacent to the location from which the sample was taken.
  - .4 Groundwater Information
    - .1 Groundwater elevations and other groundwater information are based on observations made at the time of the investigations. Daily and seasonal fluctuations may occur due to climatic and other effects. Variations between testing locations may exist due to meteorological conditions, reservoir, lake, and river conditions.
  - .5 Construction Activity
    - .1 Construction activity can alter the in situ ground conditions. The influence of all construction activities on the geologic environment should be considered.

### **3. OTHER INFORMATION DOCUMENTS**

- .1 Other Information Documents means information documents not listed in clause 4.1 herein, and are not part of the Contract Documents.
- .2 The Bidder is not entitled to rely upon the factual information or factual data in any Other Information Documents, nor any opinions or interpretations contained therein. Other Information Documents shall not be considered accurate, complete, or appropriate.
- .3 Other Information Documents are made available to the Bidder for the purpose of providing the Bidder with access to the information available to the Owner.

**4. LIST OF CONTRACT INFORMATION DOCUMENTS**

.1 Contract Information Documents comprise the following:

.1 Volume 2 of 3 of the Bid Documents

**END OF SECTION**

1. FROM: \_\_\_\_\_  
(Legal Name of Bidder)
- TO: Drumheller Resiliency and Flood Mitigation Office  
Town Hall, 224 Centre Street  
Drumheller, AB  
T0J 0Y4
- CONTRACT: TOWN OF DRUMHELLER  
DOWNTOWN DIKE PROJECT  
2023-03-28
2. We, the undersigned, having examined and read the Bid Documents for the above noted contract, and having visited the Site and examined all conditions affecting the Work, are satisfied we understand the Bid Documents and declare ourselves competent to undertake and complete the Work and do hereby irrevocably bid and agree to carry out the Work in accordance with the Bid Documents, for the unit prices, lump sums and allowances set out in the Schedule of Prices, the total amount of which is:
- \$ \_\_\_\_\_ which amount **excludes** GST.  
(Total Amount In Figures Only)
3. This bid is based on and submitted in accordance with Section 00431 - Schedule of Prices which is attached hereto and which forms an integral part of this bid.
4. The total amount of the bid set out in clause 2. is the sum of all unit price extensions, lump sums and allowances in the Schedule of Prices. It is understood that the unit prices, lump sums and allowances set out in the Schedule of Prices form the basis of the bid price and that the extensions of unit prices and addition of unit price extensions, lump sums and allowances will be checked by the Owner and if arithmetical errors are discovered, the unit prices shall be considered as representing the Bidder's intentions and the unit price extensions and the total amount entered in the Schedule of Prices and the Bid Form will be corrected accordingly by the Owner.
- [5.] This bid includes all costs associated with the assignable contracts specified in Section 01118 – Assignable Contracts.
6. The following is submitted with this bid:
- .1 Schedule of Prices, as specified in Section 00431 – Schedule of Prices.
  - .2 Bid security as specified in Section 00210 – Bid Security.
  - .3 List of Subcontractors as specified in Section 00441 – List of Subcontractors.

7. If notified in writing by the Owner of the acceptance of this bid within 35 days after the bid closing time, the undersigned will,
- .1 within seven (7) calendar days, to sign and return the Contract to the Owner for the performance of the Work and/or the supplying of material covered by this tender, and
  - .2 within fourteen (14) calendar days, to provide the required security and evidence of insurance coverage in accordance with Section 00625, Insurance Conditions, Section 00612, Contract Performance Security, and Section 00616, Security for Payment of Claim, satisfactory to the Owner

for the performance of the Work for the above stated compensation and comply with all other requirements of the Bid Documents.

8. It is understood that, with respect to the Bid Form and Schedule of Prices, should any required information be omitted or illegible, should any alteration be made to the text, or should any condition be added on or submitted with the Bid Form or Schedule of Prices, the bid may be declared informal and the bid may be rejected.

9. Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

NAME AND ADDRESS  
OF BIDDER:  
(Print or Type) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

SIGNATURE OF AUTHORIZED  
REPRESENTATIVE(S):

NAME AND TITLE OF AUTHORIZED  
REPRESENTATIVE  
(Print or Type)

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

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

**END OF SECTION**

1. FROM: \_\_\_\_\_  
(Legal Name of Bidder)  
  
TO: Drumheller Resiliency and Flood Mitigation Office  
Town Hall, 224 Centre Street  
Drumheller, AB  
T0J 0Y4  
  
CONTRACT: TOWN OF DRUMHELLER  
DOWNTOWN DIKE PROJECT
2. This Schedule of Prices forms an integral part of the bid for the above noted project and shall be read and considered in conjunction with Section 00425 - Unit Price Bid Form.
3. It is understood and agreed that with respect to the submission of this Schedule of Prices, the following shall apply:
  - .1 Items of Work are priced in accordance with the Bid Documents, including Section 00630 - Payment Conditions, Section 01275 - Measurement Rules, and Section 01280 - Measurement Schedule.
  - .2 Section references are a guide and are not to be considered as modifying the scope of payment.
  - .3 Every price requested shall be submitted or the bid may be declared informal and the bid may be rejected.
  - .4 Should any item be omitted or illegible, should any alteration be made to the text, or should any condition be added on or submitted with the Schedule of Prices, the bid may be declared informal and the bid may be rejected.
4. Schedule: See next page.

ITEM NO.	ITEM NAME	SECTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED AMOUNT

Page [ ] Total, to Summary \$\_\_\_\_\_

ITEM NO.	ITEM NAME	SECTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED AMOUNT

ITEM NO.	ITEM NAME	SECTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED AMOUNT
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Page [ ] Total, to Summary \$\_\_\_\_\_

**SUMMARY**



1. Page 2, Total ..... \$ \_\_\_\_\_

2. Page [ ], Total ..... \$ \_\_\_\_\_

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**TOTAL AMOUNT OF THE BID:** \$ \_\_\_\_\_  
(Sum of extended amounts of all Unit Prices,  
Lump Sums and Allowances)

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**END OF SECTION**

1. FROM: \_\_\_\_\_  
(Legal Name of Bidder)  
  
TO: Drumheller Resiliency and Flood Mitigation Office  
Town Hall, 224 Centre Street  
Drumheller, AB  
T0J 0Y4  
  
PROJECT: TOWN OF DRUMHELLER  
  
DOWNTOWN DIKE PROJECT
2. This List of Subcontractors forms a part of the bid for the above project.
3. The following conditions apply to the List of Subcontractors:
  - .1 Names are entered, where applicable, for the items of work listed.
  - .2 Items of work for which the Bidder intends to use Subcontractors, Sub-subcontractors, Suppliers and own-forces are so indicated.
  - .3 Should the Bidder be awarded the Contract, the parties named, including the Bidder's own forces, shall be used to perform the work they are scheduled to perform and shall not be changed without the Owner's written consent.
4. The following conditions apply to the Cost Breakdown:
  - .1 Provide an approximate value of Subcontractor work. Separate itemized costs are entered for the items of work listed.
5. List of Subcontractors: See next page.

<b>Subcontractor</b>	<b>Item of Work</b>	<b>Approximate Value</b>

**END OF SECTION**

1. FROM:

---

(Legal Name of Bidder)

TO:

Drumheller Resiliency and Flood Mitigation Office  
Town Hall, 224 Centre Street  
Drumheller, AB  
T0J 0Y4

PROJECT:

TOWN OF DRUMHELLER  
  
DOWNTOWN DIKE PROJECT

2. This list of relevant experience and qualifications from the bidder will allow the Owner to evaluate the credibility of the Contractor. The Owner may choose to reject bids based on the acceptability of information provided in support of this schedule.
3. The following conditions apply to the List of Projects:
  - .1 The year indicated is the year in which the project is completed.
  - .2 Projects listed must be projects completed by the bidder as the Prime Contractor. Projects where the bidder was a subcontractor will not be considered.
  - .3 Reference Contact Information must be valid. If the reference is not accessible with the contact information provided, that project will not be considered as Relevant Experience.
4. List of Relevant Experience: See next page.

<b>Year Completed and Location</b>	<b>Project Description (scope of work completed by Bidder)</b>	<b>Approximate Value</b>	<b>Reference Contact</b>

**END OF SECTION**

1. FROM:

---

(Legal Name of Bidder)

TO:

Drumheller Resiliency and Flood Mitigation Office  
Town Hall, 224 Centre Street  
Drumheller, AB  
T0J 0Y4

PROJECT:

TOWN OF DRUMHELLER  
  
DOWNTOWN DIKE PROJECT

2. This list of local content will be considered supplemental to the Bid Submission.
3. Contractors are encouraged to develop their Bid with consideration for local content. The following conditions apply to the List of Local Content:
- .1 Local content may include subcontractors, trades, labourers, equipment / material suppliers, accommodations, fuel, etc.
  - .2 Local contractors must have a Town of Drumheller business license.
  - .3 Reference Contact Information must be valid. If the reference is not accessible with the contact information provided, that resource will not be considered as Local Content.
5. List of Local Content: See next page.

<b>Name or Company Name of Local Resource</b>	<b>Services Provided</b>	<b>Estimated Value of Service</b>	<b>Reference Contact</b>

**END OF SECTION**

**AGREEMENT BETWEEN THE TOWN OF DRUMHELLER  
AND CONTRACTOR**

This Agreement made on the ..... day of

.....

**between**

THE Town of Drumheller  
hereinafter called the "Owner"

**and**

.....  
name of Contractor

.....  
address

.....

.....

.....

.....  
hereinafter called the "Contractor"

**witnesses:** that the parties agree as follows:

**1. THE WORK**

The Contractor shall perform the Work required by  
the Contract Documents for:

.....  
title of the Work and the Project

.....

.....

.....

.....

.....

and do and fulfill everything required by this Agreement.

**2. CONTRACT DOCUMENTS**

The Contract Documents referred to in clause 1 of this Agreement shall be as defined in the Contract Documents. Terms used in the Contract Documents which are defined in the Definitions and Interpretation section shall have the meanings designated therein.

**3. CONTRACT TIME**

The Contractor shall attain Substantial Performance of the Work by the following date:

..... day of ..... 20\_\_

and shall attain Total Performance of the work as provided for in the Contract Documents.

**4. CONTRACT PRICE**

The Contract Price is .....

.....

..... dollars

(\$.....) in Canadian funds.

**6. PAYMENT**

The Owner shall make payment in Canadian funds to the Contractor on account of the Contract Price in accordance with the Payment Conditions and other applicable provisions of the Contract Documents.

**7. RIGHTS AND REMEDIES**

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.



**8. LANGUAGE AND LAW OF THE CONTRACT**

The language of the Contract is English and the Contract shall be construed and interpreted accordingly. The law prevailing in the Province of Alberta, Canada shall govern the interpretation of the Contract.

**9. SUCCESSION**

The Contract Documents are to be read into and form part of this Agreement and the whole shall constitute the Contract between the parties and subject to law and the provisions of the Contract Documents shall ensure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and permitted assigns.

**10. NOTICES**

Notices to be given under the Contract shall be addressed to the parties as follows:

The Owner and the Owner's Representative at:

The Town of Drumheller  
702 Premier Way  
Drumheller AB T0J 0Y0

The Contractor at:

.....  
name

.....  
address

.....

.....

.....

.....

Telephone: .....

Email Address: .....

**In witness whereof** the parties hereto have executed this Agreement under their respective seals and by the hands of their proper officers thereunto duly authorized.

SIGNED, SEALED AND DELIVERED in the presence of:

**CONTRACTOR**

.....  
company name

.....  
signature of authorized signing officer

.....  
name and title of officer

.....  
signature of authorized signing officer

.....  
name and title of officer

.....  
signature of witness

.....  
name and title of witness

**OWNER OR OWNERS'S AUTHORIZED REPRESENTATIVE**

.....  
signature

.....  
name and title

.....  
provincial seal

.....  
signature of witness

.....  
name and title of witness

**END OF SECTION**

## 1. DEFINITIONS

In the Contract the following terms shall have the meanings assigned to them:

- 1.1 "Additional Instruction" means a written instruction, issued by the Owner to the Contractor, clarifying or finalizing requirements of the Contract Documents and not involving a change in the Contract Price or the Contract Time.
- 1.2 "Agreement Form" means the document which, when executed by the Owner and the Contractor, formalizes the Contract.
- 1.3 Omitted: "Alberta Transportation" definition.
- 1.4 "Bid" means the Contractor's priced offer to the Owner for the performance of the Work in accordance with the provisions of the Contract, as accepted by the Letter of Acceptance.
- 1.5 "Change Order" means a written instruction, issued by the Owner to the Contractor on or after the date of execution of the Agreement Form, authorizing or ordering a Change in the Work or a change in the Contract Price or the Contract Time or any combination thereof.
- 1.6 "Change Proposal" means a written communication, issued by the Owner to the Contractor on or after the date of execution of the Agreement Form, containing a proposed Change in the Work and requiring the Contractor to submit a quotation for executing such proposed change, including the Contractor's proposed changes to either or both the Contract Price or the Contract Time.
- 1.7 "Change in the Work" means an addition to, deletion from or other modification of the Work consistent with the scope and intent of the Contract.
- 1.8 "Construction Equipment" means equipment, appliances and things required for the performance of the Work, but does not include Permanent Work or Temporary Work.
- 1.9 "Contract" means the undertaking by the Owner and the Contractor to perform their respective duties, responsibilities and obligations as prescribed in the Contract Documents and represents the entire agreement between the Owner and the Contractor. The Contract Documents form the Contract.
- 1.10 "Contract Deficiency" means a deficiency in the Work, or part thereof, for which the Contractor is responsible under the Contract and includes a deficiency in any design for which the Contractor is responsible.
- 1.11 "Contract Documents" means:
- the Letter of Acceptance;
  - the executed Agreement Form;
  - Instructions to Bidders, completed Bid Form, Schedule of Prices, and Supplements to Bid Form;
  - Information Documents specifically incorporated into the Contract Documents;
- Definitions and Interpretation, Payment Conditions, Security Conditions, Insurance Conditions, General Conditions, Supplementary Conditions, conditions related to Public Works Act claims;
- the Specifications;
  - the Drawings;
  - Addenda;
  - Regulatory Permits and Authorizations;
  - and such other documents as may be identified as Contract Documents, and shall include amendments thereto made pursuant to the provisions of the Contract.
- 1.12 "Contract Price" means the total amount payable by the Owner to the Contractor under the Contract as stated in the Agreement Form, including authorized adjustments thereto.
- 1.13 "Contract Time" means the period of time specified in the Contract for attainment of Substantial Performance of the Work, including authorized adjustments thereto.
- 1.14 "Contractor" means the person, firm or corporation contracting directly with the Owner to perform the Work.
- 1.15 "Cost Plus Work" means a contractual arrangement that prescribes the cost of the work plus an allowance for overhead and profit, as expressly defined in the Contract, as payment for performance of the item of work to which it relates.
- 1.16 Omitted: The "Crown" definition.
- 1.17 "Day" means a calendar day.
- 1.18 "Department" means the Town of Drumheller or such successor department.
- 1.19 Omitted: "Deputy Minister" definition.
- 1.20 "Drawings" means the graphic and pictorial portions of the Contract Documents showing the design, location or dimensions of the Work, generally including plans, elevations, sections, details and diagrams.
- 1.21 "Force Majeure Event" means any war, invasion, insurrection, armed conflict, act of foreign enemy, revolution, terrorist act, interference by military authorities, nuclear explosion, contamination by ionizing radiation, epidemic, pandemic including Covid-19, or quarantine restriction that prevents, delays or interrupts the performance of any obligation under this Contract, other than any obligation to pay any money, and provided such event does not occur by reason of:
- .1 The negligence of the Party relying on the Force Majeure Event (or those for whom it is in law responsible); or
  - .2 Any act or omission of the Party relying on the Force Majeure Event (or those for whom it is in law responsible) that is in breach of this Contract.
- 1.22 "Information Documents" means information of any type and in any form related to the Project and identified in the Contract Documents as such, but which does not form part of the Contract unless specifically incorporated therein.

- 1.23 "Invention" means any new and useful practice, process, machine, device, manufacture or composition of matter, or any new and useful improvement thereof.
- 1.24 "Letter of Acceptance" means the formal acceptance by the Owner of the Contractor's Bid, including any modifications to the Bid agreed to by the Owner and the Contractor and incorporated therein.
- 1.25 "Lump Sum Work" means a contractual arrangement that prescribes a lump sum as payment for performance of the item of work to which it relates.
- 1.26 "Milestone Date" means a time period or date specified in the Contract for completion or attainment of specified portions of the Work.
- 1.27 "Owner" means the Town of Drumheller and includes a person acting for, or if the office is vacant, in place of, the Owner and the Owner's successors in the office.
- 1.28 "Owner's Representative" means the officer or employee of the Town of Drumheller identified in writing by a duly authorized departmental officer to represent the Owner under the Contract.
- 1.29 "Other Contractor" means any person, firm or corporation employed by or having a separate contract with the Owner for work related to the project other than that required by the Contract Documents.
- 1.30 "Permanent Work" means any structure, Product or thing constructed, manufactured or installed in the performance of the Work, but does not include Temporary Work.
- 1.31 "Products" means material, components, elements, machinery, equipment, fixtures, systems and other items forming the Work or part thereof but does not include Construction Equipment. "Products" is synonymous with "Materials".
- 1.32 "Project" means the total construction of which the Work to be provided under the Contract may be the whole or a part.
- 1.33 "Regulatory Requirements" means laws, ordinances, rules, regulations, orders, codes, and other legally enforceable requirements in effect and applicable to the performance of the Work.
- 1.34 "Schedule of Prices" means the completed Schedule of Prices submitted by the Contractor with his Bid, as accepted by the Letter of Acceptance.
- 1.35 "Site" means the designated Site or location of the Work and any other places as may be specifically designated in the Contract as forming part of the Site.
- 1.36 "Specifications" means that portion of the Contract Documents comprising Divisions 01 onwards of the specification format including the General Requirements and technical specifications.
- 1.37 "Subcontractor" means a person, firm or corporation having a contract with the Contractor for the performance of a part of the Work at the Site.
- 1.38 "Sub-subcontractor" means a person, firm or corporation having a contract with a Subcontractor for the performance of a part of the Work at the Site.
- 1.39 "Substantial Performance of the Work" means the time when the prerequisites to Substantial Performance of the Work required by the Contract are fulfilled and the Work is ready for use or is being used for the purpose intended and the state of the work is so declared, in writing, by the Owner.
- 1.40 "Supplier" means a person, firm or corporation having a contract with the Contractor, a Subcontractor or a Sub-subcontractor for the supply of goods or services to be incorporated into or utilized in the performance of the Work.
- 1.41 "Temporary Work" means site offices, temporary structures, facilities and controls and other temporary things required for the performance of the Work, but does not include Construction Equipment.
- 1.42 "Total Performance of the Work" means the time when the prerequisites to Total Performance of the Work required by the Contract are fulfilled and the entire Work, except those items arising from the warranty provisions of the Contract, has been performed to the requirements of the Contract Documents and is so declared, in writing, by the Owner.
- 1.43 "Unit Price" means the amount payable by the Owner to the Contractor under the Contract for a single unit of each separately identified item of work for which a unit price is prescribed as the basis of payment, as stated in the Schedule of Prices.
- 1.44 "Unit Price Work" means a contractual arrangement that prescribes the product of a Unit Price multiplied by a number of units of measurement of a class as payment for performance of the item of work to which it relates.
- 1.45 "Warranty Performance of the Work" means the time when the prerequisites to Warranty Performance of the Work required by the Contract are fulfilled and all items arising from the warranty period or periods required by the Contract have been corrected by the Contractor and the state of the Work is so declared, in writing, by the Owner.
- 1.46 "Work" means the total construction and related services required by the Contract Documents.

## **2. INTERPRETATION**

The Contract shall be interpreted as follows:

- 2.1 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.
- 2.2 Words importing the singular also include the plural and the masculine includes the feminine and vice-versa where the context requires.
- 2.3 "Herein", "hereby", "hereof", "hereunder" and similar expressions refer to the Contract as a whole and not to a particular part thereof, unless the context indicates otherwise.

- 2.4 Words and abbreviations which have well known technical meanings are used in the Contract in accordance with such recognized meanings.
- 2.5 Words importing persons or parties shall include firms and corporations and any organization having legal capacity.
- 2.6 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an", but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.
- 2.7 The imperative mood is used extensively in the Contract Documents, particularly the Specifications. Such language is always directed to the Contractor, and it is the Contractor's responsibility to perform the Work specified in the imperative mood, unless specifically stated otherwise.
- 2.8 Unless the context indicates otherwise, where a term is defined in the Contract Documents, other parts of speech or grammatical forms of the same word or expression have corresponding meanings.
- 2.9 Unless the context indicates otherwise, all monetary amounts shall be interpreted as amounts in the lawful currency of Canada.
- 2.10 When provision is made for the giving or issue of any notice, consent, approval, certificate or determination by any person, unless otherwise specified, such notice, consent, approval, certificate or determination shall be in writing and the words "notify", "certify" or "determine" shall be construed accordingly. Any such consent, approval, certificate or determination shall not unreasonably be withheld or delayed.
- 2.11 When provision is made for a communication to be "written" or "in writing" this means any hand-written, type-written or printed communication, including facsimile transmissions.
- 2.12 Except in relation to a change in the Contract Time, any period of time in the Contract within which the Owner or the Contractor is to take action or decide anything may be extended by agreement, notwithstanding that the period of time has expired.
- 2.13 The term "including" or "includes" shall be construed as inclusive and not exclusive, and shall be interpreted to mean including but not necessarily limited to the items referred to.
- 2.14 This Contract may be executed by the parties in counterparts, and may be delivered by email in Portable Document Format (PDF), each of which upon execution and delivery shall be deemed an original and all which taken together shall constitute one and the same agreement.
- 2.15 In the event of ambiguities, discrepancies and conflicts between the several documents forming the Contract Documents the following order of precedence shall apply:
- .1 .Executed Agreement Form
  - .2 .Letter of Acceptance.
  - .3 .Supplementary Conditions.
  - .4 .Conditions of Contract, including General, Payment, Security and Insurance Conditions.
  - .5 Drawings.
  - .6 .Specifications.
  - .7 .Drawings of larger scale shall govern over those of smaller scale of the same date.
  - .8 .Figured dimensions shown on a Drawing shall govern even though they may differ from dimensions scaled on the same Drawing.
- Notwithstanding the foregoing, documents of later date shall always govern over the documents amended.
- END OF SECTION**

**1. CONTRACT PERFORMANCE SECURITY**

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- 1.1 Contractor shall provide security for performance of the Contract in the form of a Performance Bond for 50% of the Contract Price.
- 1.2 Bond shall be in accordance with the Canadian Construction Documents Committee (CCDC) Standard Form of Performance Bond, CCDC Document No. 221.
- 1.3 Bond shall be issued by a duly incorporated surety company authorized to transact business of suretyship in the Province of Alberta.
- 1.4 Consign bond to "the Town of Drumheller".
- 1.5 Submit bond to the Owner within 15 days after date of issuance of Letter of Intent to Enter Contract.

**END OF SECTION**

**1. LETTER OF CREDIT IN LIEU OF HOLDBACK**

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- 1.1 The Contractor may, as an alternative to retention of holdback in accordance with the provisions of Section 00630 - Payment Conditions, provide, at any time, an irrevocable, standby, Letter of Credit, subject to the provisions specified herein.
- 1.2 If the Contractor provides a Letter of Credit meeting the requirements specified herein and otherwise acceptable to the Owner, the Owner will release all holdback monies previously retained, if any, and will not retain holdback on any subsequent progress payments.

**2. LETTER OF CREDIT**

---

- 2.1 The Letter of Credit shall be provided by a domestic chartered bank as listed in the Bank Act (Canada), "Schedule A, Domestic Chartered Banks", "Schedule B, Foreign Chartered Banks", or the Alberta Treasury Branches.
- 2.2 The Letter of Credit shall be irrevocable. Partial drawings shall be permitted.
- 2.3 The amount of the Letter of Credit shall be calculated by multiplying the holdback percentage, as specified in Section 00630 – Payment Conditions, by the Contract Price as specified in Section 00525 – Agreement Form.
- 2.4 The expiry date shall be six months after the last day of the Contract Time.
- 2.5 The Letter of Credit shall provide that claims shall be duly honoured on presentation by the Owner, without inquiry by the bank as to whether the Owner has a right to make such claim, and without recognizing any claim of the Contractor, provided that the terms and conditions of the Letter of Credit are complied with.
- 2.6 The Letter of Credit shall be subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce, Publication 500.
- 2.7 The Letter of Credit shall be in the form of the Town of Drumheller standard form of Letter of Credit, Document 00614A, a copy of which is appended hereto.

**3. AMENDMENTS TO LETTER OF CREDIT**

---

- 3.1 The Owner may, from time to time, require the Contractor to amend the Letter of Credit by:

- .1 increasing the amount of the Letter of Credit if changes in the Work, or quantity variations of Unit Price items, result in a significant increase in the Contract Price, such revised amount being calculated in accordance with clause 2.3,
- .2 extending the expiry date of the Letter of Credit if there is a significant extension of Contract Time pursuant to Section 00725 - General Conditions, or for any other reasonable cause, the length of such time extension being determined by the Owner.

- 3.2 The Contractor shall, within 14 days after being requested to do so, provide to the Owner an amendment to the Letter of Credit containing the required changes.

- 3.3 If the Contractor fails to comply with clause 3.2, the Owner may:

- .1 retain holdback from subsequent progress payments,
- .2 withhold all or part of subsequent progress payments, or
- .3 draw funds on the letter of credit, as required to protect the interests of the Owner or third party claimants.

**4. DRAWING FUNDS ON LETTER OF CREDIT**

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- 4.1 The Owner may draw funds on the Letter of Credit at any time the Owner determines there is a need to establish a holdback fund in order to protect the interests of the Owner or third party claimants.
- 4.2 The Owner shall notify the Contractor not less than 14 days before drawing funds on the Letter of Credit and stating reasons for the intention to draw funds.
- 4.3 The cumulative amount of any funds drawn by the Owner shall not exceed the amount of holdback the Owner would have otherwise been entitled to retain under the Contract.

**5. RETURN OF LETTER OF CREDIT**

---

- 5.1 Notwithstanding the provisions for release of holdback specified in Section 00630 - Payment Conditions, the Owner shall return the Letter of Credit with final payment only.

**END OF SECTION**

**KNOWN ALL MEN BY THESE PRESENTS THAT**

**The Town of Drumheller**, hereinafter called the "Owner"

**and**

.....  
name of Contractor

.....  
address

hereinafter called the "Contractor", and whereas  
the Owner and the Contractor have entered into a Contract for

.....  
title of the Work and the Project

.....  
dated the .....

.....20 .....

hereinafter called the Contract, and the Owner and the  
Contractor have agreed that:

- the Contractor shall provide the Owner with this Letter of Credit as an alternative to the holdback, as specified in the Contract.

**THEREFORE**, for an amount not exceeding in the aggregate of

.....dollars

(\$.....) lawful money of Canada,

.....  
name of bank

.....  
branch name and address

.....  
hereinafter called the "Bank", a Domestic Chartered Bank as listed in the Bank Act, "Schedule A, or Schedule B, Domestic Chartered Banks", or the Alberta Treasury Branches, hereby establishes in the Owner's favour a Standby Letter of Credit which is irrevocable. Partial drawings are permitted.

Date: .....

Letter of Credit No.: .....

Claims hereunder shall be made in writing, in the form of a sight draft, and shall identify the applicable Letter of Credit by number and date, and shall be presented to the Bank branch office.

**THE BANK HEREBY** undertakes that such drafts will be duly honoured on presentation, without inquiring whether the Owner has a right between the Owner and the Contractor to make such presentation and without recognizing any claim of the Contractor provided that the terms and conditions of this Credit are complied with.

It is understood the Bank is obligated under this Standby Letter of Credit for the payment of monies only.

The expiry date is the .....day of  
.....20.....

for presentation of any claims at the Bank and the Bank's liability will be extinguished for any claims thereafter.

Except as otherwise stated therein, this Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce, Publication 500.

**BANK MANAGER**

.....  
signature

**WITNESS**

.....  
signature

**If presented for payment, payment shall be made to the  
Town of Drumheller**

**1. TYPE AND AMOUNT OF SECURITY**

---

- 1.1 Contractor shall provide security for labour and material of the Contract in the form of a Labour and Material Payment Bond for 50% of the Contract Price.
- 1.2 Bond shall be in accordance with the Canadian Construction Documents Committee (CCDC) Standard Form of Labour and Material Payment Bond, CCDC Document No. 222.
- 1.3 Bond shall be issued by a duly incorporated surety company authorized to transact business of suretyship in the Province of Alberta.
- 1.4 Consign bond to "the Town of Drumheller". (client to confirm)
- 1.5 Submit bond to the Owner within 15 days after date of issuance of Letter of Intent to Enter Contract.

**END OF SECTION**



**1. RELATED REQUIREMENTS**

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1.1 Hold Harmless Agreement: General Conditions.

**2. GENERAL REQUIREMENTS FOR INSURANCE**

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2.1 Without restricting the generality of the hold harmless provisions of the General Conditions of Contract and without limiting the obligations or liabilities under the Contract, the Contractor shall, provide, maintain, and pay for the insurance coverages specified in this section.

2.2 Form: Insurance policies shall be placed with Insurers who comply with the Insurance Act (Alberta) and be in forms acceptable to the Owner. All required insurance shall be primary and shall not require the pro rata sharing of any loss by any insurer of the Owner.

2.3 Duration: Unless otherwise specified, required insurance coverages shall be maintained continuously from the date of commencement of the Work until the date of Total Performance of the Work.

2.4 Waiver of Recourse: The Contractor waives all rights of recourse against the Owner for damages to the Contractor's property.

2.5 Deductible: The amount of deductible on any insurance provided by the Contractor shall be reasonable and shall be subject to the Owner's approval.

2.6 Notice of Change to Policy: Each required policy shall be endorsed to provide the Owner with not less than 30 Days advance written notice of cancellation including cancellations for non-payment of premium.

2.7 Proof of Insurance: Prior to commencement of any activities on Site, the Contractor shall provide the Owner with proof that insurance coverages are in effect and meet the specified conditions. Proof of insurance shall be in the following forms:

- .1 Completed Certificate of Liability Insurance.
- .2 Completed Certificate of Property Insurance.
- .3 Insurer's standard certificate for insurance coverage.

In addition, the Contractor shall at any time upon request, promptly file a certified true copy of any insurance policy and shall otherwise provide proof of any required insurance, in a form acceptable to the Owner.

2.8 Subcontractors' Insurance: The Contractor shall ensure that Subcontractors provide their own General Liability Insurance, Automobile Liability Insurance, where such risks exist, Aircraft and Watercraft Liability Insurance, and Other Insurance equivalent to that specified herein. With respect to General Liability Insurance, the Contractor may alternatively provide such insurance on a wrap-up basis insuring himself, his Subcontractors, and anyone employed directly or indirectly by himself or his Subcontractors to perform a part of the Work. The named insureds on such wrap up liability insurance policy shall be the Contractor and the Owner. The requirements under Article 3 – General Liability Insurance shall apply to such wrap up liability insurance and in addition, the policy shall contain completed operations liability coverage, which shall remain in effect

for a period of 12 months after the date of Interim Acceptance of the Work

**3. GENERAL LIABILITY INSURANCE**

---

3.1 The Contractor shall provide General Liability Insurance with limits of not less than \$10,000,000.00 inclusive per occurrence, insuring against bodily injury, death, and property damage including loss of use thereof. Such insurance shall include but not necessarily be limited to coverage for:

- .1 Owner's and Contractor's protective liability,
- .2 blanket written contractual liability,
- .3 personal injury liability,
- .4 non-owned automobile liability (minimum sub-limit \$2,000,000),
- .5 broad form property damage endorsement endorsement (as per as per IBC 2313 or similar. Minimum sub-limit \$1,000,000),
- .6 sudden and accidental pollution,
- .7 Forest-fire fighting expenses (minimum sub-limit \$250,000).

3.2 Where such further risks exist, General Liability Insurance shall also include coverage for the following, to limits specified in clause 3.1:

- .1 Operations requiring the use of explosives for blasting, or pile driving or caisson work, or removal or weakening of support of property, building or land.
- .2 Elevator and hoist liability.
- .3 Operation of attached machinery.

3.3 General Liability Insurance shall:

- .1 **not** include the Owner as a named insured, and
- .2 shall be maintained continuously until twelve months following the date of Substantial Performance of the Work or until the date of Total Performance of the Work, whichever is later.

**4. AUTOMOBILE LIABILITY INSURANCE**

---

4.1 The Contractor shall provide Automobile Liability Insurance on all vehicles owned, operated or licensed in Contractor's name, with limits of not less than \$5,000,000.00 inclusive per occurrence for bodily injury, death, and property damage.

**5. AIRCRAFT AND WATERCRAFT LIABILITY INSURANCE**

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.1 Where such risks exist, Contractor shall provide Aircraft Liability Insurance and Watercraft Liability Insurance on all aircraft and watercraft, owned, operated or licensed in Contractor's name and non-owned aircraft and watercraft used in Contractor's operations, with limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof.

**6. COURSE OF CONSTRUCTION AND BOILER INSURANCE**

---

6.1 The Contractor shall provide Course of Construction Insurance in the form of:

- .1 an All Risks Builder's Risk Policy, or
- .2 if appropriate, due to the nature of the Work, and subject to the Owner's approval, an All Risks Installation Floater,

Coverage shall:

- .1 insure not less than the sum of the amount of the Contract Price and, if any the full value of Products specified to be provided by the Owner for incorporation into the Work.
- .2 extend to any location and while in transit and shall be maintained continuously until the date of Substantial Performance of the Work.
- .3 include loss or damage caused by flood.
- .4 include loss or damage caused by earthquake.

6.2 Where such risks exist, the Contractor shall provide Boiler and Machinery/Equipment Breakdown Insurance insuring not less than the sum of the amount of the Contract Price and the full value of Products specified to be provided by Owner for incorporation into the Work. Such risk shall be deemed to exist when the Work includes any boiler, fired or unfired pressure vessel, refrigerating or air conditioning system, mechanical or electrical machine or apparatus used for the generation, transmission or utilization of mechanical or electrical power. The insurance coverage shall not less than the insurance provided by a comprehensive boiler and machinery policy. The policy shall have the same limits as specified for the course of construction policy and shall be written on a replacement cost basis and shall cover all boilers, pressure vessels and other objects insurable under a standard boiler and machinery policy. The named insureds on the insurance policy shall be the Contractor and the Owner. Other insureds shall include all subcontractors, consultants and subconsultants of every tier, whether named or unnamed in the policy, and all others having an insurable interest in the Work as other insureds. The policy shall be maintained continuously until date of Substantial Performance of the Work or until such objects have been installed, tested and accepted by the Owner, whichever is the latest.

**7. CONTRACTOR'S EQUIPMENT INSURANCE**

---

7.1 The Contractor shall provide insurance covering construction machinery and equipment owned, rented, or used by the Contractor for performance of the Work, in such forms and amounts as will enable the expeditious replacement or repair of damaged or destroyed equipment.

**8. OTHER INSURANCE**

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8.1 The Contractor shall provide, maintain and pay for any additional insurance required to be provided by law, or which he considers necessary to cover risks not otherwise covered by insurance specified in the Contract Documents.

**END OF SECTION**

**INSTRUCTIONS:**

- This certificate must be completed by the Contractor's insurance agent or broker and submitted to The Town of Drumheller **prior to commencement of any activities** by the Contractor on site. Refer to the Insurance Conditions in the Contract Documents for detailed description of insurance requirements, including required coverages.
- An Insurer's standard certificate of insurance is **not acceptable** in lieu of this Town of Drumheller form, unless modified to provide **all** information required by this form.
- It is understood that this certificate is issued as information only. It does not amend, extend or alter coverages afforded by the policies described herein.
- Submit the completed certificate to: **Town of Drumheller  
702 Premier Way  
Drumheller, AB  
T0J 0Y4**

**Identification of Insured**

Contractor's Name		
Contractor's Address		
City / Town	Province	Postal Code

**Identification of Contract**

Contract Name (location and description of the Work as it appears in the Contract Documents)	Project ID (from Contract Documents)
	Contract Number
	CPIN

**General Liability Insurance**

Insurer's Name														
Policy Number	Expiry Date <small>month (name of), date, year</small>	Limit of Liability (per occurrence)												
Coverages provided by this Policy (check applicable coverages) <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Owner's and Contractor's protective liability</td> <td><input type="checkbox"/> Blasting</td> </tr> <tr> <td><input type="checkbox"/> Blanket written contractual liability</td> <td><input type="checkbox"/> Piledriving or caisson work</td> </tr> <tr> <td><input type="checkbox"/> Personal injury liability</td> <td><input type="checkbox"/> Removal or weakening of support of property, building or land</td> </tr> <tr> <td><input type="checkbox"/> Non-owned automobile liability</td> <td><input type="checkbox"/> Elevator and hoist liability</td> </tr> <tr> <td><input type="checkbox"/> Broad form property damage endorsement</td> <td><input type="checkbox"/> Operation of attached machinery</td> </tr> <tr> <td><input type="checkbox"/> Sudden and accidental pollution liability</td> <td><input type="checkbox"/> Forest fire-fighting expenses</td> </tr> </table>			<input type="checkbox"/> Owner's and Contractor's protective liability	<input type="checkbox"/> Blasting	<input type="checkbox"/> Blanket written contractual liability	<input type="checkbox"/> Piledriving or caisson work	<input type="checkbox"/> Personal injury liability	<input type="checkbox"/> Removal or weakening of support of property, building or land	<input type="checkbox"/> Non-owned automobile liability	<input type="checkbox"/> Elevator and hoist liability	<input type="checkbox"/> Broad form property damage endorsement	<input type="checkbox"/> Operation of attached machinery	<input type="checkbox"/> Sudden and accidental pollution liability	<input type="checkbox"/> Forest fire-fighting expenses
<input type="checkbox"/> Owner's and Contractor's protective liability	<input type="checkbox"/> Blasting													
<input type="checkbox"/> Blanket written contractual liability	<input type="checkbox"/> Piledriving or caisson work													
<input type="checkbox"/> Personal injury liability	<input type="checkbox"/> Removal or weakening of support of property, building or land													
<input type="checkbox"/> Non-owned automobile liability	<input type="checkbox"/> Elevator and hoist liability													
<input type="checkbox"/> Broad form property damage endorsement	<input type="checkbox"/> Operation of attached machinery													
<input type="checkbox"/> Sudden and accidental pollution liability	<input type="checkbox"/> Forest fire-fighting expenses													

**Automobile Liability Insurance**

# Certificate of Liability Insurance

## Drumheller Resiliency and Flood Mitigation Office

Insurer's Name		
Policy Number	Expiry Date <small>month (name of), date, year</small>	Limit of Liability (per occurrence)

### Aircraft Liability Insurance (if applicable)

Insurer's Name		
Policy Number	Expiry Date <small>month (name of), date, year</small>	Limit of Liability (per occurrence)

### Watercraft Liability Insurance (if applicable)

Insurer's Name		
Policy Number	Expiry Date <small>month (name of), date, year</small>	Limit of Liability (per occurrence)

### Certification

<p>The undersigned hereby certifies that:</p> <ul style="list-style-type: none"> <li>The policies described herein, subject to their terms, conditions, and exclusions, have been issued to the named insured and are in force at this time.</li> <li>Coverages afforded under said policies will not be cancelled or materially changed to restrict coverage unless thirty (30) days advance written notice has been given to the Town of Drumheller at the address shown on page 1 of this form and each of the policies have been endorsed to this effect.</li> <li>The undersigned is an authorized representative of each of the insurance companies listed herein, and has full knowledge of the facts set forth herein and believes them to be true.</li> </ul>			
Name of Issuing Agency			
Address of Issuing Agency			
City / Town	Province	Postal Code	Telephone No.
Name of Authorized Representative (print or type)	Signature of Authorized Representative		Date of Issue

**INSTRUCTIONS:**

- This certificate must be completed by the Contractor's insurance agent or broker and submitted to the Town of Drumheller **prior to commencement of any activities** by the Contractor on site. Refer to the Insurance Conditions in the Contract Documents for detailed description of insurance requirements, including required coverages.
- An Insurer's standard certificate of insurance is **not acceptable** in lieu of this Town of Drumheller form, unless modified to provide **all** information required by this form.
- It is understood that this certificate is issued as information only. It does not amend, extend or alter coverages afforded by policies described herein.
- Submit the completed certificate to: **Town of Drumheller  
702 Premier Way  
Drumheller, AB  
T0J 0Y4**

**Identification of Insured**

Contractor's Name		
Contractor's Address		
City / Town	Province	Postal Code

**Identification of Contract**

Contract Name (location and description as it appears in the Contract Documents)	Project ID (from Contract Documents)
	Contract Number
	CPIN

**Course of Construction Insurance**

Insurer's Name		
Policy Number	Expiry Date <hr style="border: none; border-top: 1px solid black; margin: 0;"/> <small>month (name of), date, year</small>	Total Insured Value
Form of Policy (check applicable)		
<input type="checkbox"/> All Risks Builder's Risk Policy <input type="checkbox"/> Other (specify below)		
<input type="checkbox"/> All Risks Installation Floater		
Limits of Liability		
\$ _____ <small>At Place of Work</small>	\$ _____ <small>At any other location</small>	\$ _____ <small>In transit</small>
Deductible		
\$ _____ <small>At Place of Work</small>	\$ _____ <small>At any other location</small>	\$ _____ <small>In transit</small>
Coverages provided by this Policy (check applicable coverages)		
<input type="checkbox"/> All risks coverage <input type="checkbox"/> Primary Insurance, <b>not</b> requiring loss sharing with other insurers		
<input type="checkbox"/> Town of Drumheller included as a named insurable insured <input type="checkbox"/> Subcontractors, sub-subcontractors and others with an interest, included as additional insureds		

**Boiler Insurance**

Insurer's Name		
Policy Number	Expiry Date  _____ month (name of), date, year	Limit of Liability (per occurrence)

**Certification**

<p>The undersigned hereby certifies that:</p> <ul style="list-style-type: none"> <li>• The policies described herein, subject to their terms, conditions, and exclusions, have been issued to the above named insured and are in force at this time.</li> <li>• Coverages afforded under said policies will not be cancelled or materially changed to restrict coverage unless thirty (30) days advance written notice has been given to Town of Drumheller at the address shown on page 1 of this form and each of the policies has been endorsed to this effect.</li> <li>• The undersigned is an authorized representative of each of the insurance companies listed herein, and has full knowledge of the facts set forth herein and believes them to be true.</li> </ul>			
Name of Issuing Agency			
Address of Issuing Agency			
City / Town	Province	Postal Code	Telephone No.
Name of Authorized Representative (print or type)	Signature of Authorized Representative		Date of Issue

**1. FEDERAL GOODS AND SERVICES TAX**

- 1.1 Monies payable by the Owner to the Contractor shall be charged the federal Goods and Services Tax (GST).

**2. BASIS OF PAYMENT**

- 2.1 Payment for Lump Sum Work shall be based on the prices in the Contract and, when required by the Contract, the approved schedule of values for such work.
- 2.2 Payment for Unit Price Work shall be based on the Unit Prices in the Contract.
- 2.3 Payment for Cost Plus Work shall be based on the cost of such work, as specified herein, plus a fee in the amount of 10% of the cost of such work for the Contractor's overhead and profit except that no fee shall be applied to the cost of Construction Equipment when such cost is based on rates which already include the Contractor's overhead and profit.
- 2.4 The cost of Cost Plus Work shall be computed as the sum of the following cost elements as applicable to such work:

- .1 Cost of labour (other than labour costs included in other cost elements) comprised of payroll costs for employees in the direct employ of the Contractor. Such employees shall include the superintendent and foremen at the Site. Payroll costs shall include salary, fringe benefits and statutory charges paid by the Contractor. Fringe benefits shall include health care, vacations with pay, sick time allowance, and pension plan, life and disability insurance, dental and medication plan contributions. Statutory charges shall include contributions for Canada Pension Plan, Workers' Compensation, statutory holidays and Unemployment Insurance. Labour rates shall be consistent with rates actually paid for equivalent job classifications in the normal performance of Lump Sum Work or Unit Price Work or, if there are no such equivalencies, under a schedule of job classifications and labour rates agreed upon by the Owner and the Contractor, if possible before labour costs are incurred.

- .2 Cost of Products supplied and incorporated into Permanent Work, including cost of transportation and storage thereof and Supplier's site services required in connection therewith. Cash discounts shall accrue to the Contractor. Trade discounts, rebates and refunds and returns from sale of surplus Products shall accrue to the Owner.

- .3 Cost of Construction Equipment:

- .1 Cost of Construction Equipment shall be paid at the rates specified in the current edition of the Equipment Rental Rates Guide published by the Alberta Roadbuilders and Heavy Construction Association, hereinafter called the "Rates Guide", subject to the following:

- .1 Rates specified in the Rates Guide shall be deemed to include all overhead and profit, regardless of whether Construction Equipment is provided by the Contractor, Subcontractors or Sub-subcontractors.

- .2 Rates specified in the Rates Guide shall be deemed to include cost of owning, operating (including wages for equipment operators but not including travel and subsistence costs for equipment operators) loading, unloading, assembling, erecting, and dismantling.

- .2 When applicable rates are not included in the Rates Guide, costs shall be paid at the rates agreed upon by the Owner and the Contractor, if possible before such costs are incurred.

- .3 Cost of moving Construction Equipment to and from the Site shall not be payable, unless such cost is solely attributable to the Work and is approved as such by the Owner.

- .4 Except for Construction Equipment traveling under its own power, travel time for Construction Equipment shall not be payable. Unless otherwise approved by the Owner, Construction Equipment shall be moved by the most economical method.

- .4 Cost of Temporary Work, including cost of transportation and maintenance thereof, used and consumed in the performance of the Work and the cost less fair market value of such work used but not consumed which shall remain the property of the Contractor.

- .5 Cost of special services, including the cost of architects, engineers, specifiers, surveyors, testing laboratories and inspection agencies.

- .6 Supplemental costs, including:

- .1 travel and subsistence costs of the Contractor's employees (including equipment operators under clause 2.4.3.);
- .2 statutory charges, including fees, cost of permits and licences and custom duties;
- .3 cost of rights-of-way and other land related costs;
- .4 royalty payments and patent licence fees;
- .5 deposits lost for causes other than the Contractor's fault or negligence.

- .7 Subcontract and Sub-subcontract costs, including payments made by the Contractor to Subcontractors and by Subcontractors to Sub-subcontractors in accordance with the requirements of such contracts. Subcontractors' and Sub-subcontractors' costs and fees for overhead and profit for Cost Plus Work to be performed under such contracts shall be determined in the same manner as the Contractor's cost and fee.

- 2.5 With respect to Cost Plus Work:

- .1 Costs payable by the Owner shall be directly related to or shall have been necessarily and properly incurred in the performance of such work.

- .2 Overhead shall include the Contractor's costs related to the operation and maintenance of his head office and branch offices, administration at head office and branch offices, general management, legal, audit and accounting services, buying organization, corporate tax, financing and other bank charges, company



directors, salaries and other compensation of personnel stationed off-site, design of Construction Equipment and Temporary Work, planning and scheduling of work, expendable and unexpendable small tools, including maintenance thereof, and recruitment and training of site staff.

- .3 The Contractor shall obtain the Owner's prior approval to subcontract or enter into other agreements for Cost Plus Work.
- .4 The Owner may refuse to pay all or part of the cost of any Work item under any cost element, where the item in question was, in the Owner's opinion, unsuitable for the Work performed.

### **3. MEASUREMENT FOR PAYMENT**

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- 3.1 Unless otherwise specified in the Contract, the Owner shall measure the Work for the purpose of determining payment to the Contractor in accordance with the measurement provisions of the Contract.

### **4. PROGRESS PAYMENTS**

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- 4.1 Prior to Substantial Performance of the Work, the Owner shall make monthly payments to the Contractor.

- 4.2 Within 7 days after the end of each monthly payment period, the Contractor shall submit to the Owner:

- .1 completed Statutory Declaration Form 00630A, at and after the second monthly payment period,
- .2 any data requested by the Owner to assist the Owner to determine the amount due and payable to the Contractor, and
- .3 for Products stored by the Contractor on the Site for incorporation in Permanent Work but not incorporated in such Work, proof of purchase price and delivery to the Site, along with a statement of the quantity of such Products and the Schedule of Prices item to which the Products relate.

- 4.3 The Owner shall, within 42 days after the end of each monthly payment period and subject to having received within the time specified any required information referred to in clause 4.2, pay to the Contractor the amount which the Owner determines to be due and payable to the Contractor, up to the end of the monthly payment period in respect of:

- .1 the value of Work executed;
- .2 the value of Work executed pursuant to authorized Changes in the Work;
- .3 the value of Products stored by the Contractor on the Site for incorporation in Permanent Work but not incorporated in such Work;
- .4 adjustments due to changes in Regulatory Requirements or price fluctuation provisions of the Contract, if applicable;
- .5 any other amount determined by the Owner; and
- .6 subject to:
  - .1 any deductions under clause 11.;
  - .2 any withholdings under clause 12.; and

- .3 retention of the holdback amount calculated by applying the holdback percentage referred to in clause 5. to the amount payable to the Contractor under clause 4.3 after any deductions and withholdings.

- 4.4 For Unit Price Work, the Owner may, at his discretion, make partial payment based on partial completion of the scope of a single unit of an item of Work.

- 4.5 If, after receipt of a progress payment from the Owner, the Contractor disagrees with the amount of such payment, such amount shall nevertheless be considered to be correct unless the Contractor, within 7 days after such receipt, notifies the Owner of the respects in which such payment is claimed by him to be incorrect. On receipt of such notice, the Owner shall review the amount of the payment and either confirm or vary it. If the Owner varies the payment, such variance shall be added to the next progress payment.

- 4.6 Notwithstanding the terms of this clause or any other clause of the Contract no amount shall be paid by the Owner until the contract security and proof of insurance, if required under the Contract, have been provided by the Contractor.

### **5. HOLDBACK**

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- 5.1 The Owner shall hold back 10% from each progress payment referred to in clause 4, pursuant to the Builders Lien Act.

- 5.2 Up to 100% of retained holdback monies shall be payable by the Owner to the Contractor not less than 45 days after the date of Substantial Performance of the Work as certified by the Owner provided:

- .1 third party claims, received by the Owner pursuant to the Public Works Act, the Builders Lien Act or applicable or addressed and a course of action agreed to by the Owner and the Contractor, and
- .2 the Contractor has submitted to the Owner, within 7 days after the date of Substantial Performance, a letter of clearance from the Workers' Compensation Board and a completed Statutory Declaration Form 00630A.

- 5.3 The Owner shall, within 63 days after Substantial Performance and subject to having received within the time specified any required information referred to in clause 5.2, pay to the Contractor 100% of retained holdback monies, subject to any deductions under clause 11. and to any withholdings under clause 12., and subject further to withholding:

- .1 an amount equal to twice the Owner's estimate of the cost to the Owner of remedying any defects described in the certificate of Substantial Performance of the Work, and
- .2 an amount equal to the Owner's estimate of the cost to the Owner of completing any outstanding work described in the certificate of Substantial Performance of the Work.

- 5.4 If the Owner withholds a portion of the retained holdback pursuant to clause 5.3, the Owner shall, at such reasonable times and intervals as the Owner may

determine, pay to the Contractor the balance of the retained holdback, as and when the cause or causes for the withholding are removed.

- 5.5 When a certificate of Substantial Performance for part of the Work has been issued by the Owner, the provisions of clause 5.2 shall apply proportionately to such part of the Work.

#### **6. PAYMENT AFTER SUBSTANTIAL PERFORMANCE**

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- 6.1 After Substantial Performance of the Work, the Owner shall make periodic payments to the Contractor on the same basis and conditions as specified in clause 4, except that such payments:

- .1 shall be made at such reasonable times and intervals as the Owner may determine, and
- .2 shall not be subject to holdback.

- 6.2 When a certificate of Substantial Performance for part of the Work has been issued by the Owner, the provisions of this clause shall apply proportionately to such part of the Work.

#### **7. FINAL PAYMENT**

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- 7.1 The Owner shall prepare the final statement and make final payment to the Contractor.
- 7.2 Within 42 days after the date of Total Performance of the Work, the Contractor shall submit to the Owner:
- .1 any data requested by the Owner to assist the Owner to determine the final amount due and payable to the Contractor,
  - .2 a completed Statutory Declaration Form 00630A, and
  - .3 a letter of clearance from Workers' Compensation Board.
- 7.3 Subject to having received within the time specified any required information referred to in clause 7.2, the Owner shall, within 63 days after the date of Total Performance of the Work, prepare and deliver to the Contractor the final statement, stating the final amount which the Owner determines to be due and payable by the Owner to the Contractor.
- 7.4 The Owner shall, within 42 days after the final statement is issued to the Contractor, pay the Contractor the final amount.
- 7.5 If the final statement is considered by the Contractor to be incorrect, the Contractor shall, within 63 days of receipt thereof, submit to the Owner a notice of claim, including substantiation, notwithstanding the time provisions of clause 10. of the General Conditions
- 7.6 If the Owner does not receive a notice of claim pursuant to clause 7.5 within the time specified, the final statement shall be considered correct.
- 7.7 The final payment shall represent full and final settlement of all monies due to the Contractor pursuant to the Contract except with respect to unresolved claims, if any.

#### **8. OWNER'S LIABILITY**

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- 8.1 .1 After the final payment issued pursuant to clause 7.4 has been made, the Owner shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract, except as may be provided elsewhere in the Contract, unless the Contractor shall have made a claim in respect thereof prior to or within the time specified in clause 7.5.

#### **9. DELAY IN MAKING PAYMENT**

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- 9.1 In respect of progress payments, payment after Substantial Performance of the Work, payment of holdback, and final payment, the Owner shall pay the Contractor an amount that the Owner considers to be due to the Contractor, pursuant to the Contract, within the time specified.

#### **10. RIGHT OF SET-OFF**

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- 10.1 Without limiting any right of set-off, deduction or recovery given or implied by law or elsewhere in the Contract, the Owner may set off any amount payable to the Owner by the Contractor, or recoverable from the Contractor by the Owner, under the Contract or under any other current contract against any amount payable to the Contractor under this Contract.
- 10.2 For the purposes of these Payment Conditions, "other current contract" means a contract between the Owner and the Contractor under which the Contractor has an undischarged obligation to perform or supply work, labour, or material, or in respect of which the Owner has, since the date of execution of the contract agreement, exercised any right to take the work that is the subject of the contract out of the Contractor's hands.

#### **11. DEDUCTIONS FROM PAYMENTS**

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- 11.1 The Owner may deduct from any amount claimed by or payable to the Contractor:
- .1 an amount at least equal to the value, as determined by the Owner, of work not in accordance with Contract Documents,
  - .2 the amount of any unresolved third party claim submitted pursuant to the Public Works Act or applicable requirements of the Contract,
  - .3 the amount of any unpaid and overdue statutory account related to the Contract and of which the Owner has received notice and which is enforceable against the Owner,
  - .4 the amount of any overpayment made by the Owner to the Contractor, and
  - .5 any other amount recoverable by the Owner from the Contractor under the Contract.

#### **12. WITHHOLDING OF PAYMENT**

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- 12.1 The Owner may withhold all or part of any amount payable to the Contractor in order to protect the Owner or third parties from loss due to the Contractor's:

- .1 failure to make payments properly to Subcontractors or for labour, materials or equipment,
  - .2 failure to ensure that Subcontractors make payments properly to Sub-subcontractors or for labour, materials or equipment,
  - .3 inability to complete the Work within the Contract Time,
  - .4 inability to complete the Work for the unpaid balance of the Contract Price,
  - .5 persistent failure to perform the Work in accordance with the Contract Documents.
- 12.2 Owner may withhold all or part of any amount payable to Contractor due to Contractor's persistent failure to provide submittals in accordance with the Contract Documents.
- 12.3 When the causes for withholding payment pursuant to clauses 12.1 or 12.2 are removed to the Owner's satisfaction, the Owner shall pay the Contractor the amount previously due and payable with the next progress payment.

**13. TITLE TO AND ACCEPTANCE OF WORK**

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- 13.1 The Contractor warrants that title to work and Products covered by any payment made by the Owner to the Contractor will pass to the Owner, at the time of payment, free and clear of all claims, interests and encumbrances.
- 13.2 The Contractor further warrants that Products stored at the Site and for which payment has been received, shall not be removed from the Site and shall be kept secure and protected.
- 13.3 Payments made by the Owner shall not be construed as an acceptance that the Work, Products, or any part thereof is complete, is satisfactory or is in accordance with the Contract Documents.

**END OF SECTION**

**DRMFO TEMPLATE TO BE INSERTED**

**1. GENERAL**

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- 1.1 The Public Works Act (Alberta) applies to this Project. The Builders' Lien Act (Alberta) does not apply.
- 1.2 The Public Works Act allows any person who has not received proper payment, regardless of their level in the contracting chain, to make a claim directly to the Owner.
- 1.3 This Section specifies procedures for making a claim under the Public Works Act.
- 1.4 For the purpose of interpreting the "Notice of Claim" provisions under Section 14 of the Public works Act, this Contract shall be deemed to be a contract for work *other than* a highway or road as defined in section 1 of schedule 14 of the Government Organization Act. The 45-day claim period as set out in Section 14(3)(a) shall apply.

**2. POSTING OF CLAIMS INFORMATION**

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- 2.1 Contractor shall display, at the Site, on a bulletin board of adequate size, a copy of each of the following:
  - .1 This Specification Section.
  - .2 Notice of Public Works Act Claim Form (copy appended to this Section).
  - .3 Labour and Material Payment Bond, if provided under the Contract.
- 2.2 Protect display in plastic sleeves and maintain in legible condition for duration of Contract.
- 2.3 The Owner may, upon request, waive the requirement to post claims information where it is not practicable to display this information at the Site.

**3. CLAIMS PROCEDURE**

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- 3.1 Complete Notice of Public Works Act Claim form (copy appended to this Section) and submit form to address indicated on form within 45 Days after the last day on which labour, equipment, material or services giving rise to claim were provided.
- 3.2 Owner will acknowledge receipt of claim in writing.
- 3.3 The claimant shall, if requested by Owner, submit additional evidence in support of claim.

**4. EXTRACT FROM PUBLIC WORKS ACT**

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Notice of claim

**14(1) When**

(a) a person provides labour, equipment, material or services used or reasonably required for use in the performance of a contract with the Crown for the construction, alteration, demolition, repair or maintenance of a public work, and

(b) that person is not paid by the party who is legally obliged to pay that person, that person may send a notice of that person's claim to the Minister, or agent of the Crown that is responsible for the public work.

(2) (b) that person is not paid by the party who is legally obliged

to pay that person (3) The notice of claim, other than for a claim referred to in subsection (2), must

(a) be sent by registered mail not later than 45 days after the last day on which the labour, equipment, material or services were provided, and

(b) set out the nature and amount of the claim in a form satisfactory to the Crown.

**END OF SECTION**



**1. OWNER AND OWNER'S REPRESENTATIVE**

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- 1.1 Owner's Duties and Authority
- 1.2 Owner's Representative
- 1.3 Appointment of Assistants
- 1.4 Instructions in Writing
- 1.5 Owner Interpreter of Contract
- 1.6 Owner's Determinations
- 1.7 Owner's Review

**2. ASSIGNMENT, SUBCONTRACTING AND NOMINATION**

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- 2.1 Assignment
- 2.2 Subcontracting
- 2.3 Nominated Subcontractors and Suppliers

**3. DOCUMENTS**

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- 3.1 Property and Use of Contract Documents
- 3.2 Reporting of Conflicts, Errors and Discrepancies
- 3.3 Disruption of Progress
- 3.4 Additional Instructions
- 3.5 Forms

**4. GENERAL OBLIGATIONS**

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- 4.1 Contractor's Responsibilities
- 4.2 Contract Security
- 4.3 Site Operations and Methods of Construction
- 4.4 Differing Physical Conditions or Obstructions
- 4.5 Climatic and Weather Conditions
- 4.6 Contractor's Superintendence
- 4.7 Contractor's Employees
- 4.8 Owner May Object
- 4.9 Safety, Security and Protection of the Environment
- 4.10 Owner's Responsibilities for Safety
- 4.11 Care of Work
- 4.12 Responsibility to Rectify Loss or Damage
- 4.13 Hold Harmless Agreement
- 4.14 Regulatory Requirements
- 4.15 Artifacts and Fossils
- 4.16 Patent Rights

- 4.17 Royalties
- 4.18 Other Contractors
- 4.19 Permanent Work Designed by Contractor
- 4.20 Records and Audit
- 4.21 Record of Labour and Construction Equipment
- 4.22 Customs
- 4.23 Urgent Remedial Work

**5. QUALITY OF PRODUCTS AND WORK**

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- 5.1 Products and Workmanship
- 5.2 Cost of Samples
- 5.3 Cost of Tests Provided For
- 5.4 Cost of Tests Not Provided For
- 5.5 Inspection and Testing
- 5.6 Dates for Inspection and Testing
- 5.7 Rejection
- 5.8 Cost for Inspection and Testing
- 5.9 Independent Inspection
- 5.10 Examination of Work Before Covering Up
- 5.11 Uncovering and Making Openings
- 5.12 Removal of Improper Work or Products

**6. COMMENCEMENT, COMPLETION, CONTRACT TIME AND DELAYS**

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- 6.1 Commencement of Work
- 6.2 Possession of Site and Access to Site
- 6.3 Contract Time
- 6.4 Extension of Contract Time
- 6.5 Contractor to Provide Notification and Details
- 6.6 Interim Determination of Extension of Time
- 6.7 Rate of Progress
- 6.8 Substantial Performance of the Work
- 6.9 Substantial Performance of Part or Parts of Work
- 6.10 Total Performance of the Work
- 6.11 Warranty Performance of the Work
- 6.12 Acceleration
- 6.13 Damages for Delay
- 6.14 Damages for Delay of Specific Work

**7. WARRANTY**

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- 7.1 Warranty Period
- 7.2 Completion of Outstanding Work
- 7.3 Remedying Defects
- 7.4 Contractor's Failure to Carry Out Instructions
- 7.5 Contractor to Search

**8. CHANGES AND VARIATIONS**

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- 8.1 Changes in the Work
- 8.2 Instructions for Changes in the Work
- 8.3 Valuation of Changes in the Work
- 8.4 Impact of Changes in the Work
- 8.5 Quantity Variations

**9. CHANGES IN COST AND REGULATORY REQUIREMENTS**

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- 9.1 Increase or Decrease in Cost
- 9.2 Changes in Regulatory Requirements

**10. CLAIMS REVIEW PROCESS AND DISPUTE RESOLUTION PROCEDURE**

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- 10.1 General
- 10.2 Claims Review Process for Contractor Claims
- 10.3 Dispute Resolution Procedure
- 10.4 Obligations to and Claims of Third Parties

**11. RELEASE FROM PERFORMANCE**

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- 11.1 Frustration
- 11.2 Removal of Construction Equipment on Termination
- 11.3 Payment if Contract Terminated

**12. SUSPENSION AND TERMINATION BY OWNER**

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- 12.1 Suspension of Work
- 12.2 Owner's Determination Following Suspension
- 12.3 Suspension Lasting More Than 91 Days
- 12.4 Termination of Contract

**13. DEFAULT OF CONTRACTOR**

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- 13.1 Default
- 13.2 Valuation at Date of Termination
- 13.3 Payment After Termination
- 13.4 Assignment of Benefit of Agreement

**14. DEFAULT OF OWNER**

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- 14.1 Failure of Owner to Pay
- 14.2 Removal of Construction Equipment
- 14.3 Payment on Termination
- 14.4 Contractor May Suspend Work
- 14.5 Resumption of Work

**15. FORCE MAJEURE**

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- 15.1 Force Majeure Event



## **1. OWNER AND OWNER'S REPRESENTATIVE**

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- 1.1 **Owner's Duties and Authority:** The Owner shall carry out the duties and exercise the authority specified in the Contract.
- 1.2 **Owner's Representative:** The Owner shall appoint a representative who shall, unless the Contractor is expressly advised otherwise by the Owner or a duly authorized departmental officer, have full authority to act on behalf of and bind the Owner under the Contract.
- 1.3 **Appointment of Assistants**
- .1 The Owner's Representative may appoint any number of persons to assist him in carrying out his duties. He shall notify the Contractor of the names, duties and scope of authority of such persons.
- .2 The failure of any assistants appointed pursuant to clause 1.3.1 to disapprove any work shall not prejudice the authority of the Owner to disapprove such work and to give instructions for the rectification thereof.
- 1.4 **Instructions in Writing:** The Contractor shall take instructions only from the Owner or any assistants appointed pursuant to clause 1.3. Instructions given by the Owner shall be in writing, provided that if the Owner considers it necessary to give any instruction orally, the Contractor shall comply with such instruction. Confirmation in writing of such oral instruction given by the Owner, whether before or after the carrying out of the instruction, shall be deemed to be an instruction within the meaning of this clause. Provided that if the Contractor, within 7 days, confirms in writing to the Owner any oral instruction of the Owner and such confirmation is not contradicted in writing within 7 days by the Owner, it shall be deemed to be an instruction of the Owner.
- 1.5 **Owner Interpreter of Contract:** The Owner in the first instance shall be the interpreter of the Contract and the judge of the Contractor's performance.
- 1.6 **Owner's Determinations:** When the Owner is required to exercise his discretion by giving his decision, opinion or consent, or expressing his satisfaction or approval, or determining value, or otherwise taking action which may affect the rights and obligations of the Contractor he shall exercise such discretion within the terms of the Contract after due consultation with the Contractor and shall promptly notify the Contractor of such decision, opinion, consent, approval or determination.
- 1.7 **Owner's Review:** Any review, comment, consent, acceptance or approval, or lack thereof, by the Owner, shall not relieve the Contractor of any of its responsibilities or liabilities under the Contract.

## **2. ASSIGNMENT, SUBCONTRACTING AND NOMINATION**

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### **2.1 Assignment**

- .1 The Contractor shall not assign the Contract, either in whole or in part, without the previous written consent of the Owner, which consent, notwithstanding other provisions of the Contract, shall be at the Owner's sole discretion.
- .2 The Owner shall not be bound by any assignment by the Contractor of any monies payable or to become payable to the Contractor under the Contract, without the written consent of the Owner, which consent:
- .1 will not be given for a general assignment of book debts, but
- .2 may, at the Owner's sole discretion, be given for a specific assignment of all or part of monies payable to the Contractor under the Contract, subject however, in all cases, to the provisions of the Financial Administration Act (Alberta).

### **2.2 Subcontracting**

- .1 The Contractor:
- .1 shall not sublet the Contract as a whole,
- .2 shall not subcontract any part of the Work without the Owner's prior consent, which shall not be unreasonably withheld,
- .3 shall provide such details of any Subcontractor he wishes to engage as the Owner may require,
- .4 shall contract with those Subcontractors proposed by him and accepted by the Owner and such Subcontractors shall not be changed without the Owner's prior consent.
- .2 The Owner may, for reasonable cause, object to the use of a proposed Subcontractor and require the Contractor to contract with another Subcontractor.
- .3 If the Owner requires a change from a proposed Subcontractor, the Contract Price shall be adjusted by any difference in cost and markup occasioned by such required change, except where such change is required due to the Contractor's default or negligence, in which case there shall be no change in the Contract Price.
- .4 The Owner may, upon reasonable request and at his discretion, provide to a Subcontractor information as to the percentage or quantity of the Subcontractor's work for which payment has been approved.
- .5 Nothing contained in the Contract shall create a contractual relationship between a Subcontractor and the Owner and subcontracting part of the Work shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents, servants or workers as fully as if they were his own.
- .6 The Contractor shall enter into contracts or written agreements with his Subcontractors to require them to perform their work in accordance with the Contract, and the Contractor shall incorporate the terms and conditions of the Contract Documents, to the extent that they apply, into all subcontracts.

### **2.3 Nominated Subcontractors and Suppliers**

- .1 A nominated Subcontractor or nominated Supplier means a person, firm or corporation with whom the Contract requires the Contractor to enter into a contract for the performance of a subcontract or the supply of things related to the Work.
- .2 Nothing contained in the Contract shall create a contractual relationship between the Owner and a nominated Subcontractor or nominated Supplier and such nomination shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any nominated Subcontractor or nominated Supplier, his agents, servants or workers as fully as if they were his own.

### **3. DOCUMENTS**

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- 3.1 **Property and Use of Contract Documents:** The Contract Documents are the sole property of the Owner and unless it is necessary for the purposes of the Contract, the Contract Documents shall not, without the consent of the Owner, be used by or communicated to a third party by the Contractor.
- 3.2 **Reporting of Conflicts, Errors and Discrepancies**
  - .1 If the Contractor finds a conflict, error or discrepancy in the Contract Documents, the Contractor shall so report to the Owner in writing at once and, before proceeding or continuing with the Work affected thereby, shall obtain a written interpretation or clarification from the Owner; however, the Contractor shall not be liable to the Owner for failure to report any conflict, error or discrepancy in the Contract Documents unless the Contractor had actual knowledge thereof or should reasonably have known thereof.
  - .2 The Contractor shall obtain from the Owner any dimensions required but not indicated in figures in the Contract Documents nor calculable from figures in the Contract Documents. Scaling of Drawings, for any purpose, shall be at the Contractor's risk.
- 3.3 **Disruption of Progress**
  - .1 The Contractor shall notify the Owner when planning or execution of the Work is likely to be delayed or disrupted unless any further document or instruction required of the Owner under the Contract is issued by the Owner within a reasonable time. The notice shall include details of the document or instruction required and of why and by when it is required and of any delay or disruption likely to be suffered if it is late.
  - .2 If, by reason of any failure or inability of the Owner to issue, within a reasonable time, any document or instruction for which notice has been given by the Contractor in accordance with clause 3.3.1, the Contractor suffers delay or incurs costs then the Owner shall determine:
    - .1 any extension of time to which the Contractor is entitled under clause 6.4, and
    - .2 the amount of such costs, which shall be added to the Contract Price.
  - .3 If the failure or inability of the Owner to issue any documents or instruction is caused in whole or in

part by the failure of the Contractor to submit documents which he is required to submit under the Contract, the Owner shall take such failure by the Contractor into account when making his determination pursuant to clause 3.3.2.

- 3.4 **Additional Instructions:** The Owner shall have authority to issue to the Contractor, from time to time, such Additional Instructions as may be necessary for the proper performance of the Work. The Contractor shall carry out and be bound by such Additional Instructions.
- 3.5 **Forms:** Forms to be used pursuant to the Contract or as otherwise may be required for the administration of the Contract shall be as prescribed or approved by the Owner.

### **4. GENERAL OBLIGATIONS**

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- 4.1 **Contractor's Responsibilities:** The Contractor shall, with due care and diligence, design, to the extent provided for by the Contract, execute and complete the Work and remedy any defects therein in accordance with the provisions of the Contract. This shall include the provision of superintendence, labour, Products, Construction Equipment, Temporary Work and all other things, whether of a temporary or permanent nature, required in and for such design, execution, completion and remedying of any defects. The Contractor shall comply with and adhere strictly to the Owner's instructions on any matter, whether mentioned in the Contract or not, concerning the Work.
- 4.2 **Contract Security**
  - .1 The Contractor shall, if required by the Bid Documents, provide either or both contract performance security or security for payment of claims for labour and material.
  - .2 Surety bonds shall be issued by a duly incorporated surety company authorized to transact business of suretyship in the Province of Alberta.
  - .3 The Owner may, for reasonable cause, object to use of the surety company proposed by the Contractor, and may require the Contractor to provide a surety bond issued by another surety company acceptable to the Owner, with no change in Contract Price.
- 4.3 **Site Operations and Methods of Construction**
  - .1 The Contractor shall be fully responsible for the adequacy, stability and safety of all Site operations and methods of construction.
  - .2 The Contractor shall submit at such times and in such detail as the Owner may require such information pertaining to the methods of construction (including Temporary Work and the use of Construction Equipment) which the Contractor proposes to use and such calculations of stresses, strains and deflections that will arise, in the Permanent Work or any part thereof, from the use of such methods during execution of the Work.
  - .3 The Owner shall, on request from the Contractor, provide to the Contractor such design criteria relevant to the Permanent Work or any Temporary Work designed by the Owner as may be necessary to enable the Contractor to comply with clause 4.3.2.

- .4 For the purposes of this clause, "method of construction" means a method, means, technique, sequence or procedure of construction.
- 4.4 Differing Physical Conditions or Obstructions**
- .1 If, during the execution of the Work, the Contractor encounters physical obstructions or physical conditions, including sub-surface obstructions or conditions, other than weather conditions or conditions due to weather conditions, on the Site, which, in his opinion, differ substantially from those indicated in the Contract and which were not reasonably foreseeable, the Contractor shall as soon as possible give notice thereof to the Owner. On receipt of such notice, the Owner shall, if in his opinion such obstructions or conditions differ substantially from those indicated in the Contract Documents and could not have been reasonably foreseen, determine:
- .1 any extension of time to which the Contractor is entitled under clause 6.4, and
- .2 the amount of any costs, valued in accordance with clause 8.3, which may have been incurred by the Contractor by reason of such obstructions or conditions having been encountered, which shall be added to the Contract Price.
- .2 A determination by the Owner pursuant to clause 4.4.1 shall take account of:
- .1 the time of the Contractor's notice to the Owner of a differing physical condition or obstruction,
- .2 any instruction which the Owner may have issued to the Contractor in connection therewith, and
- .3 any proper and reasonable measures acceptable to the Owner which the Contractor may have taken in the absence of specific instructions from the Owner.
- 4.5 Climatic and Weather Conditions:** The relevant climatological records and related information published by the Canadian Climate Centre of Environment Canada, for one or more locations in the vicinity of the Site, shall be used as a basis for any evaluations and determinations concerning climate and weather.
- 4.6 Contractor's Superintendence**
- .1 The Contractor shall provide all necessary superintendence during the execution of the Work and as long thereafter as the Owner may consider necessary for the proper fulfilling of the Contractor's obligations. The Contractor, or a competent and authorized representative approved of by the Owner, which approval may at any time be withdrawn, shall give his whole time to the superintendence of the Work. Such authorized representative shall receive, on behalf of the Contractor, instructions from the Owner.
- .2 If approval of the Contractor's representative is withdrawn by the Owner, the Contractor shall, as soon as is practicable, after receiving notice of such withdrawal, remove the representative from the Work and shall not employ him again on the Work in any capacity and shall replace him by another representative approved by the Owner.
- 4.7 Contractor's Employees**
- .1 The Contractor shall provide on the Site in connection with the execution and completion of the Work and the remedying of any defects therein:
- .1 technical assistants who are skilled and experienced in their respective trades and such foremen and others as are competent to give proper superintendence of the Work, and
- .2 labour as is necessary for the proper and timely fulfilling of the Contractor's obligations.
- 4.8 Owner May Object:** The Owner may object to and require the Contractor to remove forthwith from the Site any person who, in the opinion of the Owner, misconducts himself, or is incompetent or negligent in the proper performance of his duties, or whose presence is otherwise considered by the Owner to be undesirable, and such person shall not be allowed on the Site without the consent of the Owner.
- 4.9 Safety, Security and Protection of the Environment**
- .1 The Contractor shall, throughout the execution of the Work and the remedying of any defects therein:
- .1 have full regard for the health and safety of all persons upon the Site and keep the Site and the Work, to the extent that they are under his control, in an orderly state appropriate to the avoidance of danger to such persons, and
- .2 provide and maintain at his own cost all temporary facilities and controls when and where necessary or required by the Owner or by any duly constituted authority, for the protection of the Work or for the safety and convenience of the public or others, and
- .3 take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or any other causes arising as a consequence of his methods of operation.
- .2 The Contractor shall appoint a person at the Site who shall manage an accident prevention program. This person shall be the Contractor's superintendent unless another person is appointed and approved by the Owner.
- 4.10 Owner's Responsibilities for Safety**
- .1 If under clause 4.18 the Owner carries out work on the Site with his own workers he shall, in respect of such work and subject to clause 4.9:
- .1 have full regard to the safety of all persons upon the Site, and
- .2 keep the Site in an orderly state appropriate to the avoidance of danger to such persons.
- .2 If under clause 4.18 the Owner contracts with Other Contractors on the Site he shall require them

to have the same regard for safety and avoidance of danger.

#### 4.11 Care of Work

.1 The Contractor shall take full responsibility for the care of the Work from the date of commencement of Work at the Site until the date of issue of the certificate of Substantial Performance of the Work, when the responsibility for such care shall pass to the Owner, provided that:

- .1 except where otherwise specified in the Contract, if the Owner issues a certificate of Substantial Performance for part of the Permanent Work the Contractor shall cease to be liable for the care of that part from the date of issue of such certificate, when the responsibility for the care of that part shall pass to the Owner, and
- .2 the Contractor shall take full responsibility for the care of any outstanding Work which he undertakes to finish during the warranty period until such outstanding Work has been completed.

4.12 **Responsibility to Rectify Loss or Damage:** If there is any loss or damage to the Work, or any part thereof, or to Products for incorporation therein, during the period for which the Contractor is responsible for the care thereof, from any cause whatsoever, the Contractor shall, at his own cost, rectify such loss or damage so that the Work conforms with the provisions of the Contract to the satisfaction of the Owner. The Contractor shall also be liable for any loss or damage to the Work occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under the warranty provisions of the Contract.

4.13 **Hold Harmless Agreement:** The Contractor shall hold harmless the Owner from any and all third party claims, demands, or actions for which the Contractor is legally responsible, including those arising out of negligence or willful acts by the Contractor or the Contractor's employees or agents. This hold harmless shall survive the Contract.

#### 4.14 Regulatory Requirements

.1 The Contractor shall conform in all respects, including by the giving of all notices and the paying of all fees, with the provisions of:

- .1 any Regulatory Requirements, and
- .2 the rules and regulations of all public bodies and companies whose property or rights are affected or may be affected in any way by the Work,

and the Contractor shall keep the Owner indemnified against all penalties and liability of every kind for breach of any such provisions.

.2 The Owner shall be responsible for obtaining any planning, zoning or other similar permission required for the Project to proceed.

.3 Without limiting the Contractor's obligations under clause 4.14.1, the Contractor shall:

- .1 comply with all requirements of and pay all fees in connection with the Workers' Compensation Act (Alberta),
- .2 comply with the Occupational Health and Safety Act (Alberta) and all safety requirements as contained in the regulations thereto,
- .3 ensure that wages, hours of work and other conditions of employment of all persons employed by the Contractor in the performance of any work required by the Contract are in compliance with the requirements of the Employment Standards Code (Alberta), the Labour Relations Code (Alberta) and any other applicable law, rule, regulation or order, and
- .4 pay all fees and charges levied by a municipal authority in respect of applicable permits and licences.

#### 4.15 Artifacts and Fossils

.1 Coins, fossils, artifacts, structures and other remains or things of geological or archaeological interest discovered on the Site shall, as between the Owner and the Contractor, be deemed to be the property of the Owner. The Contractor shall take reasonable precautions to prevent his workers or any other persons from removing or damaging any such clause or thing and shall, immediately upon discovery thereof and before removal, inform the Owner of such discovery and carry out the Owner's instructions for dealing with same. If, by reason of such instructions, the Contractor suffers delay or incurs costs then the Owner shall determine:

- .1 any extension of time to which the Contractor is entitled under clause 6.4, and
- .2 the amount of such costs, which shall be added to the Contract Price.

4.16 **Patent Rights:** The Contractor shall indemnify the Owner from and against all claims and proceedings for or on account of infringement of any patent rights, design trademark or name or other protected rights in respect of any Product, Construction Equipment, Temporary Work or other thing used for or in connection with or for incorporation in the Work and from and against all damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, except where such infringement results from compliance with the design or specification provided by the Owner.

#### 4.17 Royalties

- .1 Except as otherwise provided in the Contract, the Contractor shall be liable for all tonnage and other royalties, rent and other payments or compensation, if any, for obtaining stone, sand, gravel, clay or other materials required for the Work.
- .2 The Contractor shall be liable for all payments or other compensation, if any, levied in relation to the dumping of all or part of any waste materials.

#### 4.18 Other Contractors

- .1 The Contractor shall, in accordance with the requirements of the Owner, afford all reasonable opportunities for carrying out their work to:
  - .1 any Other Contractors of the Owner and their workers,
  - .2 the workers of the Owner, and
  - .3 the workers of any duly constituted authorities who may be employed in the execution on or near the Site of any work not included in the Contract or of any contract which the Owner may enter into in connection with or ancillary to the Work.
- .2 Pursuant to clause 4.18.1, and except as may be provided in the Contract, the Contractor shall, on the request of the Owner:
  - .1 make available to any person referred to in clause 4.18.1, any roads or ways for the maintenance of which the Contractor is responsible, or
  - .2 permit the use, by any such persons, of Temporary Work or Construction Equipment on the Site, or
  - .3 provide any other service for any such person, the Owner shall determine an addition to the Contract Price in accordance with clause 8.3.

#### 4.19 Permanent Work Designed by the Contractor

- .1 Where the Contract provides that part of the Permanent Work shall be designed by the Contractor, he shall submit to the Owner, for review:
  - .1 such drawings, specifications, calculations and other information as is necessary for the Owner's review, and
  - .2 operation and maintenance manuals, as applicable together with drawings of the Permanent Work as completed, in sufficient detail to enable the Owner to operate, maintain, dismantle, reassemble and adjust the Permanent Work incorporating that design, and such design and any alterations thereto shall be performed by a qualified design professional licensed to practice in Alberta.
- .2 The Contractor shall not commence any work to which the information referred to in clause 4.19.1 relates unless such information has been reviewed by the Owner, and the Contractor shall not thereafter alter such design without the Owner's review.

#### 4.20 Records and Audit

- .1 With respect to Cost Plus Work, the Contractor shall:
  - .1 keep accurate records of estimated and actual costs, payments made and time spent;
  - .2 keep record copies of bids, quotations, contracts, correspondence, invoices, receipts and vouchers related thereto;
  - .3 make such records available for inspection and audit by the Owner for a period of at least 2 years after the date of Total Performance of the Work;

- .4 provide the Owner with copies and extracts therefrom when requested by the Owner; and
  - .5 afford facilities for audit and inspection by the Owner at mutually agreeable times and places.
- .2 The Contractor shall cause Subcontractors and other persons directly or indirectly controlled by or affiliated with the Contractor and persons directly or indirectly having control of the Contractor to comply with clause 4.20.1 as if they were the Contractor.

#### 4.21 Record of Labour and Construction Equipment:

The Contractor shall, if required by the Owner, deliver to the Owner a record in detail, in such form and at such intervals as the Owner may prescribe, showing the staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such information respecting Construction Equipment as the Owner may require.

#### 4.22 Customs

- .1 With respect to the importation and re-export of Construction Equipment, Temporary Work, Products and other things required for the Work, the Contractor shall:
  - .1 be liable for all applicable customs, import duties, taxes and brokerage fees, and
  - .2 be responsible for obtaining clearance through Customs. If requested by the Contractor, the Owner may assist in obtaining such clearance.

#### 4.23 Urgent Remedial Work

- .1 If, due to any accident, or failure, or other event occurring to, in, or in connection with the Work, or any part thereof, either during the execution of the Work, or during the warranty period, any remedial or other work is, in the opinion of the Owner, urgently necessary for the safety of the Work, persons or property and the Contractor is unable or unwilling at once to do such work, the Owner may employ other persons or contract with other firms or corporations to carry out such work as the Owner may consider necessary.
- .2 If the work or repair done by the Owner pursuant to clause 4.23.1 is work which, in the opinion of the Owner, the Contractor was liable to do at his own cost under the Contract, then all costs consequent thereon or incidental thereto shall be determined by the Owner and shall be recoverable from the Contractor by the Owner.

### 5. QUALITY OF PRODUCTS AND WORK

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#### 5.1 Products and Workmanship

- .1 Products and workmanship shall be:
  - .1 of the respective kinds described in the Contract, and
  - .2 subjected from time to time to such tests as the Owner may require at the place of manufacture, fabrication or preparation, or on the Site or at such other place or places as may be specified in the Contract, or at all or any of such places.
- .2 The Contractor shall:

- .1 at his cost provide all things necessary for examining, measuring, and testing Products including labour, electricity, fuels, stores, apparatus and instruments, and
  - .2 supply samples of materials, before incorporation in the Work, for testing as may be selected and required by the Owner.
- 5.2 **Cost of Samples:** All samples shall be supplied by the Contractor at his own cost if the supply thereof is provided for in the Contract.
- 5.3 **Cost of Tests Provided For**
- .1 The cost of making any test shall be borne by the Contractor if such test is:
    - .1 specified in the Contract to be performed by the Contractor, or
    - .2 in cases of a test under load or of a test to ascertain whether the design of any finished or partially finished work is appropriate for the purposes which it was intended to fulfill, specified in the Contract in sufficient detail to enable the Contractor to price or allow for the same in his Bid.
- 5.4 **Cost of Tests Not Provided For**
- .1 .If the Owner requires any test which is not provided for in the Contract and such test shows the Products or workmanship not to be in accordance with the Contract, then the cost of such test shall be borne by the Contractor, but in any other case clause 5.4.2 shall apply.
  - .2 Where, pursuant to clause 5.4.1, this clause applies, the Owner shall determine:
    - .1 any extension of time to which the Contractor is entitled under clause 6.4, and
    - .2 the amount of any costs incurred by the Contractor, which shall be added to the Contract Price.
- 5.5 **Inspection and Testing**
- .1 The Owner shall at reasonable times have access to the Site and to all workshops and places where Products are being manufactured, fabricated or prepared for the Work and the Contractor shall afford every facility for, and every assistance in, obtaining the right to such access.
  - .2 The Owner shall be entitled, during manufacture, fabrication or preparation to inspect and test the Products to be supplied under the Contract. If Products are being manufactured, fabricated or prepared in workshops or places other than those of the Contractor, the Contractor shall obtain permission for the Owner to carry out such inspection and testing in those workshops or places. Such inspection or testing shall not release the Contractor from any obligation under the Contract.
- 5.6 **Dates For Inspection and Testing:** The Contractor Shall agree with the Minster on the time and place for the inspection or testing of any Products as provided in the Contract. The Owner shall give the Contractor not less than 48 hours notice of his intention to carry out the inspection or to attend the tests. If the Owner does not attend on the date agreed, the Contractor may, unless otherwise instructed by the Owner, proceed with the tests. The Contractor shall forthwith forward to the Owner certified copies of the test results.
- 5.7 **Rejection:** If, at the time and place agreed in accordance with clause 5.6, Products are not ready for inspection or testing or if, as a result of the inspection or testing referred to in clause 5.5, the Owner determines that the Products are defective or otherwise not in accordance with the Contract, he may reject the Products and shall notify the Contractor thereof immediately. The notice shall state the Owner's objections with reasons. The Contractor shall then promptly make good the defect or ensure that rejected Products comply with the Contract. If the Owner so requests, inspection and testing of rejected Products shall be made or repeated under the same terms and conditions.
- 5.8 **Cost for Inspection and Testing:** All costs incurred by the Owner because of rescheduling, or undue delay of inspection and testing, and for which the Contractor is responsible, shall be determined by the Owner and shall be recoverable from the Contractor by the Owner.
- 5.9 **Independent Inspection:** Inspection and testing of Products to be carried out by the Owner may be delegated to an independent agency. Any such delegation shall be effected in accordance with clause 1.3 and for this purpose such independent agency shall be considered as an assistant of the Owner.
- 5.10 **Examination of Work Before Covering Up:** The Contractor shall afford full opportunity for the Owner to examine and measure any part of the Work which is about to be covered up or put out of view and to examine exposed or excavated surfaces before any part of the Work is placed thereon. The Contractor shall give notice to the Owner whenever any such part of the Work or exposed or excavated surface is or are ready or about to be ready for examination and the Owner shall, without unreasonable delay, unless he considers it unnecessary and advises the Contractor accordingly, attend for the purpose of examining and measuring such part of the Work or of examining such surfaces.
- 5.11 **Uncovering and making Openings:** The Contractor shall uncover any part of the Work or make openings in or through the same as the Owner may from time to time instruct and shall reinstate and make good such part. If any such part has been covered up or put out of view after compliance with the requirement of clause 5.9 and is found to be executed in accordance with the Contract, the Owner shall determine the amount of the Contractor's costs in respect of such uncovering, making openings in or through, reinstating and making good, which shall be added to the Contract Price. In any other case all costs shall be borne by the Contractor.
- 5.12 **Removal of Improper Work or Products**
- .1 The Owner shall have authority to issue instructions for:
    - .1 the removal from the Site, within such time or times as may be specified in the instruction, of any Products which, in the opinion of the

- Owner, are not in accordance with the Contract,
  - .2 the substitution of proper and suitable Products, and
  - .3 the removal and proper re-execution, notwithstanding any previous test thereof or progress payment therefor, of any work which is not in accordance with the Contract.
- .2 In case of default by the Contractor in carrying out instructions pursuant to clause 5.12.1 within the time specified therein or, if none, within a reasonable time, the Owner may employ other persons or contract with other firms or corporations to carry out the same, and all costs consequent thereon or incidental thereto shall be determined by the Owner and shall be recoverable from the Contractor by the Owner.

#### **6. COMMENCEMENT, COMPLETION, CONTRACT TIME AND DELAYS**

**6.1 Commencement of Work:** The Contractor shall commence the Work as soon as is reasonably possible in accordance with the instructions contained in the Letter of Acceptance and other provisions of the Contract. Thereafter, the Contractor shall proceed with the Work without delay.

#### **6.2 Possession of and Access to Site**

.1 If the Contractor suffers delay or incurs costs from failure of the Owner to give possession of the Site or part thereof in accordance with the provisions of the Contract, the Owner shall determine:

- .1 any extension of time to which the Contractor is entitled under clause 6.4, and
- .2 the amount of such costs, which shall be added to the Contract Price.

.2 The Contractor shall bear all costs and charges for special or temporary rights-of-way required by him in connection with the Work. The Contractor shall also provide at his own cost any additional facilities outside the Site required by him for the purposes of the Work.

#### **6.3 Contract Time**

- .1 The Contractor shall achieve Substantial Performance of the Work as a whole within the Contract Time.
- .2 When the Contractor is required to achieve Substantial Performance of part or parts of the Work prior to achieving Substantial Performance of the Work as a whole, the Contractor shall achieve Substantial Performance of such part or parts of the Work within the time or times specified and such time or times shall be considered to be the Contract Time or Times for such part or parts.

#### **6.4 Extension of Contract Time**

- .1 In the event of:
  - .1 a change in the Work made under clause 8.1, or
  - .2 any cause of delay referred to in the Contract, or

- .3 abnormally adverse weather conditions, abnormal weather being defined as temperature, precipitation, humidity or wind that is outside of plus or minus one standard deviation from the mean, for the time period in question, determined pursuant to clause 4.5, or
- .4 any delay, impediment or prevention by the Owner, or
- .5 other special circumstances which may occur, other than through a default of or breach of Contract by the Contractor or for which he is responsible,

being such as to affect an activity on the critical path of the Contractor's schedule, the Owner shall determine the extension of the Contract Time for the whole or part of the Work, to which the Contractor may be entitled.

#### **6.5 Contractor to Provide Notification and Details**

.1 The Owner shall not be bound to make any determination pursuant to clause 6.4 unless the Contractor has:

- .1 within 7 days after such event has first arisen notified the Owner, and
- .2 within 14 days, or such other reasonable time as may be agreed by the Owner after such notification, submitted to the Owner details of any extension of time to which he may consider himself entitled in order that such submission may be investigated at the time.

**6.6 Interim Determination of Extension of Time:** Where an event has a continuing effect such that it is not practicable for the Contractor to submit details within the period of 14 days referred to in clause 6.5.1.2, he may claim for an extension of time provided that he has submitted to the Owner interim details at intervals of not more than 14 days and final details within 14 days of the end of the effects resulting from the event. On receipt of such interim details, the Owner may make an interim determination of extension of time and, on receipt of the final details, the Owner shall review all the circumstances and may determine an overall extension of time in regard to the event. No final review shall result in a decrease of any extension of time already determined by the Owner. The Owner may determine an extension of the Contract Time notwithstanding that the Contract Time may have passed without being extended.

**6.7 Rate of Progress:** If for any reason, which does not entitle the Contractor to an extension of time, the rate of progress of the Work or any part is at any time, in the opinion of the Owner, too slow to comply with the Contract Time, or Milestone Dates, the Owner may notify the Contractor who shall immediately take such steps as are necessary, subject to the consent of the Owner, to expedite progress so as to comply with the Contract Time or Milestone Dates. The Contractor shall not be entitled to any additional payment for taking such steps. If any steps, taken by the Contractor in meeting his obligations under this clause, involve the Owner in additional costs, such costs shall be determined by the Owner and shall be recoverable from the Contractor by the Owner.

#### **6.8 Substantial Performance of the Work**

- .1 When the whole of the Work has been substantially performed and any pre-requisites to Substantial Performance of the Work prescribed by the Contract have been met, the Contractor may so notify the Owner, accompanied by a written undertaking to finish without delay any outstanding work during the warranty period. Such notice and undertaking shall be deemed to be a request by the Contractor for the Owner to issue a certificate of Substantial Performance of the Work.
- .2 The Owner shall, within 21 days after the date of delivery of the notice referred to in clause 6.8.1, either issue to the Contractor, a certificate, stating the date on which, in his opinion, the Work was substantially performed in accordance with the Contract, or give instructions in writing to the Contractor specifying all the work which, in the Owner's opinion, is required to be done by the Contractor before the issue of such certificate. The Owner shall also notify the Contractor of any defects in the Work affecting substantial performance that may appear after such instructions and before completion of the Work specified therein. The Contractor shall be entitled to receive such certificate within 21 days after completion, to the satisfaction of the Owner, of the Work so specified and remedying all defects so notified. The Owner may specify the date for Total Performance of the Work in such certificate.

#### 6.9 Substantial Performance of Part or Parts of Work

- .1 In accordance with the procedure set out in clause 6.8, the Contractor may request and the Owner may issue a certificate of Substantial Performance in respect of any substantial part of the Permanent Work which has been substantially completed and which has been or will be occupied or used by the Owner or an Other Contractor prior to Substantial Performance of the Work as a whole, whether or not such prior occupation or use is provided for in the Contract.

#### 6.10 Total Performance of the Work

- .1 When the whole of the Work has been totally performed and any pre-requisites to Total Performance of the Work prescribed by the Contract have been met, the Contractor may so notify the Owner. Such notice shall be deemed to be a request by the Contractor for the Owner to issue a certificate of Total Performance of the Work.
- .2 The Owner shall, in accordance with the procedure set out in clause 6.8.2, either issue a certificate of Total Performance of the Work or give instructions.

- 6.11 **Warranty Performance of the Work:** The Work of the Contract shall only be considered as completed when a certificate of Warranty Performance of the Work has been signed by the Owner and delivered to the Contractor, stating the date on which the Contractor has completed his obligations to execute and complete the Work and remedy any defects therein to the Owner's satisfaction. The certificate of Warranty Performance of the Work shall be given by the Owner within 28 days after the expiration of the warranty period, or, if different warranty periods are applicable to different parts of the Permanent Work, the expiration of the latest such period, or as soon thereafter as any Work instructed, pursuant

to clause 7, has been completed to the satisfaction of the Owner.

#### 6.12 Acceleration

- .1 If the Owner wishes to reduce the Contract Time for the Work or any part thereof, he shall issue to the Contractor a notice thereof and an instruction requiring the Contractor to submit to him within the period specified in the instruction:
  - .1 the Contractor's priced proposals for reducing the Contract Time, together with any consequential modifications to the construction schedule, or
  - .2 the Contractor's explanation why he is unable to reduce the Contract Time.
- .2 If the Owner accepts the Contractor's proposals submitted pursuant to clause 6.12.1.1, including amendments thereto agreed by both parties, the Owner shall issue instructions to the Contractor modifying the Contract accordingly. Such instructions shall include:
  - .1 the revised Contract Time or Times,
  - .2 the modifications to the construction schedule,
  - .3 the revised Contract Price, and
  - .4 any other relevant modifications to the Contract.
- .3 The Contractor may at any time submit to the Owner proposals to reduce the Contract Time for the Work or part thereof. The Owner shall consider such proposals and if he accepts them he shall take action as in clause 6.12.2.

### 7. WARRANTY

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#### 7.1 Warranty Period

- .1 In the Contract the term "warranty period" shall mean a period of two (2) years, or such longer period as may be provided elsewhere in the Contract, calculated from:
  - .1 the date of Substantial Performance of the Work, certified by the Owner in accordance with clause 6.8, or
  - .2 in the event of more than one certificate having been issued by the Owner under clause 6.9, the respective dates so certified, or
  - .3 in the case of outstanding work to be completed after the date or dates of Substantial Performance referred to in clauses 7.1.1.1 and 7.1.1.2, the date upon which such work is certified as complete by the Owner,and in relation to the warranty period the term "the Work" shall be construed accordingly.

- 7.2 **Completion of Outstanding Work:** The Contractor shall complete work outstanding at the date of Substantial Performance of the Work within the time specified by the Owner in the certificate of Substantial Performance of the Work.

#### 7.3 Remedying Defects



- .1 The Contractor shall, during or as soon as practicable after the expiration of the warranty period, remedy any defects in the Work and execute any work of modification or reconstruction related thereto, as the Owner may, during the warranty period or within 14 days after its expiration instruct the Contractor to do.
- .2 Work referred to in clause 7.3.1 shall be executed by the Contractor at his own cost if the necessity thereof is, in the opinion of the Owner, due to:
  - .1 defects in Products or workmanship, or defects in design for which the Contractor is responsible,
  - .2 the neglect or failure on the part of the Contractor to comply with any obligation expressed or implied on the Contractor's part under the Contract.

If, in the opinion of the Owner, such necessity is due to any other cause, he may determine an addition to the Contract Price in accordance with clause 8.

- 7.4 **Contractor's Failure to Carry Out Instructions:** If the Contractor defaults in carrying out instructions issued pursuant to clause 7.2 or 7.3, the Owner may employ other persons or contract with other firms or corporations to carry out the same. If such work is work which, in the opinion of the Owner, the Contractor was liable to do at his own cost, then all costs consequent thereon or incidental thereto shall be determined by the Owner and shall be recoverable from the Contractor by the Owner.
- 7.5 **Contractor to Search:** If any defect in the Work appears at any time prior to the end of the warranty period, the Owner may instruct the Contractor to search for the cause thereof. If such defect is one for which the Contractor is liable, the cost of the work carried out in searching shall be borne by the Contractor and he shall in such case remedy such defect at his own cost in accordance with the provisions of clauses 7.3 and 7.4. If such defect is one for which the Contractor is not liable under the Contract, the Owner shall determine the amount of the costs of such search incurred by the Contractor, which shall be added to the Contract Price.

## **8. CHANGES AND VARIATIONS**

### **8.1 Changes in the Work**

- .1 Consistent with the Work, the Owner may make changes in the Work or any part thereof, and he shall have the right to instruct the Contractor to make such changes and the Contractor shall make such changes, which may include:
  - .1 increasing or decreasing the quantity of any work included in the Contract,
  - .2 omitting any work, but not if the omitted work is to be carried out by the Owner or by an Other Contractor except by reason of the Contractor's default or negligence,
  - .3 changing the character or quality or kind of any work,
  - .4 changing the levels, lines, position and dimensions of any part of the Work,
  - .5 executing additional work of any kind necessary for the completion of the Work,

.6 changing any specified sequence or timing of construction of any part of the Work.

- .2 No such change shall invalidate the Contract, but the effect, if any, if such changes on the Contract Price shall be valued in accordance with clause 8.3 and any extension of the Contract Time shall be determined in accordance with clause 6.4. Where an instruction to change the Work is necessitated by default or negligence of the Contractor or for which he is responsible, any cost and time attributable to such default or negligence shall be borne by the Contractor.

### **8.2 Instructions For Changes in the Work**

- .1 The Contractor shall not make any changes in the Work without a written instruction from the Owner.
- .2 No instruction shall be required for:
  - .1 an increase or decrease in the quantity of any work where such increase or decrease is not the result of an instruction given under this clause, but is the result of quantities exceeding or being less than those stated in the Schedule of Prices, and
  - .2 a change or adjustment in lines, levels, grades or elevations when such change or adjustment is already provided for in the Contract.

### **8.3 Valuation of Changes in the Work**

- .1 Changes referred to in clause 8.1 and any changes to the Contract Price which are required to be determined in accordance with this clause (for the purposes of this clause referred to as "changed work"), shall be valued, at the Owner's option,:
  - .1 at the rates and prices set out in the Contract if, in the opinion of the Owner, these are applicable, or
  - .2 if the rates and prices set out in the Contract are not applicable to the changed work, at rates and prices deduced or extrapolated from such rates and prices, or
  - .3 by acceptance by the Owner of rates and prices submitted by the Contractor or other rates and prices as may be agreed by negotiation, or
  - .4 by acceptance by the Owner of a lump sum quotation submitted by the Contractor or other lump sum as may be agreed by negotiation, or
  - .5 as Cost Plus Work in accordance with the provisions of Section 00630 - Payment Conditions.
- .2 If there is disagreement on the value of changed work, the Owner shall fix such rates or prices as are, in his opinion, appropriate and shall notify the Contractor accordingly. Until such time as rates or prices are agreed or fixed, the Owner shall determine provisional rates or prices to enable on-account payments to be made in accordance with the payment conditions of the Contract.

#### 8.4 Impact of Changes in the Work

- .1 If in the opinion of the Owner or the Contractor the nature or amount of any changed work relative to the nature or amount of the whole of the Work or to any part thereof, is such that the rate or price contained in the Contract for any item of the Work is, by reason of such changed work, rendered inappropriate or inapplicable, then, after due consultation by the Owner with the Contractor, a suitable rate or price may be agreed upon between the Owner and the Contractor.
- .2 If there is disagreement on the rates or prices referred to in clause 8.4.1 the Owner shall fix such rate or price as is, in his opinion, appropriate and shall notify the Contractor. Until such time as rates or prices are agreed or fixed, the Owner shall determine provisional rates or prices to enable on-account payments to be made in accordance with the payment conditions of the Contract.

#### 8.5 Quantity Variations

- .1 Except for items of Work, if any, for which the applicability of this clause 8.5 has been specifically excluded elsewhere in the Contract, the Owner and the Contractor may agree to adjust a rate or price contained in the Contract:
  - .1 if the actual quantity of work executed under the item exceeds or falls short of the estimated quantity specified in the Schedule of Prices by more than 15%; and
  - .2 if there is no off-setting adjustment with respect to the quantity of any other item of work; and
  - .3 if, based on the actual quantity of work executed and the rate or price contained in the Schedule of Prices, the extended amount of the item exceeds 15% of the original Contract Price; and
  - .4 if the Contractor believes that he has incurred significant additional expense as a result thereof or the Owner believes that the quantity variation entitles the Owner to an adjustment in the rate or price.
- .2 An adjusted rate or price made pursuant to clause 8.5.1, where the actual quantity of work executed under the item exceeds the estimated quantity specified in the Schedule of Prices by more than 15%, shall apply only to the quantity that is in excess of 115%.
- .3 An adjusted rate or price made pursuant to clause 8.5.1, where the actual quantity of work executed under the item falls short of the quantity specified in the Schedule of Prices by more than 15%, shall not exceed the rate or price that would cause the total amount paid for the item to exceed 85% of the product of the original rate or price contained in the Schedule of Prices multiplied by the estimated quantity specified in the Schedule of Prices.

#### 9. CHANGES IN COST AND REGULATORY REQUIREMENTS

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- 9.1 **Increase or Decrease in Cost:** Subject to clause 9.2, the Contract Price shall not be subject to any adjustment in respect of rise or fall in the cost of labour, Products or any other matters affecting the cost of execution of the Contract, except where specified otherwise in the Contract Documents.
- 9.2 **Changes in Regulatory Requirements**
  - .1 If, after the latest date for submission of Bids for the Contract, there is a change to any Regulatory Requirement, or a new Regulatory Requirement is introduced, which causes additional or reduced cost to the Contractor in the execution of the Contract, such additional or reduced cost shall be determined by the Owner and shall be added to or deducted from the Contract Price.
  - .2 When a Regulatory Requirement is changed or introduced during the period of time referred to in clause 9.2.1 but public notice thereof has been given by the applicable authority before the commencement of such period of time, the change or introduction shall be deemed to have occurred before the commencement of such period of time.

#### 10. CLAIMS REVIEW PROCESS AND DISPUTE RESOLUTION PROCEDURE

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##### 10.1 General

- .1 Any claims or demands by the Contractor, arising out of alleged errors, omissions or misrepresentations in the Contract Documents or arising out of acts or omissions of the Owner's assistants or the Owner's assistants' directors, officers, employees, agents or sub-contractors, in relation to the carrying out of the Work, are to be made only to, or against, the Owner. The Contractor waives any right to commence or carry on such claims or demands against any person other than the Owner.
- .2 Unless otherwise agreed to in writing between the Owner and the Contractor, all disputes in respect of the application or interpretation of any provision of the Contract shall be determined in accordance with the Dispute Resolution Procedure (as defined in clause 10.3). Either party may at any time by notice to the other refer any question in respect of the application or interpretation of any provision of this Agreement to the Dispute Resolution Procedure. In the case of a Claim (as defined in clause 10.2), the Contractor shall follow the Claims Review Process for Contractor Claims (as set out in clause 10.2).
- .3 The Contractor is hereby warned that under applicable laws there may be certain things that have to be done by certain times, otherwise the Contractor may lose its legal right to make, or continue with making, a claim against the Owner.

##### 10.2 Claims Review Process for Contractor Claims : The review of the contractor's claim is subject to the following process:

- .1 If a circumstance arises between the Owner and the Contractor, in connection with or arising out of the

Contract or the carrying out of the Work, which the Contractor believes requires a change in payment or compensation under the Contract or a change in the time required to complete the Contract, such situation is considered a claim (the "**Claim**").

- .2 As soon as the Contractor becomes aware of the Claim, the Contractor shall immediately begin to keep separate daily work records relating to the Claim. The records may include, but are not limited to, accurate quantity measurements, quality reports, actual direct costs, and actual indirect costs. The Contractor shall provide copies of such records in the manner and at the times requested by the Owner.
- .3 Notice of claim
  - .1 Where the Contractor considers that there is a Claim, the Contractor shall send a notice of the Claim (the "**Notice of Claim**") to the Owner's Representative (as set out in the Contract).
  - .2 The Notice of Claim must be provided as soon as reasonably possible after the occurrence of the circumstance giving rise to the Claim, and not later than seven days after the occurrence of the circumstance or the Contractor becoming aware of the circumstance. It is imperative that the Contractor provide such notice in such manner and if the Contractor fails to provide such notice in such manner, the Owner may assert a claim for damages arising from such failure.
  - .3 The Notice of Claim shall be in such written form as directed in writing by the Owner or be in writing and expressly referring to this clause 10.2.3.3 and shall set out details about the Claim, including but not limited to:
    - .1 the Contract number;
    - .2 the Contract description;
    - .3 Notice of Claim number;
    - .4 identification of any documents or particulars that support the Claim (including any written or oral communications related to the Claim);
    - .5 detailed description of the substance of the Claim with dates, locations, incurred/projected direct costs (labour, material, equipment, etc.), incurred/projected indirect costs and any other items relevant to the Claim;
    - .6 relevant provisions of the Contract which support the Claim and the reasons why such provisions support the Claim;
    - .7 identify whether there is any impact on a critical path that will impact the construction schedule (as set out in the contract) thereby resulting in extension of the Contract Time (as defined in the contract);
    - .8 any other information that may be helpful for reviewing the Claim; and
    - .9 any proposals on ways to mitigate the impact of the Claim.
  - .4 In order for there to be an efficient and effective understanding of the Claim by the Owner, it is

incumbent on the Contractor to provide all the necessary information reasonably needed by the Owner in order to understand the Claim and to provide all the necessary information in an organized, concise, and logical manner.

- .5 Notwithstanding a Notice of Claim has been provided to the Owner, the Work must proceed or continue without delay.
- .4 Owner Acknowledgement of the Notice of Claim
  - .1 Upon receipt of the Notice of Claim, the Owner shall provide a written acknowledgement to the Contractor and within seven days of the receipt of the Notice of Claim arrange a tri-party meeting of the Owner's representative, the Contractor and the Owner's assistant. The details of the Claim will be discussed at the tri-party meeting.
  - .5 Ongoing effect
    - .1 If the circumstance giving rise to the Claim has a continuing effect, then the Contractor shall submit to the Owner such further information at such intervals as may be reasonably required by the Owner.
  - .6 Review of the Claim
    - .1 If the Contractor wishes to have the Owner review the Claim, the Contractor shall send a written notice to the Owner's Representative (as set out in the Contract) no later than 28 days after submitting the Notice of Claim, expressly referring to this clause 10.2.3.6 and requesting the Owner to review the Claim (the "**Level 1 Notice**").
    - .2 Failure by the Contractor to provide the Level 1 Notice in such manner shall be deemed by the Owner to be an abandonment of the Claims Review Process for Contractor Claims (as set out in clause 10.2), unless otherwise agreed to in writing by the Owner.
    - .3 The parties will make bona fide efforts to review the Claim but the Work must proceed or continue without delay during the following process to review the Claim.
    - .4 Level 1 Review by the Owner's Representative
      - .1 within 14 days of the receipt of the Level 1 Notice, the Level 1 reviewer will provide a written acknowledgement of receipt of the Level 1 Notice to the Contractor;
      - .2 the Level 1 reviewer shall commence review of the claim as soon as possible and will meet with the Contractor within a period of 30 days from the receipt of the Level 1 Notice. During this meeting, the Level 1 reviewer and the Contractor will start the process of negotiating and entering into a claim review process agreement for the Claim (the "**CRP Agreement**") addressing the schedule for the review, the process for the review (including participants), the date for providing the Level 1 reviewer's decision;
      - .3 the Contractor shall provide any additional information as set out in the CRP

Agreement and as may be further required by the Level 1 reviewer;

- .4 the Level 1 reviewer shall provide the Contractor with the Level 1 reviewer's decision (the "**Level 1 Decision**") by the date set out in the CRP Agreement;
- .5 if the Contractor is not satisfied with the Level 1 Decision, the Contractor may submit the Claim to the Dispute Resolution Procedure set out in clause 10.3.
- .5 The review of the Claim shall end no later than 12 months after the occurrence of the circumstance giving rise to the Claim. If the review of the Claim has not been completed within 12 months after the occurrence of the circumstance giving rise to the Claim, for any reason whatsoever including the inability of the parties to agree on a CRP Agreement, the Claim shall be deemed to have been unequivocally denied by the Owner and the Contractor may submit the Claim to the Dispute Resolution Procedure set out in clause 10.3.

#### 10.3 Dispute Resolution Procedure :

- .1 Any Claim that has not been resolved by the Claims Review Process for Contractor Claims (as set out in clause 10.2), or any disagreement or other dispute in respect of the application or interpretation of any provision of the Contract (the "**Dispute**"), will be resolved in accordance with the dispute resolution procedure set out in this clause 10.3 (the "**Dispute Resolution Procedure**"):
  - .1 the Dispute Resolution Procedure shall be started by delivery of a notice (the "Dispute Notice") in writing and expressly referring to this clause 10.3, from one party to the other party providing details of a Dispute and invoking the Dispute Resolution Procedure in respect of that Dispute.
  - .2 any Dispute Notice issued by the Contractor to the Owner must be sent to:

Project Director,  
Town of Drumheller,  
702 Premier Way,  
Drumheller, Alberta T0J 0Y0
  - .3 within 30 days from the receipt of the Dispute Notice, officials designated by the Owner and the Contractor will meet (the "**Settlement Meeting**") at a mutually acceptable time and place to make all reasonable efforts to attempt to resolve the Dispute (all negotiations held pursuant to the Settlement Meeting are to be held on a without prejudice basis and will not be used by either party as evidence at any other proceeding); and
  - .4 if the Settlement Meeting does not result in resolution of the Dispute, either party may refer the Dispute to a court of law of competent jurisdiction.

#### 10.4 Obligations to and Claims of Third Parties

- .1 The Contractor shall, with respect to lawful obligations of and lawful claims against the Contractor or any Subcontractor arising from the Contract:
  - .1 discharge such obligations of and satisfy such claims against the Contractor, and
  - .2 ensure the discharge of such obligations of and the satisfaction of such claims against Subcontractors.
- .2 The Contractor shall, when requested by the Owner, make a statutory declaration deposing to the existence and condition of any obligations and claims referred to in clause 10.4.1.
- .3 If a third party sends written notice to the Owner of an undischarged obligation or unsatisfied claim referred to in clause 10.4.1, the Owner may, 30 days after giving written notice to the Contractor, and surety where applicable,:
  - .1 pay any amount that is due and payable to the Contractor pursuant to the Contract directly to the obligees of and the claimants against the Contractor or the Subcontractor, and
  - .2 where security for payment of claims has been provided in the form of a security deposit, the Owner may deduct such amount from the security deposit, or
  - .3 where a security deposit has not been provided or insufficient monies are available in the security deposit, the Owner may deduct such amount, or portion thereof, from the amount payable to the Contractor under the Contract.
- .4 Clause 10.4.3 shall apply only when written notice of the obligation or claim is sent to Owner not later than 45 days after the last day on which the labour, equipment, material or services giving rise to such obligation or claim were provided.

#### 11. RELEASE FROM PERFORMANCE

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- 11.1 **Frustration:** If any circumstance outside the control of both the Owner and the Contractor arises after the award of the Contract which renders it impossible or unlawful for either party to fulfill his contractual obligations, then the Owner or the Contractor may terminate the Contract by giving notice to the other party and, upon such notice, the Contract shall, except as to the rights of the parties under this clause and to the operation of clause 15., terminate, but without prejudice to the rights of either party in respect of any antecedent breach thereof.
- 11.2 **Removal of Construction Equipment on Termination:** If the Contract is terminated pursuant to clause 11.1, the Contractor shall remove from the Site all Construction Equipment.
- 11.3 **Payment if Contract Terminated**
  - .1 If the Contract is terminated pursuant to clause 11.1, the Contractor shall be paid by the Owner, insofar as such amounts or items have not already been covered by payments on account made to the Contractor, for all Work executed prior to the date of termination at the rates and prices provided in the Contract and in addition:

- .1 the cost of Products reasonably ordered for the Work which have been delivered in acceptable condition to the Contractor or of which the Contractor is liable to accept delivery, such Products becoming the property of the Owner upon such payments being made by him,
- .2 the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Work insofar as such expenditure has not been covered by any other payments referred to in this clause,
- .3 such proportion of the cost as may be reasonable, taking into account payments made or to be made for work executed, for removal of Construction Equipment under clause 11.2.

provided that against any payment due from the Owner under this clause, the Owner shall be credited with any amounts which, at the date of termination, were recoverable by the Owner from the Contractor.

- .2 Any amount payable under this clause shall be determined by the Owner.

## **12. SUSPENSION AND TERMINATION BY OWNER**

### **12.1 Suspension of Work**

- .1 The Contractor shall, on the instructions of the Owner, suspend the progress of the Work or any part thereof for such time and in such manner as the Owner may consider necessary and shall, during such suspension, properly protect and secure the Work or such part thereof so far as is necessary in the opinion of the Owner. Clause 12.2 shall apply unless such suspension is

- .1 otherwise provided for in the Contract, or
- .2 necessary by reason of some default of or breach of contract by the Contractor or for which he is responsible, or
- .3 necessary by reason of normal weather conditions on the Site, or
- .4 necessary for the proper execution of the Work or for the safety of the Work or any part thereof, except to the extent that such necessity arises from any act or default by the Owner,

in which case such suspension shall be at the Contractor's expense.

### **12.2 Owner's Determination Following Suspension**

- .1 Where, pursuant to clause 12.1, this clause applies the Owner shall determine
  - .1 any extension of time to which the Contractor is entitled under clause 6.4, and
  - .2 the amount, which shall be added to the Contract Price, in respect of the cost incurred by the Contractor by reason of such suspension.

- 12.3 **Suspension Lasting More Than 91 Days:** If the progress of the Work or any part thereof is suspended on the written instructions of the Owner and if permission to resume work is not given by the Owner within a period of 91 days after the date of suspension then, unless such suspension is the Contractor's

responsibility pursuant to clauses 12.1.1.1 to 12.1.1.4, the Contractor may give notice to the Owner requesting permission, within 28 days from the receipt thereof, to proceed with the Work or that part thereof in regard to which progress is suspended. If, within such time, such permission is not granted, the Contractor may elect to treat the suspension, where it affects only part of the Work, as an omission of such part under clause 8.1 by giving a further notice to the Owner to that effect, or, where it affects the whole of the Work, treat the suspension as an event of default by the Owner and terminate the Contract in accordance with the provisions of clause 14., in which case the provisions of clauses 14.2 and 14.3 shall apply.

### **12.4 Termination of Contract**

- .1 The Owner may terminate the Contract at any time by giving a notice of termination to the Contractor. When such a notice is received by the Contractor he shall, subject to the provisions of such notice, forthwith cease all operations in performance of the Contract.
- .2 If the Owner terminates the Contract pursuant to clause 12.4.1 the Owner shall be under the same obligations to the Contractor in regard to payment as if the Contract had been terminated under the provisions of clause 14..

## **13. DEFAULT OF CONTRACTOR**

### **13.1 Default**

- .1 If the Contractor:
  - .1 is deemed by law unable to pay his debts as they fall due, or becomes insolvent, or
  - .2 enters into voluntary or involuntary bankruptcy, liquidation or dissolution (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or
  - .3 if any act is done or event occurs with respect to the Contractor or his assets which, under any applicable law, has a similar effect to any of the foregoing, or if he
  - .4 has contravened clause 2.1, or
  - .5 has repudiated the Contract,then the Owner may, upon written notice, enter upon the Site and the Work and immediately terminate the Contractor's right to continue with the Work.
- .2 If the Owner determines, that, in his opinion, the Contractor without reasonable excuse:
  - .1 has failed to commence and proceed with the Work or any part thereof in accordance the provisions of the Contract, or
  - .2 has failed to comply with a notice issued pursuant to clause 6.7 or an instruction issued pursuant to clause 6.12 within 14 days after receiving it, or
  - .3 despite previous warning from the Owner, in writing, is otherwise persistently or flagrantly neglecting to comply with any of his obligations under the Contract, or

- .4 has contravened clause 2.2, or
- .5 has failed to attain Substantial Performance of the Work or part or parts of the Work within the Contract Time or Times pursuant to clause 6.3,

then the Owner may, after giving 14 days notice to the Contractor, and unless the Contractor has within such period remedied the default, enter upon the Site and the Work and terminate the Contractor's right to continue with the Work in whole or in part.

- .3 If the Owner terminates the Contractor's right to continue with the Work, in whole or in part, pursuant to clause 13.1.1 or clause 13.1.2, such termination shall not release the Contractor from any of his obligations or liabilities under the Contract, and shall not affect the rights and authorities conferred on the Owner by the Contract, and the Owner may complete the Work or part thereof, or may contract with any Other Contractor to complete the Work or part thereof. The Owner or such Other Contractor may use for such completion so much of the Construction Equipment, Temporary Work and Products as he or they may think proper.

### 13.2 Valuation at Date of Termination

- .1 The Owner shall, as soon as practicable after any entry and termination by the Owner pursuant to clause 13.1, determine:
  - .1 what amount (if any) had, at the time of such entry and termination, been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract, and
  - .2 the value of any unused or partially used Products, any Construction Equipment and any Temporary Work.

- 13.3 **Payment After Termination:** If the Owner terminates the Contractor's right to continue with the Work in whole or in part under clause 13.1, he shall not be liable to pay to the Contractor any further amount in respect of the Contract until the expiration of the warranty period and thereafter until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any) and all other expenses incurred by the Owner have been determined. The Contractor shall then be entitled to receive only such sum (if any) as the Owner may determine would have been payable to him upon due completion by him after deducting the said amount. If such amount exceeds the sum which would have been payable to the Contractor on due completion by him, then the Contractor shall, upon demand, pay to the Owner the amount of such excess and it shall be deemed a debt due by the Contractor to the Owner and shall be recoverable accordingly.

- 13.4 **Assignment of Benefit of Agreement:** The Contractor shall, if so instructed by the Owner within 14 days of the entry and termination referred to in clause 13.1, assign to the Owner the benefit of any agreement for the supply of any goods or materials or services and/or for the execution of any work for the purposes of the Contract, which the Contractor may have entered into.

## 14. DEFAULT OF OWNER

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- 14.1 **Failure of Owner to Pay:** If the Owner fails to pay to the Contractor any amount due under the Contract within 28 days after the expiry of the time stated in the Payment Conditions within which payment is to be made, the Contractor may terminate the Contract by giving notice to the Owner. Such termination shall take effect 14 days after the giving of such notice unless payment is received within such period.

- 14.2 **Removal of Construction Equipment:** Upon the termination of the Contract referred to in clause 14.1, the Contractor shall remove promptly from the Site all Construction Equipment.

- 14.3 **Payment on Termination:** In the event of termination pursuant to clause 14.1 the Owner shall be under the same obligations to the Contractor in regard to payment as if the Contract had been terminated under the provisions of clause 11., but, in addition to the payments specified in clause 11.3, the Owner shall pay to the Contractor the amount of any loss or damage, including reasonable profit, to the Contractor directly arising out of or in connection with or by consequence of such termination.

### 14.4 Contractor May Suspend Work

- .1 As an alternative to termination under clause 14.1 but without prejudice to the Contractor's entitlement to terminate under clause 14.1, the Contractor may, after giving 14 days' prior notice to the Owner, suspend work or reduce the rate of work.
- .2 If the Contractor suspends or reduces the rate of work pursuant to clause 14.4.1 and thereby suffers delay or incurs cost the Owner shall determine
  - .1 any extension of time to which the Contractor is entitled under clause 6.4, and
  - .2 the amount of such costs, which shall be added to the Contract Price.

- 14.5 **Resumption of Work:** When the Contractor suspends work or reduces the rate of work pursuant to clause 14.4.1 and the Owner subsequently pays the amount due, the Contractor's entitlement under clause 14.1 shall, if notice of termination has not been given, lapse and the Contractor shall resume normal working as soon as is reasonably possible.

## 15. FORCE MAJEURE

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### 15.1 Force Majeure Event:

- .1 If a Force Majeure Event occurs then notwithstanding any other provision of this Contract:
  - .1 To the extent that and for so long as either Party is prevented by the Force Majeure Event from performing any obligation under this Contract, that Party is relieved from liability due to its inability to perform or delay in performing that obligation; and
  - .2 If the Force Majeure Event wholly or substantially prevents the Contractor from proceeding with the Work then the times by which the Contractor shall obtain Substantial Performance of the Work or Total Performance

- of the Work as applicable shall be adjusted for the period of the Force Majeure Event.
- .2 Upon either Party becoming aware of the occurrence of a Force Majeure Event that prevents that Party from performing any obligation under this Contract, that Party shall in a timely manner give the other Party notice of the Force Majeure Event, including reasonable details of the anticipated effects on performance of this Contract, and thereafter the Contractor shall, on an ongoing basis, notify the Owner of its plans for remedying or mitigating the effects of the Force Majeure Event.

- .3 If the Contractor anticipates that the Force Majeure Event will delay the times by which the Contractor shall obtain Substantial Performance of the Work or Total Performance of the Work as applicable, but is of the opinion the delay can be avoided or mitigated through extraordinary measures, the Contractor may propose to the Owner that such extraordinary measures be taken by the Contractor at the Owner's expense.

**END OF SECTION**

**INSERT TOWN OF DRUMHELLER PRIME CONTRACT FORM**