CLIENT/ENGINEER AGREEMENT FOR *PROFESSIONAL CONSULTING SERVICES*

2024
(VERSION 4.0)

Association of Consulting Engineering Companies (Ontario)
in partnership with the Municipal Engineers Association

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AGREEMENT

Dated the _____ day of _____ 20___

BETWEEN

(hereinafter the "**Client**")

AND

(hereinafter the "**Engineer**")

WHEREAS the Client intends to: (*describe Project below)*

(hereinafter the "**Project**")

AND WHEREAS the Client has requested the Engineer to furnish professional Services in connection with the Project, and the Engineer desires to perform such Services.

NOW THEREFORE, in consideration of the covenants contained herein, the Client and the Engineer mutually agree as follows:

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DEFINITIONS

For the purpose of this Agreement, the following definitions shall apply:

Agreement

The Agreement means this written agreement between, and as executed by, the Client and the Engineer.

Additional Services

Additional Services are services that are not included or contemplated as part of the Services to be provided under this Agreement at the time of its execution and which may be added to the Services upon the written agreement of the Client and the Engineer.

Arbitration Act

Arbitration Act means the *Arbitration Act, 1991*, S.O. 1991, C. 17, and the regulations made thereunder, as may be amended.

Budget of the Work

The Budget of the Work is the maximum amount the Client is prepared to spend on the Work, including contingency allowances, if any.

Business Day

Business Day means any day other than a Saturday, Sunday, a statutory holiday, a statutory vacation day that is observed by the construction industry in the area of the Site, a statutory holiday observed by municipalities in the Province of Ontario, a statutory holiday in the area of the Site, or a statutory holiday in the Province of Ontario.

Change

Change has the meaning given to it in Subsection 1.3.1 of this Agreement.

Claims

Claims has the meaning given to it in Subsection 1.12.1 of this Agreement.

Client

Client means the person identified as such in the Recitals hereof.

Consequential Damages

Consequential Damages means (i) any consequential, indirect, exemplary, or special damages, and (ii) damages of any kind, however caused or characterized, for loss of actual or anticipated revenue or

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profits, standby time, interest expenses, overhead, business interruption, loss of reputation, loss of use, loss of business opportunity, increased capital or operating costs, or increased financing costs.

Construction Act

Construction Act means the *Construction Act,* RSO 1990, c C.30, and the regulations made thereunder, as may be amended.

Construction Contract

Construction Contract means any contract or written agreement between the Client and a Contractor for performance of all or part of the Work.

Construction Documents

Construction Documents means all documents related to performance of the Work issued by or through the Engineer or Client and which shall be incorporated by the Client into the Construction Contract. The Construction Documents include all variations and modifications thereto as issued by or approved by the Engineer.

Contract Documents

Contract Documents are those documents identified in Subsection 1.1.1 of this Agreement, as may be amended by the parties in writing from time to time.

Contractor

A Contractor is a person or entity that has contracted with the Client under a Construction Contract to perform all or part of the Work.

Cost of the Work:

Cost of the Work means the total actual cost incurred by the Client, including the actual cost of all materials, equipment, labour and contractors' overhead and profit and any applicable fees, tariffs or levies, for completion of the Work for which the Engineer prepares Deliverables under this Agreement. The Cost of the Work shall not include any fees and disbursements due to the Engineer under this Agreement, the Client's engineering and office expenses, or the cost of land. Where applicable, the following shall apply when determining the Cost of the Work:

(i) Wherever the Client furnishes labour or other service which is incorporated in the Work, the current price of labour or other service when the Work was executed shall be used to compute the Cost of the Work.

(ii) Whenever used materials or equipment is furnished by or on behalf of the Client, the fair market value of such materials or equipment, as though it was purchased new, shall be used to compute the Cost of the Work, subject to approval by the Client.

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(iii) In computing the Cost of the Work, no deductions shall be made on account of any penalties or damages claimed by the Client from any contractor or on account of any other sum withheld from any contractor.

For certainty, Cost of the Work excludes Value Added Taxes.

Deliverables

Deliverables are the designs, drawings, plans, models, specifications, studies, reports, photographs, sketches, graphic representations, materials, software, concepts, products, processes, surveys, calculations and other data, information and deliverables, in any form (including in hard copy or electronic form), prepared by or on behalf of the Engineer as part of the Services.

Engineer

Engineer means the person identified as such in the Recitals hereof.

Engineer's IP

Engineer's IP means all patents, trademarks, copyrights, industrial or other intellectual property rights arising or resulting from performance of the Services, including those which are developed, patentable, capable of trademark, first reduced to practice or otherwise produced by or resulting from the Services rendered by the Engineer. For certainty, Engineer's IP includes any and all intellectual property rights in the Deliverables.

Engineer's Staff

Engineer's Staff has the meaning given to it in Subsection 1.5.1 of this Agreement.

Force Majeure

Force Majeure means an event which causes a party to be delayed in performing, or unable to perform, its obligations under this Agreement in whole or in part, and which meets all of the following criteria: (a) the event and its effects are beyond such party's reasonable control; (b) such party could not reasonably have prevented, overcome or removed the event and its effects by commercially reasonable efforts and due diligence; and (c) the event and its effects do not result from such party's impecuniosity or negligence. For certainty, the following events shall constitute events of Force Majeure:

(i) fire, unusual delay by common carriers or unavoidable casualties;

(ii) act of God, war, civil commotion, rebellion, terrorism, revolution, insurrection, military or usurped power, hostilities (whether war be declared or not), invasion, or acts of foreign enemies;

(iii) labour dispute, strike, lockout or picketing;

(iv) action or inaction by a government authority;

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(v) abnormally adverse weather conditions; and

(vi) pandemics, epidemics or other public health emergencies (including those resulting from diseases, influenzas, coronaviruses and other viruses) and related governmental actions (including quarantines, business closures and travel restrictions relating to public health emergencies).

OHSA

OHSA means the *Occupational Health and Safety Act*, RSO 1990, c. O.1, and the regulations made thereunder, as may be amended.

Other Municipality

Other Municipality means a municipality as defined under the *Municipal Act, 2001*, SO 2001, c. 25, as may be amended, that is located within the Province of Ontario and that is not the Client.

Professional Engineers Act

Professional Engineers Act means the *Professional Engineers Act*, RSO 1990, c P.28, and the regulations made thereunder, as may be amended.

Project

The Project is the total endeavour contemplated under this Agreement as identified in the Recitals hereof and of which the Services and the Work may be the whole or a part.

Recitals

The Recitals include all information set out on the first page of this Agreement.

Schedule

The Schedule means the schedule for performance of the Services set out in Subsection 1.10.1.

Services

The Services are those services to be provided by the Engineer as set out in Article 2 of this Agreement.

Shop Drawings

Shop Drawings means the drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data that are to be provided by the Contractor or by others to illustrate details of portions of the Work.

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Site

The Site is the site or location of the Work as identified in the Contract Documents and includes the actual work site and other locations where the checking of materials, equipment and workmanship is carried out.

Subconsultant

A Subconsultant is any person or entity that has entered into a contract or written agreement with the Engineer for performance of all or part of the Services.

Sublicense

Sublicense has the meaning given to it in Subsection 1.7.3.3 of this Agreement.

Sublicensee

Sublicensee has the meaning given to it in Subsection 1.7.3.3 of this Agreement.

Standard of Care

The Standard of Care means the degree of care, skill and diligence normally provided by a reasonable and prudent engineer providing comparable services for projects of a similar nature at the same time and in the same or similar locale as the Project, including as required by the Professional Engineers Act.

Value Added Taxes

Value Added Taxes means those taxes as shall be levied upon costs, fees and expenses, including the Engineer's compensation, by the federal or any provincial or territorial government and is computed as a percentage of such compensation, costs, fees and expenses and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which are imposed by tax legislation.

Work

The Work is the total construction and related services required by the Construction Contract, but does not include the Services or the services of other consultants engaged by the Client for the Project.

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ARTICLE 1 – GENERAL CONDITIONS

1.1 The Agreement

1.1.1 The Agreement is made up of the following terms, conditions, schedules and other documents, which form part of and are incorporated into the Agreement and which, in the event of conflict, shall have the following order of priority, from highest to lowest:

1. Supplementary Conditions, if any;
2. Recitals;
3. Definitions;
4. Article 1 – General Conditions;
5. Article 2 – Services To Be Provided;
6. Article 3 – Fees And Disbursements;

The following additional attachments, if any:

7.

1.2 The Services

1.2.1 The Client hereby retains the Engineer for performance of the Services in connection with the Project, and the Engineer agrees to provide such Services in accordance with the Standard of Care and the Contract Documents, and for the compensation as set out in Article 3 to this Agreement.

1.2.2 The Engineer represents that it is a person or entity licensed to practice in the Province of Ontario and, as such, the Client acknowledges that the Engineer has obligations under law and pursuant to the Engineer's professional status, which include requirements to exercise judgement and ensure public safety.

1.2.3 The Engineer shall not be responsible for:

.1 performance of the Construction Contract or for any Contractor or other person's failure to carry out the Work in accordance with the Construction Contract;

.2 performance of the Work or of any other services by any Contractor, other consultant of the Client, or other person outside the Engineer's control;

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.3 control of the means, methods, techniques, schedules, sequences or procedures of construction for the Work or Project; or

.4 commissioning or startup of equipment for the Work or Project;

1.2.4 Where the Services include administration of a Construction Contract by the Engineer each of the following shall apply:

.1 The Engineer shall have authority to act on behalf of the Client, but only to the extent set out in the Contract Documents. Such authority may only be modified by written consent of the Engineer and Client.

.2 The Engineer shall have authority to:

(i) reject Work that is not in conformity with the Construction Contract;

(ii) require special inspection or testing of Work, whether or not such Work has been fabricated, installed or completed; and

(iii) order minor adjustments in the Work that are consistent with the intent of the Construction Contract provided such adjustments do not involve an adjustment to the Client's costs under the Construction Contract or to the schedule requirements of the Construction Contract.

.3 The Engineer shall be included on all relevant communications, written and otherwise, between the Client and any Contractor and between the Client and any other consultants engaged on the Project.

.4 Notwithstanding express or implied acceptance by the Engineer of the Work or services performed by a Contractor or other consultant engaged by the Client, such persons shall remain responsible to the Client for the proper performance of the Work or their services, as applicable.

.5 The Engineer's review of Shop Drawings shall be restricted to checking general conformance with information given and the design concept expressed in the Construction Documents, and shall not be relied on for determining the feasibility or constructability of the Work detailed within the Shop Drawings or the accuracy or completeness of instructions for installation.

1.2.5 Where the Services include issuance by the Engineer of any certificate for payment under a Construction Contract, such issuance shall constitute a representation by the Engineer that, based on visits to the Site at intervals appropriate to the progress of the Work as determined by the Engineer in its professional judgment and on review of the Contractor's schedule of values and application for payment:

.1 the Work has progressed to the value indicated;

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.2 to the best of the Engineer's knowledge, information and belief, the Work observed is in general conformity with the Construction Contract; and

.3 the Contractor is entitled to payment in the amount certified.

For certainty, issuance of a certificate of payment shall not be a representation that the Engineer has investigated or examined the Contractor's use of the funds paid by the Client or that the Contractor has complied with its legal obligations.

1.2.6 The parties shall each advise the other in writing of their requirements in connection with the Project, which shall include for the Client, advising the Engineer of the Budget of the Work and any scheduling or time constraints, and for the Engineer, advising of all information, documents and data required for performance of the Services.

1.2.7 The Engineer shall not be liable for any changes to the Services resulting from undisclosed, undiscovered, or unknown conditions at the Site, including those resultant from the discovery of hazardous or toxic substances at the Site. Should the Engineer observe or discover any condition at the Site that materially differs from the Contract Documents, it shall promptly notify the Client in writing of such observation or discovery and the nature of the changes to the Services that may be required, and shall not proceed with the change until approved by the Client.

1.3 Changes and Additional Services

1.3.1 The parties acknowledge that, from time to time, circumstances may dictate a need to delete, extend, increase, vary or otherwise alter the Services as originally contemplated in this Agreement (a "**Change**"). Where a party identifies such need for Additional Services, that party shall, within seven (7) calendar days after becoming aware of the Change, notify the other party setting out the facts and circumstances giving rise to the Change. Where the parties agree that Additional Services are required, the parties shall record their agreement in writing and such Additional Services shall be performed on a "time" basis as set out in Subsection 3.1.5, or as otherwise agreed by the parties in writing.

1.3.2 Where the Client does not agree there has been a Change or that Additional Services are warranted, or where the Client requires the Engineer to proceed with Additional Services before agreement can be reached regarding any resultant adjustments to the Schedule or the Engineer's compensation under this Agreement, the Client may issue a written direction to the Engineer requiring the Engineer to proceed with such Additional Services. Within five (5) Business Days of receipt of such direction, the Engineer shall provide the Client with written notice of any anticipated impacts to the Engineer's remuneration or the Schedule, including estimates of such impacts.

1.3.3 The parties shall resolve any dispute in respect of a Change in accordance with Section 1.14, and shall otherwise continue to perform all Services and obligations which are not subject to dispute.

1.3.4 Where the Engineer reasonably considers emergency services to be necessary in order to meet its professional obligations, the Engineer shall promptly notify the Client and shall

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undertake such services as Additional Services and the costs for such services shall be recoverable by the Engineer in accordance with this Section 1.3.

1.3.5 If the Engineer intends to make a claim for an increase to its compensation under this Agreement, or if the Client intends to make a claim against the Engineer for a credit or reduction to the Engineer's compensation under this Agreement, the party that intends to make such a claim shall give written notice to the other party of its intent to claim within ten (10) Business Days of becoming aware of the event or series of events giving rise to the claim. The written notice to be given pursuant to this Subsection 1.3.5 shall include all details and supporting documentation regarding the claim available at such time and the claiming party shall thereafter submit all such details and supporting documentation to the other party within five (5) Business Days of such details and supporting documentation becoming known or available, as applicable. Where the party making a claim fails to provide notice or details and supporting documentation within the time stipulated in this Subsection 1.3.5 and such failure prevents the Client or Engineer from mitigating or minimizing Claims resultant from the event or series of events giving rise to such claim or otherwise causes the other party loss or damage, then the party making the claim shall be barred from bringing the subject claim.

1.3.6 For certainty, in no event shall the Engineer be obligated to perform Additional Services unless it has first received written direction to do so from the Client.

1.4 Client Obligations

1.4.1 The Client acknowledges that it shall promptly fulfill its obligations as set out under this Agreement in order to allow the Engineer's efficient performance of its Services in accordance with the Schedule.

1.4.2 The Client acknowledges that, in order to avoid any delay, it shall promptly examine and respond to requests for information or decisions submitted by the Engineer.

1.4.3 The Client further agrees that it shall include the Engineer in any value analysis and preparation of the estimates of the Cost of the Work.

1.4.4 Unless otherwise set out in the Contract Documents, it shall be the responsibility of the Client to obtain and pay the costs of all required consents, approvals, licenses, and permits from authorities having jurisdiction.

1.4.5 Additional obligations of the Client, if any, are set out in Article 2.

1.5 Staff and Subconsultants

1.5.1 Prior to commencement of the Services, the Engineer shall provide the Client with a list of its staff to be employed on the Project, including the Engineer's principals and executives (the "**Engineer's Staff**"). The Engineer shall employ only competent personnel who will be under the supervision of a senior member of the Engineer's Staff. The Engineer shall give the Client written notice of any changes to the Engineer's Staff and the Client and the Engineer shall work cooperatively to address any issues associated with changes to the Engineer's Staff.

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1.5.2 The Engineer may engage Sub-Consultants for specialized services provide that prior approval is obtained, in writing, from the Client and may add a mark-up of _____% of the cost of such Services to cover office administration costs when claiming reimbursement from the Client.

1.5.3 To the extent expressly specified as part of the Services, the Engineer shall coordinate the activities of other consultants engaged by the Client in respect of the Project.

1.6 Contract Documents

1.6.1 Subject to Section 1.7, Project drawings and documents, or copies thereof, shall be shared between the parties as needed at no cost.

1.6.2 The Client agrees to provide the following to the Engineer, and will ensure that it notifies the Engineer of any changes in information as available and relevant in respect of the Services and the Work:

.1 a copy of the Contract Documents;

.2 information required for cost estimating, if applicable, as determined at the Client's discretion;

.3 the Budget of the Work; and

.4 all background documents available to the Client that are required by the Engineer for the execution of the Services and the Work.

1.6.3 The Engineer shall be entitled to rely upon the accuracy and completeness of records, information, reports, recommendations, surveys, data and specifications provided by the Client. Notwithstanding the foregoing, the Engineer confirms that it has reviewed the Contract Documents and, to the best of its knowledge, information and belief, has found no errors, omissions, inconsistencies or discrepancies. If the Engineer finds errors, omissions, inconsistencies or discrepancies in the Contract Documents or has any doubt as to the meaning or intent of any part thereof, the Engineer shall at once notify the Client in writing. The Client agrees that it shall promptly inform the Engineer by written notice if it becomes aware of any nonconformity with the requirements of the Construction Documents. Nothing in this Subsection 1.6.3 shall relieve the Engineer of responsibility for the Engineer's own errors and omissions.

1.7 Deliverables, Intellectual Property, Licensing

1.7.1 The Client shall give due consideration to all Deliverables submitted by the Engineer, and shall make any decisions which they are required to make in connection therewith within a reasonable time so as not to delay performance of the Services as required by this Agreement. The Client shall promptly notify the Engineer in writing in the event that the Client discovers any error, omission or inconsistency in the Deliverables.

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1.7.2 The Engineer shall retain ownership of the Engineer's IP. The Deliverables shall be and remain the property of the Engineer. The parties acknowledge and agree that the Engineer shall retain original copies of the Deliverables and any parts of the Construction Documents created by the Engineer, which the Client has not specifically commissioned and paid for. The Client is entitled to keep a copy of the Deliverables for its records, and may only use the Deliverables and any such copies in accordance with the license rights granted under this Agreement.

1.7.3 Except in the event of termination of this Agreement by the Engineer pursuant to Subsection 1.11.3 and provided that the Client has paid all compensation due and owing to the Engineer under this Agreement, the Client shall have a permanent, non-exclusive and royalty-free license to:

.1 Use and reproduce the Deliverables and any Engineer's IP therein in connection with the Work and Project, including for the purposes of constructing, using, occupying, maintaining, repairing, renovating, altering, and/or adding to the Work and the Project.

Applies
Does Not Apply

.2 ~~Use and reproduce the Deliverables and any Engineer's IP therein in connection with other works and projects of the Client that are similar to the Work and Project, as determined by the Client, acting reasonably, including for the purposes of constructing, using, occupying, maintaining, repairing, renovating, altering, and/or adding to other works or projects of the Client.~~

Applies
Does Not Apply

.3 ~~Grant sublicenses (each, a "**Sublicense**") to Other Municipalities (each, a "**Sublicensee**") for use and reproduction of the Deliverables and any Engineer's IP therein in connection with works and projects of Other Municipalities that are similar to the Work and Project, as determined by the Client, acting reasonably, including for the purposes of constructing, using, occupying, maintaining, repairing, renovating, altering, and/or adding to such works or projects of Other Municipalities. Each Sublicense shall be subject to an agreement on terms and conditions consistent with the terms of and conditions of the license granted under Subsection 1.7.3.1 and is no more permissive than such license. For clarity, no Sublicense shall include the right to grant further sublicense under the Deliverables or any Engineer's IP therein. The Client shall be responsible for ensuring that each Sublicensee complies with the terms and conditions of any sublicense agreement to which the Sublicensee is a party. Any act or omission of a Sublicensee which would be a breach of this Agreement if performed by the Client shall be deemed to be a breach by the Client.~~

1.7.4 Any and all license rights granted under Subsection 1.7.3 are subject to the following conditions which are expressly acknowledged and agreed to by the Client:

.1 No license granted is exclusive with respect to the Engineer's IP and nothing in this Agreement shall be deemed to derogate from the Engineer's ownership and full right to use the Engineer's IP for any other site, work or project.

.2 Any alteration, modification or amendment to the Deliverables that is not performed by the Engineer (whether for the Work, the Project or any other work or project) shall be at

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the Client's sole risk and the Client will not hold out that any such changes to the Deliverables were approved, reviewed or otherwise accepted by the Engineer.

.3 The Engineer shall bear no liability in respect of any use of the Deliverables and any Engineer's IP therein for any location other than the Site or for any work or project other than the Work or the Project for which the Deliverables were intended and the Client shall indemnify the Engineer from and against any and all Claims in any way arising out of or related to: (i) alteration, modification or amendment to the Deliverables by the Client, any Other Municipality, the Client's and any Other Municipality's other consultants, contractors, subcontractors, suppliers, agents, employees or tenants, or any other person for whom the Client or Other Municipality (as applicable) is responsible at law; (ii) use of the Deliverables and any Engineer's IP therein in connection with any other work or project of the Client except the extent, if any, the Engineer performed services for such other work or project of the Client; and/or (iii) use of the Deliverables and any Engineer's IP therein by any Other Municipality for any other work or project of such Other Municipality, except to the extent, if any, the Engineer performed services for such other work or project of the Other Municipality. For certainty, the Client's liability for Claims under this Subsection 1.7.4.3 shall include the obligation to reimburse the Engineer for all legal fees (including costs of defense) reasonably incurred by the Client as a direct result of such Claims on a full indemnity basis.

.4 The Client shall give the Engineer written notice of any Sublicense granted pursuant to Section 1.7.3.3 identifying the person to whom such Sublicense was granted and the intended use of such Sublicense within 30 calendar days of such Sublicense having been granted. For certainty, the right to grant Sublicenses pursuant to Section 1.7.3.3 is exclusive to the Client and does not include the right of any sublicensee to grant further sublicenses or sub-sublicenses to any Other Municipalities or other persons.

1.7.5 The Engineer represents and warrants that its Deliverables do not infringe the patent, copyright, trademark or other intellectual property rights of another person. The Engineer shall indemnify the Client in the event of any Claims suffered by the Client resultant from the Engineer's breach of this Subsection 1.7.5.

1.8 Confidential Information

1.8.1 Neither party shall divulge any specific information identified as confidential, communicated to or acquired by them, or disclosed by the other party in the course of carrying out their obligations under this Agreement. These obligations of confidentiality shall not apply to information which is in the public domain, which is provided to the receiving party by a third party without obligation of confidentially, which is independently developed by a party without access to the other party's information, or which is required to be disclosed by law or court order. No such received, confidential information shall be used by one party on any other project without the prior written approval of the other party.

1.8.2 Each party agrees to obtain the consent in writing of the other before publishing or issuing any confidential information regarding the Project.

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1.9 Inspection, Records and Audit

1.9.1 The Client, or persons authorized by the Client, shall have the right, upon reasonable notice and at all reasonable times during business hours, to inspect or otherwise review, at the offices of the Client, any and all documents and records in relation to the Services performed, or being performed, under the Project and at the Site.

1.9.2 Where Services are to be performed on a time and materials basis:

.1 the Engineer shall keep a detailed record of the hours worked by staff employed for performance of the Services in order to provide data for the calculation of fees; and

.2 the Client may inspect the Engineer's applicable timesheets and records of expenses and disbursements at all reasonable times during business hours.

1.9.3 The Engineer, when requested by the Client, shall provide copies of receipts with respect to any disbursement for which the Engineer claims payment under this Agreement.

1.9.4 For seven (7) years after the expiry date or any date of termination of the Agreement, the Engineer shall maintain all necessary records to substantiate (i) all charges and payments under the Agreement and (ii) that all Deliverables were provided in accordance with the Agreement.

1.10 Time for Performance and Delays

1.10.1 Unless agreed otherwise by the parties in writing, the Engineer shall:

.1 commence the Services by , and

.2 complete the Services upon the later of (i) or (ii) year(s), month(s), week(s) after completion or abandonment of the Work.

1.10.2 The Engineer shall perform the Services expeditiously and in such sequence as the Client may reasonably require to ensure efficient and orderly progress of the Project and the Work and in accordance with the Schedule or any other schedule for such performance of the Services as agreed to by the parties in writing.

1.10.3 In the event that the start of the Project is delayed for sixty (60) calendar days or more in a manner that materially affects the ability to deliver the Services for reasons beyond the control of the Engineer, the Engineer shall have the right to renegotiate the Agreement before the commencement of the Project.

1.10.4 Except with respect to payment obligations already in process, neither party shall be liable for any delay or failure in performance of their respective obligations under this Agreement to the extent caused by or resultant from an event of Force Majeure.

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1.10.5 Upon the occurrence of a Force Majeure event, the impacted party shall notify the other in writing with reasonable promptness and, in any event, no later than seven (7) calendar days after becoming aware of the Force Majeure event, explaining the facts and circumstances and the Client and Engineer shall then cooperate to establish a mutually acceptable revision to the timing for performance of the subject obligation, including to the Schedule, as necessary and applicable.

1.11 Suspension or Termination

1.11.1 The Client may, at any time upon fourteen (14) calendar days' written notice, suspend the Services or any portion thereof at any stage of the Project. Upon receipt of such written notice, the Engineer shall perform no further Services other than those reasonably necessary to safely close out their Services, and otherwise suspend all operations in respect of its Services or such part of the Services which may be identified as suspended. In such an event, and except to the extent that the suspension was required as a result of the Engineer's negligence or breach of this Agreement, the Engineer shall be entitled to payment for the direct costs reasonably incurred by the Engineer as a direct result of such suspension, and the Schedule shall be extended for such reasonable time as the Client and Engineer may together decide. In no event shall such costs include Consequential Damages. The Engineer will make every effort to mitigate costs, expenses and impacts to the Client resultant from suspension.

1.11.2 If the period of suspension is ninety (90) calendar days or less, upon notification by the Client, the Engineer will resume the performance of the Services as soon as practicable and in any event within seven (7) calendar days in accordance with the terms of the Agreement. If the period of suspension exceeds ninety (90) calendar days, no Services will be resumed or be completed in accordance with the terms of the Agreement prior to the parties having agreed upon the resumption and its terms and conditions, unless the suspension was required as a result of the Engineer's negligence or breach of this Agreement in which case the Engineer's agreement is not required. Failing agreement on the resumption and its terms and conditions, the notice of suspension will be deemed to be a notice of termination and Subsection 1.11.5.2 shall apply.

1.11.3 Without limiting the rights and obligations in Subsection 1.11.2, where an event of Force Majeure resulting in suspension of the Services continues for a period of ninety (90) calendar days or more, the Engineer shall not resume the Services until the parties have agreed upon the terms and conditions for their resumption. The parties shall work cooperatively to endeavour to reach an agreement. Failing such agreement, either party may elect to terminate the Agreement upon provision of ten (10) Business Days' written notice to the other.

1.11.4 Either party may terminate this Agreement:

.1 upon seven (7) calendar days' written notice to the other party and without further liability in the event the other party is in material breach of this Agreement and fails to remedy such breach within seven (7) calendar days of receiving written notice of the breach, provided that the breach was not caused or contributed to by the party seeking to terminate this Agreement; or

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.2 immediately upon notice if the other party becomes insolvent or files for or is put in bankruptcy or makes a general assignment in favour of its creditors, or if all or any part of its property is put under receivership.

.3 Upon such termination by either party, unless due to negligence, the Client shall pay the Engineer for all Services performed to the date of termination.

Where such termination is by the Engineer, the Client shall also reimburse the Engineer for the direct costs reasonably incurred by the Engineer as a direct result of such termination, but not to include Consequential Damages.

1.11.5 In addition to the foregoing, the Client may terminate this Agreement as follows:

.1 upon notice, if the Project is lawfully interrupted for more than ten (10) calendar days pursuant to an ordinance originating with a court or public authority having jurisdiction, in which case the Client agrees to pay the Engineer for the Services duly performed up to the date of termination; or

.2 for convenience by giving the Engineer fourteen (14) calendar days' prior written notice of its intention to terminate, in which case the Client agrees to pay the Engineer for the Services duly performed up to the date of termination and to reimburse the Engineer for the direct costs reasonably incurred by the Engineer as a direct result of such termination, but not to include Consequential Damages; or

.3 immediately upon notice of the death of the Engineer if the Engineer is an individual and deceases before their Services have been completed, in which case the Client shall pay for the Services duly performed up to rendered and disbursements incurred by the Engineer to the date of such termination.

1.11.6 All representations, indemnities, obligations of confidentiality and other obligations under this Agreement that by their nature are intended to survive termination shall so survive termination or expiration of this Agreement.

1.12 Indemnification

1.12.1 The Engineer shall indemnify the Client, including its respective parent, subsidiaries, affiliates, officers, directors, employees, agents, successors and assigns from and against any claims, liabilities, demands, losses, settlements, costs, expenses, penalties, damages, actions, suits, or proceedings ("**Claims**") arising from or caused by the Engineer's negligent acts, errors or omissions or breach of this Agreement or non-performance of its obligations under this Agreement. For certainty, the Engineer's liability for Claims under this Subsection 1.12.1 shall include the obligation to reimburse the Client for all legal fees (including costs of defense) reasonably incurred by the Client as a direct result of such Claims on a full indemnity basis.

1.12.2 Each party shall indemnify the other, including its respective parent, subsidiaries, affiliates, officers, directors, employees, agents, successors and assigns from and against any Claims by third parties that arise out of or are attributable to this Agreement or the Services, including Claims attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of

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tangible property, to the extent that such Claims are attributable to or caused by the negligence or willful misconduct of the indemnifying party or anyone for whose acts the indemnifying party is responsible in law.

1.12.3 In no event shall either the Client or the Engineer be liable to the other, or their respective directors, officers or employees, for Consequential Damages arising out of or related to this Agreement, the Project, the Work or the Services.

1.12.4 The parties' liability for any and all Claims whatsoever, including, without limitation, in tort, contract, strict liability, indemnity or otherwise, arising out of, or in connection with this Agreement shall be limited as follows:

.1 in respect to Claims suffered by the Client or Engineer, as the case may be, for which insurance is to be provided pursuant to Section 1.13, to the amount of such insurance that is required to be held for one claim or occurrence pursuant to Section 1.13.

.2 in respect to Claims suffered by the Client or Engineer, as the case may be, for which insurance is not required to be provided pursuant to Section 1.13, to the total compensation to be paid to the Engineer pursuant to this Agreement.

.3 in respect to Claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of Claims advanced by third parties, the limits set forth in Subsections 1.12.4.1 and 1.12.4.2 above shall apply.

1.12.5 To the fullest extent permitted by law, no shareholder, officer, director, partner, principal or employee of the Client or Engineer shall have personal liability under any provision of this Agreement or for any matter in connection with the Services provided.

1.13 Insurance

1.13.1 The Engineer shall provide and maintain at its sole expense the insurance coverage stipulated in this Agreement. Insurance is to be carried through locally licensed insurers with a minimum A Best rating or as otherwise acceptable to the Client. Certificates of insurance showing the following coverages shall be provided by Engineer upon request:

.1 **Commercial General Liability Insurance:** Commercial General Liability Insurance shall be carried in the amount of $ per occurrence and $ in the aggregate providing coverage for Bodily Injury, Property Damage, Products and Completed Operations Liability, Contractual Liability, and Severability of Interests. The Engineer shall include the Client as an "Additional Insured" and provide a waiver of subrogation in their favour.

.2 **Automobile Insurance:** If used in the performance of the Engineer's Services, Automobile Liability Insurance, including bodily injury and property damage, in the amount of $ including any owned, leased, hired and non-owned automobiles.

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.3 **Professional Liability Insurance:** Professional Liability Insurance shall be carried in the amount of $ per claim and $ in the aggregate. Insurance must be carried for a minimum of three years after Project completion, and, if applicable, shall have no exclusion for pollution, mold or asbestos coverage.

.4 **Cyber Liability Insurance:** If there is exposure of the Engineer to confidential or personal data, Cyber Liability Insurance, with limits of at least $ per claim and $ in the aggregate, to be maintained for the duration of this Agreement. Cyber liability is to respond to privacy and network security liability claims including:

(i) Liability arising from theft, dissemination, and/or use of confidential information regardless of how the information is stored or transmitted.

(ii) Liability arising from (i) the unauthorized access to, use of, or tampering with computer systems, including hacker attacks; or (ii) the inability of an authorized third party to gain access to supplier systems, including denial of service, unless caused by a mechanical or electrical failure.

(iii) Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or their person's computer, computer system, network, or similar computer-related property and the data, software, and programs thereon.

(iv) Crisis-management expenses (i.e., notification, public relations, reputation damage, forensics, etc.) for a date breach.

.5 **Worker's Compensation;** The Engineer shall provide evidence of compliance with workers' compensation legislation at the Site.

1.13.2 **Additional Coverage:** If the Client requests to have the amount of coverage increased from that detailed in the Contract Documents or requests other special insurance for this Project, then the Engineer shall endeavour forthwith to obtain such additional or special insurance at the Client's expense as a disbursement.

1.13.3 It is understood and agreed that the coverage provided by the foregoing policies will not be materially changed or cancelled by the Engineer until thirty (30) calendar days' written notice to the Client of such material change or cancellation has been delivered.

1.13.4 The Client shall ensure that, where applicable, its other consultants have adequate insurance in respect of the services they will provide for the Project, including with respect to professional liability insurance.

1.13.5 For the purpose of meeting the limit of insurance required in Subparagraphs 1.13.1.1 and 1.13.1.2, the Engineer may use a combination of Commercial General Liability/Automobile Liability supported by Umbrella Liability or Excess Liability to meet the required limits of insurance.

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1.14 Dispute Resolution

1.14.1 Subject to the Construction Act and all applicable laws, the parties agree that all disputes in respect of this Agreement or the Services shall be addressed as set out in this Section 1.14. Notwithstanding any dispute, it shall be the responsibility of each party to continue to perform its obligations under this Agreement pending resolution of such disputes.

1.14.2 Negotiation.

.1 In the event a matter of difference arises between the Engineer and the Client in relation to the Agreement, the grieved party shall send a written notice of dispute to the other party which contains the particulars of the matter in dispute and the relevant provisions of the Contract Documents. The responding party shall provide a written response to the grieved party within ten (10) Business Days after receipt of the notice of dispute setting out particulars of this response and any relevant provisions of the Contract Documents.

.2 The Engineer and the Client shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of any and all relevant facts, information, and documents to facilitate these negotiations.

.3 In the event of failure by the Engineer and the Client to reach agreement within ten (10) Business Days of receipt of the responding party's reply, or if either party concludes that further negotiation is unlikely to result in agreement, the matter shall be referred to mediation as provided in Subsection 1.14.3 herein unless either party elects to terminate the negotiations and forego mediated negotiations by giving written notice to the other party within such ten (10) Business Days of receipt of the responding party's reply.

1.14.3 Mediation.

.1 Where neither party has given written notice foregoing mediated negotiations pursuant to Subsection 1.14.2.3, this Subsection 1.14.3 shall apply.

.2 The Engineer and the Client shall jointly select an impartial mediator who shall be, preferably, properly qualified in the area of work as contemplated by this Agreement. In the event that the parties, acting reasonably, cannot agree on a mediator, the candidates selected by the parties shall, acting reasonably, choose a third party to act as the Mediator.

.3 The Mediator shall meet with the parties within ten (10) Business Days after the selection of the Mediator, or as soon thereafter as is practicable, to attempt to mediate and resolve the dispute. The Engineer and the Client shall observe such reasonable procedures for conducting the mediation as the Mediator may reasonably request.

.4 If no agreement is reached upon mediation, or if either party concludes that further mediation is unlikely to result in agreement, then either the Engineer or the Client may

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request the Mediator to recommend (and only recommend) a basis, or bases, for resolution of the dispute. The Mediator shall, after consideration of the parties' positions and written submissions (if so requested), issue a written recommendation in this regard. Any recommended basis for resolution shall have absolutely no binding effect upon either party unless both parties agree to accept it and shall be without prejudice to the parties' positions in any further proceeding.

.5 If no agreement is reached the mediator will terminate the mediated negotiations by giving written notice to the Client and Engineer.

.6 All meetings and proceedings shall be held in the municipality of the Client or a reasonable alternate at a time and location as determined by the parties.

.7 The costs and expenses of the Mediator shall be shared equally by the Engineer and the Client.

1.14.4 Arbitration.

.1 By giving written notice to the other party within ten (10) Business Days after the date of termination of the negotiations pursuant to either Subsection 1.14.2.3 or 1.14.3.5, either party may refer such matter as is arbitrable to arbitration as provided in this Subsection 1.14.4.

.2 Where neither party has given written notice pursuant to Subsection 1.14.4.1, on expiration of the ten (10) Business Days the arbitration agreement under this Subsection 1.14.4 is non-binding on the parties and the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.

.3 In the event that the parties are unable to settle any dispute between them which is under mediation, either party may refer such matter to arbitration as provided herein:

(i) The Client and the Engineer shall select an arbitrator within ten (10) Business Days of the submission of a dispute to arbitration under this Subsection 1.14.4, which arbitrator shall be neutral and independent of the parties. If the parties are unable to agree on an arbitrator, either party shall be at liberty to seek an appointment of an arbitrator upon application under the Arbitration Act.

(ii) The arbitration shall be conducted in accordance with the provisions of the Arbitration Act, unless the parties otherwise agree. If the issue in dispute is particularly time sensitive, the parties shall, in good faith, take such reasonable steps as may be required to expedite the arbitration process. In any event, all disputes shall be submitted to the arbitrator within thirty (30) calendar days of the selection of the arbitrator. All arbitration meetings and proceedings shall be held in the municipality of the Client or a reasonable alternate, at a time and location determined by the parties, but in any event no later than thirty (30) calendar days following the submission of the dispute to the arbitrator.

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(iii) In addition to the examination of the parties by each other, the arbitration panel may examine, in the ordinary course, the parties or either of them and the witnesses in the matter referred to the arbitration panel, and the parties and witnesses, if examined, shall be examined on oath or affirmation.

(iv) The arbitration panel shall, after full consideration of the issues in dispute, the relevant facts and applicable law, render a decision within thirty (30) calendar days after argument of the issue to the arbitrator, which decision shall be final and binding on the parties and not subject to appeal or challenge, except such limited relief provided under subsection 45(1) (appeal on a question of law, with leave) or section 46 (setting aside award) of the *Arbitration Act*.

(v) Each party shall bear is own costs and expenses incurred in the arbitration, and the parties shall share equally in the costs and expenses of the arbitrator.

(vi) Any award of the arbitration panel may, at the instance of either of the parties to this Agreement and without notice to the other of them, be made an Order of the Superior Court of Ontario, pursuant to the *Arbitration Act* and the *Courts of Justice Act,* RSO 1990, c C.43.

1.14.5 Nothing in this Agreement shall prevent the right of either the Engineer or the Client to refer to adjudication any dispute which may be adjudicated under the Construction Act. Any such adjudication shall be governed by the provisions of Part II.1 CONSTRUCTION DISPUTE INTERIM ADJUDICATION of the Construction Act.

1.15 Miscellaneous

1.15.1 Unless previously agreed to by the Client or in accordance with the Client's purchasing policies, the Engineer or any person, firm or corporation affiliated with or subsidiary to the Engineer shall not tender for the construction of the Project or have an interest either directly or indirectly in any of the parties bidding on the construction of the Project.

1.15.2 Neither party may assign this Agreement or any portion thereof without the prior consent in writing of the other party which consent shall not be unreasonably withheld.

1.15.3 This Agreement supersedes all previous agreements, arrangements or understandings between the parties whether written or oral in connection with or incidental to the Project.

1.15.4 Unless otherwise provided in this Agreement, where the Services are subject to the approval or review of an authority, department of government, or agency other than the Client, such applications for approval or review shall be the responsibility of the Engineer, but shall be submitted through the offices of the Client and, unless authorized by the Client in writing, such applications for approval or review shall not be obtained by direct contact by the Engineer with such other authority, department of government or agency. Costs for all application fees shall be borne by the Client unless otherwise set out in the Contract Documents. The foregoing in no way limits the Engineer's responsibility to identify, understand and coordinate any and all approvals and permits required for the Project unless otherwise specified in the RFP or agreed to by the Client.

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1.15.5 Any additional requirements regarding insurance, permits, approvals, etc. to be listed here. If there are no additional conditions, then this Subsection 1.15.5 is to be left blank.

[Remainder of page left intentionally blank. Article 2 follows.]

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ARTICLE 2 – SERVICES TO BE PROVIDED

2.1 Engineer's Services

Services to be provided by Engineer in addition to its obligations set out in Article 1:

2.2 Exclusions from the Engineer's Services

The following are expressly excluded from the Services:

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2.3 Responsibilities of the Client

Responsibilities of the Client in addition to those set out in Article 1:

[Remainder of page left intentionally blank. Article 3 follows.]

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ARTICLE 3– FEES AND DISBURSEMENTS

3.1 Basis of Payment for this Agreement

3.1.1 The Client will compensate the Engineer in accordance with the fees and charges for Services as set out in this Article 3. The parties have together determined that the following shall be the basis for such compensation (each as described in greater detail below):

☐ Percentage of Cost Basis

☐ Time Basis

☐ Upset Cost Limit Basis

☐ Lump Sum Basis

3.1.2 For certainty, all fees, irrespective of their basis, shall be in Canadian funds and exclusive of Value Added Taxes, which Value Added Taxes are to be added to each invoice. All payments shall be subject to the requirements of the Construction Act.

3.1.3 **Expenses.** Where compensation is on a "percentage cost", "time" or "upset cost limit" basis, the Engineer shall, in addition to such compensation, be reimbursed for the actual cost plus an administrative charge of %, for all reasonable expenses and disbursements properly incurred by the Engineer in connection with the Project including but not limited to: vehicle use charges, traveling and living expenses, long distance telephone charges, report production costs, photography, special delivery charges, supplies and equipment, field equipment costs, laboratory costs. Computer and office charges are considered part of overhead and shall not be invoiced as disbursements. For certainty, where compensation is on a "lump sum" basis, such compensation shall be deemed to include all such expenses and disbursements.

3.1.4 **Percentage of Cost Basis:** Where compensation is to be paid on a "Percentage of Cost Basis", the Client shall pay the Engineer fees calculated as a percentage of the Cost of the Work as follows:

TYPE OF SERVICE	% OF COST OF THE WORK

.1 Where compensation is to be paid on a "Percentage of Cost Basis", payment shall be made as follows:

(i) **Monthly Payment** – The Engineer shall submit an invoice to the Client for that part of the design of the Project completed in the immediately preceding month, calculated upon the basis of the Engineer's estimate of the cost of that part of

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the Project, and, if the Client agrees with such estimate and that such part has been completed, the Engineer will be paid the amount of the fee so invoiced. Any dispute in respect of the estimate shall be determined in accordance with Section 1.14 hereof.

(ii) **On Award of Construction Contract** – Following the award of the Construction Contract, the Engineer shall recalculate their fee on the basis of the tender quantities and prices on which the Construction Contract was awarded, plus the estimated cost of materials and other services supplied by the Client. Upon such recalculation, the amount paid to the Engineer shall be adjusted to equal the full amount of the recalculated fee including the repayment by the Engineer of any overpayment made to the Engineer. Any dispute in respect of the updated estimate shall be determined in accordance with Section 1.14 hereof.

(iii) **Delay of Award of Construction Contract** – In the event the Construction Contract is not awarded within months of the acceptance of the Engineer's design by the Client, the final fee for design shall be determined as in Subsection 3.1.4.1(i) above, and Subsection 3.1.4.1(ii) shall not apply. Further services for the Project beyond the months will be undertaken on a "time" basis as set out below.

(iv) **On Completion of the Work** – Following completion of the Work as defined in the Construction Act, the Engineer shall recalculate their fee on the basis of the Cost of the Work and upon such recalculation the amount paid to the Engineer shall be adjusted to equal the full amount of the recalculated fee including the repayment by the Engineer of any overpayment to the Engineer. Any dispute in respect of the calculation of fees shall be determined in accordance with Section 1.14 hereof.

3.1.5 **Time Basis:** Where compensation is to be paid on a "Time Basis":

.1 The Client shall pay the Engineer a fee, calculated on a time basis, for performance of the Services. Fees on a time basis for all staff shall be at hourly rates based on job classifications as agreed to by the parties in writing.

.2 If the Project is greater than one (1) year in duration, the Engineer may from time to time seek approval from the Client to adjust hourly rates and such approval shall not be unreasonably withheld.

.3 All time expended on the Services, whether in the Engineer's office, at the Site, or elsewhere, excluding including travel time (eligibility of travel time shall be determined by the Client as outlined in the Terms of Reference), shall be chargeable.

.4 When requested by the Client, the Engineer shall provide, for approval by the Client:

(i) An estimate of the total fees to be paid for the Services;

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(ii) A payment schedule showing an estimate of the portion of the Services to be completed in each month and an estimate of the portion of the fee which will be payable for each such month consistent with the Schedule; and

(iii) A list of Engineer's Staff showing the number, classifications and hourly rates for Engineer's Staff for which the Engineer will seek payment on a time basis. The Engineer shall relate such information to the particular type of work that such staff are to perform while employed on the Project. Such list shall designate the member of the Engineer's Staff who is to be the liaison person between the Engineer and the Client.

.5 The Engineer will require prior written approval from the Client for any of the following changes:

(i) Any increase in the estimated fees beyond those approved under Subsection 3.1.5.4(i);

(ii) Any change in the schedule which results in a longer period than provided in Subsection 3.1.5.4(ii); and/or

(iii) Any change in the number, classification and hourly rate ranges of the Engineer's Staff provided under Subsection 3.1.5.4(iii).

.6 The Engineer shall submit an invoice to the Client for all Services performed and reimbursable expenses incurred, if any, in the immediately preceding month.

3.1.6 **Upset Cost Limit Basis:** Where compensation is to be paid on an "Upset Cost Limit Basis":

.1 The Engineer shall be paid a fee, calculated on a "Time Basis", for the Services in accordance with Subsection 3.1.5.

.2 The parties further agree that, notwithstanding Subsections 3.1.3 and 3.1.6.1, the total fees and disbursements to be paid by the Client to the Engineer for the Services shall not exceed the total upset amount of $ plus Value Added Taxes.

.3 Notwithstanding Subsections 3.1.6.1 and 3.1.6.2, the Client, at its sole discretion, may limit the fees and disbursements paid by the Client to the percentage equivalent of Project completion in the opinion of the Client.

3.1.7 **Lump Sum Basis:** Where compensation is to be paid on a "Lump Sum Basis":

.1 Fees for the Services will be the fixed fee of $, which fee is inclusive of all labour, disbursements, reimbursable expenses, overhead and profit.

.2 Progress invoices will be issued monthly for an amount based on the percentage of Services completed, except that where the parties have agreed to payment of the lump sum on the basis of milestones, progress invoices shall be issued following achievement of each milestone for the amount of the agreed-to milestone payment.

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.3 If the Project is abandoned or delayed for any reason beyond the Engineer's control, the Client shall pay a fee for Services rendered to that date, plus the termination expenses reasonably incurred by the Engineer in winding down the Project.

3.2 Invoicing and Payment

3.2.1 All invoices submitted by the Engineer to the Client under this Agreement shall contain the following information (together with any other information required by the Construction Act):

.1 The Engineer's name and address;

.2 The date of the invoice and the period during which invoiced Services were supplied;

.3 Information identifying the Agreement under which Services were supplied;

.4 A description of the Services supplied;

.5 The amount payable for the Services supplied, and a statement that payment is due upon receipt;

.6 The name, title, telephone number and mailing address of the person to whom payment is to be sent;

.7 If requested by the Client, a written report showing the portion of the Services completed in the preceding month; and

.8 The following additional information (if any):

3.2.2 If the Client intends to dispute any invoice delivered by the Engineer, in whole or in part, the Client shall, within fourteen (14) calendar days of receiving the invoice, deliver to the Engineer a notice of non-payment as prescribed by the Construction Act. Any undisputed portion of any invoice shall remain payable upon receipt in accordance with the terms of payment set out in Subsection 3.2.3.

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3.2.3 Invoices will be due as presented and payable by the Client upon receipt, and in any event no later than twenty-eight (28) calendar days after receiving the proper invoice detailed in Subsection 3.2.1.

3.2.4 Interest on overdue accounts will be charged at the rate of % per annum.

Remainder of page left intentionally blank. Signature page follows.

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This Agreement is entered into by the parties on the date first set out above as evidenced by its execution as follows:

ENGINEER: _____

The signatory shall have the authority to bind the Engineer for the purposes of this Agreement.

This _____ day of _____ 20___

Signature		Signature	
Name		Name	
Title		Title	

CLIENT: _____

The signatory shall have the authority to bind the municipality or its agency for the purposes of this Agreement.

This _____ day of _____ 20___

Signature		Signature	
Name		Name	
Title		Title	

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