

Professional Services Purchase Order Terms and Conditions

TO THE EXTENT THAT THE FOLLOWING TERMS CONFLICT WITH THE TERMS ON THE FACE OF THIS PURCHASE ORDER,
THE TERMS ON THE FACE OF THIS PURCHASE ORDER WILL GOVERN

1. **Services.** The Consultant shall provide the services ("Services") and the goods ("Goods") relating to the Services, if applicable, described in the Consultant's Proposal (the "Proposal") as referenced on the face of the Purchase Order included herewith ("Purchase Order"). The Proposal was provided in response to the City's Request for Proposals as referenced on the face of the Purchase Order (the "RFP"). The Consultant warrants that the Services shall only be performed by the individuals identified by the Consultant in the Proposal, unless prior written consent is provided by the City. If the Consultant wishes to seek the City's consent to replace any individual identified in the Proposal, the replacement shall have at least the same qualifications as the person identified in the Proposal. Notwithstanding the foregoing, the City may in its sole and unfettered discretion require that an individual performing the Services be removed and replaced by a competent professional replacement to the satisfaction of the City.
2. The Consultant is deemed to have accepted these terms and conditions and any additional terms on the face of the Purchase Order, upon the earlier of: (a) written notice given by the Consultant to the City that it has accepted and agreed to these terms and conditions and Purchase Order; or (b) commencement of the provision of the Services or the Goods by the Consultant.
3. The Consultant shall commence the Services upon issuance of the Purchase Order and shall complete each phase of the Services in accordance with the time limitations set out in the RFP.
4. The Consultant shall comply with all reasonable requirements established by the City's designated Project Manager or his/her designate for the performance of the Services, including but not limited to security, safety, environmental protection, emergency procedures and access.
5. The Consultant shall exercise the degree of care, skill and diligence normally provided by a qualified professional consultant in the performance of services of a similar nature to the Services required under this Purchase Order.
6. The City and the Consultant, by agreement in writing, may from time to time alter, add to or deduct from the scope of the Services, and in such case the time for completion shall be adjusted accordingly.
7. No payment shall be made to the Consultant as compensation for damages for any delays or hindrances in the progress of the Services, unless due to the City's willful misconduct or negligence.
8. If the Services include the review of bids by the Consultant and if the lowest price obtained by a bid process or negotiation exceeds the City's construction budget for the Services, and if the excess is due to reasons within the control of, or reasonably foreseeable by the Consultant, the Consultant shall, if requested by the Project Manager, and without additional charge, cooperate in revising the project scope as required to reduce the construction cost and shall modify the construction documents as necessary to comply with the City's construction budget.
9. **PURCHASE ORDER DOCUMENTS.** The RFP and the Proposal are incorporated by reference and form part of this Purchase Order.
10. **PAYMENT & APPLICATION FOR PAYMENT.** The City will pay the Consultant as per the price structures indicated on the face of the Purchase Order.
11. The City shall not under any circumstances be obligated to pay to the Consultant any amount exceeding the sum set out in the Purchase Order unless prior written authorization has been obtained by the Consultant from the City. Without limiting the generality of the foregoing, the City shall not be required to make payment for any cost or disbursement incurred by or on behalf of the Consultant for the purpose of rectifying errors or omissions for which, in the reasonable opinion of the City, the Consultant is responsible.
12. When requested by the City, the Consultant shall provide a cost breakdown for any invoice submitted by the Consultant in relation to the Services.
13. Where changes have been made to the scope of the Services in accordance with Section 6, the City and the Consultant may adjust the Consultant's fee accordingly. If the City and the Consultant cannot agree to the terms of the adjustment, then the dispute may be submitted to arbitration as set out

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in these terms and conditions. The Consultant shall have no other claim against the City for any adjustment to the Consultant's fee as a result of any change to the Services, except as set out within this Section 13.

14. An invoice billed to the City and referencing the attached purchase order number must be forwarded to: CITY OF MEDICINE HAT · Accounts Payable, 364 Kipling Street SE, Medicine Hat, Alberta T1A 1Y4 or AP@medicinehat.ca. Invoices must contain the Goods and Services Tax (G.S.T.) registration number.
15. **INFORMATION AND PROPERTY RIGHTS.** The Consultant agrees that all data, information and material provided to the Consultant by the City are and shall be confidential, both during and after the term of the Services/Purchase Order and the Consultant acknowledges that this is a fundamental term of this Purchase Order. The Consultant and the Consultant's employees shall not use, copy, disclose or communicate any information not available to the general public that was gained by them in the course of their duties related to the Services/Purchase Order, except as is necessary in the proper discharge of their duties for the Services. This obligation shall survive expiration or termination of this Purchase Order.
16. The City agrees to provide the Consultant with such information as may be reasonably required by the Consultant in the performance of the Services.
17. The Consultant agrees that all base materials, research results, computer programs, drawings, documents and notes or materials of any type whatsoever developed or prepared by the Consultant (hereinafter called the "Documents") in performance of the Services shall vest and become the absolute property of the City, including copyright of such and upon completion of the Services or termination of this Purchase Order, all copies of the Documents shall be delivered by the Consultant to the City upon demand by the City. Once the City has possession of the Documents, the City is solely responsible for the use the City makes of them.
18. **SOFTWARE LICENSE GRANT.** If Consultant provides software with the Goods that are proprietary to Consultant or Consultant's suppliers, Consultant grants the City a non-exclusive, perpetual license to use the software on and in conjunction with the Goods. The City agrees that title of that proprietary software remains with Consultant (and its suppliers). The City will maintain all proprietary marks on software provided by Consultant. The City may transfer this license if transferring the Goods. If the Goods include software or designs to be developed for the City, Consultant transfers and assigns title and all intellectual property rights to such software to the City upon delivery of such software or design.
19. **REPORTING.** The Consultant shall submit to the Project Manager regular progress reports with respect to the Services. If the Project Manager, acting reasonably, deems additional progress reports necessary the Consultant shall submit all additional progress reports requested by the Project Manager.
20. The Consultant shall meet with the Project Manager from time to time as requested by the Project Manager to review the progress of the Services and the performance of the Services.
21. No acceptance or approval of a report by the Project Manager, whether expressed or implied, shall be deemed to relieve the Consultant of the professional or technical responsibility for the Services.
22. **WARRANTIES.** Consultant warrants to the City that for a period of **12** months from the delivery date, (i) all Goods will: (a) be free from any defects in workmanship, material, design, errors, and omissions; (b) conform to all applicable specifications, drawings, designs, samples and other requirements specified by the City; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; (f) not infringe or misappropriate any third party's patent or other intellectual property rights, and (iii) all Services will: (a) be free from any defects in workmanship, material, design, errors and omissions; (b) conform to all applicable specifications, drawings, designs, samples and other requirements specified by the City; and (c) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods or Services by the City. These warranties are cumulative and in addition to

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any other warranty provided by law or equity. The Consultant shall further assign or otherwise pass-through any and all warranties and indemnities received from the manufacturer(s) or licensor(s) of the Goods or any component thereof, and to the full extent granted by such manufacturer(s) or licensor(s), to the City as the beneficiary of same upon transfer of title to the Goods. The Consultant shall further cooperate with the City to ensure such warranties and indemnities are fulfilled by the manufacturer(s) or licensor(s).

23. **SUSPENSION OF SERVICES.** The City may, at any time by notice in writing, at its sole and unfettered discretion suspend the performance of the Services.
24. The City shall pay all fees accrued due to the Consultant to the time of suspension, but payment of all other fees may be suspended by the City.
25. The City shall not be responsible for any fees incurred by the Consultant during the period of any suspension unless the Consultant satisfies the Project Manager, before incurring any such fees, of the necessity for the same and provides the Project Manager with such documentation as may be required by the Project Manager in support of the claim for fees.
26. The Consultant shall resume and complete the Services in accordance with these terms and conditions upon written notice from the City. The City shall make an equitable adjustment for terms of this Purchase Order which are affected by the suspension including time requirements and payment. Any dispute as to what constitutes an equitable adjustment may be decided by arbitration in the manner herein provided.
27. **TERMINATION OF SERVICES.** The City may terminate this Purchase Order by giving notice in writing which is hand delivered (not by normal mail service) to the address on the face of the Purchase Order for the Consultant, if the Consultant: a) in the opinion of the City, fails to complete the Services or any portion thereof within the time limited by this Purchase Order for such completion, or b) becomes insolvent, or c) commits an act of bankruptcy, or d) ceases providing the Services, or e) assigns its interest in this Purchase Order without the required written consent, or f) fails to

observe or perform any of the provisions of this Purchase Order, or g) has any conflict of interest which may, in the opinion of the City, have an adverse effect on the Services.

28. Notwithstanding the foregoing, the City may terminate this Purchase Order at its sole and unfettered discretion for its convenience upon seven (7) days written notice, hand delivered (not by normal mail services) to the address set out on the face of the Purchase Order.
29. The Consultant, upon termination of this Purchase Order for any of the reasons set out in Section 27, shall be liable for, and upon demand shall pay to the City an amount equal to, all loss or damage suffered by the City as a result of the non-completion of the Services. If the Consultant fails to pay the City for any such loss or damage on demand, the City shall be entitled to deduct the same from any payments due and payable to the Consultant, without prejudice to the City's right to exercise any other remedies available to the City at common law or at equity or under any statute.
30. The Consultant agrees that termination or suspension of this Purchase Order or a change to the Services in accordance with Section 6 does not operate so as to relieve or discharge the Consultant from any obligation under this Purchase Order or imposed upon him by law in respect to the Services or any portion of the Services.
31. The City shall, In the event of any termination of this Purchase Order, pay to the Consultant all amounts for completed work due to the Consultant in accordance with this Purchase Order as well as all reasonable fees incurred up to the date of termination. The City shall have no further liability of any nature whatsoever to the Consultant for any loss of profit or for loss of business opportunity or for any other losses suffered whatsoever, either directly or indirectly, by the Consultant as a result of the termination of this Purchase Order.
32. The Consultant shall, upon termination, forthwith deliver to the City a reproducible copy of all materials used by the Consultant or prepared by the Consultant in relation to the Services.
33. **INDEMNITY AND INSURANCE.** The Consultant shall indemnify, defend, and save harmless the City, its servants,

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agents, employees and elected officials from and against any and all losses, claims, demands, payments, suits, judgments, charges, expenses, actions, causes of actions and costs (including costs on a solicitor and its own client basis) suffered by any or all of them in respect to any and all claims, demands, suits, judgments, charges, actions or causes of action lawfully brought or made by any person against the City, its servants, agents, employees and elected officials where such losses, claims, demands, payments, suits, judgments, expenses, charges, actions, causes of action or costs result from or occur by reason of any error, omission or willful or negligent act or breach of these terms and conditions arising out of the performance of the Services by the Consultant or its servants, agents, employees or sub-consultants. This Section 33 shall survive expiration or termination of this Purchase Order.

34. Consultant shall, at its expense, defend, indemnify and hold harmless the City, its servants, agents, employees and elected officials ("Indemnified Parties") against any and all Losses arising out of or in connection with any claim that any of the Indemnified Parties' use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Consultant enter into any settlement without the City's prior written consent. This Section 34 shall survive expiration or termination of this Purchase Order.
35. The Consultant shall maintain, in full force the following insurance: (a) Comprehensive General Liability Insurance in respect to the Services and operations of the Consultant for bodily injury and/or property damage with policy limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence and shall include the following coverage: The City of Medicine Hat as an Additional Insured, Standard non-owned automobile liability, Broad Form Products and Completed Operations liability, Owners & Contractors Protective Liability, Employer's liability insurance with limits of liability of not less than two million dollars (\$2,000,000.00) per employee for each accidental injury to, or death of, an employee of the Consultant or of a sub-consultant, engaged in the Services, Cross liability; (b) Automobile Liability insurance (Owner's Form) in respect of all vehicles used in the performance of the Service with

limits of no less than Two Million Dollars (\$2,000,000.00), inclusive per occurrence for bodily injury, death, and damage to property; (c) Professional Errors and Omissions Liability Insurance in respect to the Services with policy limits of not less than One Million Dollars (\$1,000,000.00) per claim with a 12-month maintenance period, a deductible of not more than Twenty-Five Thousand Dollars (\$25,000.00) and with an aggregate limit of not less than Two Million Dollars (\$2,000,000.00); and (d) such other insurance coverage as may be required pursuant to the applicable Order, with financially sound and reputable insurers. The certificate of insurance shall name the City as an additional insured and waive subrogation against the City's insurers and the City or the Indemnitees. Each of the insurance policies mentioned in this Section 34 shall be endorsed to provide the City with not less than thirty (30) days written notice in advance of any cancellation, change or amendment restricting coverage and shall be primary and non-contributing.

36. The aforementioned insurance shall be in a form and with insurers acceptable to the City. Certificates of Insurance or Certified copies of the policies shall be provided to the City by the Consultant or the Consultant's broker upon request by the City, and evidence of renewal shall be provided to the City not less than thirty (30) days prior to the expiry dates of the policies.
37. All required insurance policies shall be with insurers licensed to underwrite insurance in Alberta, signed by representatives licensed to do so for insurance in Alberta.
38. The Consultant shall be responsible for the payment of all premium, defense costs, and deductible amounts relating to the said insurance policies and the Consultant shall maintain the aforementioned insurance from the date of this Purchase Order until the Services are fully completed.
39. Insurance provided by the Consultant will be primary and non-contributing.
40. Neither the Consultant nor the City shall be liable to the other for, and each party releases the other party from and against, any indirect, special, incidental, punitive or consequential damages including but not limited to loss of production, loss of revenue and profits, loss of business, business interruption, and loss of use of assets, whether

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such damages arise in pre-contractual warranty, contract, tort, strict liability, indemnity or any other theory of legal liability.

41. **DISPUTE RESOLUTION.** In the event of a dispute arising between the parties hereto as to the interpretation, application, operation or alleged violation of these terms and conditions, or any of the provisions hereof (but not with respect to termination), if requested in writing by either party, the parties may enter into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. If a dispute cannot be settled within a period of thirty (30) calendar days with the mediator, if mutually agreed, such dispute may be determined by arbitration in accordance with the following terms and conditions: The party desiring to refer a dispute for arbitration shall notify the other party in writing of the details of the nature and extent of the dispute and the desire of the notifying party to refer the matter to arbitration. Thereafter the following steps shall apply. Within seven (7) days of receipt of such notice, the receiving party shall, by written notice, advise the party requesting the arbitration of its position with respect to all matters set forth in the initial notice. The receiving party's notice may admit responsibility and propose remedial action, for some or all of the matters raised in the initial notice, and the receiving party shall then forthwith undertake such remedial action. The terms of reference for arbitration shall be those areas of dispute referred to in the initial notice in respect of which the receiving party has not admitted responsibility or taken remedial action. The City and the Consultant shall, within seven (7) days of the establishment of the terms of reference, each appoint an arbitrator and the two arbitrators shall, within seven (7) days of their appointment, appoint a third member to the Arbitration Committee to be known as the Chairman. If the two arbitrators fail to appoint a Chairman within the time period hereinbefore limited for that purpose, then both parties or either of them may apply to a Justice of the Court of Queen's Bench of

Alberta to have the Chairman appointed. If either party fails to appoint an arbitrator within the seven (7) day period as outlined herein, then the arbitrator appointed by the one party shall be deemed to be the Arbitration Committee and the decision of that Arbitrator shall be final and binding upon the parties hereto. Within thirty (30) days of the establishment of the Arbitration Committee, or such further period as may be agreed upon by the parties, the Arbitration Committee shall resolve all matters in dispute in accordance with the terms of reference. The decision of the majority of the Arbitration Committee shall be the decision of the Committee. If no majority decision is reached, the decision of the Chairman shall be the decision of the Committee. The decision of the majority of the Arbitration Committee shall be final and binding upon the parties. The costs of the Arbitration Committee shall be borne by each party as specified by the Arbitration Committee. Except as hereby modified, the provisions of the *Arbitration Act* R.S. A. 2000, Chapter A-43, as amended (or any successor legislation thereto) shall apply to the arbitration procedure. Unless the parties agree otherwise, any arbitration proceeding shall take place in the City of Medicine Hat in the Province of Alberta.

42. Unless instructed otherwise in writing by the City, the Consultant shall continue to carry out the Services during any arbitration proceedings.
43. **SUB-CONSULTANTS.** The Consultant may, upon first obtaining the written approval of the City, retain the services of one or more sub-consultants as may be required to perform the Services. The Consultant shall obtain the approval of the City before changing any Sub-consultant. The Consultant shall provide the City with information reasonably requested by the City pertaining to the terms of service or qualifications of any sub-consultant. The City may rely on this information in making its decision to approve or not approve the retention of a sub-consultant. The City reserves the right to reject any sub-consultant proposed by the Consultant for any reason deemed appropriate by the City.

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44. The Consultant shall remain fully responsible for the performance of the Services even if the Sub-consultants retained are approved pursuant to Section 43 by the City.
45. The Consultant shall take all necessary measures to bind all Sub-consultants to these terms and conditions.
46. **FORCE MAJEURE.** Neither party shall be liable to the other for any delay or failure in performing its obligations under the Purchase Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). Consultant's economic hardship, changes in market conditions, labour strikes, or other labour difficulties are not considered *Force Majeure* Events. If a *Force Majeure* Event prevents Consultant from carrying out its obligations under the Purchase Order for a continuous period of more than 30 calendar days, the City may terminate this Purchase Order immediately by given written notice to Consultant.
47. **LEGAL REQUIREMENTS.** The Consultant shall ensure that the Services comply with all relevant legislation including codes, bylaws and regulations as well as City policies and procedures. Where there are two or more laws, ordinances, rules, regulations or codes applicable to the Services, the more restrictive shall apply. The Consultant shall apply and pay for all necessary permits or licenses required for the performance of the Services.
48. The Consultant shall at all times observe all the provisions of the *Labour Relations Code*, *Workers' Compensation Act*, *Environmental Protection and Enhancement Act* and the *Occupational Health and Safety Act* as well as rules and regulations pursuant thereto. In the event the Consultant fails to comply with any legislation or any regulations there under and the City is required to act or take any steps or pay any sums to rectify such non-compliance, the City may subtract the cost of any such rectifications from any monies owed to the Consultant. Such action shall not be deemed a waiver of any action that the City may pursue to collect any monies paid herewith that exceed the monies owed to the Consultant.
49. The Consultant shall be responsible for the safety of its workers and equipment on the Services, and for the protection of the environment in relation to the work performed by the Consultant on the Services. The Consultant shall bring to the attention of all Sub-consultants all pertinent provisions of the *Occupational Health and Safety Act* and the *Environmental Protection and Enhancement Act* and regulations there under.
50. **ENGINEERING, GEOLOGICAL AND GEOPHYSICIST CONSULTANTS AND SUB-CONSULTANTS.** The Consultant shall follow the requirements of the Alberta Engineering, Geological and Geophysical Professions Act, as amended from time to time, including all applicable regulations, for work within this Purchase Order that falls under the jurisdiction of this Act. This includes, without limitation, authenticating all professional documents, as applicable, and accepting professional responsibility for work performed by the Consultant in accordance with the Act and regulations. The Consultant shall provide the City with a copy of the Consultant's Professional Practice Management Plan (PPMP) upon demand by the City. A professional document prepared by the Consultant cannot include a disclaimer statement that limits the Consultant's responsibility under this Section 50 unless the City specifically authorizes a specific disclaimer or limitation in writing.
51. **ASSIGNMENT.** The Consultant shall not, without the prior written consent of the City, assign or in any way transfer its interest in or obligations under the Services/Purchase Order to any other party. The Consultant acknowledges and accepts that the City has chosen the Consultant to perform the Services because of the reputation of the Consultant and the qualifications of the persons identified in the Proposal, and the Consultant therefore agrees that the City may in its absolute discretion refuse to accept any assignment or transfer of the Consultant's interest in or

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obligations hereunder, even if such refusal may be construed to be arbitrary or unreasonable.

52. **NOTICES.** Subject to Sections 27 and 28, any notice required or permitted to be given hereunder shall be in writing and may be delivered personally, or sent by confirmed facsimile transmission or other means of recorded electronic communications or, sent by registered mail to the other party at its respective address as set out on the face of the Purchase Order.
53. Any notice if delivered or sent by electronic communications or facsimile shall be deemed to have been delivered on the date of receipt or if sent by registered mail shall be deemed to have been received on the third day following the date on which it was mailed.
54. Either party may, at any time, give notice in writing to the other of any change of address of the party giving such notice and after the giving of such notice, the address therein specified shall be deemed to be the address of the said party for the giving of notice there under.
55. The word "notice" in this section shall be deemed to include any requests, statements or other writing provided or permitted to be given by the City to the Consultant or by the Consultant to the City.
56. **SINGULAR AND MASCULINE.** Words importing the singular or masculine also include the plural or feminine or body corporate where the context requires.
57. **RELATIONSHIP OF THE PARTIES.** The relationship between the parties is that of independent contractors. Nothing contained in the Purchase Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
58. **LAWS OF ALBERTA.** This Purchase Order shall be construed in accordance with the laws of the Province of Alberta, and for the purposes of all legal proceedings the Services shall be deemed to have been performed in the said Province. If any provision contained in these terms and conditions shall in any way contravene the laws of the Province of Alberta, such provision shall be severed from

these terms and conditions and the remaining provisions shall continue in force and effect. Nothing herein shall restrict the right of the City to bring action against the Consultant in any Court of competent jurisdiction. The parties hereby irrevocably submit and attorn to the sole and exclusive jurisdiction of the Judicial District of Medicine Hat in the Province of Alberta for any legal proceeding arising under this Purchase Order.

59. **INTERPRETATION.** The headings of these terms and conditions are for ease of reference only and shall not be taken into consideration in construing or interpreting these terms and conditions.
60. **SUCCESSORS.** These terms and conditions shall enure to the benefit of and be binding upon the parties hereto and, except as hereinbefore provided, the successors and assigns thereof.
61. **BUSINESS LICENSE.** Subject to City Bylaw #2339, Consultant providing Goods or Services pertaining to this Purchase Order may require a valid City of Medicine Hat Business License; proof of valid business license must be provided upon request by the City. Consultant's business license does not cover it subcontractor's activities. Consultant shall ensure its subcontractors take out their own business license in their own names.