

INTRODUCTION

The Client/Consultant Agreement is a project of the Master Municipal Construction Document Association (MMCDA). The MMCDA is a partnership of the Consulting Engineers of British Columbia. The Road Builders and Heavy Construction Association, and the Municipal Engineer's Division of the Association of Professional Engineers and Geoscientists of British Columbia.

The objectives of the document are similar to those for the construction Contract Documents, namely fair to all parties, minimize the need for risk taking by the Consultant and provide an equitable means of resolving disputes, and addressing changes. Another primary objective is to provide the Consultant with adequate resources to foster innovation and analysis of alternatives to provide the best possible design and project for the Client.

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MMCD Client/Consultant Agreement - for use to retain consulting services for municipal engineering projects, including projects using the Master Municipal Construction Documents.

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Agreement
Between Client and Consultant

(FOR USE TO RETAIN CONSULTING SERVICES ON MUNICIPAL ENGINEERING PROJECTS, INCLUDING PROJECTS USING THE MASTER MUNICIPAL CONSTRUCTION DOCUMENTS.)

THIS AGREEMENT made in duplicate this ____ day of _____, 20____.

BETWEEN:

(NAME , OFFICE ADDRESS AND FAX OF CLIENT)

(the "*Client*")

AND:

(NAME , OFFICE ADDRESS AND FAX OF CONSULTANT)

(the "*Consultant*")

Whereas the *Client* intends to engage the professional services of the *Consultant* in connection with the following project:

(TITLE OF PROJECT)

(the "*Project*")

The *Client* and the *Consultant* agree as follows:

DEFINITIONS 1.

Definitions	1.1	1.1.1 For the purposes of this <i>Agreement</i> , the following definitions will apply.
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(a) “*Additional Services*” means services provided by the *Consultant* which are outside the scope of *Basic Services* under this *Agreement*.

(b) “*Agreement*” means this Agreement between the *Client* and the *Consultant*.

(c) “*Basic Services*” means the services which the *Consultant* is required to perform as identified under Schedule A of this *Agreement*.

(d) “*Business Day*” means a day other than a Saturday, Sunday or statutory holiday in British Columbia. A *Business Day* will end at 5:00 p.m. on that day.

(e) “*Client*” means the person, firm, corporation or municipality identified on page 1 of this *Agreement*.

(f) “*Consultant*” means the person, firm or corporation identified on page 1 of this *Agreement*.

(g) “*Contract*” means an agreement between the *Client* and a *Contractor* for the performance of all or part of the *Work*.

(h) “*Contract Administrator*” means the person, if any, identified as Contract Administrator in the *Contract Documents*.

(i) “*Contract Documents*” means the documents comprising the *Contract*.

(j) “*Contractor*” means the person, firm, or corporation who has entered into a *Contract* with the *Client*.

(k) “*Defined Remuneration Services*” means the *Services* where the cost of, and the time required for, the performance of such *Services* can be predicted to a reasonable level of accuracy by professionals experienced in providing services similar to the *Services*.

(l) “*Disbursement*” has the meaning set out in paragraph 5.2.

(m) “*Field Services*” means making such visits to the *Project* site at intervals appropriate to the stage of the *Work* as reasonably necessary to enable the *Consultant* to ascertain whether the *Contractor* is carrying out the *Work* in general conformity with the *Contract Documents*.

(n) “*Hazardous Materials*” means any material or substance which is a “hazardous product”, “contaminant”, “toxic substance”, “deleterious substance”, “special waste”, “dangerous good” or “reportable substance” that is identified or described in or defined by an applicable statute, regulation or law.

(o) “*Instruments of Service*” has the meaning set out in paragraph 7.2.1.

(p) “*Master Municipal Construction Documents*” means the latest edition, as of the date of this *Agreement*, of the Master Municipal Construction Documents published by The Master Municipal Construction Documents Association. (Copies of the documents can be purchased from Support Services Unlimited, Suite 302, 1107 Homer Street, Vancouver, BC, V6B 2Y1, Tel. 681-0295, or obtained on-line from www.mmcd.net.)

(q) “*Other Consultant*” means a registered or licensed Professional Engineer, Architect or other specialist, other than the *Consultant*, engaged directly by the *Client* in connection with the Project.

(r) “*Project*” means the project identified on page 1 of this *Agreement*.

(s) “*Proposal*” means the formal or informal written submission, if any, made by the *Consultant* to the *Client* prior to the execution of this *Agreement* describing proposed scope of services to be provided by the *Consultant*, or portion of such submission, which is accepted by the *Client* and attached to this *Agreement* as Schedule D.

(t) “*Services*” means all services to be provided by the *Consultant* under this *Agreement*.

(u) “*Sub-Consultant*” means any registered or licensed Professional Engineer, Architect or other specialist such as, without limitation, any geotechnical, environmental, legal, accounting, insurance or bonding specialist, engaged by the *Consultant* in connection with the *Services*.

(v) “*Termination Expenses*” means expenses reasonably and necessarily incurred by the *Consultant* as a direct result of the termination of this *Agreement* or the suspension of the *Services*.

(w) “*Variable Remuneration Services*” means the *Services* where the cost of, and the time required for, the performance of such *Services* cannot be predicted to a reasonable level of accuracy by professionals experienced in providing services similar to the *Services*. For illustration, *Variable Remuneration Services* may include:

- (1) negotiating real property rights required for the Project;
- (2) participating in public consultation processes beyond the level of effort as may be defined in this *Agreement*;
- (3) providing *Field Services* beyond the level of effort as may be defined in this *Agreement*; and
- (4) Obtaining permits, licenses or approvals for the Project from authorities having jurisdiction.

(x) “*Work*” means the labour, materials and equipment to be supplied and incorporated into the *Project* by a *Contractor* under a *Contract*.

SCHEDULES 2.

- | | | |
|------------------|-----|--|
| Schedules | 2.1 | 2.1.1 The following schedules form a part of this <i>Agreement</i> : |
| | | (a) Schedule A - Services |
| | | (b) Schedule B - Fees |
| | | (c) Schedule C - Insurance |
| | | (d) Schedule D - Proposal (if any) |
| | | (e) Schedule E – Other Conditions (if any) |

SCOPE OF SERVICES 3.

- | | | |
|-----------------------|-----|---|
| Services | 3.1 | 3.1.1 The <i>Consultant</i> shall in accordance with this <i>Agreement</i> perform and provide the <i>Services</i> described in this <i>Agreement</i> . |
| Basic Services | 3.2 | 3.2.1 Without limiting any other provision of this <i>Agreement</i> , the <i>Consultant</i> shall perform and provide the following <i>Basic Services</i> : |
| | | (a) <u>Review Requirements</u> At the commencement of the performance of the <i>Services</i> , and from time to time during the performance of the <i>Services</i> , review the <i>Client</i> ’s total requirements for the <i>Project</i> , and advise the <i>Client</i> if the requirements cannot be met within the <i>Client</i> ’s <i>Project</i> budget and schedule. |

(b) Suggest Alternatives If requested by the *Client* suggest alternatives or changes to reduce the costs of the proposed *Project* so that the *Client's Project* budget and schedule can be met.

(c) Review Client Data Generally review information and data provided by or through the *Client* to determine its sufficiency and applicability and immediately notify the *Client* of errors or deficiencies. The *Consultant* shall be entitled to rely on the accuracy and completeness of such information and data except to the extent it contains errors or deficiencies that would be obvious or apparent to a consultant qualified in British Columbia to perform services similar in scope, nature and complexity to the *Services*. The *Consultant* shall not be responsible for information or data provided by *Other Consultants*.

(d) Submit Reports Submit technical memoranda, reports and drawings to the *Client* as necessary throughout the course of providing the *Services* and generally keep the *Client* informed in a timely manner by way of written reports on all issues relevant to the *Services*, including progress of the *Services*, any anticipated cost overruns and delays, and on decisions required to be made by the *Client*.

(e) Notice of Other Consultants Advise the *Client* in a timely manner of any *Other Consultant* or *Sub-Consultant*, other than those identified in the *Proposal*, necessary for the performance of the *Services*. If the need for such *Other Consultant* or *Sub-Consultant* would not reasonably have been anticipated at the time of submitting the *Proposal* by a consultant qualified to perform services similar in scope, nature and complexity to the *Services*, then the *Client* shall pay the cost of any such additional *Other Consultant* or *Sub-Consultant*, but if such consultant would reasonably have anticipated the need for the *Other Consultant* or *Sub-Consultant* then the *Consultant* shall pay such costs. If the *Client* does not agree to the engagement of such *Other Consultant* or *Sub-Consultant*, then paragraph 10.7 shall apply.

(f) Access to Property Advise the *Client* as soon as practicable of any need for access to public or private properties necessary to enable the *Consultant* to perform its *Services*.

(g) Notice of Defects Respond promptly to *Client's* notices of apparent defects and deficiencies in the performance of the *Services*.

(h) Approvals, Licences and Permits Advise the *Client* in a timely manner of any necessary approvals, licences and permits required by authorities having jurisdiction, and provide to the *Client* the documentation required by authorities having jurisdiction in connection with such approvals, licences and permits. As *Work* proceeds, monitor compliance with the terms of such approvals, licences and permits and advise the *Client* of the extent of compliance.

Services as Contract Administrator 3.3

3.3.1 If the *Client* appoints the *Consultant* under Schedule A to act as the *Contract Administrator* under the *Master Municipal Construction Documents*, or to perform similar contract administration services under a *Contract* based on a form other than the *Master Municipal Construction Documents*, then the *Consultant* shall provide such contract administration services and shall act on behalf of the *Client* in that capacity, only to the extent expressly provided in the *Contract Documents*. Unless specifically provided otherwise in Schedule A:

(a) all such contract administration services shall be deemed to be *Basic Services*; and

(b) all contract administration services under this paragraph 3.3.1, whether provided as *Basic Services* or *Additional Services*, shall be paid for as *Variable Remuneration Services*.

3.3.2 If appointed by the *Client* to provide contract administration services as described in paragraph 3.3.1, the *Consultant* shall:

(a) immediately upon such appointment nominate in writing a person reasonably acceptable to the *Client* to undertake such services;

(b) without limiting any other provision of this *Agreement* or the *Contract Documents*, inform the *Client* promptly of any observed defects or deficiencies in the *Work* of the *Contractor* and any failure by the *Contractor* to otherwise meet the requirements under the *Contract*; and

(c) give the *Client* prompt notice of possible budget overruns

and shall update the construction cost projection monthly with progress draw approvals.

3.3.5 Nothing in the *Contract Documents* shall create any contractual relationship between the *Consultant* and the *Contractor*.

Additional Services 3.4

3.4.1 The *Consultant* may, at the *Consultant's* absolute discretion and without invalidating this *Agreement*, decline to take on any *Additional Services* requested by the *Client* under this *Agreement* which the *Consultant* decides are beyond the *Consultant's* normal fields of expertise.

3.4.2 The *Consultant* shall not undertake any *Additional Services* without the prior written approval of the *Client*. Prior to proceeding with any *Additional Services*, the *Consultant* and the *Client* shall agree on the scope of the *Additional Services* to be performed and the basis of payment. If the *Additional Services* consist of any *Variable Remuneration Services*, the *Consultant* shall provide the *Client* with a cost estimate breakdown for the performance of such *Variable Remuneration Services* prior to undertaking such *Services*. If the *Client* gives approval for the performance of the *Additional Services*, the *Consultant* shall not exceed the scope or the cost estimate accepted by the *Client* for the *Variable Remuneration Services* without first providing timely written notice to the *Client* setting out the revised scope and/or cost estimate and a reasonable justification for the increase in scope and/or costs. The *Consultant* shall not proceed to provide any *Additional Services* in excess of the *Client* approved scope and cost estimate without the *Client's* prior written approval.

Standard of Service 3.5

3.5.1 The *Consultant* shall undertake and perform all *Services* with such degree of care, skill and diligence as would reasonably be expected from a consultant qualified in British Columbia to perform services similar in scope, nature and complexity to the *Services*. The *Consultant* warrants and represents that the *Consultant* is qualified and has sufficient expertise and experience to perform expeditiously and efficiently all of the *Services* in a proper and professional manner to the standard set out above.

**Compliance with
Laws 3.6**

3.6.1 In performing the *Services*, the *Consultant* shall in all respects comply with all applicable laws, rules, codes, regulations, bylaws, orders and ordinances of authorities having jurisdiction.

Consultant's Representative	3.7	3.7.1 Immediately upon execution of this <i>Agreement</i> , the <i>Consultant</i> shall designate in writing a representative to act as the <i>Consultant's</i> representative for the purposes of all communications with the <i>Client</i> under this <i>Agreement</i> , such representative to have authority to provide information to, and receive instructions from, the <i>Client</i> . The representative shall be available on a reasonably continuous basis during the performance of the <i>Services</i> , and for any periods when the representative is absent or unavailable a replacement with equivalent expertise and authority shall be appointed by the <i>Consultant</i> .
Confidentiality	3.8	3.8.1 The <i>Consultant</i> shall maintain confidentiality on all information, documentation and data provided by the <i>Client</i> to the <i>Consultant</i> or otherwise acquired by the <i>Consultant</i> during the course of carrying out the <i>Services</i> . Except with the prior written consent from the <i>Client</i> , or as required by law or an authority having jurisdiction, neither the <i>Consultant</i> , nor any of its employees, officers, agents, representatives or <i>Sub-Consultants</i> , shall divulge or disclose any of such information to third parties, or use any of such information for any purpose other than as required under this <i>Agreement</i> in connection with the <i>Project</i> .
Sub-Consultants	3.9	3.9.1 If the <i>Consultant</i> retains or employs any <i>Sub-Consultants</i> or other parties to assist in the performance of the <i>Services</i> , then the <i>Consultant</i> shall incorporate into any agreement with and shall bind such <i>Sub-Consultants</i> and other parties to all of the terms of this <i>Agreement</i> . The <i>Consultant</i> shall be responsible for such <i>Sub-Consultant's</i> and other parties' work, and for overseeing and coordinating such <i>Sub-Consultants'</i> or other parties' work.
Key Personnel	3.10	3.10.1 The <i>Consultant</i> shall maintain the key personnel as may be listed in the <i>Proposal</i> attached as Schedule D, or as otherwise specified in this <i>Agreement</i> , and shall not replace any of such key personnel without the <i>Client's</i> prior written agreement, which agreement shall not be unreasonably withheld or denied.
Cooperation and Coordination	3.11	3.11.1 The <i>Consultant</i> shall cooperate and coordinate with <i>Other Consultants</i> as necessary, but in no event, except as otherwise agreed in writing between the <i>Client</i> and the <i>Consultant</i> , shall the <i>Consultant</i> be responsible for the services or performance of any such <i>Other Consultants</i> .

**Hazardous Waste
and Environmental
Issues**

- 3.12 3.12.1 Unless otherwise specifically provided in this *Agreement*, the scope of *Basic Services* shall not include engineering services for the treatment or containment of *Hazardous Materials* or *Hazardous Materials* site remediation, and if provided, such services shall be considered *Additional Services*. The Client and the *Consultant* acknowledge and agree that such services require specialized knowledge and expertise, and consideration of additional provisions such as additional liability insurance.

**CLIENT'S DUTIES
AND
RESPONSIBILITIES
TO THE
CONSULTANT**

**Duties and
Responsibilities**

4. 4.1 4.1.1 The *Client* shall:
- (a) Description of Requirements Provide the *Consultant* with a written description of the *Client's* requirements for the *Project*, including, where applicable, the *Client's Project* budget and *Project* schedule.
 - (b) Disclose Data Unless otherwise provided in this *Agreement*, make reasonable efforts to disclose and make available to the *Consultant*, in a timely manner and at no cost to the *Consultant*, all information or data in the *Client's* possession or control relevant to the performance of the *Services*.
 - (c) Other Consultants When requested by the *Consultant* in writing, give due consideration to engaging, at the *Client's* own cost, *Other Consultants* as may be reasonably necessary for the *Consultant* to undertake the *Services*. The *Client* shall not have an obligation to retain any *Other Consultants* if requested to do so by the *Consultant*. All *Other Consultants* engaged by the *Client* at the *Consultant's* request shall be paid for by the *Client* and shall be reasonably acceptable to both the *Client* and the *Consultant*.
 - (d) Timely Decisions Give timely consideration to all requests from the *Consultant*, including requests for decisions required relating to the *Services*, and inform the *Consultant* of the *Client's* decisions and provide all feedback in a timely manner so as not to unduly delay the *Consultant's*

performance of the *Services*.

(e) Access to Property Arrange and make provision for the *Consultant's* reasonable and ready access to public and private properties as necessary for the *Consultant* to perform the *Services*.

(f) Notice of Observed Deficiencies Give prompt notice to the *Consultant* whenever the *Client* becomes aware of any apparent defects or deficiencies in the *Services*.

(g) Permits, Licences and Permits Obtain required approvals, licences and permits from authorities having jurisdiction so as not to unduly delay the *Consultant* in the performance of the *Services*.

Client's Representative 4.2

4.2.1 Immediately upon execution of this *Agreement*, the *Client* shall designate in writing a representative to act as the *Client's* representative, for the purposes of all communications with the *Client* under this *Agreement*, such representative to have authority to provide instructions to, and receive information from, the *Consultant*. The representative shall be available on a reasonably continuous basis during the performance of the *Services*, and for any periods when the representative is absent or unavailable a replacement with equivalent expertise and authority shall be appointed by the *Client*.

Confidentiality 4.3

4.3.1 The *Client* shall maintain confidentiality on all information, documentation and data provided by the *Consultant* which is expressly identified in the *Proposal* or other provision of this *Agreement*, as being proprietary or confidential in nature. Except with the prior written consent from the *Consultant*, or as required by law or an authority having jurisdiction, neither the *Client* nor any of its employees, officers, agents, representatives or *Other Consultants* shall divulge or disclose any of such information to third parties, or use any of such information for any purpose other than as required under this *Agreement* in connection with the *Project*.

FEES, RATES AND DISBURSEMENTS 5.

Fees 5.1

5.1.1 The *Client* shall pay the *Consultant* the fees described in Schedule B as compensation for the *Services* provided by the *Consultant*.

5.1.2 The fees for *Defined Remuneration Services*, whether rendered as *Basic Services* or *Additional Services*, may be, on written agreement by the parties, either a lump sum fee or a fee based on the actual hours reasonably expended in performing such *Defined Remuneration Services* at the hourly charge out rates set out in Schedule B, but shall not exceed the maximum amount, if any, specified in Schedule B.

5.1.3 The fees for *Variable Remuneration Services*, whether rendered as *Basic Services* or *Additional Services*, shall be based on the actual hours reasonably expended in performing such *Variable Remuneration Services* at the hourly charge out rates as set out in Schedule B, but shall not exceed the maximum amount, if any, as estimated and approved under paragraph 6.3.

Disbursements 5.2

5.2.1 In addition to other amounts payable to the *Consultant* for the *Services* under this *Agreement*, the *Client* shall pay the *Consultant* the *Consultant's* actual out of pocket costs for the items set out below, as reasonably incurred by the *Consultant* or the *Sub-Consultants* to perform the *Services* and substantiated by supporting invoices reasonably acceptable to the *Client* (called in the aggregate the "*Disbursements*"), plus, unless specified otherwise in this *Agreement*, a 10% markup on all *Disbursements*. *Disbursements* means the costs of:

- (a) Reproduction of documents including reports or submissions to the *Client* or authorities having jurisdiction, and tender and construction documents;
- (b) Messenger or courier services, long distance telephone calls, faxes and postage;
- (c) Advertising on behalf of the *Client*, with the *Client's* prior written approval;
- (d) Travel expenses, with the *Client's* prior written approval;
- (e) Fees, including user fees, paid to authorities having jurisdiction in order to obtain necessary approvals, permits or licenses;
- (f) Fees paid to any authority having jurisdiction in order to obtain any required record information or data;
- (g) Federal, provincial or municipal taxes paid by the

Consultant in respect of the *Services*;

(h) Testing and laboratory services;

(i) Additional insurance required by the *Client* in excess of the insurance coverage specified in this *Agreement*;

(j) Expenses to provide, operate and maintain a *Project* site office, with the *Client's* prior written approval;

(k) Expenses to provide and operate specialized equipment of a kind not normally used by consultants providing services similar in nature and scope to the *Services*, with the *Client's* prior written approval, including, where requested by the *Client*, the applicable charge-out rates and an estimated total cost of using such equipment;

(l) Expenses to provide digitized data or transparency reproduction of plans, drawings, designs or models, if requested by the *Client*;

(m) Items specifically identified in Schedule B;

(n) Other costs reasonably incurred by the *Consultant* in the performance of the *Services* with the prior written approval of the *Client*.

Sub-Consultants 5.3

5.3.1 In addition to any other amounts payable by the *Client* to the *Consultant* under this *Agreement*, the *Client* will reimburse the *Consultant* for the fees and *Disbursements* the *Consultant* pays to *Sub-Consultants* as follows:

(a) Lump Sum Fees If a *Sub-Consultant* undertakes *Services* which the *Client* and the *Consultant* have agreed will be paid for on a lump sum basis, whether undertaken as *Basic Services* or *Additional Services*, then all fees payable by the *Client* will be included in the lump sum, and no additional amount will be payable by the *Client* on account of the *Sub-Consultant's* fees the *Consultant* pays to the *Sub-Consultant*;

(b) Hourly Rate Fees If a *Sub-Consultant* undertakes *Services* which the *Client* and the *Consultant* have agreed will be paid for based on the actual hours expended in performing such *Services*, whether undertaken as *Basic Services* or *Additional Services*, then the *Client* will reimburse the *Consultant* for the actual amount of fees the *Consultant* pays to the *Sub-Consultant*, plus a markup of 5% on the *Sub-Consultant* fees;

(c) Disbursements In addition to the fees as described in subparagraph (a) and (b) above, the *Client* will reimburse the *Consultant* for amounts the *Consultant* pays a *Sub-Consultant* for *Disbursements*, without markup to the *Consultant*. (A *Sub-Consultant* may claim its actual out of pocket costs of *Disbursements* as reasonably incurred in undertaking the *Services*, plus the markup specified in paragraph 5.2.1, or other markup as specified otherwise in this *Agreement*, on all such *Disbursements*.)

PAYMENT 6.

Payment Procedures 6.1

6.1.1 Each month, the *Consultant* shall submit to the *Client* an invoice for the *Consultant's* fees and *Disbursements*, and any charges of *Sub-Consultants* retained by the *Consultant* upon the *Client's* request as provided in this *Agreement*. Each invoice will be accompanied by supporting documentation as may reasonably be required by the *Client*.

6.1.2 The *Client* shall pay such invoices in full within thirty (30) calendar days of receipt. If the *Client* reasonably determines that the full amount of an invoice is not owing then the *Client* will pay the amount it determines is owing, and forthwith provide the *Consultant* with written reasons for any deduction in the amount of the invoice.

6.1.3 Accounts unpaid by the *Client* thirty (30) calendar days after presentation shall bear monthly interest calculated at 2% per annum over the prime commercial lending rate of the Royal Bank of Canada, which amount shall be due and payable until payment. Such interest shall be calculated and added to any unpaid amounts monthly.

Defined Remuneration Services 6.2

6.2.1 Monthly claims for *Defined Remuneration Services* shall be based either on the actual hours of work performed by the *Consultant* and *Sub-Consultants*, or the percentage of the *Services* completed, depending on the manner of compensation agreed upon by the parties under paragraph 5.1.2, but the aggregate of all such claims shall not exceed the maximum amount, if any, specified in Schedule B. If compensation for *Defined Remuneration Services* is agreed by the parties to be based on actual hours of work performed as provided in paragraph 5.1.2, the *Consultant* shall keep, or cause to be kept, timesheets to support the hourly effort and shall make them available for review by the *Client* upon

request.

**Variable
Remuneration
Services** 6.3

6.3.1 Without limiting any other provision of this *Agreement*, the *Consultant* shall keep separate records of the hours and *Disbursements* applicable to the provision of any *Variable Remuneration Services* and, unless otherwise agreed in writing between the parties, shall submit to the *Client* a weekly summary, within 3 *Business Days* after the end of each week, setting out the *Variable Remuneration Services* performed in the previous week and applicable fees, together with an updated projection of *Variable Remuneration Services* still to be provided and the estimated fees and *Disbursements* to completion. If the *Client* does not dispute the fees set out in the summary by written notice to the *Consultant* within 7 *Business Days* of receipt, the fees and the updated projection will be deemed to be accepted by the *Client* and the fees and *Disbursements* shall be invoiced and paid in accordance with paragraph 5.

6.3.2 The *Consultant* shall not undertake any *Variable Remuneration Services*, whether or not identified in Schedule A, without the prior written approval from the *Client*. Prior to proceeding with any *Variable Remuneration Services*, the *Consultant* shall provide the *Client* with a description of the scope of the *Variable Remuneration Services* to be performed and a cost estimate breakdown for the performance of such *Variable Remuneration Services*. If the *Client* grants its permission for the performance of such *Variable Remuneration Services*, the *Consultant* shall not exceed the scope or the cost estimate accepted by the *Client* without first providing timely written notice to the *Client* setting out the revised scope and/or cost estimate and a reasonable justification for the increase in scope and/or costs. The *Consultant* shall not proceed to provide *Variable Remuneration Services* in excess of the *Client* approved scope and cost estimate without the *Client*'s prior written approval.

**OWNERSHIP AND
USE OF
DOCUMENTS** 7.
Service Continuity 7.1

7.1.1 The *Client* acknowledges that all plans, specifications, drawings and designs are provided by the *Consultant* to the *Client* on the assumption that the *Consultant* will continue with the *Services* during construction and installation relating to such plans, specifications, drawings or designs. Accordingly, such plans, specifications, drawings and designs may not be sufficient or reliable on their own in the absence

of such continuity of *Services*. The *Client* shall give due consideration to continuing with the *Consultant's Services* during construction and installation and shall consult with the *Consultant* prior to retaining any party other than the *Consultant* to continue the *Services* during construction and installation. If the *Consultant* is not retained to provide services during construction and installation then the *Consultant* shall not be liable in contract or in tort for any loss or damage incurred as a result of any defect or deficiency in any plans, specifications, drawings or designs provided by the *Consultant* to the *Client*, except where such defect or deficiency would be obvious or apparent to an experienced professional performing services similar to the *Services*.

Ownership 7.2

7.2.1 All concepts, plans, drawings, specifications, designs, models, reports, photographs, computer software, surveys, calculations, construction and other data, documents, and processes produced by the *Consultant* in connection with the *Project* (the "*Instruments of Service*"), including all copyright and other intellectual property therein, are and shall at all times remain the property of the *Consultant* unless otherwise agreed in writing between the parties.

7.2.2 The *Client* may copy and use any of the *Instruments of Service* for record and maintenance purposes and for any future renovation, repair, modification and extension work undertaken with respect to that part of the *Project* to which the *Services* relate.

7.2.3 In no event shall the *Client* copy or use any of the *Instruments of Service* for any purpose other than those noted above or in relation to any project other than the *Project* without the prior written permission of the *Consultant*. The *Consultant* shall not unreasonably withhold or deny such consent but shall be entitled to receive additional equitable remuneration in connection with its grant of consent.

7.2.4 The *Client* shall have a permanent non-exclusive royalty-free license to use any *Instruments of Service* which is capable of being patented or registered as a trademark for the life of the *Project* only. For the purposes of this paragraph, "life of the *Project*" means the period during which the physical asset or assets described on page 1 of this *Agreement* are designed, under construction or operational. The *Consultant* shall have full rights to any *Instruments of Service* arising from his *Services* which is capable of being patented or registered as a trademark and may use any such

Instruments of Service on any other project.

Changes to Instruments of Service	7.3	7.3.1 The <i>Client</i> accepts full responsibility for any changes made to any <i>Instruments of Service</i> without the prior written consent of the <i>Consultant</i> and shall indemnify and hold harmless the <i>Consultant</i> from any claims arising from use of such changed <i>Instruments of Service</i> .
INSURANCE AND LIABILITY	8.	
General Insurance Requirements	8.1	8.1.1 The <i>Consultant</i> shall obtain and maintain insurance policies as specified in Schedule C of this <i>Agreement</i>. 8.1.2 The above insurance policies shall be approved by the <i>Client</i> prior to commencement of the <i>Services</i>, and the <i>Consultant</i> shall provide the <i>Client</i> with satisfactory evidence of such insurance at any time upon request. 8.1.3 All policies shall contain a cancellation clause requiring the insurer to give at least 30 days' written notice to the <i>Client</i> prior to policy cancellation. 8.1.4 Should the <i>Consultant</i> neglect to obtain or maintain insurance as required under this <i>Agreement</i>, or to provide satisfactory evidence of such insurance to the <i>Client</i> upon request, the <i>Client</i> may elect to either secure such insurance, at the <i>Consultant's</i> cost and without terminating this <i>Agreement</i>, in which event the <i>Consultant</i> shall reimburse the <i>Client</i> immediately upon demand for any costs reasonably incurred by the <i>Client</i> in that connection, or declare the <i>Consultant</i> to be in default, in which event the provisions of paragraph 10.1 shall apply.
Additional Insurance	8.2	8.2.1 If the <i>Client</i> for any reason requires the <i>Consultant</i> to obtain insurance in addition to that required under this <i>Agreement</i> , the <i>Consultant</i> shall use its best efforts to obtain such additional insurance. The <i>Client</i> will pay the premiums owing for such additional insurance.
Limits of Liability	8.3	8.3.1 In consideration of the provision of the <i>Services</i> by the <i>Consultant</i> to the <i>Client</i> under this <i>Agreement</i> , the <i>Client</i> agrees that any and all claims which the <i>Client</i> may have against the <i>Consultant</i> , its employees, officers, agents, representatives and <i>Sub-Consultants</i> in respect of the <i>Services</i> , howsoever arising, whether in contract or in tort, save and except for claims arising out of or in connection

with any malicious act or malicious omission under paragraph 9.1.1, shall be absolutely limited to the amount of the insurance available at the date such claim is brought, including any deductible portion therein, provided that neither the *Consultant* nor any of its employees, officers, agents, representatives nor *Sub-Consultants* has done anything to prejudice or impair the availability of such insurance.

8.3.2 In no event shall the *Consultant* be liable for any loss or damage occasioned by delays or other causes or circumstances beyond the *Consultant's* reasonable control.

INDEMNITY 9.

- 9.1.1 Notwithstanding the provision of any insurance coverage by the *Client*, and subject to paragraphs 8.3.1 and 8.3.2, the *Consultant* shall indemnify and save harmless the *Client*, its officers, employees, agents, successors, assigns, representatives, *Contractors* and *Other Consultants* from and against any losses, claims, damages, actions and causes of action, costs, expenses, judgments and proceedings arising out of or in connection with any error, or negligent or malicious act or omission, by the *Consultant* or any of its officers, agents, representatives, employees or *Sub-Consultants*, except to the proportionate extent of any contributing negligent or wrongful act or omission of the *Client*, or any of its officers, agents, representatives, employees, *Contractors* or *Other Consultants*. The terms and conditions of this indemnity provision shall survive the completion of all *Services* and the termination of this *Agreement* for any reason.

SUSPENSION AND TERMINATION 10.

By Client due to Default of the Consultant

- 10.1.1 If the *Consultant* is in default in the performance of any of the *Consultant's* material duties and responsibilities under this *Agreement*, then the *Client* may, by written notice to the *Consultant*, require such default to be corrected. If within 5 *Business Days* after receipt of such notice, such default shall not have been corrected or reasonable steps to correct such default shall not have been taken, the *Client* may, without limiting any other right or remedy the *Client* may have, give a further written notice to the *Consultant* to terminate this *Agreement*. In the event of such termination the *Client* shall pay for the cost of the *Services* rendered and *Disbursements* incurred by the *Consultant* pursuant to this

Agreement and remaining unpaid as of the effective date of such termination. Notwithstanding the above, the *Client* may deduct from amounts owing to the *Consultant* any reasonable additional costs and expenses incurred as a result of the *Consultant's* default, and if the payments owing to the *Consultant* are not sufficient to cover such costs then the *Consultant* shall immediately pay the *Client* the shortfall. In the event of termination for default, *Termination Expenses* shall not be payable by the *Client*.

**By the Consultant
due to Default of the
Client**

10.2 10.2.1 If the *Client* fails to make payment to the *Consultant* in accordance with this *Agreement*, then the *Consultant* may, by written notice to the *Client*, require that such default be corrected. If within 5 *Business Days* after receipt of such notice such default shall not have been corrected, or reasonable steps taken to correct such default, the *Consultant* may, without limiting any other right or remedy he may have, give a further written notice to the *Client* to terminate immediately this *Agreement*. In such event, in addition to any other rights or remedies the *Consultant* may have, the *Consultant* shall be paid by the *Client* for all *Services* performed and for all *Disbursements* incurred pursuant to this *Agreement* and remaining unpaid as of the effective date of such termination, plus *Termination Expenses*. In the event of any other default by the *Client*, the *Consultant* shall only have the right to claim damages, but not the right to terminate this *Agreement*.

**By the Client for
Own Reasons**

10.3 10.3.1 The *Client* has the right to suspend or terminate further performance of all or any portion of the *Services* at any time, for convenience or any other reason, by written notice to the *Consultant*. Upon receipt of such notice, the *Consultant* shall immediately discontinue the performance of the *Services* as instructed, whether being performed by the *Consultant* or any *Sub-Consultants*, except to the extent that those *Services* are reasonably necessary to comply with the *Client's* instructions, and shall preserve and protect all work in progress and all completed work. Any contracts relating to the *Services* entered into by the *Consultant* with a third party including a *Sub-Consultant*, shall, at the written request of the *Client*, be assigned to the *Client*.

10.3.2 In the event of suspension or termination under paragraph 10.3.1, the *Client* shall, in addition to any other rights or remedies the *Consultant* may have, pay the *Consultant* for that portion of the *Services* satisfactorily performed or completed to the date of the notice, including *Disbursements* incurred as provided under this *Agreement*, plus *Termination Expenses*.

By Mutual Consent 10.4

10.4.1 If the *Project* is terminated by mutual consent of the parties, the *Consultant* shall be paid by the *Client* for all *Services* performed, and for all *Disbursements* incurred pursuant to this *Agreement* and remaining unpaid as of the effective date of such termination, plus *Termination Expenses*.

**By the Consultant
due to Client's
Suspension in Excess
of 60 Days** 10.5

10.5.1 If the *Services* are suspended by the *Client* at any time for more than 60 calendar days, either consecutive or in the aggregate, through no fault of the *Consultant*, then the *Consultant* may, at any time until such suspension is lifted by the *Client*, give written notice to the *Client* of termination due to suspension. If within 15 *Business Days* after receipt of such notice such suspension has not been lifted, the *Consultant* may, without limiting any other right or remedy the *Consultant* may have, give a further written notice to the *Client* to terminate this *Agreement*. In such event the *Consultant* shall be paid by the *Client* for all *Services* performed and for all disbursements incurred pursuant to this *Agreement* and remaining unpaid as of the effective date of such suspension, plus *Termination Expenses*.

Death or Incapacity 10.6

10.6.1 If a party to this *Agreement* is an individual and dies or becomes incapacitated before completing the *Services* under this *Agreement*, this *Agreement* shall automatically terminate as of the date of the said death or incapacity, and payment shall be made in accordance with this *Agreement* for the *Services* performed and *Disbursements* incurred pursuant to this *Agreement* and remaining unpaid as of the effective date of termination.

**Failure to Engage
Other Consultants or
Sub-Consultants** 10.7

10.7.1 If the *Client* does not give approval for the engagement of an *Other Consultant* or *Sub-Consultant* that under paragraph 3.2.1(e) the *Consultant* has advised the *Client* is necessary for the performance of the *Services*, then the *Consultant* may give 5 *Business Days* written notice of intended termination to the *Client* describing why the engagement of the *Other Consultant* or *Sub-Consultant*, as the case may be, is essential for the *Consultant* to perform the

Services, and if the *Client* has failed or refused to engage the *Other Consultant* or *Sub-Consultant* then on further written notice to the *Client* the *Consultant* may terminate this *Agreement*.

DISPUTE RESOLUTION 11.

Purpose 11.1 11.1.1 The purpose of this paragraph is to establish a process whereby any dispute or difference of opinion under or in connection with this *Agreement* can be resolved in a fair, efficient and cost-effective manner.

**Amicable
Negotiation** 11.2 11.2.1 Both parties shall use their best efforts to resolve any dispute or difference of opinion under or in connection with this *Agreement* by good faith amicable negotiations on a “without prejudice” basis, and shall provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.

Mediation 11.3 11.3.1 If the dispute or difference of opinion is not resolved to the reasonable mutual satisfaction of the parties within 10 *Business Days* of the commencement of negotiations, or within such longer period as may be agreed to by the parties, the dispute or difference of opinion shall be submitted to mediation. Both parties agree not to make a request for arbitration or to commence litigation without first seeking agreement through the mediation process.

11.3.2 Mediation shall consist of 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 and shall be impartial and free from any actual or apparent conflict of interest. Failing such agreement, the mediator shall be appointed by the Executive Director of the Master Municipal Construction Document Association.

11.3.3 The costs of mediation shall be shared equally by both parties.

**Arbitration or
Litigation** 11.4 11.4.1 If the dispute or difference of opinion is not resolved to the reasonable mutual satisfaction of both parties within 30 calendar days of the appointment of the mediator, or within such longer time as may be mutually agreed to by the parties, the dispute or difference of opinion may, upon the mutual written agreement of the parties, be submitted to binding arbitration in accordance with the laws of the Province of

British Columbia. If the parties do not agree to arbitration, each party shall be free to commence litigation without further notice.

Disputed Fees 11.5 11.5.1 If the dispute relates to the *Consultant's* fees or disbursements under this *Agreement*, the *Client* shall be entitled to withhold the amount of fees and/or disbursements which are in dispute and the balance of the fees and disbursements not in dispute shall be paid by the *Client* in accordance with this *Agreement*.

GENERAL 12.

Notices 12.1 12.1.1 All notices under this *Agreement* shall be in writing and delivered by hand, fax or pre-paid registered mail to the recipient's designated representative at the address set out on page 1 of this *Agreement*, and shall be considered to have been received:

- a) immediately upon delivery, if delivered by hand; or
- b) immediately upon transmission, if sent by fax, provided a confirmation has been received; or
- c) 3 *Business Days* from date of mailing, if sent by pre-paid registered mail.

12.1.2 Either party may, at any time, change its address for notice by giving written notice to the other party in accordance with this *Agreement*.

Assignment and Successors 12.2 12.2.1 Neither party shall assign this *Agreement*, or any portion of this *Agreement*, without the prior written consent of the other party.

12.2.2 If a party to this *Agreement* who is an individual or partnership should desire to bring in a partner or partners, it may do so, and such a change shall not be deemed to be a breach of this *Agreement*, provided that the other party is first notified in writing. The new or altered entity so created shall be deemed a successor entity to share the benefits and obligations of this *Agreement*.

12.2.3 If a party to this *Agreement* is a partnership, and a partner thereof either dies or retires then the remaining partner(s) therein shall be deemed a new successor entity to share the benefits and obligations of this *Agreement*.

Rights and Remedies	12.3	12.3.1 The duties and obligations imposed by this <i>Agreement</i> and the rights and remedies available under this <i>Agreement</i> shall be in addition to and not in substitution for any duties, obligations, rights and remedies otherwise imposed by or available at law or equity. 12.3.2 No action or failure to act by either party shall constitute a waiver by that party of any of its rights or remedies, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach under this <i>Agreement</i>.
Conflicts of Interest	12.4	12.4.1 The <i>Consultant</i> declares and confirms that it has no pecuniary or other interest in the business of any third party that would cause a conflict of interest or be seen to cause a conflict of interest in performing the <i>Services</i>. If any such conflict of interest occurs during the term of this <i>Agreement</i>, then the <i>Consultant</i> shall immediately declare it in writing to the <i>Client</i> and, at the direction of the <i>Client</i>, the <i>Consultant</i> shall promptly and diligently take steps to the satisfaction of the <i>Client</i> to resolve the conflict.
Independent Contractor	12.5	12.5.1 The <i>Consultant</i> shall be, and in all respects be deemed to be, an independent contractor and nothing in this <i>Agreement</i> shall be construed to mean that the <i>Consultant</i> is an employee of the <i>Client</i> or that any joint venture or partnership exists between the <i>Consultant</i> and the <i>Client</i>.
Governing Law	12.6	12.6.1 This <i>Agreement</i> shall be interpreted and construed according to the laws of British Columbia.
Headings	12.7	12.7.1 The headings included in this <i>Agreement</i> are for convenience only and do not form part of this <i>Agreement</i> and will not be used to interpret, define or limit the scope or intent of this <i>Agreement</i>.
Number	12.8	12.8.1 Unless otherwise specified, words importing the singular, include the plural and vice versa.
Enurement	12.9	12.9.1 This <i>Agreement</i> shall be binding upon and enure to the benefit of the parties hereto and their respective executors, administrators, successors and assigns.

Entire Agreement 12.10 12.10.1 This *Agreement* constitutes the entire agreement between the parties relating to the matters covered in this *Agreement* and supersedes all prior agreements, negotiations, understandings and representations between the parties, whether written or oral, relating to the subject matter hereof unless specifically provided otherwise in this *Agreement*.

Unenforceability 12.11 12.11.1 If any provision of this *Agreement* is found to be invalid, illegal or unenforceable, it shall be severed from this *Agreement* and any such severance shall not affect the validity, legality or enforceability of the remaining provisions of this *Agreement*.

Conflicting Provisions 12.12 In the event of a conflict or ambiguity between a provision of Schedule D and another provision of this *Agreement*, including Schedules A, B, C or E of this Agreement, such other provision will prevail over the provision of Schedule D to the extent of the conflict or ambiguity.

OTHER CONDITIONS 13. See Schedule E.

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

Consultant:

(FULL LEGAL NAME OF CORPORATION, PARTNERSHIP OR INDIVIDUAL)

(AUTHORIZED SIGNATORY)

(AUTHORIZED SIGNATORY)

Client:

(FULL LEGAL NAME OF CLIENT)

(AUTHORIZED SIGNATORY)

(AUTHORIZED SIGNATORY)

Schedule A

SERVICES

A.1 The *Consultant* shall perform the following services as *Basic Services* under this *Agreement*:

A.1.1 *Defined Remuneration Services*:

A.1.2 *Variable Remuneration Services*:

Schedule B

FEES

- B.1 The *Client* shall pay the *Consultant* for *Defined Remuneration Services* as follows:

- B.2 The *Client* shall pay the *Consultant* for *Variable Remuneration Services* in accordance with the following hourly charge out rates:

- B.3 The *Disbursement* items referred to in paragraph 5.2.1(m), if any, shall be as follows:

Schedule C

INSURANCE

Professional Liability Insurance

C.1 C.1.1 The *Consultant* shall obtain and maintain for the duration of the *Services* and for a minimum of 1 year thereafter, at its own cost, Professional Liability Insurance on terms and from an insurer satisfactory to the *Client*.

C.1.2 The Professional Liability Insurance policy shall insure the *Consultant's* legal liability for errors, omissions and negligent acts, to the extent of no less than:

\$500,000.00 per claim

\$1,000,000.00 aggregate

General Liability Insurance

C.2 C.2.1 The *Consultant* shall obtain and maintain for the duration of the *Services*, at its own cost, the following insurance, on terms and from insurers satisfactory to the *Client*:

- a) Comprehensive General Liability coverage, covering premises and operations liability;
- b) Consultant's Contingency Liability coverage, covering operations of *Sub-Consultants*;
- c) Completed Operations Liability coverage;
- d) Contractual Liability coverage; and
- e) Owned and Non-owned Automobile Liability Insurance coverage.

C.2.2 The limits of coverage shall not be less than the following:

- (a) Bodily Injury Liability - \$2,000,000.00 each occurrence; \$2,000,000.00 aggregate products and/or completed operations
- b) Property Damage Liability - \$2,000,000.00 each occurrence; \$2,000,000.00 aggregate products and/or completed operations

- c) Owned & Non-owned Automobile - \$2,000,000.00
any one accident

C.2.3 A Cross Liability clause shall be made part of the Comprehensive General Liability Insurance.

Schedule D

PROPOSAL

(see attached)

Schedule E

ARTICLE 13 - OTHER CONDITIONS

The following provisions, if any, constitute Article 13 of this *Agreement* and amend, modify and supplement Articles 1 through 12 of this *Agreement* to the extent required. In the event of any conflict or inconsistency between the provisions of this Schedule E and any provision of Articles 1 through 12 of this *Agreement*, the provisions of this Schedule E shall prevail to the extent of that conflict or inconsistency.

13.1