

# Instructions for use of Engineering Services Agreement

This template can be used when the Community Government wants to enter in to an agreement to obtain services from an independent Engineer. In particular, this Agreement is contemplated to be used for more complex and/or longer term project management services.

The Agreement is to be used as a template, with the body of the Agreement containing the basic terms and conditions and the customization of the Agreement (Services, Fees & Expenses, Performance Requirements, Rates and Fees) accomplished by the insertion of the appropriate particulars in the Schedules. It is imperative that the Schedules be filled out properly and completely. If you require assistance or need to make adjustments to the agreement it is advisable that you contact Brownlee LLP directly for assistance or guidance needed in order to accomplish this. You can contact Mike Coombs directly at 1 (780) 497- 4833 or [mcoombs@brownleelaw.com](mailto:mcoombs@brownleelaw.com)

Please note the following within the Agreement:

1. Engineer — the name of the Engineer must be completed. In the event the Engineer is an individual, or an individual operating under a trade name, such individual name, and if applicable such trade name, should be completed. In the event the Engineer is a corporate entity, a corporate search should be performed on the corporate name to confirm the correct corporate entity is named and such corporate entity is “active”. If a Community would like assistance with respect to corporate searches, please contact us as required. **Please ensure that the appropriate Engineer name is inserted.**
2. Term — Section 1.10) sets out that the Term runs from the period of time beginning on the date of the Agreement and ending upon the earlier of the completion of the Project or when terminated in accordance with the Agreement. As such, when attending to execution of the Agreement **please ensure that the applicable date is inserted in the space provided at the top of page 1.** This date should always be the first day on which the Services are to be performed, as this date sets the commencement date of the Term.
3. Project — Section 1.1 (g) sets out the definition of the Project, please ensure that a fulsome description of the Project is inserted here.

Engineer Obligations — Section 3.1 delineates the obligations of the Engineer in performing the Services. Note that depending on the factual situation and nature of the Services there may be additional obligations the Community should consider. The Engineer is obligated under Section 3.1

4. Community Obligations — Section 3.2 delineates the obligations the Community has with respect to supporting the Engineer in delivery of its Services. Note that depending on the factual situation and nature of the Services there may be additional obligations the Community should consider.
5. Subcontractors — Section 4.1 (a) and (b) operate to restrict the Engineer's ability to subcontract the Services. The Engineer can only subcontract all or part of its Services if such subcontractor agrees to be bound by the terms and conditions of the Agreement and only if the Community provides prior written consent, which the Community may choose to withhold.
6. Payment — Section 5.1 sets out that the Community shall pay the Engineer the Fees in accordance with Schedule "B" **and that GST is in addition to such Fees.**
7. Insurance and Indemnity — Please confirm with the Community that they need to review the insurance requirements and indemnity provisions in Articles 9 and 10 with you (and if applicable their other insurance and risk advisors) for each Agreement, as you (and if applicable their other insurance or risk management advisors) may suggest revisions to these provisions based on the nature and scope of the Engineer's Services to be performed.
8. Confidential Information — Section 11.1 set out that certain information (including the Work Product) is confidential. In particular note the definition of Work Product within Section 1.1 (j) and **consider whether this definition needs to be amended to reflect the factual circumstances,**
9. Suspension & Termination — Please note in particular that Section 13.1 of the Agreement contemplates that the Community may suspend the Engineer's performance of part or all of the Services under certain conditions, by providing written notice. Furthermore, Section 13.3 of the Agreement provides that the Community may terminate the Agreement for convenience upon 7 days written notice to the Engineer This right is not extended to the Engineer.
10. Set off Right — Under Article 15 the Community has certain rights of set off as against the Engineer, such that if the Community provides the Engineer notice of this fact and if following such notice the Engineer still fails to pay any third party for which the Community would otherwise be liable to, the Community can pay such third party and set off as against the Engineer the amount of such payment.
11. Notice - The address, email, fax number, and contact person for the purposes of sending notices to the Community or Engineer are to be identified within Section 17.1. Please ensure that the appropriate information is inserted and is correct.
12. GST — The Engineer's GST number must be completed in Section 17.17. As an additional step, we suggest searching the Contractor's GST number on the CRA website <http://www.cra-arc.gc.ca/gsthstregistrv/> to confirm the Engineer is

indeed a GST registrant. **Please ensure that the GST number is inserted and confirm by search that the Contractor is a GST registrant.**

13. Signatory page — There are two signatory options, if the Engineer is an individual or if the Engineer is a Corporation. **For the Engineer, please choose one of the corporation signature line or the individual signature line and delete the inapplicable one.**
14. Schedule “A” — We have included a sample description of Services to help guide how a Community might choose to complete this Schedule. **This is merely an example and in each case the Community must consider the particular description that should make up the description of Services, as this is a factual specific matter.**

Please note that this Schedule should contain a complete and detailed description of the nature and scope of the Services to be provided by the Engineer to the Community under this Agreement. The Agreement will not be legally enforceable unless it is readily ascertainable, by reference to Schedule “A”, what precisely the Engineer will be required to do. It should be drafted so that a third party who knows nothing at all about the project in question would understand what exactly the Engineer is required to do under the Agreement. In many cases the Engineer will have provided the Community with a letter of proposal which details the work which will be performed. In such a case, a copy of the letter of proposal could simply be attached to Schedule “A” and incorporated therein by reference - for example:

“The services to be provided by the Engineer to the Community are those services described in the Engineer’s letter of proposal to the Community dated 20\_\_\_\_, a copy of which is attached hereto and incorporated in this Schedule ‘A’ by reference.”

Please keep in mind, to the extent the parties have agreed on any changes to the scope of the work as outlined in the letter of proposal, a description of the agreed changes must be included.

15. Schedule “B” — This schedule allows the Community to customize the Agreement and include how Fees are paid to the Engineer (ie: how and when payment is made to the Engineer). Here consideration should be given to whether there are phases to the project that should coordinate with payment (ie: on completion of phase I certain payment is made). Furthermore, the Community should consider if Fees are charged based on an hourly, lump sum, or other basis.
16. Schedule “C” — This schedule allows the Community to customize the Agreement and include particular performance requirements with respect to the

Services to be provided to the Community (which may vary depending upon the nature of the Services to be provided).

When attending to execution of the **Agreement please ensure that the date is inserted in the space provided at the top of page 1**, and, if applicable, the corporate seals for the parties are impressed upon the signature page in the vicinity of the respective signatures.

We have included an affidavit of corporate signing authority, which can be used when the Engineer is a corporation, and which must be sworn by the director or officer of such corporation in front of a Commissioner for Oaths in and for the Northwest Territories.

Also, we have included an affidavit of execution for use if the Engineer is an individual, which must be sworn by such individual in front of a Commissioner for Oaths in and for the Northwest Territories.

Please ensure that the appropriate names, locations, and dates are inserted prior to proper execution of the applicable Affidavit.