

CONSULTING SERVICES AGREEMENT

[Project Name/Nature of Services]

[Community]

and

[CONSULTANT]

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SCHEDULE "A" - SERVICES

SCHEDULE "B" - TERMS OF PAYMENT

SCHEDULE "C" - SPECIAL TERMS AND CONDITIONS

THIS AGREEMENT dated the ____ day of _____, 20____

BETWEEN:

[COMMUNITY]
(hereinafter called the "Community")

AND:

[CONSULTANT]
(hereinafter called the "Consultant")

CONSULTING SERVICES AGREEMENT

WHEREAS:

- A.** The Community requires the performance of the Services;
- B.** Consultant has agreed to provide to the Community the Services, and the Community has agreed to pay to the Consultant certain sums in consideration of the Services.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the covenants herein contained, the Community and the Consultant covenant and agree each with the other as follows:

ARTICLE 1 - DEFINITIONS

1.1 Definitions

For the purposes of this Agreement, including the recitals hereto, each of the following expressions have the meanings ascribed to them in this Section 1.1, unless the context otherwise requires:

- (a) "Agreement", "hereto", "herein", "hereby", "hereunder", "hereof" and similar expressions when used in this Agreement refer to the whole of this Agreement which includes the attached Schedules and not to any particular

Article or Section or portion thereof and include any and every instrument supplemental hereto;

- (b) "Agreement Amount" means the amount set out in Schedule "C";
- (c) "Commencement Date" means the date designated as such in Schedule "C";
- (d) "Completion Date" means the date designated as such in Schedule "C", or such later date as may be agreed upon in writing by the parties;
- (e) "Confidential Information" has the meaning ascribed to it in Section 5.1;
- (f) "Service Results" has the meaning ascribed to it in Section 5.4;
- (g) "Services" means those Services to be provided and performed by the Consultant hereunder, as more particularly described in Schedule "A" hereto, and all other services to be provided or performed as directed by the Community;
- (h) "Term" means the period of time commencing on the Commencement Date and ending on the Completion Date.

1.2 Number and Gender

Words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter gender and words importing persons shall also mean firms, corporations and partnerships and vice versa.

1.3 Headings and Division

The division of this Agreement into Articles and Sections and the headings of any Articles or Sections are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

ARTICLE 2 - SERVICES

2.1 Services

The Consultant shall provide the Services upon the terms and conditions contained herein.

2.2 Commencement and Completion of Services

The Consultant shall commence the Services no later than the Commencement Date and complete the Services on or before the Completion Date, subject always to sooner termination as provided for herein.

2.3 Performance of Work

The Consultant shall exercise the degree of care, skill and diligence normally used in performing services of a similar nature to those Services to be provided under this Agreement. All work done in performing the Services under this Agreement shall:

- (a) be supervised by competent and qualified personnel;
- (b) be performed in accordance with the Community's directions and to the Community's satisfaction;
- (c) comply with the requirements of this Agreement; and
- (d) be documented according to the Community's requirements.

All work done in performance of the Services shall be subject to such review as the Community considers advisable or appropriate. Any work not meeting the requirements of this Agreement may be rejected by the Community and shall require appropriate correction by the Consultant. No such review by the Community shall relieve the Consultant from the performance of its obligations hereunder.

2.4 Warranty of Consultant

The Consultant represents and warrants to the Community:

- (a) that it has sufficient skill, knowledge, expertise and resources, including qualified and competent personnel, to perform and provide the Services in accordance with the provisions of this Agreement;
- (b) that it is not involved in and is not aware of any actual or potential law suit or circumstance which would or could materially affect its ability to perform the Services hereunder and, upon becoming aware of such, it shall immediately notify the Community and provide the Community with details of the nature of the law suit or circumstance; and
- (c) that the entering into of this Agreement and the performance of the Services hereunder shall not cause the Consultant to be in breach of any obligation of confidentiality which the Consultant may owe to any third party, or otherwise

cause the Consultant to be in breach of any agreement or undertaking with any third party.

2.5 Progress Reports

If required by the Community, the Consultant shall provide progress reports to the Community and/or attend progress meetings regarding the performance of the Services, in such form and detail and whenever and as often as requested by the Community.

2.6 Compliance with Legislation

In performing the Services hereunder (including any portion thereof performed by any subcontractors), the Consultant shall comply with the provisions and requirements of all laws, rules and regulations by lawful authority applicable including, without limitation, all relevant legislation, codes, bylaws, regulations and ordinances as well as the Community's policies, procedures and regulations as are made known to the Consultant by the Community. Where there are two or more laws, codes, bylaws, regulations, ordinances, policies, procedures or regulations applicable to the Services, the more restrictive shall apply. In particular, the Consultant shall at all times observe and cause its personnel, agents and subcontractors to observe the provisions of all applicable environmental, health, safety and labour legislation including, and including any successor legislation, as well as rules and regulations pursuant thereto. Evidence of compliance with such laws shall be furnished by the Consultant to the Community at such times as the Community may reasonably request. In the event the Consultant, its personnel, any agent or subcontractor or their respective personnel, fail to comply with any legislation or any regulations thereunder and the Community is required to do anything or take any steps or pay any amounts to rectify such non-compliance, the provisions of Section 4.4 of this Agreement shall apply.

2.7 Permits and Licenses

The Consultant shall obtain and pay for all necessary permits or licenses required in connection with providing or performing the Services.

ARTICLE 3 - PERSONNEL

3.1 No Substitution

If specific personnel are designated by this Agreement to perform the Services or any part thereof, the Consultant shall not substitute other personnel for those designated without the prior written consent of the Community. If any such personnel shall become no longer available for any reason, the Consultant shall supply a similarly

experienced and skilled individual as soon as practicable subject to approval of such individual by the Community.

3.2 No Subcontractors

The Consultant shall not engage or retain any agent, subcontractor any other third party for purposes of providing the Services hereunder in whole or in part without the prior written consent of the Community (which may be arbitrarily withheld) and on terms and conditions satisfactory the Community in its sole discretion. The use of any agents, subcontractor, subcontractor or any other third parties by the Consultant shall in no way relieve the Consultant from its responsibility and obligation to provide the Services in accordance with the provisions of this Agreement.

3.3 Removal of Personnel

The Consultant shall forthwith remove from the Community's premises and from performance of the Services any officer, employee, agent or subcontractor who is for any reason unsatisfactory to the Community including, without limitation, and such person who:

- (a) is charged with and convicted of a criminal offence;
- (b) fails, in the opinion of the Community or in the opinion of the Consultant, to carry out the work required in the performance of the Services in a satisfactory manner including, without limitation, causing any delays in the performance of the Services;
- (c) removes any property not belonging to the Consultant, its personnel or any agent or subcontractor, as the case may be, from the Community premises without the prior written consent of the Community, or
- (d) discloses or uses any Confidential Information contrary to the provisions of Section 5.1 of this Agreement, without the prior written permission of the Community;

and, in the case of paragraphs (c) and (d), the Consultant shall take all reasonable steps to ensure that any property removed from the Community is promptly returned, or to restrain any further improper disclosure or use of the Confidential Information, as the case may be. Any costs or expenses associated with removal of any such officer, employee, agent, or subcontractor shall be the responsibility of the Consultant, including any necessary training costs or expenses associated with replacement persons, as determined by the Community.

3.4 Compliance with Policies

The Consultant shall ensure that its personnel and agents, and subcontractors when using the Community premises, comply with all security, safety, emergency and access policies, procedures or regulations in effect from time to time on such premises.

3.5 Safety

The Consultant shall be responsible for the safety of its personnel and any agents or subcontractors, and all property of the Consultant or its personnel, agents or subcontractors while on the Community premises. The Community shall not be responsible for any personal property, tools or equipment that the Consultant or its personnel, agents or subcontractors may bring onto the Community premises.

3.6 No Solicitation

During the Term of this Agreement, and for a period of twelve (12) months thereafter, the Consultant shall not, directly or indirectly, solicit for employment any Community employee or agent. For the purposes of this Section 3.6, "employee" shall include any individual who was employed by the Community at any time during the six (6) month period prior to the time in question.

ARTICLE 4 - PAYMENT

4.1 Payment

The Community shall pay the Consultant in accordance with the provisions of Schedule "B" (Terms of Payment), upon the diligent and timely performance of the Services to the satisfaction of the Community. No payment by the Community shall relieve the Consultant from the performance of its obligations hereunder.

4.2 Excess Payments, Taxes

The Community shall not pay any amount exceeding the Agreement Amount or make any payment for any work done by the Consultant after the Completion Date unless prior written authorization has been obtained by the Consultant from the Community. All customs duties, excise taxes (including G.S.T.), federal, territorial and municipal taxes and other duties, taxes or charges of a similar nature, and all travel and living expenses of the Consultant are included within the Agreement Amount, unless expressly stated otherwise in Schedule "C". If the total cost for man-days spent in performing the Services is less than the Agreement Amount, the Community shall not be required to pay to the Consultant any sum in excess of the total cost for man-days actually expended.

4.3 No Payment for Costs, Expenses or Damages

The Community shall not be required to make any payment to the Consultant under this Agreement for any costs, expenses, losses or damages suffered or incurred:

- (a) in performing any work reasonably incidental to the performance of the Services;
- (b) as a result of any delays in performing the Services from any cause whatsoever; or
- (c) to remedy errors or omissions for which, in the reasonable opinion of the Community, the Consultant is responsible.

4.4 Performance upon Failure of Consultant

Upon failure of the Consultant (including any of its subcontractors) to perform any of its obligations under this Agreement the Community may, but shall not be obligated to perform or engage a third party to perform any of those obligations without prejudice to any other remedy or right it may have and the Consultant, immediately upon written demand, shall pay an amount equal to all costs and expenses incurred by the Community in association therewith, plus interest on that amount from the date the cost or expense is incurred until it is paid at the rate of 1.5% per month (19.6% per annum). The Community may, in its discretion, deduct any such amount, together with interest, from any payment then or thereafter due by the Community to the Consultant, provided that such action shall not be deemed a waiver of any action that the Community may pursue to collect any costs or expenses incurred herewith that exceed the amounts owed to the Consultant.

4.5 Withholdings

Notwithstanding any other provision of this Agreement, the Community shall be entitled to withhold and remit to the appropriate taxing authorities, or otherwise withhold, federal withholding taxes or any other amounts required by law to be withheld from payments made to the Consultant. If the Consultant is a non-Canadian resident the Community shall, as required by federal legislation, deduct all applicable federal withholding taxes. For this purpose, the Consultant shall separately identify in each invoice all work performed in Canada and that performed elsewhere. The Consultant will be provided with evidence of withholdings as required, upon written request. If the Consultant provides the Community with an exemption certificate from Revenue Canada, then the Community shall not withhold any federal withholding tax in respect of the payment made to the Consultant in reliance on such certificate of exemption.

The Consultant is responsible for all deductions and remittances required by law in relation to its employees including those required for Canada or Quebec Pension Plans, unemployment insurance, workers' compensation or income tax. The Community shall have no liability or responsibility for the withholding, collection or payment of income taxes, unemployment insurance, statutory or other taxes or payments of any other nature on behalf of or in respect of or for the benefit of the Consultant or any other person. The Consultant shall pay all municipal, provincial, or federal sales, excise (including G.S.T.) or other taxes or payments of any type payable hereunder to any level of government, and shall indemnify and hold the Community, its officials, representatives, agents and employees harmless against any order, fine, penalty, interest or tax that may be assessed or levied against the Community or such persons as a result of the failure or delay of the Consultant to make any such payment or to file any return or information required by any law, ordinance, regulation or other lawful authority. The Community is authorized to pay any demand by any level of government or government agency, including the Workers' Safety and Compensation Commission, due to a failure by the Consultant, in which event the provisions of Section 4.4 of this Agreement shall apply.

4.6 Records

The Consultant shall keep and maintain, at its principal place of business within the Northwest Territories, or at such other location as may be agreed by the Community, adequate and complete records from which any fees, costs, charges, reimbursable expenses or other amounts payable by the Community to the Consultant may be readily and accurately determined and verified for each calendar month during the Term of this Agreement. The Consultant shall take such steps as are necessary to maintain such records in accordance with generally accepted accounting practices in Canada.

Such records shall be open to inspection by the Community, or its agents, during the Consultant's regular business hours. The Consultant shall be required to retain such records for a period of seven (7) years following expiration or termination of this Agreement.

4.7 Audit

The Community or its agents shall, from time to time during the Term of this Agreement, and for a period of two (2) years thereafter, during business hours and upon reasonable notice to the Consultant, be entitled to review all or any of the security, quality assurance procedures, accounting or other records and procedures of the Consultant regarding the Services or business relationship between the Community and the Consultant affecting any fees, costs, charges, reimbursable expenses or other amounts payable by the Community, or any commitments to the Community, and to have such records reviewed, audited, inspected or examined by an independent chartered accountant or other auditor or party designated by the Community to determine:

- (a) whether the Consultant has accurately recorded events or transactions requiring payments of fees, costs, charges, reimbursable expenses or other amounts by the Community, as applicable;
- (b) the status of the provision of the Services; and
- (c) whether the Consultant is complying with the terms of this Agreement.

The costs of any such inspection or audit shall be payable by the Community.

4.8 Acceptance is Not Waiver

The acceptance by the Community, from time to time, of any statement of fees, costs, charges, reimbursable expenses or other amounts delivered by the Consultant or any payment of such amounts based thereon shall not be deemed to be a waiver by the Community of any of the Consultant's obligations or the Community's rights under this Agreement. However, if the Community has not caused an audit or inspection of the Consultant's accounting records or Services for any calendar month to commence within two (2) years of the last day of any such calendar month, the Community and the Consultant agree that the accounting records and all such amounts paid for that calendar month shall have been deemed to have been made accurately and in full compliance with the provisions of this Agreement.

ARTICLE 5 - INFORMATION AND PROPERTY RIGHTS

5.1 Confidential Information

The Consultant agrees that:

- (a) all data, information and material of a confidential nature provided or disclosed to the Consultant by or on behalf of the Community;
- (b) all data, information and material of a confidential nature concerning the Community's business, systems, operations, processes, technology, trade practices, products, services, marketing or other strategic plans, suppliers or customers which is obtained by the Consultant in the performance of its obligations under this Agreement;
- (c) the Service Results; and
- (d) any and all information or material provided to the Consultant by or on behalf of the Community which is marked "CONFIDENTIAL";

and all copies thereof (hereinafter collectively called the "Confidential Information") are confidential and constitute valuable and proprietary information and materials of the Community and shall be kept strictly confidential, both during and after the Term of this Agreement, and shall only be used for the purpose of providing the Services hereunder. In that regard, such Confidential Information may only be disclosed by the Consultant to those of its officers, employees, agents or subcontractors who have a need to know such information for the purposes of this Agreement and the Consultant shall take appropriate steps, whether by instruction, agreement or otherwise to ensure that such officers, employees, agents and subcontractors keep such information strictly confidential and otherwise comply with the provisions of this Section 5.1. No Confidential Information shall be copied or provided or disclosed to any other party without the prior written consent of the Community, which consent may be arbitrarily withheld. The Consultant acknowledges that it has no interest in the Confidential Information and shall surrender all Confidential Information in its possession or control (including all copies thereof) to the Community immediately upon termination or expiration of this Agreement or at any earlier time upon the Community's request, and shall thereafter cease all use of the Confidential Information.

5.2 No Obligation to Disclose

The Community shall have no obligation to disclose to the Consultant any particular data, information or material which is considered by the Community to be sensitive or confidential. All data, information or material which is provided to the Consultant by the Community shall be and remain the sole property of the Community, and shall be returned to the Community immediately upon termination or expiration of this Agreement or at any earlier time upon the Community's request.

5.3 Injunctive Relief

The parties agree that improper disclosure or use of the Confidential Information will cause irreparable harm to the Community, which harm may not be adequately compensated by damages. As a result, the parties agree that, in addition to all other remedies the Community may have and not in derogation thereof, the Community may seek and obtain from any court of competent jurisdiction injunctive relief in respect of any actual or threatened disclosure or use contrary to the provisions of this Agreement.

5.4 Ownership of Service Results

The Consultant agrees that all discoveries, designs, inventions, works of authorship, improvements in any apparatus, device, process, technology or thing, know-how, base materials, research results, data, surveys, maps, plans, schematics, reports (including progress reports referred to in Section 2.5), charges, tabulations, compilations, diagrams, flow-charts, processes, formulae, computer programs, specifications, screen or program layouts, drawings, documents, and notes or materials of any type whatsoever developed, created, conceived of, first reduced to practice or prepared by or on behalf of

the Consultant or any officer, employee, agent or subcontractor in performance of the Services either alone or jointly with others (hereinafter collectively called the "Services Results") shall be fully and promptly disclosed to the Community and shall be the absolute and exclusive property of the Community, including any patent, copyright, other intellectual property or other rights of any kind in relation thereto. The Consultant hereby assigns, transfers and conveys to the Community all of its right, title and interest in and to the Service Results and the Consultant shall promptly execute and do or cause to be executed and done any and all documents and things necessary or desirable to give effect to the provisions of this Section 5.4, including the execution of a written assignment of all right, title and interest, whether in law or in equity, to the Community for any or all of the Services Results, in form acceptable to the Community. Upon completion of the Services or expiration or termination of this Agreement, whichever is sooner (and from time to time upon request by the Community), the Service Results and all copies thereof shall be delivered by the Consultant to the Community without demand by the Community, together with all supporting materials, explanatory notes and know-how required or reasonably necessary for full and complete disclosure of such Service Results and to enable the Community to understand, use and modify the Service Results without assistance. No use may be made of the Service Results by the Consultant other than in connection with the performance of the Services hereunder. The Consultant hereby waives absolutely (and shall cause any other persons to waive absolutely) in favour of the Community, its successors and assigns, any moral rights the Consultant or such other persons have or may at any time hereafter have in the Service Results.

5.5 Protection of Rights

The Consultant shall, at the request and expense of the Community, execute or cause to be executed any documents and do or cause to be done all things which may be necessary or desirable to enable the Community to file and prosecute applications for patents, file for and obtain copyright registrations or otherwise protect any of the Community's interest in and to the Service Results or any part thereof, in Canada or any other country. The Community shall have complete control of and responsibility for the filings and prosecution of applications for patents, copyrights or other registrations in Canada and in foreign countries. The Community shall assume all expenditures necessary to prepare and prosecute such applications and maintain or renew any resulting registrations.

5.6 Records of Consultant

The Consultant shall make and maintain during the Term of this Agreement, adequate and current written records of all Service Results, which records shall be made available to and remain the property of the Community at all times, both during and after the Term of this Agreement.

5.7 Warranty of Original Work

The Consultant warrants that all Service Results will be original development by the Consultant, will not infringe any rights of any third parties and will otherwise be free of any claims of third parties, and will be specifically developed for the fulfillment of this Agreement.

5.8 No Challenge

The Consultant shall not challenge or deny nor assist any third party in challenging or denying any of the Community's rights in and to the Service Results.

ARTICLE 6 - TERMINATION

6.1 Termination for Convenience

This Agreement may be terminated at any time, with or without cause, by the Community providing written notice to the Consultant at least seven (7) days prior to the termination date specified in the notice.

6.2 Termination for Default

The Community may forthwith terminate this Agreement by providing written notice of termination to the Consultant, without prejudice to any other right or remedy the Community may have, if the Consultant at any time:

- (a) fails to comply with any of the terms or conditions of this Agreement; or
- (b) is adjudged or otherwise becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, if a receiver is appointed for the property of the Consultant, or if the Consultant ceases to carry on business in the normal course;

such termination to be effective on the date such notice of termination is received.

6.3 Payment upon Termination

The Community shall, in the event of termination of this Agreement, other than pursuant to Section 6.2(a), pay to the Consultant all amounts for completed work due to the Consultant in accordance with this Agreement, less any amounts which may be owing by the Consultant to the Community as provided for hereunder. The Community shall have no further liability of any nature whatsoever to the Consultant for any losses or damages suffered or sustained, either directly or indirectly, by the Consultant including, without limitation, loss of profit, as a result of the termination of this Agreement.

6.4 Effect of Termination

Upon termination or expiration of this Agreement:

- (a) the Consultant shall forthwith return to the Community all Confidential Information in written form within its possession or control, together with all copies thereof or, at the Community's written direction, destroy all such Confidential Information and provide the Community with a certificate confirming such destruction; and
- (b) no further use may be made by the Consultant of the Service Results or any portion thereof, for any purpose whatsoever.

6.5 Survival of Obligations

Notwithstanding the expiration or termination of this Agreement for any cause, the provisions of this Agreement regarding payment obligations, indemnities, confidentiality obligations and proprietary rights, and those provisions which are expressly or impliedly intended to survive, shall survive any such expiration or termination and shall remain in force and shall include, without limitation, the provisions of Section 3.3, Section 3.6, Article 4, Article 5, Section 6.3, Section 6.4, Section 6.5, Article 7 and Section 8.8.

ARTICLE 7 - INDEMNITY AND INSURANCE

7.1 Indemnity

Notwithstanding any other provision of this Agreement to the contrary, the Consultant shall:

- (a) be liable to the Community, its officials, representatives, agents and employees for any and all losses, costs, damages and expenses (and without limiting the generality of the foregoing, any direct losses, costs, damages and expenses of the Community or such persons, including costs as between a solicitor and his own client) which the Community or such persons may pay or incur;
- (b) indemnify and hold harmless the Community, its officials, representatives, agents and employees from and against any and all liabilities, claims, suits or actions which may be brought or made against the Community or such persons;

as a result of or in connection with:

- (c) the performance of the Services; or
- (d) any breach, violation or non-performance of any covenant, condition or agreement in this Agreement set forth and contained on the part of the Consultant to be fulfilled, kept, observed or performed; or
- (e) any breach of confidentiality on the part of the Consultant or any agent or subcontractor, or employee of the Consultant or any agent or subcontractor; or
- (f) any damage to property (including loss of use thereof) or injury to person or persons, including death resulting at any time therefrom, arising out of or in consequence of the performance of the Services; or
- (g) the failure of the Community to withhold any taxes or other amounts in respect of payments made to the Consultant under this Agreement; or
- (h) any suit or proceeding based on a claim that the Service Results or any portion thereof infringes or constitutes wrongful use of any copyright, patent, trademark, trade secret or any other right of any third party;

and the Community shall be deemed to be the agent of its officials, representatives, agents and employees in regard thereto.

7.2 Insurance

The Consultant shall maintain, in full force and effect with insurers licensed in the Northwest Territories, the following insurance:

- (a) Comprehensive General Liability insurance in respect to the Services and operations of the Consultant for bodily injury and property damage with policy limits of not less than Two Million (\$2,000,000.00) Dollars per occurrence, with the Community named as an additional insured but only with respect to the operations of the Named Insured. Such policy shall include blanket contractual coverage and a cross liability clause, and shall provide for a minimum of thirty (30) days prior written notice to the Community upon any cancellation or material change in coverage;
- (b) standard automobile insurance providing coverage of at least Two Million (\$2,000,000.00) Dollars inclusive for bodily injury and property damage (if the Consultant is required to use a vehicle in the performance of the Services); and
- (c) any other insurance of such type and amount as may reasonably be required by the Community.

7.3 Placement of Insurance

A certificate of insurance shall be provided by the consultant's insurance broker of the aforementioned insurance in a form and with insurers acceptable to the Community. Certified copies of the policies shall be provided to the Community by the Consultant upon request and evidence of renewal shall be provided to the Community prior to the expiry dates of the policies.

7.4 Deductibles and Duration

The Consultant shall be responsible for the payment of all premium and deductible amounts relating to the said insurance policies and the Consultant shall maintain the aforementioned insurance until the Services are completed or the Agreement is terminated, whichever is last to occur (or, in the case of Section 7.2(d), for so long as may reasonably be required by the Community).

ARTICLE 8 - GENERAL

8.1 Schedules

The following Schedules attached hereto shall form part of this Agreement and are incorporated herein by reference:

Schedule "A" - Services
Schedule "B" - Terms of Payment
Schedule "C" - Special Terms and Conditions

8.2 Notices

Any notice provided for or permitted to be given pursuant to this Agreement shall be in writing and shall, except in the event of an interruption in postal service during which time all notices must be personally delivered, be sufficiently given if personally delivered or sent by prepaid registered mail addressed to the party for whom the same is intended to the address for notice for such party as set out in Schedule "C".

Any notice delivered personally shall be deemed to be received when left during normal business hours at the office set forth above and any notice sent by prepaid registered mail shall be deemed to have been received on the third normal delivery day following the posting thereof. Either party shall be entitled to change its address for notice to another existing address by notice in writing to the other. The word "notice" in this Section 8.2 includes any request, statement, report, demand, order or other writing in this Agreement provided or permitted to be given by the Community to the Consultant or by the Consultant to the Community.

8.3 Assignment

The Consultant shall not assign this Agreement or any portion thereof without the prior written consent of the Community, which consent may be arbitrarily withheld. Upon any transfer or assignment by the Community of this Agreement, the Community shall be released from its obligations hereunder. The Community may assign this Agreement in whole or in part to any person in the Community's sole discretion without notice to the Consultant.

8.4 Waiver

The failure of a party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of such covenant or option and no waiver by the Community of any provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by the Community.

8.5 Enurement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors, assigns or approved assigns, as the case may be.

8.6 No Agency

Nothing in this Agreement, nor in any acts of the Community and the Consultant pursuant to this Agreement, shall be construed, implied or deemed to create an agency, partnership, joint venture or employer and employee relationship between the Community and the Consultant, and neither party has the authority to bind the other to any obligation of any kind.

8.7 Whole Agreement

The provisions of this Agreement constitutes the entire agreement between the parties and supersedes any prior agreements, letters of intent or understanding, whether written or oral, between the parties with respect to the matters contemplated herein. No terms, conditions, warranties, promises or undertakings of any nature whatsoever, express or implied, exist between the parties with respect to this Agreement except as herein set forth. This Agreement may be amended, changed or modified only by further written agreement between the parties.

8.8 Partial Invalidity

If any term, condition or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, condition or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, condition or provision shall be separately valid and enforceable to the fullest extent permitted by law.

8.9 Time of Essence

Time shall be of the essence of this Agreement.

8.10 Expiration of Time

In any case where the time limited by this Agreement expires on a Saturday, Sunday or legal holiday in the Northwest Territories, the time limited shall be extended to and shall include the next succeeding day which is not a Saturday, Sunday or legal holiday in the Northwest Territories.

8.11 Further Assurances

Each of the parties to this Agreement shall at the request of the other party hereto, execute and deliver any further documents and do all acts and things as that party may reasonably require to carry out the full intent and meaning of this Agreement.

8.12 Governing Law

This Agreement shall be governed by the laws in force in the Northwest Territories and the courts of the Northwest Territories shall have exclusive jurisdiction with respect to any dispute, matter or thing arising herefrom.

IN WITNESS WHEREOF the parties hereto have affixed their corporate seals by the hands of their proper officers.

[COMMUNITY]

Per:

Signature of Authorized Signing Officer

Printed Name of Authorized Signing Officer

Position of Authorized Signing Officer

(NAME OF CONSULTANT)

Per:

Signature of Authorized Signing Officer

Printed Name of Authorized Signing Officer

Position of Authorized Signing Officer

Per:

Signature of Authorized Signing Officer

Printed Name of Authorized Signing Officer

Position of Authorized Signing Officer

SCHEDULE "A"

SERVICES

INSTRUCTIONS:

This Schedule should contain a *complete* and *detailed* description of the nature and scope of the Services to be provided by the Consultant 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 Consultant 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 Consultant is required to do under the Agreement.

In many cases the Consultant has 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 Consultant to the Purchaser are those services described in the Consultant's letter of proposal to the Purchaser dated _____, 199____, a copy of which is attached hereto and incorporated in this Schedule "A" by reference."

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.

SCHEDULE "B"

TERMS OF PAYMENT

Subject to all other terms and conditions of this Agreement, the Purchaser shall pay to the Consultant amounts not to exceed in the aggregate the Agreement Amount, in the following manner:

1. At the beginning of each calendar month an invoice shall be submitted to the Community by the Consultant in respect of Services provided during the immediately preceding month. Each invoice shall, in respect of such month:
 - (a) refer to the purchase order number,
 - (b) where applicable, separately identify work performed in Canada and elsewhere and the proportionate allocation of the invoice amount in that regard;
 - (c) identify as separate items any travel and living expenses, and/or any tax, duty or charge separately chargeable to the Community (in addition to the Agreement Amount) but only as specified and provided for in Schedule "C"; and
 - (d) identify the number of man-days or hours expended in providing the Services, the applicable rates and charges for the time expended, and a description of the Services performed in that regard.

The Consultant may elect, at its option, to provide the Community with one invoice for the whole of the Services to be provided hereunder in place of monthly invoices, provided that all the required information is included in such invoice.

2. Subject to the verification of each invoice by the Community and all other terms and conditions of the Agreement (including, without limitation, the Services being satisfactory to the Community, the Community shall pay the Consultant the amount of each invoice within thirty (30) days of receipt of same.

SCHEDULE "C"

SPECIAL CONDITIONS

[Instructions for Completion are bolded and do not form part of the Agreement]

A. REQUIRED INFORMATION

Schedule "C" must contain, as a minimum, the definitions for Agreement Amount (Section 1.1(b)), Commencement Date (Section 1.1(c)) and Completion Date (Section 1.1(d)), as well as the addresses for notice for the Community and the Consultant (Section 8.2). It should also include the name of the particular Consultant(s) designated to perform the Services, as well as their hourly/daily rate(s).

The Agreement Amount should be defined in words and figures (e.g. Five Thousand (\$5,000.00) Dollars) and, when dealing with a U.S. company, should also state whether the amount is in Canadian or US funds.

The "Attention" portions of the addresses for notice should refer to titles or positions instead of to particular individuals.

The form the clauses should take is as follows:

1. "Agreement Amount" means the sum of _____ (\$_____) Dollars in Canadian funds.
2. "Commencement Date" means _____, 20____.
3. "Completion Date" means _____, 20____.
4. the Community's address for notice is:

_____, Northwest Territories

Telephone: (____) ____-____

Fax: (____) ____-____

Attention: _____

5. The Consultant's address for notice is:

[INSERT ADDRESS AND "ATTENTION"]

6. The following personnel of the Consultant shall perform the Services hereunder:

NAME

TITLE

and shall not be replaced or substituted for except in accordance with the provisions of Section 3.1 of the Agreement.

The fees for the personnel designated to perform the Services hereunder shall be as follows:

NAME

RATE

A regular working day will be a minimum of _____ hours, and shall include all regular business days of the Community.

B. SPECIAL TERMS AND CONDITIONS

Schedule "C" should also contain a detailed description of any special terms and conditions which are to apply. As much detail as possible should be included. Where specific sections of the Agreement are being amended, these should be referred to.

The following are examples of special terms and conditions only and may not apply to your particular situation - you must prepare your own Schedule "C" to meet the requirements of your particular arrangement.

EXAMPLES:

1. **Notwithstanding the provisions of Section 4.2 of the Agreement, the following amounts shall be payable by the Community to the Consultant or appropriate taxing authorities, as may be applicable, in addition to the Agreement Amount.**

DESCRIPTION OF TAX, DUTY OR OTHER CHARGE

AMOUNT

Amount	GST	5%	of	Agreement
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2. Notwithstanding the provisions of Section 4.2 of the Agreement, the Consultant shall be reimbursed for all reasonable travel and living expenses of the Consultant necessarily incurred in providing and performing the Services in addition to the Agreement Amount, provided that:

- (a) all such expenses are pre-authorized by the Community in writing;
- (b) receipts in respect of all such expenses are provided to the Community; and
- (c) any such expenses to be reimbursed by the Community hereunder shall not exceed, in the aggregate _____- (\$_____) Dollars.

Reimbursement of such travel and living expenses is subject to the verification by the Community of all amounts claimed by the Consultant and shall be in accordance with the Community policies;

3. The Consultant shall provide the Community with copies of its annual financial statements as the same become available, or upon the request of the Community. (Consider using this clause where a long term agreement is contemplated).
4. The Community hereby consents to the following corporation being retained as a subcontractor for purposes of providing a portion of the services hereunder, as contemplated by Section 3.2 of the Agreement.

INSTRUCTIONS FOR COMPLETION OF FEE FOR SERVICE AGREEMENT
(CORPORATE)

1. The date of the Agreement must not be later than the Commencement Date. Therefore, if the Agreement is being signed *after* the Commencement Date, the date of the Agreement should be the same as the Commencement Date. Where the Agreement is being signed *prior* to the Commencement Date (which should be what happens), the date to be inserted is the date of the Agreement is signed by the party signing it last.
2. Insert full name of Consultant on Pages 1 and 17, being careful to include appropriate punctuation, and to indicate legal portion of name correctly (e.g. Limited or Ltd., Company or Co., Incorporated or Inc., etc.).
3. Complete Schedules "A" and "C" (see applicable schedules for instructions in this regard). Note in particular that if GST is payable in addition to the Agreement Amount this must be specifically addressed in Schedule "C" (see example I).
4. Where specific amendments are required to the terms and conditions contained in the body of the Agreement, these should be done by describing the amendments in Schedule "C". Brownlee LLP can be contacted for assistance in this regard where necessary.
5. This Agreement must not be used for software development or customization without review by Brownlee LLP. (**Note:** consideration must be given to additional warranty clauses, infringement indemnity and acceptance testing procedures.)

THIS AGREEMENT made effective the ____ day of _____, 20____.

BETWEEN:

(the "**Community**")

- and -

(the "**Engineer**")

ENGINEERING SERVICES AGREEMENT

WHEREAS:

- A.** The Community requires the services of the Engineer in connection with the provision of engineering services relating to the Project;
- B.** The Community and the Engineer have reached agreement with respect to the terms and conditions under which the Engineer will provide such services to the Community;

NOW THEREFORE, in consideration of the promises, mutual terms, covenants and conditions herein, the parties hereto agree as follows:

1. DEFINITIONS

1.1 In this Agreement:

- (a)** "**Construction Contract**" means an agreement between the Community and each engineer engaged to construct all or any portion of the Project;
- (b)** "**Engineer**" means the third party(s) contracted by the Community to construct the Project;
- (c)** "**Event of Default**" means, with respect to the Engineer, if:
 - (i)** the Engineer neglects or fails to observe, perform or comply with any of its obligations or covenants pursuant to this Agreement, and:
 - (A)** such neglect or failure is not cured within five (5) days after being required in writing to do so by the Community, or
 - (B)** if such neglect or failure is not capable of being cured within five (5) days as aforesaid but can be cured within a reasonable period of time by a reasonable effort by the Engineer, the Engineer has not commenced to cure such neglect or failure within the said five (5) day period and has not continued to effectively and diligently cure such neglect or failure within such reasonable period of time;
 - (ii)** an assignment of the Engineer's assets for the benefit of its creditors or makes a proposal to its creditors under any bankruptcy or insolvency legislation of any jurisdiction;

- (iii) a petition in bankruptcy is filed and presented against the Engineer or a receiver, receiver and manager, custodian or similar agent is appointed or takes possession of any property or business of the Engineer;
- (iv) the Engineer ceases or threatens to cease to carry on its business;
- (v) an execution, sequestration, extent or other process of any court becomes enforceable against the Engineer or a distress or analogous process is levied upon the property of the Engineer; or
- (vi) any of the representations or warranties given hereunder are found to be incorrect or untrue and, as result, have a material, adverse effect upon the provision of the Services;
- (d) **"Fees"** means the fees and expenses that the Community shall cause to be paid to the Engineer as set forth in **Schedule "B"** hereto;
- (e) **"Force Majeure"** means any act of God, major storms, civil disturbance or any similar major event or occurrence not within the control of a party and which by the exercise of due diligence by such party could not have been prevented, but lack of funds on the part of such party shall be deemed not to be a Force Majeure;
- (f) **"Performance Requirements"** means those certain requirements and performance levels set forth within **Schedule "C"** attached to this Agreement;
- (g) **"Project"** means **[NOTE: Insert description of Project – for example, "the development of a 2 lane roadway from _____ to _____"]**;
- (h) **"Services"** means the preparation of detailed engineering plans for Community approval, site supervision and inspection, construction survey, construction management, and post construction services, together with related ancillary activities associated with completing the Project, as more particularly identified in **Schedule "A"** hereto;
- (i) **"Term"** means the period of time beginning on the date first written above and ending upon the earlier of completion of the Project, as determined by Community in its sole discretion, or when terminated in accordance with the terms of this Agreement; and
- (j) **"Work Product"** means any and all materials, reports, documentation, and other items made, prepared or produced for the Community by or on behalf of the Engineer or any of its employees and Engineers as part of the provision of the Services (whether then provided or delivered to the Community, or not), including related materials, regardless of media or format.

2. **PREAMBLE AND SCHEDULES**

- 2.1 The parties hereby confirm and ratify the matters contained and referred to in the Preamble to this Agreement and agree that same and the various schedules hereto are expressly incorporated into and form part of this Agreement:

Schedule "A"	-	Services
Schedule "B"	-	Fees & Expenses
Schedule "C"	-	Performance Requirements
Schedule "D"	-	Hourly Rates and Disbursements

3. **OBLIGATIONS**

- 3.1 During the Term, the Engineer shall:

- (a) perform the Services faithfully, to the same standard as a prudent engineer would in the circumstances, exercising reasonable best efforts, and in accordance with and subject to the terms and conditions contained in this Agreement, including, without restriction, the Performance Requirements;
- (b) provide qualified staff to provide the Services;
- (c) be bound by and observe all applicable federal, provincial and municipal legislation and related regulations and the Engineer shall cause all of its employees and approved sub-consultants to be so bound;
- (d) obtain and maintain at its sole expense all necessary permits, licenses, consents and approvals required by all authorities having jurisdiction incidental to the performance of the Engineer's obligations under this Agreement and the Engineer shall cause all of its employees and approved sub-consultants to likewise;
- (e) pay all fees and all other costs incidental to the performance of the Engineer's obligations under this Agreement (subject always to the payment of the Fees as contemplated herein);
- (f) provide all such reasonable written and verbal reports as required by the Community on the progress of the Services. The Engineer will make available such information, including data and documents, as the Community may require from time to time to allow the Community to evaluate the quality and progress of the Services; and
- (g) upon receipt of request from the Community, provide evidence of full compliance with all requirements of the *Workers' Compensation Act* (Northwest Territories) to and including the dates of such requests, such evidence to include the Engineer and any and all sub-consultants employed to provide the Services.

3.2 The Community shall:

- (a) give due consideration to all sketches, drawings, reports, tenders, proposals and other information laid before it by the Engineer and shall give their decision in such reasonable time as not to delay the work of the Engineer; and
- (b) provide the Engineer with the following information, except where the Engineer is specifically required to provide the same according to this Agreement:
 - (i) all pertinent information which may affect the Services; and
 - (ii) copies of all bids and contracts for the work the Engineer is responsible for and copies of all quotations, all certificates for payment and final accounts in connection with the Services if they do not originate in the Engineer's office.

4. **SUBCONTRACTORS**

4.1 The Engineer shall not engage or retain any agent, contractor or any other third party for purposes of providing the Services hereunder, in whole or in part, without first:

- (a) causing such agent, contractor or any third party to be bound by all covenants and obligations of the Engineer under this Agreement as such relate to those of the Services being provided by such persons respectively; and
- (b) obtaining the prior written consent of the Community which consent may be arbitrarily withheld.

The use of any agents, contractors or any other third parties by the Engineer shall in no way relieve the Engineer from its responsibility and obligation to provide the Services in accordance with the provisions of this Agreement.

Further, the Engineer shall, in providing the Services:

- (c) provide for the coordination of the activities and work of its own forces and any contractors;
- (d) assume overall responsibility for compliance with all applicable legislation in carrying out the Services by itself and all of its contractors; and
- (e) not change or terminate any of its contractors without obtaining the prior written consent of the Community which consent may be arbitrarily withheld.

4.2 The Engineer shall forthwith remove from the performance of the Services any employee, agent or contractor who is unsatisfactory to the Community, acting reasonably. Any costs or expenses associated with removal of any such employee, agent or contractor shall be the responsibility of the Engineer.

5. PAYMENT OF FEES

5.1 The Community will be responsible for the payment of the Fees to the Engineer following receipt of invoice and in accordance with the payment terms set forth in **Schedule "B"** hereto, plus any applicable GST thereon.

6. TAXES AND DEDUCTIONS

6.1 The Engineer shall be responsible to collect, remit, and pay all source deductions, Canada Pension contributions, employment insurance premiums, taxes and GST and all other required payments, contributions or deductions under all applicable laws and authorities including, but not limited to, any assessments levied pursuant to the *Workers' Compensation Act* (Northwest Territories) which arise or may hereafter arise with respect to the performance of the obligations of the Engineer under this Agreement and the Community shall not have liability for the same.

7. CONCURRENT RETAINERS

7.1 The Engineer may accept concurrent contracting retainers from other parties during the currency of this Agreement.

8. WARRANTIES AND REPRESENTATIONS

8.1 The Engineer hereby represents and warrants with and to the Community, and acknowledges that the Community are relying upon such representations and warranties, that during the currency of this Agreement:

- (a) the Engineer is in compliance with all laws and regulations of any public authority relating to the conduct of its business and has all required approvals, permits, licenses, certificates and authorizations necessary to carry on its business and to carry out its obligations hereunder and there are not any proceedings whatsoever, actual or pending, and whether concerning cancellation, extension or otherwise, relating to the said approvals, permits, licenses, certificates or authorizations; and
- (b) The Engineer is experienced in the performance of all aspects of the Services, and is capable of performing the Services in accordance with the terms, covenants and conditions contained in this Agreement including, without restriction, the Performance Requirements.

9. INSURANCE

[BLLP NOTE: We strongly recommend that the Community discuss insurance requirements with its insurance advisor for each Engineering Services Agreement. This section will need to be revised accordingly, based on the insurance requirements suggested by the Community's risk management

advisors.]

- 9.1** Without in any way limiting the liability of the Engineer under this Agreement, the Engineer shall be responsible for obtaining and maintaining any insurance which may be required by law or merely required for the protection of the Engineer and any employees, agents or approved sub-consultants. As a minimum such insurance shall include:
- 9.2** **Commercial General Liability** Insurance with limits of not less than two million dollars (\$2,000,000) inclusive per occurrence for bodily injury, death and property damage including loss of use thereof. This insurance shall be maintained continuously from commencement of the work until not less than 12 months from the date of the Final Certificate of Completion. The insurance policy shall include but is not limited to:
- a. Premises, Property and Operations Liability
 - b. Products and Completed Operations Liability
 - c. Owners and Contractor's Protective Liability
 - d. Blanket Written Contractual Liability
 - e. Broad Form Property Damage Extension
 - f. Personal Injury Liability
 - g. Employees as Additional Insured
 - h. Cross Liability
 - i. Contingent Employers Liability
 - j. Non-owned Automobile Liability SPF # 6
- 9.3** This policy must show the Community as an additional but only with respect to the operations of the named insured. The policy will also be endorsed to provide 30 days written notice of cancellation or reduction in the insurance coverage to the Community by the insurer.
- 9.4** **Automobile liability insurance** with respect to Engineer's owned and leased, licensed vehicles used directly or indirectly in the performance of the work with limits of not less than two million dollars (\$2,000,000) inclusive per occurrence for bodily injury death and property damage as per Standard Policy Form # 1.
- 9.3** **Professional liability insurance** providing coverage of at least **TWO MILLION (\$2,000,000.00) DOLLARS** per occurrence, and **TWO MILLION (\$2,000,000.00) DOLLARS** annual aggregate.
- 9.4** **Workers' Compensation** coverage for all employees, if any, engaged by the Engineer in accordance with the laws of the Northwest Territories;
- 9.5** Such other insurance as the Community may from time to time reasonably require.
- 9.6** Within 14 days after acceptance of the Contract the Engineer shall, unless otherwise directed in writing be the Community, deposit with the Community an Insurer's Certificate of Insurance in a form acceptable to the Community and if requested, the originals or certified true copies of all insurance contracts maintained by the Engineer pursuant to the insurance coverage requirements shown hereunder.
- 9.7** The provisions of the insurance coverage requirements contained hereunder are not intended to cover all of the Engineers risk under this contract. Any additional risk management measures or additional insurance coverage the Engineer may deem necessary to fulfill its obligations under this contract shall be at the Engineer's own discretion and expense.
- 10. INDEMNITY AND WARRANTY**
- 10.1** The Engineer shall at all times and without limitation, indemnify and save harmless the Community, and their respective elected officials, officers, employees, agents, insurers and representatives from and against all

liabilities, losses, costs, damages, legal fees (on a solicitor and his own client full indemnity basis), disbursements, fines, penalties, expenses, all manner of actions, causes of action, claims, demands and proceedings, all of whatever nature and kind which the Community or its elected officials, officers, employees, agents, insurers and representatives may sustain, pay or incur or which may be brought or made against all or any of them, and whether or not incurred in connection with any action or other proceedings or claims or demands made by third parties, with respect to any occurrence, event, incident or matter caused by, and/or arising as a direct or indirect result of:

- (a) the misconduct, negligent action or negligent failure to act of the Engineer and/or any of those persons for whom the Engineer is responsible at law (including, without limitation, any of its employees or sub-consultants) in the performance or non-performance of the Services; or
- (b) any breach, violation or non-performance of any representation, warranty, obligation, covenant, condition or agreement in this Agreement set forth and contained on the part of the Engineer to be fulfilled, kept, observed or performed, as the case may be; or
- (c) any damages to third parties caused by, resulting at any time from, arising out of or in consequence of the misconduct, negligent action or negligent failure to act of the Engineer and/or any of those persons for whom the Engineer is responsible at law (including, without limitation, any of its employees or sub-consultants).

The provisions of this Section are in addition to and shall not prejudice any other rights of the Community at law or in equity. This Section shall survive the termination or expiry of this Agreement for any reason whatsoever.

10.2 The Engineer warrants to the Community that:

- (a) all Services provided by the Engineer shall materially conform to the description of the Services provided under this Agreement;
- (b) all Work Product shall be free from defects; and
- (c) the performance of the Services will be performed to the same standard or performance quality that a reasonable engineer would so perform in similar circumstances.

10.3 If the Community provides written notice of a breach of this warranty to the Engineer during the currency of this Agreement or for a period of two years after the latter of the Community providing a written acknowledgement to the Engineer that the Project is complete, the Engineer shall remedy, or cause to be remedied, the resultant defect that occurred due to the breach at the sole and absolute cost of the Engineer. Without limitation to any other remedy, should the work not be performed to the Community's satisfaction, acting reasonably, the Engineer shall refund the Fees that were paid by the Community, to the Engineer for that portion of the Services that the breach involves.

11. CONFIDENTIAL INFORMATION

11.1 All Work Product and all other information and data received and compiled by the Engineer, while performing the Services, shall be treated as confidential for the benefit of the Community and shall not be disclosed or made known to any other person except as authorized by the Community. The Engineer acknowledges and agrees that the Community is the sole legal and beneficial owner of any and all of the Work Product. This Section shall survive the termination or expiry of this Agreement.

12. ACCESS TO INFORMATION AND PROTECTION OF PRIVACY

12.1 Notwithstanding the termination or expiry of this Agreement, the Engineer acknowledges that information and records compiled or created under this Agreement which are in the custody of the Engineer are subject to the *Access to Information and Protection of Privacy Act*. If a request is received for any of these records, the

Engineer shall forward the information and records, at the Engineer's expense, to the Community within **five (5)** calendar days of official notification by the Community.

- 12.2 The Community shall furnish to the Engineer such information in its possession reasonably required for the proper performance of the obligations of the Engineer, and shall, in every way provide such cooperation as is reasonable in order for the Engineer to be able to perform the Services.
- 12.3 The Engineer shall retain all information and records received or compiled by the Engineer in accordance with this Agreement for a period of SIX (6) months from the date of termination of this Agreement, after which the information and records will be transferred to the possession of the Community.

13. SUSPENSION & TERMINATION

- 13.1 Notwithstanding anything contained within this Agreement, the Community may at any time in writing instruct the Engineer to suspend the performance of part or all of the Services for such time as the Community sets out in its notice of suspension including, without restriction, due to the Community:
 - (a) having a reasonable concern respecting the on-going safety of the Engineer and its employees, agents and sub-consultants (if any), any property of the Community, or the public at large (or any portion thereof);
 - (b) determining that the Engineer has failed to perform the Services in accordance with this Agreement including, without restriction, the Performance Requirements;
 - (c) acting reasonably, determining that the Engineer does not have the financial capability to perform its obligations under this Agreement; or
 - (d) determining, acting reasonably, that the specific project or task is unnecessary, or that a change in instructions is necessary.

Such notice shall state the cause for the suspension. The Engineer shall during any period of suspension continue to perform its obligations to insure in accordance with the Agreement.

- 13.2 After receipt by the Engineer of the Community's permission to resume the Services following any suspension of the Services, the Community and the Engineer shall jointly examine the Services affected by the suspension and thereafter determine and agree upon, each acting reasonably, the amendments necessary to the performance deadlines contemplated within this Agreement.
- 13.3 This Agreement may be terminated for convenience at any time by the Community for any reason and in the sole discretion of the Community, upon fourteen (14) days written notice to the Engineer and the Engineer's right to consideration shall be limited to payment for the Services performed in accordance with the terms, covenants and conditions contained within this Agreement and not previously paid for up to the date of termination. The Engineer specifically agrees that the notice and consideration set forth in this paragraph constitutes reasonable, fair and equitable notice and compensation for damages, if any, that may be suffered by the Engineer as a result of the termination of this Agreement.
- 13.4 If such notice is given as per Section 13.3, the Engineer shall perform the Services up to and including the effective date of termination specified in the notice and shall, upon request, provide the Community with a written report on the Services rendered to the time of termination. Except for any such report, the Engineer shall not perform any further Services subsequent to the effective date of termination.

14. EVENT OF DEFAULT

- 14.1** Upon the occurrence of an Event of Default, and without limitation to any of the Community's other rights in Section 14 hereof, the Community may, without prejudice to any of their other rights at law or equity, do one or more of the following:
- (a) pursue any remedy available to the Community in law or in equity, it being acknowledged that specific performance, injunctive relief, mandatory or otherwise or other equitable relief may be the only actual remedy;
 - (b) terminate this Agreement by written notice thereof given to the Engineer, in which case the Engineer shall have no claim for payment or otherwise against the Community; or
 - (c) waive the Event of Default, provided however, that any such waiver shall not operate as a waiver of any subsequent or continuing the Event of Default.
- 14.2** Upon the occurrence of an Event of Default under Section 1.1(c)(i), the Community shall have the right, but shall have no obligation, to remedy the deficiency to the Community's satisfaction at the sole expense of the Engineer and shall be entitled to any remedies that may be available to the Community at law, equity or otherwise.

15. SET OFF RIGHT

- 15.1** In addition to and without prejudice to all other rights of the Community, howsoever arising, if the Engineer fails to make any payment to any third party for which the Community is or, acting reasonably, determines that it will be liable or subject to action for, and the Engineer has not made the payment within ten (10) days of being requested to do so by the Community, the Community may pay such third party on behalf of the Engineer.
- 15.2** Any amount paid by the Community under this Article 14 and any damages, expenses, costs (including legal fees on a solicitor and his own client full indemnity basis) incurred or suffered by the Community as a result of an Event of Default shall constitute a debt due and owing to the Community. The Community may set-off such amount against any sum of money owed by the Community to the Engineer, as such may exist from time to time, until all amounts owing to the Community have been completely set off, without further action or notice to the Engineer.
- 15.3** The exercise by the Community of the rights set out in this Section shall not limit or prejudice any other rights of the Community, howsoever arising and the Community's rights set out in this Section shall survive the expiry or termination of this Agreement.

16. FORCE MAJEURE

- 16.1** If the parties shall fail to meet their respective obligations hereunder within the respective time prescribed therefor and such failure shall be directly caused or materially contributed to by an event of Force Majeure, such failure shall be deemed not to be a breach of the obligations of such party, provided however, in such event, such party shall:
- (a) immediately notify the other party of the circumstances of the event of Force Majeure, the extent to which the performance of obligations under this Agreement are affected, and the actions taken by the said party to mitigate against the effects of the event of Force Majeure; and
 - (b) use its best efforts to put itself in a position to carry out its obligations hereunder as soon as reasonably possible.
- 16.2** In no event shall the relief provided in respect of the occurrence of an event of Force Majeure exceed ninety (90) days.

17. GENERAL

17.1 Notices

Whether or not so stipulated herein, all notices, communication, requests and statements (the "Notice") required or permitted hereunder shall be in writing.

Any Notice required or permitted hereunder shall be sent to the intended recipient at its address as follows:

[BLLP NOTE: Insert contact person's details for the Community]

 Attention: _____ **[BLLP NOTE: Insert position/title]**
 E-mail: _____
 Fax: (____)____-____

[BLLP NOTE: Insert contact details for Engineer]

(i) _____:

 Attention: _____ **[BLLP NOTE: Insert position/title]**
 E-mail: _____
 Fax: (____)____-____

or to such other address as each party may from time to time direct in writing.

Notice shall be served by one of the following means:

- (a) by delivering it to the party on whom it is to be served. Notice delivered in this manner shall be deemed received when actually delivered to such party;
- (b) if delivered to a corporate party, by delivering it to the address specified in above during normal business hours. Notice delivered in this manner shall be deemed received when actually delivered;
- (c) by fax or email to the party on whom it is to be served. Notice delivered in this manner shall be deemed received on the earlier of:
 - (i) if transmitted before 3:00 p.m. on a Business Day, on that Business Day; or
 - (ii) if transmitted after 3:00 p.m. on a Business Day, on the next Business Day after the date of transmission; or
- (d) by mailing via first class registered post, postage prepaid, to the party to whom it is served. Notice so served shall be deemed to be received five (5) days after the date it is postmarked. In the event of postal interruption, no notice sent by means of the postal system during or within seven (7) days prior to the commencement of such postal interruption or seven (7) days after the cessation of such postal interruption shall be deemed to have been received unless actually received.

17.2 Governing Law

This Agreement shall be construed and governed by the laws of the Northwest Territories and the laws of Canada applicable therein and the parties hereto irrevocably attorn to the exclusive jurisdiction of the Courts of the Northwest Territories.

17.3 Time of Essence

Time shall be of the essence of this Agreement.

17.4 Headings

The headings, captions, paragraph numbers, sub-paragraph numbers, article numbers and indices appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit, construct or enlarge the scope or meaning of this Agreement or any provisions hereof.

17.5 Relationship between Parties

Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party, as creating the relationship of employer and employee, principal and agent, partnership, or of a joint venture between the parties hereto, it being understood and agreed that none of the provisions contained herein nor any act of the parties hereto shall be deemed to create any relationship between the parties hereto other than an independent service agreement between the two parties at arm's length.

17.6 No Authority

Except as may from time to time be expressly stated in writing by the one party, the other party has no authority to assume or create any obligation whatsoever, expressed or implied, on behalf of or in the name of the other party, nor to bind the other party in any manner whatsoever. Without restricting any of the foregoing, unless otherwise specifically authorized and documented between the parties at no time shall the Engineer have authority to bind the Community as their agent or otherwise, nor make representations or warranties for or on behalf of the Community.

17.7 Agreement Entire Relationship

This Agreement constitutes the entire agreement between the parties hereto and the parties acknowledge and agree that there are no covenants, representations, warranties, agreements or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Agreement save as expressly set out in this Agreement.

17.8 Further Assurances

Each of the parties do hereby agree to do such things and execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with their true intent.

17.9 Amendments

This Agreement may not be altered or amended in any of its provisions, except where any such changes are reduced to writing and executed by the parties.

17.10 Waiver

No consent or waiver, express or implied, by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of obligations hereunder by such party hereunder.

Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

17.11 Counterparts

This Agreement may be executed and delivered in any number of counterparts, by facsimile copy, by electronic or digital signature or by other written acknowledgement of consent and agreement to be legally bound by its terms.

Each counterpart when executed and delivered will be considered an original but all counterparts taken together constitute one and the same instrument.

17.12 Statutory Reference

Any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto and promulgated thereunder with all amendments made thereto and in force from time to time and any final judicial decisions interpreting the same, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto.

17.13 Unenforceability

If any term, covenant or condition of this Agreement or the application thereof to any party or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement or application of such term, covenant or condition to a party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Agreement shall be valid and shall be enforceable to the fullest permitted by law.

17.14 Survival

The parties acknowledge and agree that the provisions of this Agreement which, by their context, are meant to survive the termination or expiry of this Agreement shall survive the termination or expiry of this Agreement and shall not be merged therein or therewith.

17.15 Remedies Generally

Mention in this Agreement of any particular remedy of a party in respect of a default by the other parties does not preclude the first party from any other remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this Agreement. No remedy shall be exclusive or dependent upon any other remedy, but a party may from time to time exercise any one of more of such remedies generally or in combination, such remedies being cumulative and not alternative.

17.16 Payment of Monies

The parties acknowledge and agree that any payment of monies required to be made hereunder shall be made in Canadian funds.

17.17 GST Exclusive

All amounts payable by the Community to the Engineer hereunder will be exclusive of any goods and services tax ("GST") and the Community will, in addition the amounts payable hereunder, pay to the Engineer all amounts of GST applicable thereon. The Engineer's GST number is _____. **[BLLP NOTE: fill in GST number.]**

17.18 Singular, Plural and Gender

Wherever the singular, plural, masculine, feminine or neuter is used throughout this Agreement the same shall be construed as meaning the singular, plural, masculine, feminine, neuter, body politic or body corporate where the fact or context so requires and the provisions hereof.

17.19 Binding Effect

This Agreement shall enure to the benefit of and be binding upon the successors and permitted assigns of all of the parties.

17.20 Assignment

Neither party may assign its interest in this Agreement, or any part hereof, in any manner whatsoever without having first received the written consent from the other party, which consent may be arbitrarily withheld.

17.21 Requests for Consent

All parties shall provide any decision with regard to a request for consent in a timely manner.

17.22 Construction

This Agreement shall be interpreted according to its fair construction and shall not be construed as against any party hereto.

17.23 Independent Legal Advice

Each party hereto acknowledges having read this Agreement and prior to executing the same acknowledges and agrees that it has been advised by the other party hereto to obtain independent legal advice and other professional advice prior to executing this Agreement. By executing this Agreement, each party hereto acknowledges and agrees that such party hereto has had the opportunity to seek independent legal and other professional advice prior to executing this Agreement, and:

- (a) has obtained such independent legal and other professional advice; or
- (b) has waived the right to obtain such independent legal and other professional advice.

IN WITNESS WHEREOF the parties hereto have executed this Agreement effective the ____ day of _____, 20____.

[NAME OF COMMUNITY]

Per:

Signature of Authorized Signing Officer

Printed Name of Authorized Signing Officer

Position of Authorized Signing Officer

[NAME OF ENGINEER]

Per:

Signature of Authorized Signing Officer

Printed Name of Authorized Signing Officer

Position of Authorized Signing Officer

Per:

Signature of Authorized Signing Officer

Printed Name of Authorized Signing Officer

Position of Authorized Signing Officer

[BLLP NOTE: USE IF ENGINEER IS AN INDIVIDUAL]

SIGNED, SEALED and DELIVERED by NAME
OF SIGNATORY, in the presence of:

Signature

Printed Name

Address

Occupation

NAME OF SIGNATORY

(s)

SCHEDULE "A"

SERVICES

[BLLP NOTE: Community to fill in Schedule as necessary. This is sample description to give the Community some ideas as to how to complete this]

The Services are set out in four phases. The Engineer acknowledges that the Community may not proceed with all phases of the Services. Prior to proceeding with a new phase of the Services, the Engineer shall obtain a written authorization from the Community to proceed with such phase. If the Engineer proceeds with a Phase prior to obtaining the Community's written consent to proceed with such phase, the Community shall not owe the Engineer any Fees for such Services performed by the Engineer in the unauthorized phase of the Services. Additionally, the Engineer acknowledges and agrees that the Community may send written notice to the Engineer to cease performing the Services at any time, and upon receipt the of the same, the Engineer shall cease performing Services immediately and shall not resume the Services until the Community provides its written authorization to do so.

The Services are broken down into the following Phases:

- 1. Phase 1 – Preliminary Engineering and Pre-Design Report** – preparation of preliminary engineering and pre-design report, together with attendance at all meetings with the Community in relation thereto;
- 2. Phase 2 – Design** – Detailed design engineering of the Project complete with drafting and tendering, which includes the following:
 - (a)** assistance in the preparation of pre-qualification documents for procurement tenders or proposals;
 - (b)** assistance in the preparation of pre-selection documents for procurement tenders or proposals;
 - (c)** preparation of engineering documents (including design drawings, specifications, and detailed calculations);
 - (d)** review and coordination with other design disciplines;
 - (e)** preparation of quantity takeoffs;
 - (f)** preparation of documents in support of applications for approval from authorities having jurisdiction for the Project or designated specific aspects of the Project;
 - (g)** submission of engineering documents for review and approval by the Community;
 - (h)** preparation and submission of construction contract documents for review and approval by the Community (where the Engineer is the lead professional);
 - (i)** review of construction contract documents prepared by others;
 - (j)** advice regarding the preparation of request for proposals, requests for qualifications and tender information;
 - (k)** assistance in the preparation of tender documents incorporating relevant engineering documents, construction contract documents and other documents prepared by Engineer;

- (l) assistance in obtaining tenders and addenda;
 - (m) review of tenders; and
 - (n) assistance in the preparation of the construction contract;
- 3. Phase 3 – Inspection, Review, and Contract and Construction Administration –** Contract administration and construction management, technical review, and resident engineering during construction, which includes the following:
- (a) full time Project site supervision and construction coordination;
 - (b) regular construction site meetings are expected to be scheduled on a **monthly** basis. Minutes are to be taken at the monthly site meetings and subsequently distributed;
 - (c) attendance at meetings necessary to the coordination of the design, construction administration services, and completion of the Project;
 - (d) preparation and distribution of notices of change, change orders, and other necessary Project documentation during the course of the completion of the Project (where the Engineer is the lead professional) as may be contemplated within the Construction Contract;
 - (e) obtain advice, data, and information from the Engineers when required;
 - (f) review of the shop drawings as provided for in the terms of the construction contract documents;
 - (g) monitor compliance with the program of construction reviews and testing which may be required by the Engineer or imposed by law in connection with the completion of the Project by the Engineer;
 - (h) interpretation of the construction contract documents (where the Engineer is the lead professional and if so provided in the construction contract);
 - (i) evaluation of the Engineer's applications for payment;
 - (j) certification of the Engineer's applications for payment (where the Engineer is the lead professional);
 - (k) review of the an application for substantial performance of the Project noting defects and deficiencies observed in the Project;
 - (l) certification of the Engineer's substantial performance of the Project, (where the Engineer is the lead professional);
 - (m) review of the correction of defects and deficiencies observed in the Project when completed;
 - (n) arranging for reference surveys for use in the Engineer's layout of the Project (not including surveys of legal property boundaries);
 - (o) review of Engineer's surveys and layout;

- (p) regular site reviews of the work of the Engineer to ascertain if the reviewed work is in general conformance with the construction documents;
 - (q) arrangement of field-testing and inspection of materials and equipment for Community's quality assurance program;
 - (r) investigation, reporting and providing recommendations on unusual circumstances that arise during the Project implementation;
 - (s) maintenance of sufficient data to outline current progress of the work;
 - (t) quantity measurement and records; and
 - (u) construction completion inspection at the conclusion of the Project construction contract;
4. **Phase 4 – Post Construction** – post construction services, including commissioning and record drawings, which includes the following:
- (a) periodic site visits;
 - (b) provision of commissioning and start-up supervision and assistance;
 - (c) collection and organization of operating and maintenance manuals;
 - (d) identification of deficiencies during the commissioning period;
 - (e) assistance with project warranty issues during the guarantee period;
 - (f) final inspection at the conclusion of the warranty period;
 - (g) preparation of Final Acceptance Certificate;
 - (h) assistance with contract closeout and wrap up procedures;
 - (i) record testing; and
 - (j) drafting and administrative time for the preparation of record drawings and related documents;

together with such other services as are reasonably requested by the Community, or to be reasonably inferred.

SCHEDULE "B"

FEES & EXPENSES

[BLLP NOTE: Community to provide detail on the Fees to be charged during each phase – are they based on hourly rates or lump sums? Please review and we can further customize this Schedule based on how the Community usually pays the Engineers]

1. Engineer Fees – Phase 1 – Preliminary Engineering and Pre-Design Report

Fees charged for the Services pertaining to the scope of work shown as Phase 1 of Services shall be on a basis of:

[BLLP NOTE: Choose one or customize as is necessary]

*The rates set out in Schedule "D" multiplied by the time spent performing the Services
OR The sum of \$_____.*

2. Engineer Fees – Phase 2 – Detailed Design Services

Fees charged for the Services pertaining to the scope of work shown as Phase 2 of Services shall be on a fixed fee basis, consisting of:

(a) Detailed Design to completion, in the aggregate of: \$_____

(b) Tender Package, in the aggregate of: \$_____
\$_____

3. Engineer Fees – Phase 3 and 4 – Inspection, Review, Contract and Construction Administration, and Post Construction

Fees charged for the provision of the Services pertaining to this Phase 3 and 4 shall be on a fixed fee basis, consisting of:

(a)_____

Proposed fixed fee schedule is based upon an estimated _____ month construction period to reach substantial performance of the Engineer's work and therefore substantial completion of the Project.

4. Engineer Fees – Phase 3 – Additional Time and Cost

In the event that the substantial performance of the Engineer's Work and substantial completion of the Project is not achieved within the budgeted _____ month period, Fees charged for the provision of the Services pertaining to this Phase 3 from and after the budgeted _____ months shall be charged based on hourly rates, plus disbursements. The hourly rates of the personnel for this phase are set out in **Schedule "D"** attached hereto.

5. Invoices – the Engineer shall submit a written, signed invoice to the Community at the end of each month in which the Services are provided. In this regard:

(a) fixed fee charges for the corresponding Services as outlined above shall be billed monthly as a percentage of the completion of each corresponding stage of the Project; and

- (b) other fees provided on time and expense basis shall be based upon the hourly rates contemplated within **Schedule "D"**.

The Community shall cause the Engineer to be paid the corresponding invoiced amounts due no later than thirty (30) business days from the date receipt of the invoice.

6. **Travel Expenses and Disbursements** – subject always to or prior approval by the Community, the Engineer shall be reimbursed for all reasonable travel expenses and disbursements incurred in accordance with the provision of the Services and in accordance with **Schedule "D"**.

The Engineer shall submit written documentation and receipts itemizing the dates on which such expenses were incurred, and the Community will cause to be paid, such expenses at the same time as the consulting invoice.

7. **Minimum/Maximum Hours** – while there shall be no minimum or maximum hours as part of this Agreement to provide the Services, the Engineer agrees that it shall use its best efforts to perform the Services efficiently and effectively, and as such in a manner that minimizes the costs to the Community.

SCHEDULE "C"

PERFORMANCE REQUIREMENTS

[BLLP NOTE: Community to insert measurable performance criteria that Engineer is expected to meet.]

The Engineer shall ensure that the objectives of the Services are met. The objectives of the Services are for the components of the Services to be completed in accordance with the following time frame:

1. **Detailed Design** – completed by _____.
2. **Tendering** – commence tendering for the Project by _____.
3. **Inspection, Review, and Contract and Construction Administration** – will commence following the award of the tender and will continue for the duration of the construction schedule. The Engineer's entire completion schedule is preliminarily assumed to be _____ months, and may be up to _____ months.
4. **Post Construction Services, Including Commissioning and Record Drawings** – will commence following the completion of the Project and will continue for the duration of the Project warranty.

SCHEDULE "D"

HOURLY RATES AND DISBURSEMENTS

[BLLP NOTE: This is a sample. Community and Engineer to develop their own table of positions and rates and charge as necessary]

Senior Engineer	\$____/hour
Project Engineer	\$____/hour
Senior Project Coordinator	\$____/hour
Survey Technologist	\$____/hour
CADD Technologist	\$____/hour
Administration	\$____/hour
Travel	\$____/kilometer

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

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.

Instructions for use of Project Management Agreement

This template can be used when the Community Government wants to enter in to an agreement to obtain services from a Project Manager. It is designed for simple short-term services such as those provided by plumbers, electricians, janitorial, general building maintenance, or potentially other short-term simple arrangements where a more robust form of agreement is not required.

The drafted Agreement can 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, Performance Requirements) 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

When completing the Agreement, please note the following:

1. Contractor — the name of the Contractor must be completed. In the event the Contractor 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 Contractor 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 Brownlee LLP as required. **Please ensure that the appropriate Contractor name is inserted.**
2. Term — Section 1.1 (h) sets out that the term runs from the commencement date and ends on the completion date. Please insert the applicable commencement date in 1.1 (c) and the completion date in section 1.1 (d)
3. Contractor Obligations — Section 2.3 describes and lays out the obligations of the Contractor in performing the Services. Note that the Services are to be performed in accordance with the Community Contracts, as per Section 2.3 (e), which is directed at circumstances where, if the Community subcontracts to the Contractor its contractual obligations to perform services to third parties, the Contractor must perform its Services in compliance with such third party contracts.
4. Subcontractor — Section 3.2 operates to restrict the Contractor’s ability to subcontract the Services. The Contractor can only subcontract all or part of its Services if such subcontractor agrees to be bound by the terms and conditions satisfactory to the Community and only if the Community provides prior written consent, which the Community may choose to withhold. Note that under section 3.3 the

Community can request the Contractor remove certain personnel, under certain circumstances

5. Payment - Section 4.1 sets out that the Community shall pay the Contractor in accordance with Schedule “B” (discussed in more detail later in this correspondence).

6. Records - Section 4.6 provides that the Contractor must maintain records with respect to any fees, costs, charges, reimbursable expenses or other amounts payable by the Community to the Contractor may be readily and accurately determined and verified. As such, **please ensure to populate the location at which such records will be kept by the Contractor.**

7. Confidential Information – Section 5.1 set out that certain information (including the Service Results) that is confidential. In particular note the description within Section 5.1 (b) **and consider whether this definition needs to be amended to reflect the factual circumstances.**

8. Service Results - Section 5.3 provides the definition of Service Results and sets out that these are the property of the Community. Please consider the definition of Service Results (set out in the first portion of the paragraph) and **consider whether this definition needs to be amended to reflect the factual circumstances.**

9. Insurance and Indemnity — Please confirm with the Ron or Karen at the NWTAC office that the insurance and indemnity requirements in Article 7 of the agreement will work for these particular services. In some cases additional or amended insurance conditions may be needed based on the nature and scope of the contractor’s services to be performed.

10. Termination — Please note that Section 6.1 of the Agreement provides that the Community may terminate the Agreement for convenience upon 7 days written notice to the Contractor. This right is not extended to the Contractor.

11. Signatory page — There are two signatory options, if the Contractor is an individual or if the Contractor is a Corporation. **For the Contractor, please choose one of the corporation signature line or the individual signature line and delete the line which is not applicable.**

12. Schedule “A” — This Schedule should contain a complete and detailed description of the nature and scope of the Services to be provided by the Contractor to the Community under this Agreement. The Agreement will not be legally enforceable unless it is clearly understood, by what is referenced in Schedule “A”, what precisely the Contractor 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 Contractor is required to do under the Agreement. In many cases the Contractor will have provided the Customer 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 Contractor to the Community are those services described in the Contractor’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.

13. Schedule ‘B’ — This schedule allows the Community to customize the Agreement and include particular payment terms (ie: how and when payment is made to the Contractor).

14. Schedule “C” — This schedule also allows the Community to customize the Agreement and include particular special conditions. Please ensure the definitions are completed within this Schedule “C” - Agreement Amount (note consider whether or not GST is in addition to this amount, if GST is additional it should be set out specifically, as the default as per Section 4.2 of the Agreement is that GST is included in the agreement Amount), Commencement Date, Completion Date, address for notice, etc.)

Should there be any additional issues the Community wishes to have addressed within the Agreement, please contact Mike Coombs directly at Brownlee LLP for assistance or guidance needed in order to accomplish this. You can contact Mike at (780) 497- 4833 or mcoombs@brownleelaw.com

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.

You will find included an affidavit of corporate signing authority, which can be used when the Contractor 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.

In addition we have included an affidavit of execution for use if the Contractor 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

PROJECT MANAGEMENT AGREEMENT

BETWEEN:

COMMUNITY OF [PLEASE INSERT NAME] _____

AND:

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PROJECT MANAGEMENT AGREEMENT

THIS AGREEMENT dated the ____ day of _____, 20__

BETWEEN:

COMMUNITY OF _____

(hereinafter called the "Community")

OF THE FIRST PART

AND:

(hereinafter called the "Contractor")

OF THE SECOND PART

WHEREAS the Contractor has agreed to provide to the Community the Services and the Community has agreed to pay to the Contractor certain sums in consideration of the Services.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the covenants herein contained, the Community and the Contractor covenant and agree each with the other as follows:

ARTICLE 1 - DEFINITIONS

1.1 Definitions

For the purposes of this Agreement, including the recitals hereto, each of the following expressions have the meanings ascribed to them in this Section 1.1, unless the context otherwise requires:

- (a) **"Agreement", "hereto", "herein", "hereby", "hereunder", "hereof"** and similar expressions when used in this Agreement refer to the whole of this Agreement which includes the attached

Schedules and not to any particular Article or Section or portion thereof and include any and every instrument supplemental hereto;

- (b) **"Agreement Amount"** means the amount set out in Schedule "C";
- (c) **"Commencement Date"** means the ____ day of _____, 20__;
- (d) **"Completion Date"** means the ____ day of _____, 20__, or such later date as may be agreed upon in writing by the parties;
- (e) **"Confidential Information"** has the meaning ascribed to it in Section 5.1;
- (f) **"Community Contracts"** means those contracts for services between the Community and a third party under which the Community has subcontracted all or part of its obligations thereunder to the Contractor to perform;
- (g) **"Service Results"** has the meaning ascribed to it in Section 5.3;
- (h) **"Services"** means those Services to be provided and performed by the Contractor hereunder, as more particularly described in Schedule "A" hereto, and all other services to be provided or performed as directed by the Community;
- (i) **"Term"** means the period of time commencing on the Commencement Date and ending on the Completion Date.

1.2 **Number and Gender**

Words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter gender and words importing persons shall also mean firms, corporations and partnerships and vice versa.

1.3 **Headings and Division**

The division of this Agreement into Articles and Sections and the headings of any Articles or Sections are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

ARTICLE 2 - SERVICES

2.1 **Services**

The Contractor shall provide the Services upon the terms and conditions contained herein.

2.2 **Commencement and Completion of Services**

The Contractor shall commence the Services no later than the Commencement Date and complete the Services on or before the Completion Date, subject always to sooner termination as provided for herein.

2.3 **Performance of Work**

The Contractor shall exercise the degree of care, skill and diligence normally used in performing services of a similar nature to those Services to be provided under this Agreement. All work done in performing the Services under this Agreement shall:

- (a) be supervised by competent and qualified personnel;
- (b) be performed in accordance with the Community's directions and to the Community's satisfaction;
- (c) comply with the requirements of this Agreement;
- (d) be documented according to the Community's requirements; and
- (e) be performed in compliance with the Community Contracts.

All work done in performance of the Services shall be subject to such review as the Community considers advisable or appropriate. Any work not meeting the requirements of this Agreement may be rejected by the Community and shall require appropriate correction by the Contractor. No such review by the Community shall relieve the Contractor from the performance of its obligations hereunder.

2.4 **Warranty of Contractor**

The Contractor represents and warrants to the Community:

- (a) that it has sufficient skill, knowledge, expertise and resources, including qualified and competent personnel, to perform and provide the Services in accordance with the provisions of this Agreement;
- (b) that it is not involved in and is not aware of any actual or potential law suit or circumstance which would or could materially affect its ability to perform the Services hereunder and, upon becoming aware of such, it shall immediately notify the Community and provide the Community with details of the nature of the law suit or circumstance; and
- (c) that the entering into of this Agreement and the performance of the Services hereunder shall not cause the Contractor to be in breach of any obligation of confidentiality which the Contractor may owe to any third party, or otherwise cause the Contractor to be in breach of any agreement or undertaking with any third party.

2.5 **Progress Reports**

If required by the Community, the Contractor shall provide progress reports to the Community and/or attend progress meetings regarding the performance of the Services, in such form and detail and whenever and as often as requested by the Community.

2.6 **Compliance with Legislation**

In performing the Services hereunder (including any portion thereof performed by any subcontractors), the Contractor shall comply with the provisions and requirements of all laws, rules and regulations by lawful authority applicable including, without limitation, all relevant legislation, codes, bylaws, regulations and ordinances as well as the Community policies, procedures and regulations as are made known to the Contractor by the Community. Where there are two or more laws, codes, bylaws, regulations, ordinances, policies, procedures or regulations applicable to the Services, the more restrictive shall apply. Evidence of compliance with such laws shall be furnished by the Contractor to the Community at such times as the Community may reasonably request. In the event the Contractor, its personnel, any agent or subcontractor or their respective personnel, fail to comply with any legislation or any regulations thereunder and the Community is required to do anything or take any steps or pay any amounts to rectify such non-compliance, the provisions of Section 4.4 of this Agreement shall apply.

2.7 **Permits and Licenses**

The Contractor shall obtain and pay for all necessary permits or licenses required in connection with providing or performing the Services.

ARTICLE 3 - PERSONNEL

3.1 **No Substitution**

If specific personnel are designated by this Agreement to perform the Services or any part thereof, the Contractor shall not substitute other personnel for those designated without the prior written consent of the Community. If any such personnel shall become no longer available for any reason, the Contractor shall supply a similarly experienced and skilled individual as soon as practicable subject to approval of such individual by the Community.

3.2 **No Subcontractors**

The Contractor shall not engage or retain any agent, subcontractor or any other third party for purposes of providing the Services hereunder in whole or in part without the prior written consent of the Community (which may be arbitrarily withheld) and on terms and conditions satisfactory the Community in its sole discretion. The use of any agents, subcontractor or any other third parties by the Contractor shall in no way relieve the Contractor from its responsibility and obligation to provide the Services in accordance with the provisions of this Agreement.

3.3 **Removal of Personnel**

The Contractor shall forthwith remove from the Community's premises and from performance of the Services any officer, employee, agent or subcontractor who is for any reason unsatisfactory to the Community including, without limitation, and such person who:

- (a) is charged with and convicted of a criminal offence;
- (b) fails, in the opinion of the Community or in the opinion of the Contractor, to carry out the work required in the performance of the Services in a satisfactory manner including, without limitation, causing any delays in the performance of the Services;
- (c) removes any property not belonging to the Contractor, its personnel or any agent or subcontractor, as the case may be, from the Community premises without the prior written consent of the Community, or
- (d) discloses or uses any Confidential Information contrary to the provisions of Section 5.1 of this Agreement, without the prior written permission of the Community;

and, in the case of paragraphs (c) and (d), the Contractor shall take all reasonable steps to ensure that any property removed from the Community is promptly returned, or to restrain any further improper disclosure or use of the Confidential Information, as the case may be. Any costs or expenses associated with removal of any such officer, employee, agent or subcontractor shall be the responsibility of the Contractor, including any necessary training costs or expenses associated with replacement persons, as determined by the Community.

3.4 **Compliance with Policies**

The Contractor shall ensure that its personnel and agents and subcontractors, when using the Community premises, comply with all security, safety, emergency and access policies, procedures or regulations in effect from time to time on such premises.

3.5 **Safety**

The Contractor shall be responsible for the safety of its personnel and any agents or subcontractors, and all property of the Contractor or its personnel, agents or subcontractors while on the Community premises. The Community shall not be responsible for any personal property, tools or equipment that the Contractor or its personnel, agents or subcontractors may bring onto the Community premises.

3.6 **No Solicitation**

During the Term of this Agreement, and for a period of twelve (12) months thereafter, the Contractor shall not, directly or indirectly, solicit for employment any the Community employee or agent. For the purposes of this Section 3.6, "employee" shall include any individual who was employed by the Community at any time during the six (6) month period prior to the time in question.

ARTICLE 4 - PAYMENT

4.1 Payment

The Community shall pay the Contractor in accordance with the provisions of Schedule "B" (Terms of Payment), upon the diligent and timely performance of the Services to the satisfaction of the Community. No payment by the Community shall relieve the Contractor from the performance of its obligations hereunder.

4.2 Excess Payments, Taxes

The Community shall not pay any amount exceeding the Agreement Amount or make any payment for any work done by the Contractor after the Completion Date unless prior written authorization has been obtained by the Contractor from the Community. All customs duties, excise taxes (including G.S.T.), federal, provincial and municipal taxes and other duties, taxes or charges of a similar nature, and all travel and living expenses of the Contractor are included within the Agreement Amount, unless expressly stated otherwise in Schedule "C". If the total cost for man-days spent in performing the Services is less than the Agreement Amount, the Community shall not be required to pay to the Contractor any sum in excess of the total cost for man-days actually expended.

4.3 No Payment for Costs, Expenses or Damages

The Community shall not be required to make any payment to the Contractor under this Agreement for any costs, expenses, losses or damages suffered or incurred:

- (a) in performing any work reasonably incidental to the performance of the Services;
- (b) as a result of any delays in performing the Services from any cause whatsoever; or
- (c) to remedy errors or omissions for which, in the reasonable opinion of the Community, the Contractor is responsible.

4.4 Performance upon Failure of Contractor

Upon failure of the Contractor (including any of its subcontractors) to perform any of its obligations under this Agreement the Community may, but shall not be obligated to perform or engage a third party to perform any of those obligations without prejudice to any other remedy or right it may have and the Contractor, immediately upon written demand, shall pay an amount equal to all costs and expenses incurred by the Community in association therewith, plus interest on that amount from the date the cost or expense is incurred until it is paid at the rate of 1.5% per month (19.6% per annum). The Community may, in its discretion, deduct any such amount, together with interest, from any payment then or thereafter due by the Community to the Contractor, provided that such action shall not be deemed a waiver of any action that the Community may pursue to collect any costs or expenses incurred herewith that exceed the amounts owed to the Contractor.

4.5 Withholdings

Notwithstanding any other provision of this Agreement, the Community shall be entitled to withhold and remit to the appropriate taxing authorities, or otherwise withhold, federal withholding taxes or any

other amounts required by law to be withheld from payments made to the Contractor. If the Contractor is a non-Canadian resident the Community shall, as required by federal legislation, deduct all applicable federal withholding taxes. For this purpose, the Contractor shall separately identify in each invoice all work performed in Canada and that performed elsewhere. The Contractor will be provided with evidence of withholdings as required, upon written request. If the Contractor provides the Community with an exemption certificate from Revenue Canada, then the Community shall not withhold any federal withholding tax in respect of the payment made to the Contractor in reliance on such certificate of exemption.

The Contractor is responsible for all deductions and remittances required by law in relation to its employees including those required for Canada Pension Plan, unemployment insurance, workers' compensation or income tax. The Community shall have no liability or responsibility for the withholding, collection or payment of income taxes, unemployment insurance, statutory or other taxes or payments of any other nature on behalf of or in respect of or for the benefit of the Contractor or any other person. The Contractor shall pay all municipal, provincial, or federal sales, excise (including G.S.T.) or other taxes or payments of any type payable hereunder to any level of government, and shall indemnify and hold the Community, its officials, representatives, agents and employees harmless against any order, fine, penalty, interest or tax that may be assessed or levied against the Community or such persons as a result of the failure or delay of the Contractor to make any such payment or to file any return or information required by any law, ordinance, regulation or other lawful authority. The Community is authorized to pay any demand by any level of government or government agency, including the Workers' Compensation Board, due to a failure by the Contractor, in which event the provisions of Section 4.4 of this Agreement shall apply.

4.6 **Records**

The Contractor shall keep and maintain, at its principal place of business in _____, **[INSERT COMMUNITY ADDRESS]** or at such other location as may be agreed by the Community, adequate and complete records from which any fees, costs, charges, reimbursable expenses or other amounts payable by the Community to the Contractor may be readily and accurately determined and verified for each calendar month during the Term of this Agreement. The Contractor shall take such steps as are necessary to maintain such records in accordance with generally accepted accounting practices in Canada.

Such records shall be open to inspection by the Community, or its agents, during the Contractor's regular business hours. The Contractor shall be required to retain such records for a period of seven (7) years following expiration or termination of this Agreement.

4.7 **Audit**

The Community or its agents shall, from time to time during the Term of this Agreement, and for a period of two (2) years thereafter, during business hours and upon reasonable notice to the Contractor, be entitled to review all or any of the security, quality assurance procedures, accounting or other records and procedures of the Contractor regarding the Services or business relationship between the Community and the Contractor affecting any fees, costs, charges, reimbursable expenses or other amounts payable by the Community, or any commitments to the Community, and to have such records reviewed, audited, inspected or examined by an independent chartered accountant or other auditor or party designated by the Community to determine:

- (a) whether the Contractor has accurately recorded events or transactions requiring payments of fees, costs, charges, reimbursable expenses or other amounts by the Community, as applicable;
- (b) the status of the provision of the Services; and
- (c) whether the Contractor is complying with the terms of this Agreement.

The costs of any such inspection or audit shall be payable by the Community.

4.8 **Acceptance is Not Waiver**

The acceptance by the Community, from time to time, of any statement of fees, costs, charges, reimbursable expenses or other amounts delivered by the Contractor or any payment of such amounts based thereon shall not be deemed to be a waiver by the Community of any of the Contractor's obligations or the Community's rights under this Agreement. However, if the Community has not caused an audit or inspection of the Contractor's accounting records or Services for any calendar month to commence within two (2) years of the last day of any such calendar month, the Community and the contractor agree that the accounting records and all such amounts paid for that calendar month shall have been deemed to have been made accurately and in full compliance with the provisions of this Agreement.

ARTICLE 5 - INFORMATION AND PROPERTY RIGHTS

5.1 **Confidential Information**

The Contractor agrees that:

- (a) all data, information and material of a confidential nature provided or disclosed to the Contractor by or on behalf of the Community;
- (b) all data, information and material of a confidential nature concerning the Community's business, systems, operations, processes, technology, trade practices, marketing or other strategic plans, which is obtained by the Contractor in the performance of its obligations under this Agreement;
- (c) the Service Results; and
- (d) any and all information or material provided to the Contractor by or on behalf of the Community which is marked "CONFIDENTIAL";

and all copies thereof (hereinafter collectively called the "Confidential Information") are confidential and constitute valuable and proprietary information and materials of the Community and shall be kept strictly confidential, both during and after the Term of this Agreement, and shall only be used for the purpose of providing the Services hereunder. In that regard, such Confidential Information may only be disclosed by the Contractor to those of its officers, employees, agents or subcontractors who have a need to know such information for the purposes of this Agreement and the Contractor shall take appropriate steps, whether by instruction, agreement or otherwise to ensure that such officers, employees, agents and subcontractors keep such information strictly confidential and

otherwise comply with the provisions of this Section 5.1. No Confidential Information shall be copied or provided or disclosed to any other party without the prior written consent of the Community, which consent may be arbitrarily withheld. The Contractor acknowledges that it has no interest in the Confidential Information and shall surrender all Confidential Information in its possession or control (including all copies thereof) to the Community immediately upon termination or expiration of this Agreement or at any earlier time upon the Community's request, and shall thereafter cease all use of the Confidential Information.

5.2 **Injunctive Relief**

The parties agree that improper disclosure or use of the Confidential Information will cause irreparable harm to the Community, which harm may not be adequately compensated by damages. As a result, the parties agree that, in addition to all other remedies the Community may have and not in derogation thereof, the Community may seek and obtain from any court of competent jurisdiction injunctive relief in respect of any actual or threatened disclosure or use contrary to the provisions of this Agreement.

5.3 **Ownership of Service Results**

The Contractor agrees that all discoveries, designs, inventions, works of authorship, improvements in any apparatus, device, process, technology or thing, know-how, base materials, research results, data, surveys, maps, plans, schematics, reports (including progress reports referred to in Section 2.5), charges, tabulations, compilations, diagrams, flow-charts, processes, formulae, computer programs, specifications, screen or program layouts, drawings, documents, and notes or materials of any type whatsoever developed, created, conceived of, first reduced to practice or prepared by or on behalf of the Contractor or any officer, employee, agent or subcontractor in performance of the Services either alone or jointly with others (hereinafter collectively called the "Services Results") shall be fully and promptly disclosed to the Community and shall be the absolute and exclusive property of the Community, including any patent, copyright, other intellectual property or other rights of any kind in relation thereto. The Contractor hereby assigns, transfers and conveys to the Community all of its right, title and interest in and to the Service Results and the Contractor shall promptly execute and do or cause to be executed and done any and all documents and things necessary or desirable to give effect to the provisions of this Section 5.4, including the execution of a written assignment of all right, title and interest, whether in law or in equity, to the Community for any or all of the Services Results, in form acceptable to the Community. Upon completion of the Services or expiration or termination of this Agreement, whichever is sooner (and from time to time upon request by the Community), the Service Results and all copies thereof shall be delivered by the Contractor to the Community without demand by the Community without demand by the Community, together with all supporting materials, explanatory notes and know-how required or reasonably necessary for full and complete disclosure of such Service Results and to enable the Community to understand, use and modify the Service Results without assistance. No use may be made of the Service Results by the Contractor other than in connection with the performance of the Services hereunder. The Contractor hereby waives absolutely (and shall cause any other persons to waive absolutely) in favour of the Community, its successors and assigns, any moral rights the Contractor or such other persons have or may at any time hereafter have in the Service Results.

5.4 **Protection of Rights**

The Contractor shall, at the request and expense of the Community, execute or cause to be executed any documents and do or cause to be done all things which may be necessary or desirable to enable the Community

to file of and prosecute applications for patents, file for and obtain copyright registrations or otherwise protect any of the Community's interest in and to the Service Results or any part thereof, in Canada or any other country. The Community shall have complete control of and responsibility for the filings and prosecution of applications for patents, copyrights or other registrations in Canada and in foreign countries. The Community shall assume all expenditures necessary to prepare and prosecute such applications and maintain or renew any resulting registrations.

5.5 **Records of Contractor**

The Contractor shall make and maintain during the Term of this Agreement, adequate and current written records of all Service Results, which records shall be made available to and remain the property of the Community at all times, both during and after the Term of this Agreement.

5.6 **Warranty of Original Work**

The Contractor warrants that all Service Results will be original development by the Contractor, will not infringe any rights of any third parties and will otherwise be free of any claims of third parties, and will be specifically developed for the fulfilment of this Agreement.

5.7 **No Challenge**

The Contractor shall not challenge or deny nor assist any third party in challenging or denying any of the Community's rights in and to the Service Results.

ARTICLE 6 - TERMINATION

6.1 **Termination for Convenience**

This Agreement may be terminated at any time, with or without cause, by the Community providing written notice to the Contractor at least seven (7) days prior to the termination date specified in the notice.

6.2 **Termination for Default**

The Community may forthwith terminate this Agreement by providing written notice of termination to the Contractor, without prejudice to any other right or remedy the Community may have, if the Contractor at any time:

- (a) fails to comply with any of the terms or conditions of this Agreement; or
- (b) is adjudged or otherwise becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, if a receiver is appointed for the property of the Contractor, or if the Contractor ceases to carry on business in the normal course;

such termination to be effective on the date such notice of termination is received.

6.3 **Payment upon Termination**

The Community shall, in the event of termination of this Agreement, other than pursuant to Section 6.2(a), pay to the Contractor all amounts for completed work due to the Contractor in accordance with this Agreement, less any amounts which may be owing by the Contractor to the Community as provided for hereunder. The Community shall have no further liability of any nature whatsoever to the Contractor for any losses or damages suffered or sustained, either directly or indirectly, by the Contractor including, without limitation, loss of profit, as a result of the termination of this Agreement.

6.4 **Effect of Termination**

Upon termination or expiration of this Agreement:

- (a) the Contractor shall forthwith return to the Community all Confidential Information in written form within its possession or control, together with all copies thereof or, at the Community's written direction, destroy all such Confidential Information and provide the Community with a certificate confirming such destruction; and
- (b) no further use may be made by the Contractor of the Service Results or any portion thereof, for any purpose whatsoever.

6.5 **Survival of Obligations**

Notwithstanding the expiration or termination of this Agreement for any cause, the provisions of this Agreement regarding payment obligations, indemnities, confidentiality obligations and proprietary rights, and those provisions which are expressly or impliedly intended to survive, shall survive any such expiration or termination and shall remain in force and shall include, without limitation, the provisions of Section 3.3, Section 3.6, Article IV, Article V, Section 6.3, Section 6.4, Section 6.5, Article VII and Section 8.8.

ARTICLE 7 - INDEMNITY AND INSURANCE

7.1 **Indemnity**

Notwithstanding any other provision of this Agreement to the contrary, the Contractor shall:

- (a) be liable to the Community, its officials, representatives, agents and employees for any and all losses, costs, damages and expenses (and without limiting the generality of the foregoing, any direct losses, costs, damages and expenses of the Community or such persons, including costs as between a solicitor and his own client full indemnity basis) which the Community or such persons may pay or incur;
- (b) indemnify and hold harmless the Community, its officials, representatives, agents and employees from and against any and all liabilities, claims, suits or actions which may be brought or made against the Community or such persons;

as a result of or in connection with:

- (c) the performance of the Services; or
- (d) any breach, violation or non-performance of any covenant, condition or agreement in this Agreement set forth and contained on the part of the Contractor to be fulfilled, kept, observed or performed; or
- (e) any breach of confidentiality on the part of the Contractor or any agent or subcontractor, or employee of the Contractor or any agent or subcontractor; or
- (f) any damage to property (including loss of use thereof) or injury to person or persons, including death resulting at any time therefrom, arising out of or in consequence of the performance of the Services; or
- (g) the failure of the Community to withhold any taxes or other amounts in respect of payments made to the Contractor under this Agreement; or
- (h) any suit or proceeding based on a claim that the Service Results or any portion thereof infringes or constitutes wrongful use of any copyright, patent, trademark, trade secret or any other right of any third party;

and the Community shall be deemed to be the agent of its officials, representatives, agents and employees in regard thereto.

7.2 **Insurance**

Note: We strongly recommend that the Community discuss insurance requirements with NCIP for each Project Management Agreement. This section will need to be revised accordingly, based on the insurance requirements suggested by the Community's risk management advisors.

The Contractor shall without limiting its obligations or liabilities hereto, obtain and maintain at its sole expense and pay for during the period of this contract the following insurance coverage. The amount and type of insurance specified herein in no way reduces or limits the liability or responsibility of the Contractor hereunder.

Within 14 days after acceptance of the Contractors tender the Contractor shall, unless otherwise directed in writing be the Community, deposit with the Community an Insurer's Certificate of Insurance in a form acceptable to the Community and if requested, the originals or certified true copies of all insurance contracts maintained by the Contractor pursuant to the insurance coverage requirements shown hereunder.

The provisions of the insurance coverage requirements contained hereunder are not intended to cover all of the Contractors risk under this contract. Any additional risk management measures or additional insurance coverage the Contractor may deem necessary to fulfill its obligations under this contract shall be at the Contractors own discretion and expense.

The Contractor agrees to waive all rights of recourse against the Community for damages to any of the Contractor's property or property of others for which the Contractor is responsible and the Contractor's Insurers have no right of

subrogation against the Community except those claims which are the result of the negligent acts or omissions of the Community.

- (a) **Commercial General Liability Insurance** with limits of not less than two million dollars (\$2,000,000) inclusive per occurrence for bodily injury, death and property damage including loss of use thereof. This insurance shall be maintained continuously from commencement of the work until not less than 12 months from the date of the Final Certificate of Completion. The insurance policy shall include but is not limited to:

- Premises, Property and Operations Liability
- Products and Completed Operations Liability
- Owners and Contractor's Protective Liability
- Blanket Written Contractual Liability
- Broad Form Property Damage Extension
- Personal Injury Liability
- Employees as Additional Insured
- Cross Liability
- Contingent Employers Liability
- Non-owned Automobile Liability SPF # 6

The Policy must show the Community Government as an additional but only with respect to the operations of the named insured. The policy will also be endorsed to provide 30 days written notice of cancellation or reduction in the insurance coverage to the Community Government.

- (b) **Automobile liability insurance** with respect to Contractor's owned and leased, licensed vehicles used directly or indirectly in the performance of the work with limits of not less than two million dollars (\$2,000,000) inclusive per occurrence for bodily injury death and property damage as per Standard Policy Form # 1.
- (c) **Workers' Compensation coverage** for all employees, if any, engaged by the Contractor in accordance with the laws of the Northwest Territories;
- (d) such other insurance as the Community may from time to time reasonably require.

ARTICLE 8 - GENERAL

8.1 Schedules

The following Schedules attached hereto shall form part of this Agreement and are incorporated herein by reference:

- Schedule "A" - Services
- Schedule "B" - Terms of Payment
- Schedule "C" - Special Terms and Conditions

8.2 **Notices**

Whether or not so stipulated herein, all notices, communication, requests and statements (the "Notice") required or permitted hereunder shall be in writing.

Any Notice required or permitted hereunder shall be sent to the intended recipient at its address as set out in Schedule "C" or to such other address as each party may from time to time direct in writing.

Notice shall be served by one of the following means:

- (a) by delivering it to the party on whom it is to be served. Notice delivered in this manner shall be deemed received when actually delivered to such party;
- (b) if delivered to a corporate party, by delivering it to the address specified in above during normal business hours. Notice delivered in this manner shall be deemed received when actually delivered;
- (c) by fax or email to the party on whom it is to be served. Notice delivered in this manner shall be deemed received on the earlier of:
 - (i) if transmitted before 3:00 p.m. on a Business Day, on that Business Day; or
 - (ii) if transmitted after 3:00 p.m. on a Business Day, on the next Business Day after the date of transmission; or
- (d) by mailing via first class registered post, postage prepaid, to the party to whom it is served. Notice so served shall be deemed to be received five (5) days after the date it is postmarked. In the event of postal interruption, no notice sent by means of the postal system during or within seven (7) days prior to the commencement of such postal interruption or seven (7) days after the cessation of such postal interruption shall be deemed to have been received unless actually received.

8.3 **Assignment**

The Contractor shall not assign this Agreement or any portion thereof without the prior written consent of the Community, which consent may be arbitrarily withheld. Upon any transfer or assignment by the Community of this Agreement, the Community shall be released from its obligations hereunder. The Community may assign this Agreement in whole or in part to any person in the Community's sole discretion without notice to the Contractor.

8.4 **Waiver**

The failure of a party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of such covenant or option and no waiver by the Community of any provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by the Community.

8.5 **Inurement**

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors, assigns or approved assigns, as the case may be.

8.6 **No Agency**

Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party, as creating the relationship of employer and employee, principal and agent, partnership, or of a joint venture between the parties hereto, it being understood and agreed that none of the provisions contained herein nor any act of the parties hereto shall be deemed to create any relationship between the parties hereto other than an independent service agreement between the two parties at arm's length.

8.7 **Whole Agreement**

The provisions of this Agreement constitutes the entire agreement between the parties and supersedes any prior agreements, letters of intent or understanding, whether written or oral, between the parties with respect to the matters contemplated herein. No terms, conditions, warranties, promises or undertakings of any nature whatsoever, express or implied, exist between the parties with respect to this Agreement except as herein set forth. This Agreement may be amended, changed or modified only by further written agreement between the parties.

8.8 **Partial Invalidity**

If any term, condition or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, condition or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, condition or provision shall be separately valid and enforceable to the fullest extent permitted by law.

8.9 **Time of Essence**

Time shall be of the essence of this Agreement.

8.10 **Expiration of Time**

In any case where the time limited by this Agreement expires on a Saturday, Sunday or legal holiday in the Northwest Territories, the time limited shall be extended to and shall include the next succeeding day which is not a Saturday, Sunday or legal holiday in the Northwest Territories.

8.11 **Further Assurances**

Each of the parties to this Agreement shall at the request of the other party hereto, execute and deliver any further documents and do all acts and things as that party may reasonably require to carry out the full intent and meaning of this Agreement.

8.12 **Independent Legal Advice**

Each party hereto acknowledges having read this Agreement and prior to executing the same acknowledges and agrees that it has been advised by the other party hereto to obtain independent legal advice and other professional advice prior to executing this Agreement. By executing this Agreement, each party hereto acknowledges and agrees that such party hereto has had the opportunity to seek independent legal and other professional advice prior to executing this Agreement, and:

- (a) has obtained such independent legal and other professional advice; or
- (b) has waived the right to obtain such independent legal and other professional advice.

8.13 **Counterparts**

This Agreement may be executed and delivered in any number of counterparts, by facsimile copy, by electronic or digital signature or by other written acknowledgement of consent and agreement to be legally bound by its terms. Each counterpart when executed and delivered will be considered an original but all counterparts taken together constitute one and the same instrument.

8.14 **Governing Law**

This Agreement shall be governed by the laws in force in the Northwest Territories and the courts of Northwest Territories shall have exclusive jurisdiction with respect to any dispute, matter or thing arising herefrom.

IN WITNESS WHEREOF the parties hereto have affixed their corporate seals by the hands of their proper officers.

[NAME OF COMMUNITY]

Per:

Signature of Authorized Signing Officer

Printed Name of Authorized Signing Officer

Position of Authorized Signing Officer

[NAME OF CONTRACTOR]

Per:

Signature of Authorized Signing Officer

Printed Name of Authorized Signing Officer

Position of Authorized Signing Officer

Per:

Signature of Authorized Signing Officer

Printed Name of Authorized Signing Officer

Position of Authorized Signing Officer

[NOTE: USE IF CONTRACTOR IS AN INDIVIDUAL]

SIGNED, SEALED and DELIVERED by)

NAME OF SIGNATORY, in the presence of:)

)

_____)

Signature)

)

_____)

Printed Name)

)

_____)

Address)

)

_____)

Occupation)

_____) (s)
NAME OF SIGNATORY

SCHEDULE "A"

SERVICES

INSTRUCTIONS:

This Schedule should contain a *complete* and *detailed* description of the nature and scope of the Services to be provided by the Contractor 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 Contractor 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 Contractor is required to do under the Agreement.

In many cases the Contractor has 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 Contractor to the Community are those services described in the Contractor's letter of proposal to the Community dated _____, 20____, a copy of which is attached hereto and incorporated in this Schedule "A" by reference."

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.

SCHEDULE "B"

TERMS OF PAYMENT

Subject to all other terms and conditions of this Agreement, the Purchaser shall pay to the Contractor amounts not to exceed in the aggregate the Agreement Amount, in the following manner:

1. At the beginning of each calendar month an invoice shall be submitted to the Community by the Contractor in respect of Services provided during the immediately preceding month. Each invoice shall, in respect of such month:
 - (a) refer to the purchase order number,
 - (b) where applicable, separately identify work performed in Canada and elsewhere and the proportionate allocation of the invoice amount in that regard;
 - (c) identify as separate items any travel and living expenses, and/or any tax, duty or charge separately chargeable to the Community (in addition to the Agreement Amount) but only as specified and provided for in Schedule "C"; and
 - (d) identify the number of man-days or hours expended in providing the Services, the applicable rates and charges for the time expended, and a description of the Services performed in that regard.

The Contractor may elect, at its option, to provide the Community with one invoice for the whole of the Services to be provided hereunder in place of monthly invoices, provided that all the required information is included in such invoice.

2. Subject to the verification of each invoice by the Community and all other terms and conditions of the Agreement (including, without limitation, the Services being satisfactory to the Community, the Community shall pay the Contractor the amount of each invoice within thirty (30) days of receipt of same.

SCHEDULE "C"

SPECIAL CONDITIONS

A. REQUIRED INFORMATION

Schedule "C" must contain, as a minimum, the definitions for Agreement Amount (Section 1.1(b)), Commencement Date (Section 1.1(c)) and Completion Date (Section 1.1(d)), as well as the addresses for notice for the Community and the contractor (Section 8.2). It should also include the name of the particular Consultant(s) designated to perform the Services, as well as their hourly/daily rate(s).

The Agreement Amount should be defined in words and figures (e.g. Five Thousand (\$5,000.00) Dollars) and, when dealing with a U.S. company, should also state whether the amount is in Canadian or US funds.

The "Attention" portions of the addresses for notice should refer to titles or positions instead of to particular individuals.

The form the clauses should take is as follows:

1. **"Agreement Amount"** means the sum of _____ (\$_____) Dollars in Canadian funds.
2. **"Commencement Date"** means _____, 20__.
3. **"Completion Date"** means _____, 20__.
4. The Community's address for notice is:

[BLLP NOTE: Insert contact person's details for the Community]

 Attention: _____ **[BLLP NOTE: Insert position/title]**
 E-mail: _____
 Fax: (____)____-____

5. The Contractor's address for notice is:

[BLLP NOTE: Insert contact details for Contractor]

(i) _____:

Attention: _____ [BLLP NOTE: Insert
position/title]

E-mail: _____

Fax: (____) ____ - ____

6. The following personnel of the Contractor shall perform the Services hereunder:

NAME

TITLE

and shall not be replaced or substituted for except in accordance with the provisions of Section 3.1 of the Agreement.

The fees for the personnel designated to perform the Services hereunder shall be as follows:

NAME

RATE

A regular working day will be a minimum of _____ hours, and shall include all regular business days of the Community.

B. SPECIAL TERMS AND CONDITIONS

Schedule "C" should also contain a detailed description of any special terms and conditions which are to apply. As much detail as possible should be included. Where specific sections of the Agreement are being amended, these should be referred to.

The following are examples of special terms and conditions only and may not apply to your particular situation - you must prepare your own Schedule "C" to meet the requirements of your particular arrangement.

EXAMPLES:

1. Notwithstanding the provisions of Section 4.2 of the Agreement, the following amounts shall be payable by the Community to the Contractor or appropriate taxing authorities, as may be applicable, in addition to the Agreement Amount.

DESCRIPTION OF TAX, DUTY OR OTHER CHARGE

AMOUNT

GST

5% of Agreement Amount

2. Notwithstanding the provisions of Section 4.2 of the Agreement, the Contractor shall be reimbursed for all reasonable travel and living expenses of the Contractor necessarily incurred in providing and performing the Services in addition to the Agreement Amount, provided that:

- (a) all such expenses are pre-authorized by the Community in writing;
- (b) receipts in respect of all such expenses are provided to the Community; and
- (c) any such expenses to be reimbursed by the Community hereunder shall not exceed, in the aggregate _____-(\$_____) Dollars.

Reimbursement of such travel and living expenses is subject to the verification by the Community of all amounts claimed by the Contractor and shall be in accordance with the Community policies;

INSTRUCTIONS FOR COMPLETION OF PROJECT MANAGEMENT AGREEMENT
(CORPORATE)

1. The date of the Agreement must not be later than the Commencement Date. Therefore, if the Agreement is being signed *after* the Commencement Date, the date of the Agreement should be the same as the Commencement Date, the date of the Agreement should be the same as the Commencement Date. Where the Agreement is being signed *prior* to the Commencement Date (which should be what happens), the date to be inserted is the date of the Agreement is signed by the party signing it last.
2. Insert full name of Contractor on Pages 1 and 19, being careful to include appropriate punctuation, and to indicate legal portion of name correctly (e.g. Limited or Ltd., Company or Co., Incorporated or Inc., etc.).
3. Complete Schedules "A" and "C" (see applicable schedules for instructions in this regard). Note in particular that if GST is payable in addition to the Agreement Amount this must be specifically addressed in Schedule "C" (see example I).
4. Where specific amendments are required to the terms and conditions contained in the body of the Agreement, these should be done by describing the amendments in Schedule "C". Brownlee LLP can be contacted for assistance in this regard where necessary.
5. This Agreement must not be used for software development or customization without review by Brownlee LLP. (Note: consideration must be given to additional warranty clauses, infringement indemnity and acceptance testing procedures.)

CANADA) I, **<FULL NAME>**
) of the **<Community>** of **<NAME>**, in
NORTHWEST TERRITORIES) the Northwest Territories
) MAKE OATH AND SAY THAT:
TO WIT:)

2. That I am authorized by **<NAME OF CORPORATION>** to execute the instrument without affixing a corporate seal.

A COMMISSIONER FOR OATHS IN AND FOR
THE NORTHWEST TERRITORIES

AFFIDAVIT OF EXECUTION

CANADA) I, <FULL NAME>
) of the <Community> of <NAME>, in
NORTHWEST TERRITORIES) the Northwest Territories,
) MAKE OATH AND SAY THAT:
TO WIT:)

1. I was personally present and did see <NAME> named in the within (or annexed) instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein.

2. The same was executed at the <Community> of <NAME> in the Northwest Territories, and that I am the subscribing witness thereto.

3. I know the said <NAME> and he/she is, in my belief, of the full age of eighteen (18) years.

SWORN BEFORE ME at the)
<Community> of <NAME>, in the)
Northwest Territories this <DATE> day of)
<MONTH>, <YEAR>)

A COMMISSIONER FOR OATHS IN AND FOR)
THE NORTHWEST TERRITORIES)
