

THIS AGREEMENT made this _____ of _____, 20_____.

BETWEEN:

City of Lloydminster

4420 - 50 Avenue

Lloydminster, AB T9V 0W2

(herein called the "Owner")

OF THE FIRST PART

AND:

(herein called the "Contractor")

OF THE SECOND PART

WITNESSES that the Owner and the Contractor covenant and agree as follows:

1. Contract Documents

1.1. That the following documents, together with this Agreement, shall constitute the Contract Documents:

- Instructions to Bidders
- Bid Form
- Addenda (if any)
- Consent of Surety
- Notice of Acceptance
- General Conditions
- Supplementary Conditions
- Available Information (if any)
- General Requirements
- Drawings and Specifications, as listed in the index of the Bid Documents
- Schedules
- The City of Lloydminster Municipal Development Standards at the time of award.
- All other documents

2. Contractor's Covenants

The Contractor undertakes and agrees to:

2.1. perform the Work required by the Contract Documents:

for:

_____ *Title of the Work*

located at:

_____ *Place of the Work*

and for which:

is acting as and is herein called the Engineer;

2.2. commence the Work within a reasonable time after the date of the Notice to Proceed and, subject to adjustment in the Contract Time as provided for in the Contract Documents, attain completion of the Work, by the ____ of _____, **20**, (the "Completion Date");

2.3. in accordance with GC 13, pay to the Owner, as Liquidated Damages and not as a penalty, the sum(s) stipulated in the Supplemental General Conditions if the Work has not been completed by the Completion Date or, if applicable, a specified portion(s) of the Work has not been completed by the milestone completion date(s) stipulated in Section 00 73 00 – Supplemental General Conditions;

2.4. indemnify and hold the Owner and the Engineer harmless from and against any suits, claims, demands, liability, costs, damages, or expenses, including reasonable legal fees, made or incurred by Other Contractors involved in the Project, arising from the Contractor's failure to complete the Work by the Completion Date or, if applicable, the Contractor's failure to complete one or more specified portions of the Work by the milestone completion date(s) stipulated in the Supplementary General Conditions; and

2.5. do and fulfil everything indicated by the Contract Documents.

3. Contract Price

3.1. The Contract Price, which excludes the Goods and Services Tax, means the Bid Price subject to the adjustments, additions, deductions and deletions as provided in the Contract Documents.

3.2. The Bid Price is \$_____ as set forth in the Notice of Acceptance.

3.3. All amounts are in Canadian funds.

4. Payment

4.1. Subject to the provisions of the Contract Documents, the Owner shall:

4.1.1. make progress payments to the Contractor on account of the Contract Price, in the amounts certified by the Engineer, within **twenty-eight (28) Days** after the Owner receives the Contractor's invoice in accordance with GC 22.7;

4.1.2. if the amount certified by the Engineer in the certificate for payment is less than the amount of the Contractor's invoice, submitted in accordance with GC 22.7, or the Owner otherwise disputes all or some of the amount in the Contractor's invoice, the Owner shall issue a notice of dispute or non-payment in accordance with the *Prompt Payment Legislation*, within **fourteen (14) Days** of receipt of the Contractor's invoice in accordance with GC 22.7. If the Owner issues a notice of dispute or non-payment pursuant to the *Prompt Payment Legislation*, the parties shall comply with the dispute resolution process in GC 47 of this Agreement;

4.1.3. retain from each payment to the Contractor a ten percent (10%) holdback as required by applicable *Prompt Payment Legislation*. The Owner shall administer any amounts withheld from the Contractor in accordance with the provisions of any applicable lien legislation; and

4.1.4. pay to the Contractor the unpaid balance of holdback monies then due under the Contract Documents in accordance with the applicable *Prompt Payment Legislation*, provided that the Contractor has submitted to the Engineer the following:

4.1.3.1 a current Statutory Declaration verifying that all Subcontractors, Suppliers, labour and accounts for services, materials, machinery and equipment, and any other indebtedness which may have been incurred by the Contractor, directly or indirectly, in the performance of the Work have been fully paid by the Contractor except for unpaid holdbacks on such subcontracts and that no lien has been filed against the Contractor, the Project, the premises or any materials supplied to or incorporated in the Work or in respect of anything done under or by virtue of this Agreement;

4.1.3.2 a letter of clearance or certificate from the Workers' Compensation Board verifying that all assessments due by the Contractor have been fully paid;

4.1.3.3 if requested by the Owner, a letter from the Contractor's surety (if any) approving the release of holdback; and

4.1.3.4 a Final Release and Indemnity in the form attached to the General Conditions as Appendix "E".

4.2. If a lien is filed against the Project in respect of the Work by any Subcontractor, or Supplier or other person claiming through, by or under the Contractor or any of its Subcontractors or Suppliers:

- 4.2.1 the Owner may, at its option, instruct the Contractor to cause the said lien to be removed from the title to the Project within **ten (10) Days** from the date of such notice by direct payment, furnishing of a bond, payment into court or otherwise;
 - 4.2.2 if the lien is not removed from the title to the Project within such time or such further time as may be subsequently agreed upon, the Owner, without prejudice to any other right or remedy it may have, may take such steps or proceedings, including payments, settlements or compromise of the lien or payment into court, as the Owner reasonably determines as necessary to procure the release of the lien, and all payments and costs, including legal fees and disbursements incurred by the Owner shall be paid by the Contractor to the Owner or may be deducted from any amount then due or thereafter becoming due to the Contractor; and
 - 4.2.3 the Contractor shall, if requested by the Owner, defend, indemnify and save the Owner harmless from the amount of all such liens and the costs of defending any and all actions commenced against the Owner pursuant to any applicable lien legislation, including the legal costs and disbursements incurred by the Owner.
- 4.3. Should either party fail to make payments as they become due under the terms of this Agreement or in an award by arbitration or court, or as required by the *Prompt Payment Legislation*, interest at one percent (1%) per annum above the Prime Rate on such unpaid amounts shall also become due and payable until payment. Such interest shall be compounded on a monthly basis. The Prime Rate shall be the rate established by the Royal Bank of Canada as its Prime Rate from time to time.

Interest shall apply at the rate and in the manner prescribed above on the amount of any claim settled pursuant to GC 47 from the date the amount would have been due and payable under the Contract, had it not been in dispute, until the date it is paid.

5. Contractor's Representations

The Contractor makes the following representations and acknowledges the Owner's reliance thereon:

- 5.1. the Contractor is skilled and experienced in all aspects of construction work and is well able to perform the Work within the Contract Time and for the Contract Price;
- 5.2. the Contractor is an expert in this field of work and is fully knowledgeable and experienced in all aspects of required procedures, methods, regulations, codes, and municipal or other local, provincial and/or national requirements and understands that the Owner is relying on this expertise, knowledge and experience;
- 5.3. the Contractor has examined the Place of the Work as provided in Clause 18 of the Instructions to Bidders and has familiarized itself with the nature and extent of the Contract Documents, the Work and with all local conditions and federal, provincial and local laws, ordinances, rules and regulations that in any manner affect the cost, progress or performance of the Work;
- 5.4. the Contractor acknowledges that the Information Documents and any Additional Data have been or shall be made available to the Contractor for the Contractor's information

only and that the Contractor has made such inspection of the Information Documents and any Additional Data as the Contractor deems appropriate for the Contractor's purposes. The Contractor further acknowledges that:

- 5.4.1. the Information Documents and the Additional Data are or shall be provided without warranty of any kind, express or implied;
 - 5.4.2. neither the Owner nor the Engineer has represented that the Information Documents or the Additional Data are accurate, complete or suitable for the Contractor's purposes;
 - 5.4.3. the Information Documents and any Additional Data do not form part of the Contract Documents; and
 - 5.4.4. any reliance made by the Contractor on the Information Documents or the Additional Data is entirely at the Contractor's own risk;
 - 5.5. the Contractor has made or caused to be made examinations, investigations, and tests and has carefully studied reports and related data based thereon or obtained therefrom, in addition to those referred to in Clause 5.4 hereof, as it deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or shall be required by the Contractor for such purpose;
 - 5.6. the Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents;
 - 5.7. the Contractor has given the Engineer written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by the Engineer is acceptable to the Contractor or, if no written notice has been given, the Contractor acknowledges that the Contract Documents are acceptable as written.
6. Succession
- 6.1. The Contract Documents are to be read into and form part of this Agreement and the whole shall constitute this Agreement between the parties, and subject to the law and the provisions of the Contract Documents shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns.
7. Receipt of and Addresses for Notices
- 7.1. Subject to the requirements of the Prompt Payment Legislation and any regulations thereto, communications in writing between the parties or between them and the Engineer shall be deemed to have been received by the addressee on the date of delivery if delivered by hand or sent by facsimile or registered mail or via email to the individual or to a member of the firm or to an officer of the corporation for whom they are intended and if sent by regular mail shall be deemed to have been delivered within **five (5) Days** of the date of mailing when addressed as follows:

The Owner at: _____
City of Lloydminster
Attention: _____
Email: _____
4420 – 50 Avenue
Lloydminster, AB T9V 0W2

The Engineer at: _____
Attention: _____
Email: _____

The Contractor at: _____
Attention: _____
Email: _____

Provided that if there shall be, at the time of mailing or between the time of mailing and the actual receipt thereof, a mail strike, slowdown or other event which might affect delivery by the mail, then such notice, payment or other communication shall be effective only if actually delivered by hand or facsimile.

Any notice given electronically in accordance with the *Prompt Payment Legislation*, shall be sent to the email addresses identified above.

8. Rights and Remedies

- 8.1. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- 8.2. No action or failure to act by the Owner, Engineer or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
- 8.3. This Agreement shall be interpreted under and governed by the laws of the Place of the Work.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by the hands of their duly authorized representatives.

_____)
City of Lloydminster))
Name of Corporation))
_____))
Signature of Authorized Representative))
_____))
Name))
_____))
Title))
_____))
Signature of Authorized Representative))
_____))
Name))
_____))
Title))
_____))
4420 - 50 Avenue))
Address))
_____))
Lloydminster AB))
_____))
T9V 0W2))

(Corporate Seal)

If Contractor is an incorporated entity:

_____))
 _____))
 Name of Corporation _____))
 _____))
 Signature of Authorized Representative _____))
 _____))
 Name _____))
 _____))
 Title _____))
 _____))
 Address _____))
 _____))
 _____))
 _____))

(Corporate Seal)

If Contractor is an individual or an unincorporated entity:

_____))
 _____))
 Name of Business (if any) _____))
 _____))
 Signature of Individual _____))
 or Authorized Representative _____))
 _____))
 Name of Individual _____))
 or Authorized Representative _____))
 _____))
 Title _____))
 _____))
 Address _____))
 _____))
 _____))
 _____))
 _____))

_____))
 _____))
 Signature of Witness _____))
 _____))
 Name _____))
 _____))
 Address _____))
 _____))
 _____))
 _____))

END OF SECTION

REVISION LOG		
DATE	REVISION	COMMENTS
08/14/2020	Addition of Clause 9.	Addition of Termination Clause.
09/27/2022	Amendment to Clause 4 and Clause 7.	Addition of Prompt Payment Legislation and supporting text.
1/19/2024	Addition of Clause 3.3.	All amounts are in Canadian Funds.
1/19/2024	Adjustment to Clause 4.	Payment is due within 28 days of proper invoice.
1/19/2024	Delete Clause 9.	Termination is addressed in General Conditions.