

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
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 _____ day 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 the Supplementary 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.

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 **thirty (30) Days** after receipt of each certificate for payment in accordance with GC 23;
 - 4.1.2. retain from each payment to the Contractor a ten percent (10%) holdback as required by applicable lien legislation of each payment to the Contractor. The Owner shall administer any amounts withheld from the Contractor in accordance with the provisions of any applicable lien legislation; and
 - 4.1.3. pay to the Contractor the unpaid balance of holdback monies then due within **forty-five (45) Days** of expiration of the **forty-five (45) Day** lien holdback period required by the applicable lien legislation; or such earlier date as required by provincial legislation, provided that the Contractor has submitted to the Engineer, prior to such payment 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 the Contract;
 - 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. Notwithstanding anything otherwise contained in the Contract, the Engineer may, in its discretion, withhold, or on account of subsequently discovered evidence, nullify the whole or any part of any previously issued certificate, to such an extent as may be necessary to protect the Owner from loss on account of any of the following:
- 4.3.1. the Contractor's unsatisfactory prosecution of the Work;
 - 4.3.2. defective or damaged Work requiring correction or replacement;
 - 4.3.3. claims or liens filed or reasonable evidence indicating the probable filing of claims or liens;
 - 4.3.4. failure of the Contractor to make payments promptly to Suppliers or Subcontractors for materials or labour;
 - 4.3.5. a reasonable doubt by the Engineer that the Contract can be completed for the unpaid balance of the Contract Price;
 - 4.3.6. damage to an Other Contractor's work which has not been settled and which may result in the Other Contractor whose work has been damaged bringing action against the Owner. In case of such action, the Contractor shall bear the expense of the same; or
 - 4.3.7. any amounts for maintenance holdbacks, commissioning allowances and liquidated damages.

When the basis for nullifying the previously issued certificate has been removed, the Engineer shall, subject to receipt by the Engineer of any documents mentioned in Clause 4.1.3 hereof requested by the Engineer, reissue the applicable certificate. Within **thirty (30) Days** of receiving the reissued certificate, the Owner shall make payment to the Contractor in the amounts set out in the applicable certificate.

- 4.4. Should either party fail to make payments as they become due under the terms of the Contract or in an award by arbitration or court, 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 17 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

The Contract Documents are to be read into and form part of this Agreement and the whole shall constitute the Contract between the parties, and subject to the law and the provisions of the Contract Documents shall ensure 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

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:
4420 – 50 Avenue
Lloydminster, AB T9V 0W2

The Engineer at: _____
Attention:

The Contractor at: _____
Attention:

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.

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. The Contract shall be interpreted under and governed by the laws of the Place of the Work.

9. Termination

- 9.1. This Agreement may be terminated by the City of Lloydminster at any time without notice and without penalty where there is a material breach of a term of this Agreement by the Contractor.
- 9.2. It is understood and agreed that the notice of termination in accordance with the terms and conditions of this Agreement is reasonable and adequate notice, and will fulfill all requirements for notice, or payment in lieu of notice imposed by law or otherwise.
- 9.3. In the event this Agreement is terminated by either party, the contract payment will be prorated for the Work provided by the Contractor under this Agreement to the date of termination.

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/SK))
_____))
T9V 0W2))

(Corporate Seal)

REVISION LOG		
DATE	REVISION	COMMENTS
08/14/2020	Addition of Clause 9.	Addition of Termination Clause.