

THIS AGREEMENT made in duplicate this      day of  
, A.D. 2023.

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BETWEEN:

**THE CONSULTANT**

(hereinafter called "the Consultant"),  
OF THE FIRST PART,

- and -

**THE CITY OF BRANDON,**

(hereinafter called "Brandon"),  
OF THE SECOND PART.

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**CONSULTING SERVICES AGREEMENT**

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May 10, 2023

Development Services Division  
City of Brandon  
638 Princess Avenue  
Brandon, MB  
R7A 0P3

Alexia Stangherlin, P. Eng.  
Director of Utilities

Telephone: 204-729-2231  
Fax: 204-725-3235

## CONSULTING SERVICES AGREEMENT

1.0 This Agreement made as of the \_\_\_\_ day of \_\_\_\_\_, 2023.

BETWEEN:

The **City of Brandon**, a municipal corporation pursuant to and in accordance with the statutes and regulations of the Province of Manitoba and having its office at 410-9<sup>th</sup> Street, Brandon Manitoba, R7A 6A2  
(hereinafter referred to as "**Brandon**")

- and –

**The Consultant**, a business engaged in the practice of consulting engineering in accordance with the statutes and regulations of the Province of Manitoba and having its office located at **(Address)**  
(hereinafter referred to as the "**Consultant**"),

**WHEREAS** Brandon issued a Request for Proposals **on (Date and Brief Description)**;

**AND WHEREAS** Brandon is desirous of retaining the Consultant to provide consulting services in connection with the **(Describe Work)**;

**AND WHEREAS** the Consultant is desirous of providing consulting services to Brandon, on the terms and subject to the conditions herein set out;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the respective covenants and Agreements of the parties contained herein, with such good and valuable consideration exchanged between the parties (the sufficiency of which is hereby acknowledged by each of the parties) it is agreed as follows:

## SECTION ONE - PREAMBLE

The preamble herein shall form an integral part of this Agreement and be utilized with respect to its interpretation.

## SECTION TWO - SERVICES TO BE PROVIDED

### 2.0 The Work

The Consultant shall perform all of the tasks for (Describe Work) as detailed in the letter from the Consultant to Brandon dated (Date) and is attached hereto as Schedule 'A'.

### 2.1 Extent of Work

The Consultant shall not undertake any work on the project additional to, supplemental to, or in substitution of the work specified herein unless authorized in writing by Brandon in advance.

### 2.2 Conflict

If there are any conflicts between the provisions of this Agreement and the provisions of Schedule "A", the provisions of this Agreement shall prevail over the provisions of Schedule "A" to this Agreement.

### 2.3 Brandon Performance of Obligations

a) Brandon agrees to make reasonably available to the Consultant such documents and records, and any assistance from officers and employees of Brandon, as may, in the opinion of Brandon, be reasonably necessary to assist the Consultant in the performance of this Agreement.

### 2.4 Consultant Performance of Obligations

a) The Consultant represents, covenants and warrants it possesses the necessary skills, expertise and experience to perform the work in accordance with the provisions of this Agreement and the Consultant understands the requirements of Brandon under this Agreement and shall be able to satisfy these requirements. The Consultant covenants and warrants it shall comply with and carry out all of its obligations as specified throughout this Agreement;

b) **Ownership of Information** - All information, data, research, documents, photographs and materials discovered or produced by the Consultant, or any officers, employees, subconsultants or agents of the Consultant, in the performance of this Agreement, and any copyright therein, shall be the property of Brandon and shall be delivered without cost to Brandon upon request;

c) **Disclosure of Information** - While this Agreement is in effect, and at all times thereafter, the Consultant, and any officers, employees, subconsultants or agents of the Consultant, shall not use, publish or disclose any information, data, research, documents, photographs or materials discovered or produced by the Consultant in the performance of this Agreement without obtaining written permission from Brandon in advance. The Consultant may retain copies of the works, designs, notes etc. for the purposes of personal records and to satisfy the requirements of their insurance companies;

d) **Confidentiality** - The Consultant covenants and agrees that it shall not disclose to anyone any confidential information with respect to the business or affairs of Brandon except as may be necessary or desirable to further the interests of Brandon as it relates to the specific work provided by the Consultant for Brandon in accordance with this Agreement. This obligation of the Consultant with respect to the confidentiality shall survive the expiry or termination of this Agreement. Upon expiry or termination of this Agreement, the Consultant shall return to Brandon

any property, documentation, or confidential information which is the property of Brandon, on demand and without delay. Copies shall not be maintained by the Consultant unless specifically authorized in writing by the Brandon;

**e) Delegation** - The Consultant covenants and agrees with Brandon that it shall not delegate performance of the work, in whole or part, to anyone without the prior written consent of Brandon;

**f) Assignment** – The Consultant covenants and agrees with Brandon that it shall not assign the work to anyone thereby divesting itself of the obligations herein, without prior written consent from Brandon whether completely or in part;

**g) Compliance with All Laws** - The Consultant shall comply in all material respects with all laws, statutes, ordinances, regulations, rules, or otherwise, whether past, present, or future, applicable to the work provided by the Consultant on behalf of Brandon in accordance with this Agreement. The Consultant shall obtain and maintain any and all licenses, permits, approvals, consents, certificates, registrations, and authorizations, whether issued by a governmental, regulatory, or other bodies whatsoever, which are necessary for purposes of the Consultant providing the work and services on behalf of Brandon in accordance with this Agreement;

**h) No Other Benefits** - It is understood and agreed that the Consultant will act as an independent contractor, and not an employee of Brandon, whether or not some or all of the work is to be performed by the Consultant, or by employees or agents of the Consultant, and that the Consultant is entitled to no other benefits or payments whatsoever in addition to those provided for in this present Agreement;

**i) Taxes, Employment Insurance or Other Statutory Requirements.** - It shall be the sole responsibility of the Consultant to submit any applications, reports, payments or contributions with respect to Income Tax, Canada Pension Plan, Employment Insurance or any other similar matter which may be required by law to be made by the Consultant as a self-employed party in connection with the work to be performed under this Agreement.

### **SECTION THREE – TERM**

#### **3.0 Term of Agreement**

This Agreement shall remain in full force and effect from (Date) to (Date), subject to termination as hereinafter provided, with the said term being capable of extension by mutual written Agreement of the parties hereto.

#### **3.1 Termination of Agreement**

Brandon may terminate this Agreement by giving the Consultant thirty (30) days' written notice. The Consultant may terminate this Agreement at any time by giving Brandon thirty (30) days' written notice.

#### **3.2 Survival of Consultants Obligations**

The obligations of the Consultant under this Agreement shall not terminate upon the earlier of the Consultant ceasing to be retained by Brandon or the termination of this Agreement by Brandon or the Consultant.

### **SECTION FOUR - CONSULTANT FEES**

#### **4.0 Payment**

Subject to the following subsections, in consideration of the work being performed and the deliverables being provided to the satisfaction of Brandon, Brandon shall pay the Consultant a fixed fee of XXXX dollars (\$X.XX), inclusive of all required fees. If the deliverables or the

progress of the work is not to the complete satisfaction of Brandon, payment, in part or in full, may be withheld by Brandon.

#### **4.1 Invoices**

The Consultant shall submit invoices to Brandon on a monthly basis identifying the task for which expenses are claimed and percentage of the task completed for the current billing as well as the percentage of the task previously billed and any disbursement costs claimed.

#### **4.2 Maximum Fees**

The amount of payable fees as stipulated under section 4.0 of this Agreement shall not be exceeded unless authorized in writing by Brandon. Brandon will only consider exceeding the maximum amount of fees payable if either of the following conditions exist:

- (a) there is a change in scope of the work; or
- (b) if Brandon is responsible for delays in the work due to variances in timelines and/or activities that are the responsibility of Brandon.

The Consultant shall notify Brandon immediately in the event that it is of the view that either of the two above conditions exist. If Brandon determines that either of the conditions under subsection 4.2 exists, Brandon may decide to, at its option;

- (a) to reduce the scope of work or extend the project schedule without adjusting the fees under section 4.0; or
- (b) increase the maximum fees payable under section 4.0.

#### **4.3 Increased Fees**

Any increased fees shall be based on the maximum fees pursuant to subsection 4.2, based on a revised work plan, and revised fee schedule submitted by the Consultant and approved in writing by Brandon. The Consultant will not commence work associated with the revised work plan until notified by Brandon in writing. The Consultant shall prepare and submit to Brandon on a monthly basis separate records of the additional fees incurred pursuant to the revised work plan approved by Brandon.

## **SECTION FIVE – INDEMNIFICATION**

#### **5.0 Indemnification**

The Consultant covenants and agrees to indemnify, defend, reimburse, and save harmless Brandon, its officers, agents, employees, representatives, affiliates, lessees, mortgagees, trustees, predecessors, successors, and assigns, past, present, and future (the “Indemnified Parties”) with respect to any and all direct or indirect actions, suits, proceedings, claims, costs, damages, expenses or demands of any kind whatsoever, as a result, or otherwise, of the acts or omissions of the Consultant, and including but not limited to the directors, officers, shareholders, employees, agents, affiliates, and representatives of the Consultant, as well as subconsultants, subcontractors, predecessors, successors, trustees, assigns, and subsidiaries of the Consultant, past and future, concerning the work to be provided by the Consultant to Brandon in accordance with this Agreement.

**5.1** Unless otherwise provided in this Agreement, the obligation of the Consultant shall include, but not be limited to, the burden and expense of defending all such actions, suits, proceedings, claims, costs, damages, expenses, and demands of any kind whatsoever; even if such matters are groundless, false, or fraudulent, the Consultant shall be responsible for conducting all negotiations of any description, and paying and discharging, when as the same becomes due, any and all judgments, penalties, or other sums due, or which may become due, by or against such Indemnified Parties.

**5.2** If Brandon becomes aware of any matter that has arisen which may involve or give rise to a claim for indemnity any of the Indemnified Parties against the Consultant pursuant to the provisions of this Agreement (and "Indemnity Claim") Brandon will give prompt notice thereof to the Consultant providing particulars as best as possible as to the nature of the Indemnity Claim.

**5.3** If the Indemnity Claim involves any matter where there is claim or demand against any, some, or all of the Indemnified Parties, then each of the Indemnified Parties shall have the right to conduct its own defence, and the Consultant will be liable to pay the reasonable fees and expenses for such defence. The Consultant shall not enter into any settlement of any third party claim(s) without the prior written consent of Brandon, which consent may not be unreasonably withheld.

**5.4** The obligations of the Consultant pursuant to this portion of the Agreement are absolute and unconditional, and shall survive the discharge of all other obligations owed by the parties to each other under this Agreement, and shall not be released, discharged, mitigated, impaired, or affected by any extension of time or indulgences, and in addition, shall not be affected by any investigation by or on behalf of Brandon, or by any information which Brandon may have or obtain with respect thereto.

## **SECTION SIX – INSURANCE REQUIREMENTS FOR THE CONSULTANT**

### **6.0 Professional Liability Insurance**

The Consultant shall maintain, throughout the term of this Agreement, Professional Liability Insurance against claims arising out of faulty design, calculation, maps, plans and specifications or any other error, omission, mistake of a professional or technical nature committed or alleged to have been committed by or on behalf of the consultant. Such policy shall be, at a minimum, in the amount of \$2,000,000 (two million dollars) per occurrence or claim. The coverage shall be maintained for a period of twenty-four (24) months following completion of the project.

### **6.1 Commercial General Liability Insurance**

The Consultant shall maintain, throughout the term of this Agreement, Commercial General Liability Insurance against claims arising out of any accidents or incidents committed or alleged to have been committed by or on behalf of the consultant. Such policy shall be, at a minimum, in the amount of \$2,000,000 (two million dollars) per occurrence or claim.

### **6.2 Commercial Automobile Liability Insurance**

The Consultant must maintain Public Liability and Property Damage Insurance for all owned, non-owned or hired vehicles in an amount not less than \$2,000,000 (two million dollars) per occurrence combined single limit.

### **6.3 Certificate of Insurance**

The Consultant shall, upon demand, produce a certificate of insurance with the City of Brandon named as an additional insured with respect to any or all insurance as set forth at paragraphs 6.0, 6.1 and 6.2, or otherwise, in accordance with this Agreement.

## **SECTION SEVEN- DISPUTE RESOLUTION**

**7.0 Dispute Resolution** If a claim, dispute or controversy arises out of or relates to the interpretation, application, enforcement, or performance of the work under this Agreement, the Consultant and Brandon agree to try in good faith to settle the dispute by negotiations. If such negotiations are unsuccessful, the Consultant and Brandon may settle the dispute by proceeding to arbitration in accordance with The Arbitration Act (Manitoba), or alternatively, the dispute may be settled by a court of competent jurisdiction.

## **SECTION EIGHT – GENERAL PROVISIONS**

### **8.0 Binding Effect**

This Agreement shall ensure to the benefit of and be binding upon the parties, and their respective representatives, heirs, executors, administrators, assigns, or successors.

### **8.1 Further Documents**

The parties shall sign such further and other documents, or do and perform and cause to be done and performed such further and other acts and things as may be necessary in order to give full effect to this Agreement and every portion thereof.

### **8.2 Severability**

Should any provision of this Agreement be determined by a court of competent jurisdiction or arbitration panel to be invalid, unenforceable, or void, the remainder of this Agreement shall still survive and remain in full force and effect and continue to be binding upon the Parties as though the invalid provision had never been included in this Agreement.

### **8.3 Entire Agreement**

This Agreement, together with all schedules or materials incorporated by reference, constitutes the entire Agreement between the parties and supercedes all prior Agreements, understandings, and negotiation, both written and oral.

### **8.4 Amendment**

This Agreement may be amended should all such amendments be in writing, and be signed by all parties hereto, in the presence of a witness.

### **8.5 Waiver**

No failure or delay on the part of Brandon in exercising any right, power, or privilege hereunder shall operate as or be determined to be a waiver thereof. The rights and remedies herein provided shall be cumulative and not exhaustive to the rights and remedies provided by law for Brandon.

### **8.6 Governing Law**

This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the Province of Manitoba. Each party irrevocably submits to the jurisdiction of the Province of Manitoba for and with respect to any matter arising hereunder.

### **8.7 Interpretation**

There shall be no application of a principle or rule of law to interpret this Agreement, in the case of perceived uncertainty, against the party who prepared this Agreement; both parties agree and acknowledge they have each played a considerable role in negotiating and coming to terms of this Agreement.

### **8.8 Independent Legal Advice**

Both parties confirm and acknowledge they have received or had full and complete opportunity to receive independent legal advice concerning these matters.

### **8.9 Time of the Essence**

Time shall be of the essence in all respects concerning this Agreement.

### **8.10 Notice**

All notices, consents, approvals, statements, authorizations, documents, or other communications unless otherwise set forth herein (collectively "Notices") required or permitted to be given hereunder shall be in writing, and shall be delivered by email, facsimile, personally, or mailed by registered mail or postage prepaid, to the parties at their respective addresses set forth hereunder, namely:

To Brandon at:

Attention:

Address: 410 – 9<sup>th</sup> Street  
Brandon, MB R7A 6A2

Email:

Phone:

To \_\_\_\_\_ at:

Attention:

Address:

Email:

Phone:

or at any other address or addresses as may be given by any of them to the other in writing from time to time. Such Notices, if mailed, shall be deemed to have been effectively given on the second business day (except Saturdays and Sundays) following such mailing, or, if delivered personally, shall be deemed to have been given on the day of delivery, if a business day, or if not a business day, on the business day next following the day of delivery, provided that if such Notice shall have been mailed and if regular mail service shall be interrupted by strike or other irregularity before the deemed receipt of such notice as aforesaid, then such Notice shall not be effective unless delivered.



**IN WITNESS WHEREOF** the parties have hereunto set their hands and seals and/or caused their corporate seals to be affixed duly attested to by the hands of their proper signing officers in that behalf, the day and year first above written.

**THE CITY OF BRANDON**  
**PER:**

\_\_\_\_\_  
Witness Signature .

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Position:  
*"I am authorized to bind the City"*

**THE CONSULTANT**  
**PER:**

\_\_\_\_\_  
Witness Signature .

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Position:  
*"I am authorized to bind the Consultant"*