

An Agreement for Professional Engineering Services dated AGREEMENT DATE

BETWEEN:

THE GOVERNMENT OF MANITOBA,

represented by the

Minister of Infrastructure and Transportation

(called "Manitoba"),

- and -

CONSULTANT NAME

An Engineering Services Provider

(called the "ESP").

Manitoba and the ESP agree as follows:

SECTION 1 - TERM OF AGREEMENT

- 1 This Agreement comes into effect on CONTRACT START DATE
and shall continue until CONTRACT END DATE unless delayed,
suspended or extended beyond that date under Section 15 or terminated
before that date under Section 16.

SECTION 2 – COMPOSITION OF AGREEMENT AND CONFLICTS

- 2(1) The Agreement consists of this document and the following Schedules
attached hereto:

Schedule “A” – The Terms of Reference

Schedule “B” – ESP’s Response to the Terms of Reference describing the Services

- 2(2) In the event of any inconsistency or contradiction between the terms and conditions of this document and those in the Schedules,
- a) the terms and conditions of this document shall prevail over those in the Schedules and
 - b) the terms and conditions of Schedule “A” shall prevail over those in Schedule “B”.
- 2(3) The definitions contained in the Terms of Reference apply to this Agreement.

SECTION 3 – SERVICES TO BE PROVIDED

- 3(1) The ESP shall provide Manitoba with the engineering services for insert description of the services (the “Services”), as more particularly described in Schedules “A” and “B” attached hereto, and all in accordance with the terms and conditions as set out in this Agreement.
- 3(2) In carrying out the Services, if the ESP receives an instruction from Manitoba or encounters an event or a change in condition that, in the ESP’s opinion, may change the scope of the Services to be provided, the ESP must notify Manitoba of the instruction, event or change in condition. Such notice must be in writing and must be made within ten business days of the occurrence of the instruction, event or change in condition. In

addition, the notice must set out with sufficient detail how the instruction, event or change in condition changes the scope of the Services, the methodology that the ESP proposes to address the change, what the effect of the change is to the work schedule and must itemize any change to the fees, disbursements and expenses payable under this Agreement.

- 3(3) If Manitoba agrees that the instruction, event or condition constitutes a change in scope to the Services, Manitoba will, within ten business days of receipt of the notice from the ESP:
- (a) authorize the ESP in writing to proceed with the change in scope, in accordance with the notice provided by the ESP; or
 - (b) enter into negotiations with the ESP based on the methodology proposed in their notice, to arrive at mutually agreeable changes to the work schedule, fees, disbursements and expenses; or
 - (c) enter into negotiations with the ESP to develop an alternative methodology to address the change in scope, along with mutually agreeable changes to the work schedule, fees, disbursements and expenses.
- 3(4) If Manitoba and the ESP are successful in their negotiations pursuant to options (b) and (c) above, then Manitoba will authorize the ESP in writing to proceed with the change in scope in accordance with the negotiated agreement. If Manitoba and the ESP are unsuccessful in their negotiations pursuant to options (b) and (c) above, then Manitoba may delete that portion of the Services that is related to the change in scope from the original scope of work under this agreement, and may arrange for that portion of the work to be performed by others.
- 3(5) If Manitoba does not agree that that instruction, event or condition

constitutes a change in scope, the ESP will be required to address the issue within the terms of the Services as set out herein, and no additional fees, disbursements or expenses shall be payable by Manitoba in that regard.

- 3(6) Manitoba and the ESP agree that any work performed by the ESP outside the scope of the Services and/or without the prior authorization by Manitoba as set out above, will be deemed gratuitous on the ESP's part and Manitoba has no liability with respect to such work.

SECTION 4 - PERFORMANCE OF ESP'S OBLIGATIONS

- 4(1) The ESP represents and warrants that:
- (a) the ESP possesses the necessary skills, expertise and experience to perform the Services in accordance with the provisions of this Agreement;
 - (b) the ESP understands Manitoba's requirements under this Agreement and will be able to satisfy these requirements;
 - (c) the ESP's employees engaged in the execution of services under this Agreement shall comply with The Engineering and Geoscientific Professions Act.

4(2) The ESP agrees:

- (a) to perform all obligations and provide the Services in a professional manner satisfactory to Manitoba, and to provide competent, experienced personnel necessary to perform the Services to Manitoba's satisfaction;
- (b) to provide the supervision, training, equipment and all other things necessary for the performance of the Services to the satisfaction of Manitoba;

- (c) to comply with all reasonable directions and requests of Manitoba;
- (d) to ensure that all applicable laws, regulations, orders and codes are complied with;
- (e) to keep and maintain, for a period of not less than seven years after the termination of this Agreement, accurate accounts and records of the Services provided pursuant to this Agreement; and
- (f) that, for the period of time set out in clause 4(2)(e) above, Manitoba and its officers, employees and representatives may perform audits of the Services provided at such times as Manitoba may request, and agrees to permit such persons to have access to the ESP's accounts and records respecting the Services for audit purposes and to cooperate fully in any audit.

SECTION 5 - RESTRICTION ON OTHER WORK

- 5(1) While this Agreement is in effect, the ESP and any officers, employees, subcontractors or agents of the ESP shall not provide services to any other person, firm, corporation or organization in a manner which might interfere or conflict with the proper performance of the ESP's obligations under this Agreement.

SECTION 6 - DELIVERABLES

- 6(1) The ESP shall provide the deliverables identified in Schedule "B", satisfactory in form and content to Manitoba. The deliverables shall be provided to Manitoba in the manner specified and by the interim and final milestones set out in Schedule "B".

SECTION 7 - ESP'S FEES

- 7(1) Subject to the following subsections, in consideration of the Services performed to the satisfaction of Manitoba, Manitoba shall pay to the ESP

on a lump sum basis and in accordance with the amounts set out in Schedule "B" hereto, to an upset maximum of \$0.00 CND.

- 7(2) The ESP shall provide invoices to Manitoba based on the interim and final milestones, associated deliverables and their agreed value as more particularly set out in Schedule "B". Payment for the invoices will only be made upon Manitoba's acceptance of the associated deliverable. The payment shall be full compensation for all fees, disbursements, expenses and any applicable taxes associated with accomplishing the milestone.
- 7(3) All invoices shall be in writing and satisfactory to Manitoba in both form and content.
- 7(4) Manitoba shall endeavour to pay the ESP the amounts due within 60 days after the receipt and approval of an invoice.
- 7(5) Those invoiced amounts, approved but not paid by Manitoba within 60 days of receipt and approval shall bear interest from the 61st day at the prime rate charged by the Royal Bank of Canada (Winnipeg) and such interest shall be calculated monthly not in advance. Interest will not be paid on an overdue invoice where payment has been withheld as a result of a dispute between the ESP and Manitoba regarding the invoice. Any interest payable in accordance with this subsection shall be in addition to the amounts payable under this Agreement and shall not be taken into account in arriving at the maximum amounts referred to in subsection 7(1).
- 7(6) Manitoba certifies that the Services are being purchased under this Agreement by the Government of Manitoba with Crown funds and are therefore not subject to the federal goods and services tax ("GST"). The ESP represents and warrants that GST has not been included or quoted in

any fees, prices or estimates and covenants that it will not include GST in any invoice provided, or claim for payment made, under this Agreement.

- 7(7) The payment of any funds under this Agreement by Manitoba is subject to an appropriation having been made by the Legislative Assembly of Manitoba for the fiscal year during which payment pursuant to this Agreement is to be made. For the purposes of this subsection, “fiscal year” means the period from April 1 of one year to March 31 of the immediately following year. For each year of the Agreement, Manitoba agrees to make a bona fide request for funding in accordance with the terms of this Agreement.

SECTION 8 - REIMBURSEMENT OF EXPENSES

- 8(1) The parties agree that there will be no separate reimbursement of expenses under this Agreement. The payments made in accordance with Section 7 are inclusive of any and all expenses necessary to complete the Services contracted under this Agreement.

SECTION 9 - ASSISTANCE FROM MANITOBA

- 9(1) Manitoba agrees to make reasonably available to the ESP such documents, records and assistance from officers and employees of Manitoba, as may, in the opinion of Manitoba, be reasonably necessary to assist the ESP in the performance of this Agreement.

SECTION 10 - CONFIDENTIALITY OF INFORMATION

- 10(1) While this Agreement is in effect, and at all times thereafter, the ESP and any officers, employees, subcontractors or agents of the ESP:

- (a) shall treat as confidential all information, documents and materials, including (without limitation) all data, research, reports, drawings, designs, plans, photographs and other materials, acquired or to which access has been given in the course of, or incidental to, the performance of this Agreement;

- (b) shall not, without first obtaining written permission from Manitoba,
 - (i) use, or permit use of, the information, documents and materials described in clause 10(1)(a) except for the proper performance of the ESP's obligations under this Agreement, or
 - (ii) disclose, or permit disclosure of, the information, documents and materials described in clause 10(1)(a) to any person, corporation or organization; and

- (c) shall comply with any rules or directions made or given by Manitoba with respect to safeguarding or ensuring the confidentiality of such information, data, documents or materials described in clause 10(1)(a).

SECTION 11 - OWNERSHIP OF INFORMATION

11(1) All information, documents and materials, including (without limitation) all data, research, reports, drawings, designs, plans, photographs and other materials, discovered or produced by the ESP, or any officers, employees, subcontractors or agents of the ESP, in the performance of, or incidental to the performance of, this Agreement, and all intellectual property rights therein (including, without limitation, all copyright, patent, trade mark rights), shall be

the exclusive property of Manitoba, and shall be delivered without cost to Manitoba upon request.

- 11(2) The ESP hereby waives all the ESP's moral rights under The Copyright Act (Canada) in the information, documents and materials described in subsection 11.01 in favour of Manitoba, and agrees to execute any additional documents, in a form satisfactory to Manitoba, which may be required to evidence this waiver. The ESP further agrees to obtain from each of its officers, employees, subcontractors and agents written waivers, in a form satisfactory to Manitoba, of all their moral rights in such information, documents and materials in favour of Manitoba.
- 11(3) While this Agreement is in effect, and at all times thereafter, the ESP, and any officers, employees, subcontractors or agents of the ESP, shall not use, publish or disclose any information, documents and materials, including (without limitation) all data, research, reports, drawings, designs, plans, photographs and other materials, discovered or produced by the ESP, or the officers, employees, subcontractors or agents of the ESP, in the performance of, or incidental to the performance of, this Agreement without first obtaining written permission from Manitoba.
- 11(4) Any equipment, materials, and supplies provided by Manitoba to the ESP for use in the performance of this Agreement shall remain the property of Manitoba and shall be returned without cost to Manitoba upon request.

SECTION 12 - USE OF MANITOBA'S PREMISES

- 12(1) When using the premises of Manitoba, the ESP and all officers, employees, subcontractors and agents of the ESP shall comply with all security regulations in effect from time to time.

SECTION 13 - MANITOBA NOT LIABLE FOR INJURY, ETC. TO ESP

- 13(1) Manitoba shall not be liable for any injury (including death) to the ESP, or to any officers, employees, subcontractors or agents of the ESP, or for any damage to or loss of property of the ESP, or of the officers, employees, subcontractors or agents of ESP, caused by or in any way related to the performance of this Agreement.
- 13(2) Subsection 13(1) does not apply if the injury, damage or loss was caused by the wrongful or negligent act of an officer or employee of Manitoba while acting within the scope of his or her employment.

SECTION 14 - INDEMNIFICATION BY ESP, INSURANCE

- 14(1) The ESP shall use due care in the performance of its obligations under this Agreement to ensure that no person is injured, no property is damaged or lost and no rights are infringed.
- 14(2) The ESP shall be solely responsible for
- (a) any injury to persons (including death), damage or loss to property or infringement of rights caused by, or related to, the performance

of this Agreement or the breach of any term or condition of this Agreement by the ESP, or of any officers, employees, subcontractors or agents acting under the direction of the ESP, and

- (b) any omission or wrongful or negligent act of the ESP, or of any officers, employees, subcontractors or agents acting under the direction of the ESP;

and shall save harmless and fully indemnify Manitoba, its officers, employees and agents from and against all claims, liabilities and demands with respect to clauses 14(2)(a) and (b).

- 14(3) ESP shall maintain throughout the term of this Agreement, and in the case of claims-made based policies for a period of at least 24 months following completion of all Services under this Agreement (to provide a claim discovery period), the following insurance:

- (a) commercial general liability insurance covering the Services provided by ESP or its officers, employees, subconsultants or agents under this Agreement ; such insurance shall:

- (i) provide a minimum of \$2 million (\$2,000,000.) per occurrence limit of liability; and
- (ii) name Manitoba, its Ministers, officers, and employees and agents as Additional Insureds with respect to this Agreement.

- (b) professional liability insurance covering the Services provided by ESP, or its officers, employees, or subconsultants under this Agreement, subject to a minimum limit of \$2 million (\$2,000,000.)

per claim.

- 14(4) ESP shall provide Manitoba with Certificates of Insurance of the required insurance coverages prior to providing any Services under this Agreement. The Certificates shall provide for a minimum of 30 days prior written notice to Manitoba in case of policy cancellation. For claims-made policies, ESM shall provide a Certificate to Manitoba with regard to the 24 month claim discovery period referred to in subsection 14(3), within 14 days of the expiry of this Agreement, and one year later on the same anniversary date if coverage is written on an annual basis.
- 14(5) All required insurance shall be underwritten by insurers licensed in Manitoba to write the required insurance coverage.

SECTION 15 - SUSPENSION OR EXTENSION

- 15(1) Manitoba may, in writing and at its sole option, from time to time, delay or suspend the Services being provided under this Agreement, in whole or in part, for such period of time as may, in the opinion of Manitoba, be necessary.
- 15(2) Manitoba may, in writing and at its sole option, extend the time in which the Services are to be provided if necessary by reason of circumstances beyond the control of the ESP or through no fault of the ESP.
- 15(3) Where there is a delay or suspension under subsection 15(1) or an extension of time under subsection 15(2), all terms and conditions of this Agreement shall continue in full force and effect against the ESP. The ESP shall not be entitled to make any claim for damages by reasons of the delay, suspension or extension.

SECTION 16 - TERMINATION

- 16(1) Manitoba may terminate this Agreement at any time, by giving 30 days notice in writing to the ESP.
- 16(2) In addition to its rights under subsection 16(1), and without restricting any other remedies available, Manitoba may, at its sole option, immediately terminate this Agreement in writing if:
- (a) in the opinion of Manitoba, the Services provided by the ESP are unsatisfactory, inadequate, or are improperly performed;
 - (b) in the opinion of Manitoba, the ESP has failed to comply with any term or condition of this Agreement; or
 - (c) the ESP is dissolved or becomes bankrupt or insolvent.
- 16(3) Upon termination of this Agreement, the ESP shall cease to perform any further work, and shall deliver to Manitoba any finished work which has not been delivered and accepted prior to termination, together with any materials and work in progress relating to this Agreement. Manitoba shall be under no obligation to the ESP other than to pay, upon receipt of an invoice and supporting documentation satisfactory to Manitoba, such compensation as the ESP may be entitled to receive under this Agreement for work completed to the satisfaction of Manitoba up to the date of termination.

SECTION 17 - SURVIVAL OF TERMS

- 17(1) Sections 10 (Confidentiality), 11 (Ownership of Information), 13(Liability), 14 (Indemnification and Insurance), 17 (Survival of Terms), 18 (Independent Contractor) and subsection 16(3) (Obligations on Termination) shall survive the termination or expiration of this Agreement.

SECTION 18 - INDEPENDENT CONTRACTOR

- 18(1) The ESP is an independent contractor, and this Agreement does not create the relationship of employer and employee, or of principal and agent, between Manitoba and the ESP or between Manitoba and any officers, employees, subcontractors or agents of the ESP.
- 18(2) The ESP is responsible for any deductions or remittances which may be required by law.
- 18(3) In the event it is determined that the ESP is not an independent contractor and that this Agreement creates the relationship of employer and employee between Manitoba and the ESP, the ESP agrees to be solely responsible and to save harmless and indemnify Manitoba, its officers, employees and agents from and against all claims, liabilities, orders, costs and demands resulting from such a determination, to the extent that such an indemnity is not prohibited by law. Should such a determination be made, the ESP agrees that the amount Manitoba has paid to the ESP under this Agreement shall constitute an all-inclusive payment of the ESP's wages, vacation pay, overtime pay, benefits or other remuneration whatsoever, regardless of the day of the week on which the Services were performed or the number of hours worked in a day or week.
- 18(4) The ESP shall not incur any expenses or debts on behalf of, nor make any commitments for, Manitoba without first obtaining written permission from

Manitoba.

SECTION 19 – WORKERS COMPENSATION

19(1) The ESP shall be registered with the Workers Compensation Board of Manitoba and shall obtain and maintain in good standing workers' compensation coverage throughout the term of this Agreement. The ESP shall provide Manitoba with satisfactory proof of its registration and good standing with the Workers Compensation Board upon the ESP's signing of this Agreement.

SECTION 20 - WORKPLACE SAFETY AND HEALTH OBLIGATIONS

20(1) By entering into this Agreement, the ESP acknowledges its responsibility to fulfil the duties of an “employer” under Section 4 and Section 7.4, if applicable, of The Workplace Safety and Health Act C.C.S.M. c. W210 (the "Act") and to ensure that the Services are carried out in accordance with the Act and all regulations and safe work practices applicable to the work being performed under this Agreement.

20(2) Without limiting the generality of subsection 20(1) the ESP represents and warrants that:

- (a) it shall ensure that it will meet the requirements for the protection of workers set out in the Act and the regulations made there under;
- (b) it has a workplace safety and health program (the “Program”) applicable to the work being performed and shall carry out the services in accordance with the Program;

- (c) its employees, agents and subcontractors are properly qualified and trained to perform the Services;
- (d) Mobile equipment operators shall possess a valid drivers license, as required by The Highway Traffic Act and may be subject to evaluation;
- (e) it shall ensure that an adequate number of competent supervisors are provided as prescribed in the Act;
- (f) it has disclosed all "required information" as required under the Act to all employees and workers that will be providing the Services on behalf of the ESP under this Agreement to ensure they are informed of the hazards inherent to the work and understand the procedures for minimizing the risk of injury or illness;
- (g) it shall provide information and instruction to all workers to ensure they are informed of the hazards inherent to the work and understand the procedures for minimizing the risk of injury or illness;
- (h) as prescribed in the Workplace Safety and Health Regulation, it shall immediately notify Manitoba Labour, Workplace Safety and Health Division and Manitoba when a serious incident occurs at a workplace involving any of the ESP's officers, employees or agents while performing work under this Agreement and within five (5)

days of the accident provide Manitoba with a written report detailing the accident and incorporating information requested by Manitoba;

- (i) it shall immediately notify and provide Manitoba with copies of any notices, orders or charges issued under the Act to the ESP under the Act while performing work under this Agreement;
- (j) it shall comply with all reasonable requests and directions made by Manitoba including, without limitation, any requests or directions made by Manitoba's project managers.

SECTION 21 - NO ASSIGNMENT OF AGREEMENT

- 21(1) The ESP shall not assign or transfer this Agreement or any of its rights or obligations under this Agreement without first obtaining written permission from Manitoba.
- 21(2) No assignment or transfer of this Agreement shall relieve the ESP of any of its obligations under this Agreement, except to the extent they are properly performed by the ESP's permitted assigns.
- 21(3) This Agreement shall be binding upon the successors and any permitted assigns of the ESP.

SECTION 22 - TIME OF ESSENCE

- 20(1) Time shall be of the essence of this Agreement.

SECTION 23 - ENTIRE AGREEMENT

23(1) This document and the attached Schedules “A” and “B” contain the entire Agreement between the parties. There are no undertakings, representations, or promises, express or implied, other than those contained in this Agreement.

SECTION 24 - AMENDMENTS

24(1) No amendment or change to, or modification of, this Agreement shall be valid unless it is in writing and signed by both parties.

SECTION 25 - SEVERABILITY

25(1) If any provision of this Agreement is for any reason invalid, that provision shall be considered separate and severable from this Agreement, and the other provisions of this Agreement shall remain in force and continue to be binding upon the parties as though the invalid provision had never been included in this Agreement.

SECTION 26 - APPLICABLE LAW

26(1) This Agreement shall be interpreted, performed and enforced in accordance with the laws of the Province of Manitoba.

SECTION 27 - NOTICES

27(1) Any notice or other communication to the ESP under this Agreement shall

be in writing and shall be delivered personally to the ESP or an officer or employee of the ESP or sent by registered mail, postage prepaid, or by way of facsimile transmission (with follow up copy by mail) to:

CONSULTANT NAME
(INSERT MAIL CONTACT DETAILS)

Attention: _____
Fax: (###) _____

- 25(2) Any notice or other communication to Manitoba under this Agreement shall be in writing and shall be delivered or sent by registered mail, postage prepaid, or by way of facsimile transmission (with follow up by mail) to:

Manitoba Infrastructure and Transportation
(INSERT MAIL CONTACT DETAILS)

Attention: _____
Fax: (###) _____

- 25(3) Any notice or communication sent by registered mail shall be deemed to have been received on the third business day following the date of mailing. Any notice or communication sent by facsimile shall be deemed to have been received on the business day immediately following the date of transmittal. If mail service is disrupted by labour controversy, notice shall be delivered personally.

This Agreement has been executed by the Minister of Infrastructure and Transportation on behalf of the Government of Manitoba and by CONSULTANT NAME by its duly authorized representatives on the dates noted below.

SIGNED IN THE
PRESENCE OF

FOR THE GOVERNMENT OF MANITOBA

WITNESS

MINISTER OF INFRASTRUCTURE AND
TRANSPORTATION

DATE: _____

FOR CONSULTANT NAME

WITNESS

TITLE OR OFFICE

DATE: _____

SCHEDULE "A"

This is Schedule "A" to the Agreement for Professional Engineering Services between the Government of Manitoba and CONSULTANT NAME (the "ESP") dated AGREEMENT DATE.

Terms of Reference:

TERMS OF REFERENCE TITLE (Revision Date: DATE)

INITIALS	
MANITOBA	ESP

SCHEDULE "B"

This is Schedule "B" to the Agreement for Professional Engineering Services between the Government of Manitoba and CONSULTANT NAME (the "ESP") dated AGREEMENT DATE.

PROPOSAL TITLE – DATE

INITIALS	
MANITOBA	ESP