

THIS AGREEMENT made effective the \_\_\_\_ day of \_\_\_\_\_, 20\_\_  
**[BLLP NOTE: Insert date Agreement is made]**

**BETWEEN:**

**[BLLP NOTE: PLEASE INSERT MUNICIPALITY'S NAME]**  
(the "Community")

**OF THE FIRST PART**

**AND:**

\_\_\_\_\_  
(the "Contractor")

**OF THE SECOND PART**

**INDEPENDENT CONTRACTOR AGREEMENT**

WHEREAS:

A. The Community requires the services of the Contractor as an independent contractor, in connection with the provision of the services, as set out in Schedule "A";

B. The Community and the Contractor have reached agreement with respect to the terms and conditions under which the Contractor will provide such services to the Community;

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

**ARTICLE 1**

1.1 Definitions

In this Agreement:

- (a) "Business Day" means any day other than a Saturday, Sunday or statutory holiday in the Northwest Territories;
- (b) "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;
- (c) "Community Property" means the Work Product and all information, records or materials, regardless of form, acquired or produced under this Agreement by the Contractor, or provided by the Community for use by the Contractor;
- (d) "Event of Default" means, with respect to the Contractor, if:
  - (i) the Contractor 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 7 days after being required in writing to do so by the other party, or
  - (B) if such neglect or failure is not capable of being cured within 7 days as aforesaid but can be cured within a commercially reasonable period of time by a commercially reasonable effort by the Contractor, the Contractor has not commenced to cure such neglect or failure within the said 7 day period and has not continued to effectively and diligently cure such neglect or failure within such commercially reasonable period of time;
- (ii) an assignment of the Contractor'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 Contractor or a receiver, receiver and manager, custodian or similar agent is appointed or takes possession of any property or business of the Contractor;
  - (iv) the Contractor 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 Contractor or a distress or analogous process is levied upon the property of the Contractor; 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;
- (e) "Fees" means the fees and expenses to be paid by the Community to the Contractor as set forth in Schedule "B" hereto;
  - (f) "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;
  - (g) "Performance Requirements" means those certain requirements and performance levels set forth within Schedule "C" attached to this Agreement;
  - (h) "Services" means the activities associated with services as more particularly identified in Schedule "A" hereto;
  - (i) "Term" means the period commencing on the \_\_\_ day of \_\_\_\_\_, 20\_\_, and ending on the \_\_\_ day of \_\_\_\_\_, 20\_\_, subject to extension or earlier termination as set forth herein; and **[BLLP NOTE: Please fill in term]**
  - (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 Contractor or any of its employees and contractors 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.

## **ARTICLE 2**

### 2.1 Preamble and Schedules

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.

## **ARTICLE 3**

### 3.1 Obligations

The Contractor shall:

- (a) perform the Services faithfully, in a reasonable manner, exercising best efforts, and in accordance with and subject to the terms and conditions contained in this Agreement, including, without restriction, the Performance Requirements;
- (b) perform the Services in compliance with the Community Contracts;
- (c) where applicable, provide qualified additional staff to provide the Services;
- (d) be bound by and observe all applicable federal, provincial and municipal legislation and related regulations, as amended from time to time, and the Contractor shall cause all of its employees and approved subcontractors to be so bound;
- (e) 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 Contractor's obligations under this Agreement;
- (f) pay all fees and all other costs incidental to the performance of the Contractor's obligations under this Agreement (subject always to the payment of the Fees as contemplated herein);
- (g) provide all such written and verbal reports as required by the Community on the progress of the Services. The Contractor 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
- (h) upon receipt of request from the Community, provide evidence of full compliance with all requirements of the Workers' Compensation Act to and including the dates of such requests, such evidence to include the Contractor and any and all subcontractors.

## **ARTICLE 4**

### 4.1 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 first:

- (a) causing such agent, subcontractor or any third party to be bound by all covenants and obligations of the Contractor 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, subcontractors 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.

Further, the Contractor shall, in providing the Services:

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

#### 4.2 Removal of Personnel

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

### **ARTICLE 5**

#### 5.1 Payment of Fees

The Community will pay the Contractor the Fees following receipt of invoice and in accordance with the payment terms set forth in Schedule "B" hereto, plus any applicable GST thereon.

### **ARTICLE 6**

#### 6.1 Taxes and Deductions

The Contractor 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 Contractor under this Agreement and the Community shall have no liability for the same.

## **ARTICLE 7**

### 7.1 Concurrent Retainers

The Contractor may accept concurrent contracting retainers from other parties during the Term.

## **ARTICLE 8**

### 8.1 Warranties and Representations

The Contractor hereby represents and warrants with and to the Community, and acknowledges that the Community is relying upon such representations and warranties, that:

- (a) the Contractor 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 Contractor 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.

## **ARTICLE 9**

### 9.1 Insurance

**[BLLP NOTE: We strongly recommend that the Community discuss insurance requirements with its insurance advisor for each Independent Contractor 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 by 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.

## **COMMERCIAL GENERAL LIABILITY**

**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.

## **AUTOMOBILE LIABILITY INSURANCE**

**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.

- (a) Workers' Compensation coverage for all employees, if any, engaged by the Contractor in accordance with the laws of the Northwest Territories;
- (b) such other insurance as the Community may from time to time reasonably require.

## **ARTICLE 10**

### **10.1 Indemnity**

The Contractor shall at all times and without limitation, indemnify and save harmless the Community, its elected officials, employees, contractors, 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 any of the Community, its elected officials, employees, contractors, 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, as the case may be, of the Contractor and/or any of those persons for whom the Contractor is responsible at law (including, without limitation, any of its employees or subcontractors); 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 Contractor 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 Contractor and/or any of those persons for whom the Contractor is responsible at law (including, without limitation, any of its employees or subcontractors).

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.

## **ARTICLE 11**

### **11.1 Suspension & Termination for Convenience**

- (a) Notwithstanding anything contained within this Agreement, the Community may at any time in writing instruct the Contractor 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 following:
  - (i) the Community having a concern respecting the on-going safety of the Contractor and its employees, agents and subcontractors (if any), any property of the Community, or the public at large (or any portion thereof); or
  - (ii) the Community 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 Contractor shall during any period of suspension continue to perform its obligations to insure in accordance with the Agreement.

- (b) After receipt by the Contractor of the Community's permission to resume the Services following any suspension of the Services, the Community and the Contractor shall jointly examine the Services affected by the suspension and thereafter determine and agree upon, each acting reasonably, the amendments necessary to the Term or any other performance deadlines contemplated within this Agreement.
- (c) Where a suspension occurs as a result of abnormal circumstances (including, without restriction, an event of Force Majeure) or the Contractor's performance of any of its obligations is suspended for a period of Sixty (60) Business Days in aggregate for all suspensions, then at any time thereafter, the Contractor may give notice to the Community requiring that the Community shall, within ten (10) Business Days of such notice, either order the resumption of performance of the Services or require the Community to issue an instruction as a change in the Services to exclude the performance of the suspended obligations(s) from this Agreement. If the Community fails to do so, then on or at any time after the tenth (10<sup>th</sup>) Business Day following the Contractor's notice, the Contractor shall be relieved from such obligations under this Agreement or if the suspension affects the performance of all obligations under this Agreement, the

Contractor shall be entitled to terminate the Agreement.

- (d) This Agreement may be terminated for convenience at any time by the Community upon 7 days written notice to the Contractor and the Contractor'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. The Contractor 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 Contractor as a result of the termination of this Agreement.
- (e) If such notice is given as per Section 11.1 (d), the Contractor shall perform the Services up to and including the effective date of termination specified in the notice and shall, upon request, perform the Services to a predetermined ending point, as determined by the Community and provide the Community with a written report on the Services rendered to the time of termination. Except for any such report, the Contractor shall not perform any further Services subsequent to the effective date of termination.

## **ARTICLE 12**

### 12.1 Event of Default

- (a) Upon the occurrence of an Event of Default, the Community may, without prejudice to any of its other rights at law or equity, do one or more of the following:
  - (i) 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;
  - (ii) terminate this Agreement by written notice thereof given to the Contractor, in which case the Contractor shall have no claim for payment or otherwise against the Community; or
  - (iii) 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.
- (b) Upon the occurrence of an Event of Default under Section 1.1(d)(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 Contractor and shall be entitled to any remedies that may be available to the Community at law, equity or otherwise.
- (c) 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.

## **ARTICLE 13**

### 13.1 Force Majeure

- (a) 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:

- (i) 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
  - (ii) use its best efforts to put itself in a position to carry out its obligations hereunder as soon as reasonably possible.
- (b) In no event shall the relief provided in respect of the occurrence of an event of Force Majeure exceed ninety (90) days.

**ARTICLE 14**

**GENERAL:**

14.1 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 Contractor]**

- (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.

#### 14.2 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.

#### 14.3 Time of Essence

Time shall be of the essence of this Agreement.

#### 14.4 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.

#### 14.5 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.

#### 14.6 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 Contractor have authority to bind the Community as its agent or otherwise, nor make representations or warranties for or on behalf of the Community.

#### 14.7 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.

#### 14.8 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.

#### 14.9 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.

#### 14.10 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.

#### 14.11 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.

#### 14.12 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.

#### 14.13 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.

#### 14.14 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 the Term shall survive the termination or expiry of the Term and shall not be merged therein or therewith.

#### 14.15 Remedies Generally

Mention in this Agreement of any particular remedy of a party in respect of a default by the other party 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.

#### 14.16 Payment of Monies

The parties acknowledge and agree that any payment of monies required to be made hereunder shall be made in Canadian funds and that any tender of monies or documents hereunder may be made upon the solicitors acting for the party upon whom the tender is desired and it shall be sufficient that a negotiable bank draft is tendered instead of cash.

#### 14.17 GST Exclusive

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

#### 14.18 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.

#### 14.19 Binding Effect

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

#### 14.20 Assignment

The Contractor shall not assign its interest in this Agreement, or any part hereof, in any manner whatsoever

without having first received the written consent from the Community, which consent may be arbitrarily withheld.

14.21 Requests for Consent

Each party shall provide any decision with regard to a request for consent in a timely manner.

14.22 Construction

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

14.23 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 MUNICIPALITY]**

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

**[BLLP NOTE: USE IF CONTRACTOR 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

1. Scope

The Services are set out as follows:

- (a) **[BLLP NOTE: insert general description of services provided – ie: plumbing]**  
\_\_\_\_\_ **services, including, but not limited to:**
  - (i) \_\_\_\_\_;
  - (ii) \_\_\_\_\_;
  - (iii) \_\_\_\_\_;
  - (iv) \_\_\_\_\_.
- (b)
- (c)
- (d) Such other services as are reasonably requested by the Community, or to be reasonably inferred.

2. Time Line:

The Services shall be completed in accordance with the following time line:

- (a) **[BLLP NOTE: Insert details regarding the time line for performing the various stages of the Services. For example, if there are certain key deadlines that must be met, they should be set out here.]**
- (b) \_\_\_\_\_;
- (c) \_\_\_\_\_.

3. Personnel to Perform Services:

The parties acknowledge and agree that \_\_\_\_\_ are the key personnel who shall perform the Services and that the Contractor shall not substitute different personnel to perform the Services without the prior written consent of the Community.

**[BLLP NOTE: insert information about who can be used to perform the Services if the Community wants to ensure that only specific personnel are used. Otherwise, this provision may be deleted.]**

## SCHEDULE "B"

### FEES

**[BLLP NOTE: Insert information about the fees and invoicing, as is required for each contract. The following categories are simply some suggested topics that should be covered in this Schedule and may be modified as required to suit the circumstances of each particular contract]**

1. Contractor Fees

**[BLLP NOTE: insert information about the Contractor's fees – i.e.: lump sum, hourly rate, etc. GST is not included in Fees set out here as per Section 14.17]**

2. Invoices

The Contractor shall submit a written, signed invoice to the Community at the end of each month in which the Services are provided. The Community shall pay the Contractor the amount due no later than 30 Business Days from the date receipt of the invoice.

3. Travel Expenses and Disbursements

Subject always to the prior approval or request for the Services received from the Community, the Contractor shall be reimbursed for all reasonable travel expenses and disbursements incurred in accordance with the provision of the Services. **[BLLP NOTE: change this as is required if the Community is only reimbursing the Contractor for certain expenses]**

The Contractor shall submit written documentation and receipts itemizing the dates on which such expenses were incurred, and the Community will pay for such expenses at the same time as the consulting invoice.

4. Minimum/Maximum Hours

While there shall be no minimum or maximum hours as part of this Agreement to provide the Services, the Contractor 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.

**[BLLP NOTE: May not be applicable – remove as required]**



SCHEDULE "C"

PERFORMANCE REQUIREMENTS

The Services shall be performed in accordance with the following performance requirements:

1. **[BLLP NOTE: list the objectives of the Services and list any measurable performance requirements that the Community wants to be able to hold the Contractor accountable to – i.e.: time deadlines for completing the Services, number of meetings that must be held, expected time frame for Contractor to respond to an inquiry from Community, etc.]**
2. To perform the Services in compliance with the Community's policies and procedures, as amended from time to time, such policies and procedures shall be provided to Contractor at Contractor's request.

AFFIDAVIT VERIFYING  
CORPORATE SIGNING AUTHORITY

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

1. That I am an officer, director or agent of **<NAME OF CORPORATION>** named in the within or annexed instrument.

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

SWORN BEFORE ME at the **<City/TOWN>** )  
of **<NAME>**, in the Northwest Territories this )  
**<DATE>** day of **<MONTH>**, **<YEAR>** )  
)  
)  
)  
\_\_\_\_\_)  
A COMMISSIONER FOR OATHS IN AND )  
FOR THE NORTHWEST TERRITORIES )

\_\_\_\_\_

AFFIDAVIT OF EXECUTION

CANADA ) I, <FULL NAME>  
 ) of the <City/TOWN> 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 <City/TOWN> 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 <City/TOWN> )  
of <NAME>, in the Northwest Territories this )  
<DATE> day of <MONTH>, <YEAR> )

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

## Instructions for use of Independent Contractor Agreement

This template can be used when the Community Government wants to enter in to an agreement to obtain services from an independent contractor. 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](mailto: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 (l) must be completed with the date parameters of the Term of the Agreement. **Please ensure that the appropriate information is inserted.**
3. Contractor Obligations — Section 3.1 delineates 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 3.1 (b), 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 4.1 (a) and (b) operate 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 of the Agreement only if the Community provides prior written consent, which the Community may choose to withhold.

5. Insurance — Please confirm with the Ron or Karen at the NWTAC office that the insurance requirements in Article 9 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.

6. Termination — Please note in particular that the Agreement contemplates that the Community may terminate the Agreement for convenience upon 7 days written notice to the Contractor as per Section 11.1(d). This right is not extended to the Contractor.

7. Notice - The address, email, fax number, and contact person for the purposes of sending notices to the Community or Contractor are to be identified within Section 14.1. **Please ensure that the appropriate information is inserted and is correct.**

8. GST — The Contractor's GST number must be completed in Section 14.17. 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 Contractor is indeed a GST registrant. **Please ensure that the GST number is inserted and confirm by search that the Contractor is a GST registrant.**

9. 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.**

10. Schedule "A" — The schedule must be fully completed with a detailed description of Services. The time line for completing the Services is optional and may not be applicable in all cases. The Personnel to perform the Services should be completed with the individual(s) the Community wishes the Contractor use to perform the Services. It will be necessary to consider the insertions with each negotiation since each of the particulars in item 2 and 3 may not be relevant

11. Schedule 'B' — **Please ensure the Contractor Fees are inserted (note GST is in addition to the Fees as per Section 14.17).**

12. 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).

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](mailto: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 there is 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

**SEWAGE PICK UP AND DISPOSAL  
CONTRACTED SERVICES AGREEMENT**

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BETWEEN:**

Hamlet of  
(the "Hamlet")

OF THE FIRST PART

**AND**

(The "Contractor")

OF THE SECOND PART

**WHEREAS:**

- A. The Hamlet requires sewage pump out and disposal services within Designated Service Area of the Hamlet.
- B. The Contractor was the successful bidder in tender no. \_\_\_\_\_ to provide sewage pump out and disposal services within the Designated Service Area of the Hamlet.

THEREFORE, the parties agree as follows:

Definition

- 1. "Designated Service Area" means the core developed area of the Hamlet extending to an 8 kilometer radius from the Hamlet office, including the Fort Providence access road and the residential and commercial corridor along Highway #3 to the south, up to kilometer #30.

Contract Does Not Take Effect Until Contractor Provides Information

2. This contract shall not take effect until the Contractor has provided the following documents to the Hamlet:
  - (a) License to operate a business in the Northwest Territories;
  - (b) Certificate of Compliance with the *Workers' Compensation Act*;
  - (c) Certificate of Compliance with the *Labour Standards Act*; and
  - (d) Proof of general liability insurance as per section 29, 30 and 31 of this contract.
3. The Contractor shall, by no later than **April 1, 2011** provide or acquire a heated garage to house the primary vehicle used by the Contractor for sewage collection and disposal.

Sewage Pump Out Services to be provided by the Contractor

4. The Contractor shall provide a sewage pump out and disposal service to residents and businesses located within the Designated Service Area on the following terms and conditions:
  - (a) Pump out as far as possible to completely empty the sewage holding tanks of those residences, commercial establishments, institutions and government establishments (the "Customers") named in Appendix "A" attached hereto and entitled "List of Sewage Pump Out Sites and Schedule";
  - (b) Provide the sewage pump out services to private residential units up to three times per week. Commercial establishments, institutions and government establishments may receive pump out service everyday.
  - (c) Provide the service to Customers on an as required basis, but in no case shall there be more than seven (7) consecutive days between pump outs;
  - (d) Start providing the services at 8:00 a.m. daily to coincide with the water delivery, and finish disposal services at a reasonable time and in any case finish those services no later than 9:00 p.m. daily.
  - (e) Provide additional sewage pump out and disposal services as required where demands for increased services are unplanned or unforeseen;
  - (f) Supply for this service two vacuum type pump trucks designed for the purpose of removing liquid sewage from holding tanks of various

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Initials of Hamlet

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Initials of Contractor



capacities. The tank of the service vehicle shall have a capacity of not less than 11,350 litres (2500 imperial gallons). The truck shall be equipped with two 20-foot suction hoses complete with 3” cam lock fitting of the type generally used within the community. The truck shall be equipped with a custom designed visual gauge marked in 100 imperial gallon increments. This device is intended to provide a visual indicator of each pump out. This measurable device shall be affixed to the tank;

- (g) The Contractor shall provide a backup sewage pump out truck at his own expense and the backup vehicle must be ready and available at all times;
- (h) Ensure that the sewage trucks be equipped with CB radios or mobile radios;
- (i) Be responsible for ensuring that all equipment and accessories used for the pick-up of liquid sewage are, for reasons of health, kept as clean as circumstances will permit;
- (j) Ensure that the service vehicle is equipped to operate and maintain the schedule of service during all climatic conditions;
- (k) Ensure that the mandatory testing of the tank on the service vehicle shall be done by, or for, the Environmental Health Officer on a regularly scheduled basis. Any costs incurred for these tests shall be borne by the Contractor;
- (l) Ensure that the liquid sewage is dumped in an approved dumping area of lagoon, which meets all the specifications demanded under the Environmental Protection Act and the Public Health Act;
- (m) Upon user request (“a call out”), provide pump out services at all reasonable times notwithstanding that such request is in addition to the service schedule as determined from time to time by the Hamlet. In making a service call pursuant to a “call out” the contractor must obtain a signature on a “REQUEST FOR CALL OUT” form and submit it with the monthly invoice sent to the Hamlet. The form ‘REQUEST FOR CALL OUT’ is set out in Appendix “B” attached hereto. Failure to provide a signed request form which is to be attached to the monthly invoice will render pump out services made in accordance with this section outside the terms of this contract and not subject to payment by the Hamlet.
- (n) Ensure that the caps of the sewage pump out holding tanks are put back on after holding tanks have been pumped out during the summer season;
- (o) Ensure that the landfill gate is immediately locked upon entering and leaving the premises. Failure to comply with this agreement will result in

a \$100.00 (one hundred dollars) deduction from the monthly payment due to the contractor.

- (p) Not pump out sewage during the following times:
- i) Noon hour 12:00 p.m. to 1:00 p.m.
  - ii) Supper hour 5:00 p.m. to 6:00 p.m.
  - iii) Recess periods at the school.
5. The quantity of sewage collected shall be determined as units of measure in gallons as outlined in clause 4. All pump-outs must be recorded and reconciled to the maximum capacity of the tank. Monthly records shall be provided to the Senior Administrative Officer of the Hamlet as per Schedule "A" which is attached and forms part of the agreement.
6. Notwithstanding clause 4(a), the Hamlet shall advise the Contractor of the names of Customers from time to time as approved by the Hamlet. The Contractor shall provide services to the Customers on the approved list provided by the Hamlet.

Sewage Disposal Services to be provided by the Contractor

7. The Contractor shall provide sewage disposal services as follows:
- (a) The Contractor shall ensure that sewage is disposed of only at the designated Sewage Disposal Site which is the Hamlet Sewage Lagoon.
  - (b) Remove any ice or frozen sewage buildup around the access to the sewage dumping facility which may be formed due to spillage or to improper dumping procedures by the operator of the service vehicle.

Health and Safety

8. The Contractor shall not do or permit any act or thing to the sewage disposal area that may cause damage or risk to health or safety.
9. The sewage collection vehicles shall be kept clean to the satisfaction of the local Health Officer.
10. The Contractor shall ensure that all employees who collect sewage are supplied with separate exterior working clothing and facilities to wash and clean up, and will change before entering public buildings.
11. Sewage collection Vehicles shall not be parked overnight in residential areas.

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Initials of Hamlet

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Initials of Contractor

Spills

12. The Contractor shall immediately report any discharge or spills of sewage at any location other than the Hamlet Sewage Lagoon to the Regional Health Officer.
13. The Contractor shall record and report any spillage of sewage over 50 litres to the Hamlet.
14. The Contractor shall ensure that any discharge or spill of sewage at any location other than the Hamlet Sewage Lagoon is immediately cleaned up, and the site is disinfected to the satisfaction of the Regional Health Officer.

Vehicles

15. The Contractor shall park the vehicles used for sewage collection and disposal in a heated parking garage.
16. The Contractor shall operate a vehicle preventative maintenance program for vehicles used by the Contractor in performance of this Agreement, and shall provide copies of the completed maintenance schedule to the Hamlet on a quarterly basis, commencing on June 1<sup>st</sup>, 2011. This maintenance checklist shall be provided to ensure that the equipment is mobile at all times to perform the levels of service required under the terms of this agreement. (\$value) Total costs of this preventative maintenance program shall be borne by the contractor.
17. Where back up equipment is rented by the Contractor to perform these services, and is paid for by the Contractor under clause 4(g) of this agreement, the Contractor may recover from Hamlet, only those costs that would be due and payable had he used his own equipment.

Inspections

18. The Hamlet or a person authorized by Hamlet, may at all reasonable times inspect, enquire into and report upon the operation and the quality of service being provided by the Contractor under the terms of this agreement. Service must be performed to the full satisfaction of the person designated by Hamlet to perform this duty.

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Initials of Hamlet

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Initials of Contractor

Price and Payment

19. For provision of this service and, subject to the terms of this agreement, Hamlet agrees to pay to the contractor for this 5 years agreement, the fixed sum of \$ per gallon of sewage.
20. Where “call out” service has been provided a completed signed “Request For Call Out Form” must be attached to the invoice by the Contractor. An amount of **\$120.00** for each call out may be charged by the Contractor in addition to the charge for pump outs.
21. Subject to performance by the Contractor of the terms and conditions of this agreement satisfactory to the Hamlet, the Hamlet shall pay to the Contractor, the amount agreed upon for such service, as follows:
  - (a) The Contractor shall submit invoices and supporting documents by the 5<sup>th</sup> day following the month that the services were rendered for payment to the Senior Administrative Officer of the Hamlet.
  - (b) Each invoice shall contain the following information:
    - (i) Contract number;
    - (ii) dates indicating when services were performed;
    - (iii) Volume collected per Customer unit, total volume collected, and unit price;
    - (iv) List of sewage pump out sites and schedule.

Breach of Contract

22. If the Contractor fails to provide any services specified under this contract or to correct any Customer complaint to the satisfaction of the Hamlet, the Hamlet reserves the right to provide the services or to correct the complaint and to charge the complete costs, plus applicable overhead, to the Contractor as a deduction from the contract payment.
23. When, either the sewage collection vehicle and back up vehicle is not operating by 11:30 a.m. or the Contractor cannot be contacted to pump out sewage within a reasonable period of time, the Hamlet reserves the right to hire another operator for provision of services. All costs incurred for those services will be borne by the Contractor.
24. Failure by the Contractor to rectify any breach of this agreement within (10) working days of his being advised in writing by Hamlet of such breach, shall entitle Hamlet without further notice to suspend or cancel this agreement.

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Initials of Hamlet

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Initials of Contractor

25. No payment will be made to the Contractor during any period of suspension of service imposed by Hamlet under section 24 of this agreement.
26. Payment due to the Contractor at the time of suspension or cancellation of this agreement shall be limited to the amount due for services provided to the date that suspension or cancellation of this agreement was imposed by Hamlet.

No assignment or sub-contracting

27. The Contractor may not assign or sub-contract any of the services under this agreement, or any part thereof, without the prior approval and written consent of Hamlet.

Indemnity

28. The Contractor shall defend, indemnify and save harmless the Hamlet of \_\_\_\_\_, Councilors, their agents and employees from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of or attributable to the Contractor's performance of the work, or by reason of any matter or thing done, permitted or omitted to be done, by the Contractor, his Subcontractors, or their agents or employees, whether occasioned by negligence or otherwise. Such indemnity shall survive completion or termination of the Contract.

Nothing contained in the Contract Documents or any approval, express or implied, of the Hamlet shall relieve the Contractor of any liability which may be imposed by law.

Insurance Conditions

29. 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 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 Hamlet, deposit with Hamlet an Insurer's Certificate of Insurance in a form acceptable to the Hamlet and if requested, the originals or certified true copies of all insurance contracts maintained by the Contractor pursuant of the insurance coverage requirements show 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 measurers or additional insurance coverage the

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Initials of Hamlet

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Initials of Contractor

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 Hamlet 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 Hamlet.

### Commercial General Liability

30. **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 must 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 ad Additional Insured
- Cross Liability
- Contingent Employers Liability
- Non-owned Automobile Liability SPF # 6

This policy must show the Hamlet of **Fort Providence** as an additional insured but only with respect to the operations of the named insured.

This policy shall be endorsed to provide 30 days written notice to the Hamlet of Fort Providence for cancellation, termination or material change to the insurance coverage.

### Automobile Liability Insurance

31. **Automobile liability insurance** with respect to Contractor's owned and leased 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. And when applicable:

Standard Endorsement Form #4a Explosive Endorsement

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Initials of Hamlet

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The policy will also be endorsed by the insurer to provide 30 days in advance written notice to the Hamlet for any cancellation, termination for material change in the insurance coverage to the contractor.

General

32. Nothing in this agreement shall create an agency or employment relationship between the Hamlet and the Contractor. The Contractor shall, in all respects, be an independent Contractor having no authority or power to bind the Hamlet or otherwise render the Hamlet liable to the third parties at law.
33. Legislation, which must be observed and complied with in the performance of this agreement includes all federal, Territorial and municipal legislation, including but not limited to:
  - a) Public Health Act
  - b) Environmental Protection Act
  - c) Hamlets Act
  - d) Motor Vehicles Act
  - e) Workers' Compensation Act
  - f) Labour Standards Act
34. Prior to the commencement of the work the Contractor must provide proof to the Hamlet that the provisions of the Worker's Compensation Act and the Labour Standard Act of the Northwest Territories have been and continued to be complied with
35. In engaging labour for the performance of this contract, the Contractor will employ only Canadian labour with local labour receiving preferences.
36. The Contractor shall pay all of his employees performing this contract such fair and reasonable wages as are generally accepted for the character or class of work being performed.

Term of this Agreement

37. This agreement will be for a period of five years from the 1<sup>st</sup> day of April 2011, and will remain in effect, having regard to the terms and conditions contained herein, until the 31<sup>st</sup> day of March 2016.
38. Due to the 60 month term of this agreement, the price and conditions of this agreement may not be renegotiated.
39. The Hamlet reserves the right to terminate this agreement at anytime before completion for any reason whatsoever. In the event of such termination, Hamlet will pay to the Contractor an amount that, in the opinion of Hamlet, is equal to

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Initials of Hamlet

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Initials of Contractor





**AFFIDAVIT OF EXECUTION**

CANADA	)	I, _____
NORTHWEST	)	of the Hamlet of Fort
TERRITORIES	)	Providence, in the
TO WIT:	)	Northwest Territories
	)	_____
	)	(Occupation)
	)	MAKE OATH AND SAY
	)	THAT:

1. I was personally present and did see \_\_\_\_\_ (and \_\_\_\_\_), the authorized officer(s) of \_\_\_\_\_ (Contractor) named in the annexed Agreement, who is (are) personally known to me to be the person(s) named therein, duly signed and execute the same for the purpose named therein.

2. The same was executed at the Hamlet of Fort Providence, in the Northwest Territories, on the \_\_\_\_\_, day of \_\_\_\_\_, 2\_\_\_\_, and that I am the subscribing witness therein.

3. I know the said \_\_\_\_\_ (and \_\_\_\_\_) he/she/they is/are in my belief of the full age of nineteen years.

SWORN BEFORE ME at the Hamlet of \_\_\_\_\_ )  
 Fort Providence, in the Northwest Territories, )  
 This day \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_. )

\_\_\_\_\_  
 (Print & Sign Name) )  
 A Commissioner for Oaths in and for the )  
 Northwest Territories. )  
 My Commission expires: \_\_\_\_\_ )

\_\_\_\_\_  
 (Print & Sign Name)

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 Initials of Hamlet

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 Initials of Contractor

**CONTRACTED SERVICES AGREEMENT**  
**SEWAGE PUMP OUT/DISPOSAL SERVICE**  
**APPENDIX "A" - LIST OF "CUSTOMERS"**

\_\_\_\_\_  
Initials of Hamlet

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Initials of Contractor

**APPENDIX "B"**

**REQUEST FOR CALL OUT  
HAMLET OF FORT PROVIDENCE  
SEWAGE PUMPOUT/DISPOSAL SERVICE**

**SCHEDULE "A" APPENDIX**

I \_\_\_\_\_ do hereby authorize this callout for SEWAGE TANK PUMP OUT in excess of normally scheduled service and realize that a call out fee in the amount to \$120.00 will be charged for this delivery and added to monthly water sewer bill and that this amount will be paid by me.

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Unit/Address/Location

\_\_\_\_\_  
Initials of Hamlet

\_\_\_\_\_  
Initials of Contractor

**SOLID WASTE COLLECTION AGREEMENT**

THIS AGREEMENT dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**BETWEEN:**

**(BLLP NTD: INSERT COMMUNITY AS PARTY HERE)**  
(hereinafter referred to as the “Community”)

**OF THE FIRST PART**

**AND:**

\_\_\_\_\_  
(hereinafter referred to as the “Contractor”)

**OF THE SECOND PART**

**WHEREAS:**

- A. The Community wishes to retain the Contractor to provide the Services on the terms and conditions herein contained; and
- B. The Contractor wants to provide the Services to the Community on the terms and conditions as herein contained.

**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**

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;
- (b) “Bylaw” means the Community’s Bylaw \_\_\_\_\_ and any amendments or replacement bylaws thereto **(BLLP NTD: INSERT BYLAW NUMBER)**;

- (c) “Commencement Date” means the \_\_\_ day of \_\_\_\_\_, 20\_\_ **(BLLP NTD: INSERT DATE AGREEMENT BEGINS)**;
- (d) “Completion Date” means the \_\_\_ day of \_\_\_\_\_, 20\_\_ **(BLLP NTD: INSERT DATE AGREEMENT ENDS)**;
- (e) “Confidential Information” means all data, information and material of a confidential nature provided or disclosed to the Contractor by or on behalf of the Community, as well as 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;
- (f) “Disposal Site” means that waste transfer station utilized by the Community and located on a portion of the lands legally described as \_\_\_\_\_ **(BLLP NTD: PLEASE INSERT LEGAL DESCRIPTION)**
- (g) “Hazardous Waste” includes but is not limited to any waste, regardless of amount, listed or characterized as hazardous by any federal or provincial law;
- (h) “Invoice” has that meaning as set forth in Schedule “B” attached hereto;
- (i) “Landfill” means the \_\_\_\_\_ **(BLLP NTD: INSERT COMMON NAME)** located at \_\_\_\_\_ **(BLLP NTD: INSERT MUNICIPAL ADDRESS)**;
- (j) “Operations Building” means the building located at \_\_\_\_\_ **(BLLP NTD: INSERT MUNICIPAL ADDRESS)**;
- (k) “Materials” means those materials to be collected and/or transported by the Contractor pursuant to Sections 1.0 through 1.3 of Schedule “A” in conjunction with the performance of the Services;
- (l) “RFP” means the Community’s Request for Proposals entitled Solid Waste Services Collection Proposal and, along with all addendums thereto, a copy of which is attached hereto as Schedule “D”;
- (m) “Services” means those Services to be provided and performed by the Contractor hereunder, as per the RFP and as more particularly described in Schedule “A” hereto;
- (n) “Term” means the period of time commencing on the Commencement Date and ending on the Completion Date;
- (o) “Terms of Payment” has the meaning prescribed in Schedule “B”; and
- (p) “Solid Waste Services Collection Proposal” means that Solid Waste Services Collection Proposal submitted by the Contractor in response to the RFP, a copy of which is attached hereto as Schedule “E”.

All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them as in the Bylaw. In the event of a conflict between the RFP and this Agreement (including any Schedule attached hereto), the conflict shall be resolved in favor of this Agreement, or the applicable Schedule, as the case may be, save and except when the RFP contains a more restrictive term or condition, in which case, the RFP shall prevail. In the event of a conflict between Schedule "E" and this Agreement (including any other Schedule attached hereto), the conflict shall be resolved in favor of this Agreement, or the applicable other Schedule, as the case may be.

## ARTICLE 2

### 2.1 Services

The Contractor shall provide the Services to the Community upon the terms and conditions contained herein, and the Schedules appended hereto.

### 2.2 Term

The Contractor shall continuously provide the Services throughout the Term, and any extension or renewal thereof, subject always to sooner termination as provided for herein.

The Community may, in its absolute discretion, decide to renew this Agreement at the end of the Term for a further \_\_\_ year term, upon the same terms and conditions herein contained, except as may be otherwise agreed to in writing by the parties. Should the Community wish to renew this Agreement, the Community will so advise the Contractor 6 months before the Completion Date. **(BLLP NTD: INSERT HOW MANY YEARS OR IF INAPPLICABLE, THIS SECOND PARAGRAPH CAN BE DELETED ENTIRELY)**

### 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 a workmanlike manner;
- (c) be performed to the Community's satisfaction;
- (d) comply with the requirements of this Agreement; and
- (e) be documented according to the Community's requirements in effect from time to time.

All work done in performance of the Services shall be subject to such review as the Community considers advisable or appropriate from time to time. Further, any work done by the Contractor in the performance of the Services which does not meet the requirements of this Agreement or is not to the Community's satisfaction may be rejected by the Community and shall require immediate and appropriate rectification by the Contractor at the Contractor's sole expense. No such review by the Community shall relieve the Contractor from the performance of its obligations hereunder. The Contractor shall cause all of its employees and approved subcontractors to be bound by all covenants and obligations of the Contractor hereunder.

#### 2.4 Warranties and Representations of Contractor

The Contractor represents and warrants to the Community and acknowledges that the Community is relying upon such warranties and representations in entering into this Agreement, namely:

- (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) if the Contractor is a corporate entity, the Contractor has been incorporated and organized under the laws of the Northwest Territories and is a valid and subsisting corporation in good standing under all applicable laws of the Northwest Territories;
- (c) if the Contractor is a corporate entity, the Contractor has the corporate power to carry on the business of provision of Services;
- (d) if the Contractor is a corporate entity, the Contractor is validly and properly registered and licensed under the appropriate laws of each and every jurisdiction in which the nature of its business makes such qualification necessary, and in particular, in order to carry out its obligations under the terms and provisions of this Agreement;
- (e) the Contractor is in good standing under any and all contracts, licenses and undertakings to which it is a party or subject to, as the case may be;
- (f) the Contractor is in full compliance with all laws and regulations of any public authority relating to the conduct of its business and has all required permits, licenses, certificates and authorizations necessary to carry on its business and to carry out its obligations under this Agreement and there are not any proceedings whatsoever, actual or pending, and whether concerning cancellation, extension or otherwise, relating to the said permits, licenses, certificates or authorizations;
- (g) there are no actions, suits, seizures or proceedings pending or threatened against the Contractor which might give rise to any legal proceedings or inquiries against the Contractor before any court, tribunal, commission, board or other agency, whether federal, provincial or municipal and which may affect the Contractor's ability to perform all the Services as set forth herein;

- (h) there is no pending or threatened grievance, labor dispute, work stoppage or strike, nor any charge or complaint against the Contractor before any court, tribunal, commission, board or other agency whether federal, provincial or municipal, involving any charge of unfair labor practice or relating to labor or employment issues or practices generally that will prevent the Contractor from performing the Services;
- (i) there is no claim, action or proceeding pending or threatened against the Contractor arising out of any statute, ordinance or regulation relating to the payment of wages or benefits, discrimination in employment or employment practices or occupational safety or health standards;
- (j) the Contractor has received, read and understands the Bylaw; and
- (k) the Contractor has relied completely on its own due diligence and investigations and assessments in entering into this Agreement and has not relied on any representations or inducements by the Community.

## 2.5 Maintain Warranties and Representations in Effect

In carrying out its obligations hereunder the Contractor shall do things in order that all of the warranties and representations given by the Contractor herein continue to remain in effect respectively during the term hereof.

## 2.6 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.

At least once annually, the Contractor shall advise the Community as to the emerging trends and best practices that could be utilized by the Contractor when performing the Services. The Contractor will make recommendations to the Community regarding possible implementation of new practices for the efficient provisions of the Services.

## 2.7 Compliance with Legislation

In performing the Services hereunder (including, subject to Section 3.1 hereof, 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 and the Bylaw, including, without limitation, those obligations of Collectors contained therein.

Where two (2) or more laws, codes, bylaws, regulations, ordinances, policies, procedures or regulations are applicable to the Services, the more restrictive shall apply.



2.8 Permits and Licenses

The Contractor shall obtain, pay for and maintain in good standing during the Term, all at its own expense, all necessary permits or licenses required in connection with providing or performing the Services.

Prior to providing the Services and prior to receiving payment hereunder, the Contractor shall provide evidence of compliance with all requirements of the Northwest Territories with respect to Workers' Compensation including making all payments due thereunder. At any time during the Term when requested by the Community, the Contractor shall provide such evidence of compliance by itself and any of its subcontractors as aforesaid.

2.9 Breaches of the Bylaw

The Contractor shall notify the Community as to any and all breaches of the Bylaw which the Contractor becomes aware of as soon as reasonably possible thereafter.

**ARTICLE 3**

3.1 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, and on terms and conditions satisfactory to the Community, in its sole discretion. The use of any agents, subcontractors or any other third parties by the Contractor with the Community's consent shall in no way relieve the Contractor from its responsibility and obligation to provide the Services in accordance with the provisions of this Agreement.

3.2 Removal of Personnel

The Contractor shall forthwith remove from the performance of the Services any officer, employee, agent or subcontractor who is, for any reason, unsatisfactory to the Community including, without limitation, a 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) except as required in order to perform the Services, removes any property not belonging to the Contractor, its personnel or any agent or subcontractor, as the case may be, from the Community without the prior written consent of the Community; or

- (d) discloses or uses any Confidential Information contrary to the provisions of this Agreement, without the prior written permission of the Community;

and, in the case of Subsections (c) and (d) above, 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.

### 3.3 Compliance with Policies

The Contractor shall ensure that its personnel and agents and subcontractors, when providing the Services, comply with all security, safety, emergency and access policies, procedures or regulations implemented by the Community from time to time.

## **ARTICLE 4**

### 4.1 Payment

The Community shall pay the Contractor in accordance with the provisions of the Solid Waste Services Collection Proposal and Schedule "B" attached hereto. No payment by the Community shall relieve the Contractor from the performance of its obligations hereunder.

The compensation agreed herein to be paid to the Contractor for the work to be performed under this Agreement is the sole compensation to be paid to the Contractor for the discharge of the Contractor's obligations under this Agreement and any other costs and expenses incurred in relation to the performance of this Agreement shall be the responsibility of the Contractor.

### 4.2 Excess Payments, Taxes

The Community shall not pay any amount exceeding the fees to be paid in accordance with Schedule "B" 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 Goods and Services Tax), 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 in the fees to be paid to the Contractor, unless expressly stated otherwise.

### 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 with the exception of delays directly and solely caused by the Community, its servants or employees; or
- (c) to remedy errors or omissions for which, in the reasonable opinion of the Community, the Contractor is responsible.

The Contractor hereby waives any and all rights it may have, at law or in equity, to claim against the Community arising from any of the things set forth in this Section 4.3 and the Contractor is hereby forever estopped from denying the same.

#### 4.4 Performance upon Failure of Contractor

Upon failure of the Contractor (including any of its employees, subcontractors and others for whom the Contractor is responsible in law) 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 12% per annum. The Community may, in its sole discretion, set-off and 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 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.

#### 4.6 No Agency

Neither the Contractor nor any of its employees or subcontractors, shall in any way purport to be the agent of or act on behalf of the Community in any manner nor bind the Community in any manner whatsoever.

#### 4.7 Insurance

Without in any way limiting the liability of the Contractor under this Agreement, the Contractor shall, during the Term, obtain and maintain in force and in good standing the following insurance from an insurer licensed to do business in the Northwest Territories:

- (a) standard automobile, bodily injury and property damage insurance providing coverage of at least \$5,000,000.00 inclusive and in respect of any one claim for

the injury to or death of one or more persons or damage to or destruction of property;

- (b) Environmental Impairment Liability insurance of at least \$5,000,000.00;
- (c) Comprehensive general liability insurance providing coverage of at least \$5,000,000.00 inclusive and in respect of any one claim inclusive for injury to or death of one or more persons and property. Coverage to include:
  - (i) non-owned automobiles;
  - (ii) independent contractors;
  - (iii) contractual liability, including liability arising pursuant to this Agreement;
  - (iv) a broad form property damage endorsement;
  - (v) products and completed operations coverage;
  - (vi) the inclusion of employees as additional insured; and
  - (vii) contingent employers liability coverage;
- (d) Workers' Compensation coverage for all employees, if any, engaged by the Contractor in accordance with the laws of the Northwest Territories;
- (e) Employer's liability insurance respecting employees, if any, of the Contractor with limits of liability of not less than \$5,000,000.00 per employee for each accident, accidental injury or death of an employee or any subcontractor engaged by the Contractor; and
- (f) such other insurance as the Community may from time to time reasonably require.

The Contractor shall ensure that all insurance coverage maintained by the Contractor in accordance with this Agreement shall name the Community and any other party designated by the Community as an additional insured, contain a severability of interests or cross liability clause, and shall provide that no such insurance may be cancelled without the insurer providing no less than 30 days' written notice of such cancellation to the Community. The Contractor shall, upon the request of the Community, furnish written documentation, satisfactory to the Community, evidencing the required insurance coverage.

The Contractor shall be liable for the cost of all insurance required to be obtained and maintained by the Contractor as set forth herein and for payment of all deductible amounts from such policies of insurance.

## ARTICLE 5

### 5.1 Confidential Information

The Contractor agrees that Confidential Information constitutes valuable and proprietary information and materials of the Community which shall be kept strictly confidential, both during and after the Term, and shall only be used for the purpose of providing the Services hereunder. Such Confidential Information may only be disclosed by the Contractor to those of its officers, employees, approved agents or approved 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, as the case may be, 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.

Ownership of any work, information, records or materials, regardless of form, and including, but not limited to, any copyright, patent, industrial design process or trade mark, acquired or produced under this Agreement by the Contractor, or provided by the Community for use by the Contractor, as the case may be, vest with the Community. The Contractor shall treat any information required as a result of this Agreement in strict confidence and with the care and security required to ensure that it is not disclosed or made known to any person except with the written consent of the Community.

### 5.2 Freedom of Information and Protection of Privacy

Notwithstanding the termination or expiry of this Agreement, the Contractor acknowledges that information and records compiled or created under this Agreement which are in the custody of the Contractor are subject to the *Access to Information and Protection of Privacy Act*. If a request is received for any of these records, the Contractor shall forward the information and records, at the Contractor's expense, to the Community within five (5) calendar days of official notification by the Community.

### 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 of any Confidential Information contrary to the provisions of this Agreement.

5.4 Return of Documents

Except as otherwise provided for herein, immediately upon termination or expiry of this Agreement, the Contractor shall promptly return all property, documentation and information in its possession relating to the provision of the Services and it shall not thereafter utilize any of it or reproduction of it in any manner whatsoever.

5.5 Litigation

The Contractor shall cooperate, at the expense of the Community, with the Community, both during and after the Term, in the bringing of or defending of any action or claim of any nature in respect of which the Community is a party or has an interest which arises in any manner whatsoever, directly or indirectly, in connection with the performance with the obligations hereunder by the Contractor.

**ARTICLE 6**

6.1 Termination for Default

- (a) This Agreement may be terminated at any time by the Community without cause by giving 14 days written notice to the Contractor, and the Contractor's right to consideration shall be limited to payment for the Services performed and not previously paid for. The Contractor 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 Contractor as a result of the termination of this Agreement.

If such notice is given, the Contractor 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 Contractor shall not perform any further Services subsequent to the effective date of termination.

- (b) Without limiting the termination rights in Section 6.1(a) or Section 6.1(c) hereof, in the event that one of the following events occur, the Community may, at its sole option, provide to the Contractor, 5 days to remedy the event. Should the Contractor not remedy the event referred to in this notice, to the Community's absolute satisfaction, the Community may forthwith terminate this Agreement, without prejudice to any other right or remedy the Community may have, if:
- (i) the Contractor at any time fails to comply with any of the terms or conditions of this Agreement; or
  - (ii) any representation and warranty given by the Contractor hereunder is untrue or inaccurate; such termination to be effective on the date such notice of termination is received.

- (c) Without limiting the termination rights as contained in Section 6.1(a) or Section 6.1(b) hereof, in the event that one of the following events occur, the Community may, at its sole option, immediately terminate this Agreement, without prejudice to any other right or remedy the Community may have, if:
- (i) the Contractor at any time 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;
  - (ii) any of the goods and chattels of the Contractor shall be taken in execution or by attachment by any creditor of the Contractor; or
  - (iii) an order shall be made for winding up of the Contractor.

## 6.2 Payment upon Termination

The Community shall, in the event of termination of this Agreement, 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.

## ARTICLE 7

### 7.1 Indemnity

The Contractor shall at all times and without limitation, indemnify and save harmless the Community, its elected officials, employees, contractors, agents 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 any of the Community, its elected officials, employees, contractors, agents 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, as the case may be, of the Contractor and/or any of those persons for whom the Contractor is responsible at law (including, without limitation, any of its employees or subcontractors); or
- (b) the costs of repairs, clean-up or restoration paid by the Community and any fines levied against the Community or the Contractor; or

- (c) 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 Contractor to be fulfilled, kept, observed or performed, as the case may be; or
- (d) any breach of confidentiality on the part of the Contractor or any approved agent or approved subcontractor, or employee of the Contractor; or
- (e) any damages to third parties caused by, resulting at any time from, arising out of or in consequence of the misconduct, negligent action or failure to act of the Contractor and/or any of those persons for whom the Contractor is responsible at law (including, without limitation, any of its employees or subcontractors).

## 7.2 Release

The Contractor expressly releases the Community from any claims, damages, judgments, losses or awards caused by or arising from perils insured against or required to be insured against by the Contractor under this Agreement. Except for any valid claim that the Contractor may have against the Community for non-payment under the Agreement the Contractor shall not make or bring any claim, action, suit, proceeding or demand against the Community, its officials, officers, employees, servants, agents and contractors or any of same with respect to any occurrence, incident, accident or happening relating in any manner whatsoever to this Agreement and the rights and obligations arising therefrom which, without limiting the generality of the foregoing, shall include any claim, action, suit, proceeding or demand arising in tort or contract or otherwise.

## 7.3 No Liability

The Community shall not be liable to the Contractor or to any one claiming through the Contractor for any matter, cause or thing relating directly or indirectly to the state or condition of receptacles or Materials to be dealt with by the Contractor hereunder, all of such liability being hereby released by the Contractor.

# **ARTICLE 8**

## 8.1 Dispute Resolution

Except where specifically excluded, if a dispute arises between the Community and the Contractor regarding the interpretation, application or operation of this Agreement or any part of it, the dispute shall be submitted to the dispute resolution processes described in the attached Schedule "C" before either party may take any other action or step or pursues any other available remedy in relation to the dispute, provided however that either party may take any steps required to be taken in order to preserve a cause(s) of action under the *Limitations of Actions Act* (Northwest Territories). This clause shall not limit the rights of the Community to serve notice pursuant to Section 6.1 at any time. Notwithstanding that the dispute resolution process is invoked, the parties will continue to perform their obligations described in this Agreement until such time as the dispute resolution process is complete.



**ARTICLE 9**

9.1 Survival of Obligations

The provisions of this Agreement which, by their context, are meant to survive the expiry or earlier termination of this Agreement shall so survive for the benefit of the Community and be binding upon the Contractor.

9.2 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" – Dispute Resolution Procedure
- Schedule "D" – RFP
- Schedule "E" – Solid Waste Services Collection Proposal

9.3 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 delivered, be sufficiently given if 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 follows:

- (a) to the Community (**BLLP NTD: INSERT CONTACT INFO FOR COMMUNITY**):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_

Fax: (\_\_\_\_) \_\_\_\_\_

Attention: \_\_\_\_\_

- (b) to the Contractor:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_

Fax: (\_\_\_\_) \_\_\_\_\_

Attention: \_\_\_\_\_

Any notice delivered 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 9.3 includes any request, statement, report, demand, order or other writing in this Agreement provided or permitted to be given by the Community to the Contractor or by the Contractor to the Community.

9.4 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.

9.5 GST Exclusive

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

9.6 Waiver

No consent or waiver, express or implied, by the Community to or of any breach or default by the Contractor in the performance by the Contractor 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 by the Contractor hereunder. Failure on the part of the Community to complain of any act or failure to act of the Contractor or to declare the Contractor in default, irrespective of how long such failure continues, shall not constitute a waiver by the Community of its rights hereunder.

9.7 No Agency

Nothing in this Agreement, nor in any acts of the Community and the Contractor 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 Contractor.

9.8 Whole Agreement

The provisions of this Agreement constitute the entire agreement between the parties and supersede 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.

9.9 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.

9.10 Time of Essence

Time shall be of the essence of this Agreement.

9.11 Expiration of Time

In any case where the time limited by this Agreement expires on a Saturday, Sunday or statutory 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.

9.12 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.

9.13 Independent Legal Advice

The Contractor acknowledges having read this Agreement and prior to executing the same acknowledges and agrees that it has been advised by the Community to obtain independent legal advice. By executing the within Agreement the Contractor confirms that it had the opportunity to seek independent legal advice prior to executing the within Agreement and has either:

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

9.14 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.

9.15 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 and all covenants herein shall be construed to be joint and several when applicable to more than one party.

9.16 Headings

The headings in this Agreement have been inserted for reference and as a matter of convenience only and in no way define, limit or enlarge the scope or meaning of this agreement or any provision hereof.

9.17 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.

9.18 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.

**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

**[BLLP 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

AFFIDAVIT VERIFYING  
CORPORATE SIGNING AUTHORITY

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

1. That I am an officer, director or agent of **<NAME OF CORPORATION>** named in the within or annexed instrument.
  
2. That I am authorized by **<NAME OF CORPORATION>** to execute the instrument without affixing a corporate seal.

SWORN BEFORE ME at the **<City/TOWN>** )  
of **<NAME>**, in the Northwest Territories this )  
**<DATE>** day of **<MONTH>**, **<YEAR>** )  
)  
)  
)  
\_\_\_\_\_)  
A COMMISSIONER FOR OATHS IN AND )  
FOR THE NORTHWEST TERRITORIES )

\_\_\_\_\_



## SCHEDULE "A"

**(BLLP NTD: THIS SCHEDULE SHOULD BE CHANGED TO ACCURATELY REFLECT THE ACTUAL SERVICES THE CONTRACTOR WILL PERFORM – THIS IS SIMPLY A SUGGESTION OF THE TYPE OF SERVICES THAT MAY BE REQUIRED)**

### **1.0 RECYCLABLES COLLECTION**

- (a) The Contractor shall, on a weekly basis from Tuesdays to Fridays, and in the manner prescribed by the Bylaw, collect from all residential properties not exceeding 12 familial units, all co-mingled recyclable materials (including paper, glass, tin metals, cardboard and plastics), from the collection point and deliver it to a processing facility of the Contractor's choosing, which processing facility shall receive the Community's prior written approval. The Contractor shall be entitled to retain all revenues received from the disposal of the aforesaid co-mingled recyclable materials;
- (b) Immediately upon the collection thereof, all co-mingled recyclable materials collected by the Contractor shall become the sole property of the Contractor;
- (c) The Contractor shall empty all Community supplied green boxes or occupant supplied receptacles of similar shape and size containing co-mingled recyclables materials from collection points that do not exceed 23 kilograms in weight. Should the Contractor encounter a receptacle that is placed in a manner contrary to the Bylaw, or contains any material other than those contemplated within Section 1.0(a) above, the Contractor shall nevertheless collect all co-mingled recyclable materials contemplated within Section 1.0(a) above, and shall affix a Community supplied educational tag which shall prescribe the appropriate location for such receptacle and/or the appropriate contents thereof, as applicable. The Contractor shall not be obliged to collect any materials not contemplated by Section 1.0(a) above;
- (d) The Contractor shall, on a weekly basis, collect all co-mingled recyclable materials collected by the Community from the Operations Building, and deliver it to a processing facility of the Contractor's choosing, which processing facility shall receive the Community's prior written approval; and
- (e) The Contractor shall keep and maintain a detailed record of the volume and tonnage of all co-mingled recyclable materials collected by the Contractor, which record shall also detail the volume and tonnage of each subcategory of co-mingled recyclable material collected by the Contractor, and shall provide the Community with access to such record upon written request made by the Community. Notwithstanding that no written request has been made of the Community, the Contractor shall provide such reports to the Community on an annual basis.

### **1.1 KITCHEN WASTE AND YARD WASTE COLLECTION**



- (a) The Contractor shall, on a weekly basis from Tuesdays to Fridays, and in the manner prescribed by the Bylaw, collect from all residential properties, all kitchen waste and yard waste contained in yard/kitchen waste receptacles, from the collection point to the Disposal Site, or to a processing facility of the Contractor's choosing, which processing facility shall receive the Community's prior written approval;
- (b) The time period referred to in Section 1.1(a) above shall run approximately from the first Tuesday of April, to and including the last Friday of October. Notwithstanding the foregoing, the Contractor acknowledges that this is an approximation only, and the time period referred to in Section 1.1(a) above, is subject to alteration by the Community in its sole and absolute discretion;
- (c) The Contractor shall remove all kitchen waste and yard waste contained in yard/kitchen waste receptacles from collection points that do not exceed 23 kilograms in weight. Should the Contractor encounter a yard/kitchen waste receptacle that is placed in a manner contrary to the Bylaw, or contains any material other than acceptable kitchen waste or yard waste, the Contractor shall affix a Community supplied educational tag which shall prescribe the appropriate location for such receptacle and/or the appropriate contents thereof, as applicable. The Contractor shall not be obliged to remove any yard/kitchen waste receptacles that contain unacceptable kitchen waste or yard waste, as the case may be (**BLLP NTD: will have to confirm appropriateness with client**); and
- (d) The Contractor shall keep and maintain detailed records of the volume and tonnage of all kitchen waste and yard waste collected by the Contractor, and shall provide the Community with access to such records upon written request made by the Community. Notwithstanding that no written request has been made by the Community, the Contractor shall provide such reports to the Community on an annual basis.

## 1.2 **CARDBOARD BIN DROP-OFF AND REMOVAL**

- (a) The Contractor shall place Community approved cardboard receptacles at the Disposal Site, and upon 48 hours' notice from the Community, shall empty same in a processing facility of the Contractor's choosing, which processing facility shall receive the Community's prior written approval, and return such receptacle the same day;
- (b) The number of cardboard receptacles placed at the Disposal Site shall be determined by the Community in its sole discretion; and
- (c) The Contractor shall keep and maintain detailed records of the volume and tonnage of cardboard hauled by the Contractor, and shall provide the Community with access to such records upon written request made by the Community. Notwithstanding that no written request has been made by the Community, the Contractor shall provide such reports to the Community on an annual basis.

### 1.3 **SOLID WASTE TRANSFER**

- (a) The Contractor shall, upon 48 hours' notice from the Community, transport 40 yard roll-off receptacles, or similar container prescribed by the Community, from the Disposal Site to the Landfill, or other processing facility of the Contractor's choosing, which processing facility shall receive the Community's prior written approval;
- (b) The number of 40 yard roll-off receptacles at the Disposal Site shall be determined by the Community in its sole discretion;
- (c) The Contractor shall ensure empty 40 yard roll-off receptacles are placed at the Disposal Site when 40 yard roll-off receptacles are in transit to the Landfill, or other processing facility as aforesaid. Should there be a 24 hour period within which an empty 40 yard roll-off receptacle is not provided for at the Disposal Site when 40 yard roll-off receptacles are in transit to the Landfill, or other processing facility as aforesaid, the Community shall be entitled to levy a charge of \$200.00 per 24 hour period, as a genuine pre-estimate of liquidated damages for breach of this Section, which sum shall be deducted from any payment owed to the Contractor hereunder, without prejudice to any of the Community's rights or remedies provided for herein, at law or in equity, including without restriction those which would entitle the Community to perform instead of the Contractor so performing; and
- (d) Throughout the Term of this Agreement, the Contractor shall keep and maintain detailed records of the volume and tonnage of Waste hauled by the Contractor, and shall provide the Community with access to such records upon written request made by the Community. Notwithstanding that no written request has been made of the Community, the Contractor shall provide such reports to the Community on an annual basis.

### 1.4 **TERMS AND CONDITIONS OF GENERAL APPLICATION TO THE SERVICES:**

- (a) Materials shall not include, and the Contractor will use its best efforts to ensure that it does not contain radioactive, volatile, highly flammable, explosive, bio-medical, toxic or Hazardous Waste.
- (b) The Community reserves the right, from time to time, to re-designate any processing facility to which Materials collected by the Contractor are to be delivered hereunder upon 30 days' written notification to the Contractor.
- (c) Payment of disposal costs will be adjusted in accordance with arrangements made by the Community and the applicable landfill authority.
- (d) All loads of Materials to be collected by the Contractor hereunder must be tacked and weighed on a scale by the Contractor at its sole cost, with the Contractor

maintain a log of such weights. Loads delivered to the Disposal Site will be weighed at the Disposal Site's scale. It will be the Contractor's responsibility to see that his personnel adhere to the applicable scale usage procedures.

- (e) Except as expressly permitted in writing by the Community, the Contractor shall not commingle different categories of Materials with one another, or with any other waste materials.
- (f) The collection schedule provided for herein and in the Bylaw must be strictly followed in spite of weather conditions. If adverse weather prevents scheduled collection, the Contractor shall immediately notify the Community if collection will not proceed and, upon improved conditions, shall as soon as reasonably practicable resume the collection schedule, as distributed by the Community, by using extra equipment, manpower and overtime, if required, all at the Contractor's sole cost.
- (g) The Services collection area(s) and/or schedule may be amended by the Community at any time during the term of this Agreement. The Contractor shall observe and be bound by all such changes to the collection area(s) and/or schedule made by the Community from time to time. Should the Community initiate changing the collection area(s) and/or schedule, the Community shall advise all occupants affected by such change.
- (h) The Contractor shall forthwith notify the Community of any and all interruptions the Contractor encounters when carrying out the Services.
- (i) Any other receptacle other than that prescribed by the Bylaw or this Schedule will not be serviced and will be left undisturbed at curbside.
- (j) In the event that any dispute arises between the occupants and the Contractor with respect to the collection of Materials, the Community shall be the sole arbiter in the settlement of any such matters in dispute and the decision shall be final and binding upon all parties concerned.

## 1.5 **ADVERTISING**

- (a) The Contractor is prohibited from displaying any advertisements on its vehicles, other than its own corporate logo's or insignia, without the express approval of the Community, which approval may be withheld in its absolute discretion.
- (b) The Contractor shall participate in and cooperate with such educational or promotional initiatives respecting any aspect of the waste collection or recycling programs being carried on by the Community, as directed by the Community from time to time.

## 1.6 COMPLETION OF SERVICES

- (a) The Contractor shall complete 100% of each day's collection. The Contractor shall return to collect any missed Materials or receptacles, including waste receptacles within 24 hours.
- (b) A missed collection from a residential property unrectified within 24 hours, or a failure to affix an educational tag as provided for herein, will entitle the Community to levy a charge of \$20.00 per 24 hour period, or occurrence, as applicable, as a genuine pre-estimate of liquidated damages for breach of this Section, such sum to be deducted from any payment owed to the Contractor hereunder, without prejudice to any of the Community's rights or remedies provided for herein, at law or in equity, including without restriction those which would entitle the Community to perform instead of the Contractor so performing.
- (c) The Contractor shall notify the Community forthwith of any missed Services collections.
- (d) The Contractor shall remedy any breach of this Agreement on the day it occurs. If the breach is not known until the next day, the Contractor will remedy the breach within 24 hours of notification.
- (e) The Contractor shall provide the Services between the hours of 8:00am and 10:00pm, Tuesdays through Fridays, including all statutory holidays, save and except for Christmas Day and New Year's Day, unless otherwise herein stated.
- (f) The Contractor must maintain accurate records pertaining to the number of hours worked by the Contractor, number of collection personnel used, number of pick-ups per day, per area as, when and in such form as may be requested by the Community.

## 1.7 LIMITATION OF COLLECTION

- (a) The Contractor will make all reasonable efforts to collect the Materials.
- (b) Under no circumstances will Materials be allowed to be thrown over vehicles or onto other property. The Contractor shall not back up to collect Materials except as absolutely required.
- (c) If the Contractor encounters an impassable obstruction for any reason including without limitation utilities, or other contractors working on the street, it will notify the Community immediately to make arrangements and will return at least once that day to attempt to collect the affected Materials. Upon the Contractor's return to attempt again to collect the affected Materials, if the Contractor again encounters an impassable obstruction, the Contractor shall identify and record the obstruction for the Contractor's future reference and further, shall inform the Community with the details of same.

- (d) In the event that roads become impassable due to active road construction or repair by the Community, the Community will advise the Contractor at least 7 days in advance of such activity, where practical, and the Contractor will, at no cost or charge to the Community, prepare an alternate route plan or schedule for collection of Materials.
- (e) Obstructions such as cars parked on the street, snow banks, ditches and the like shall not be considered as impassable obstructions.
- (f) The Contractor should be aware that in some locations, entrance onto residential properties may be required to service such locations. If the Contractor is unable to effect collection due to obstructions, the driver shall make at least one call back on the same day after an interval of not less than one hour. If collection is still not possible, the nature and identification of the obstruction shall be recorded by the driver for future reference, and reported immediately to the Community.

## 1.8 **REPORTS AND STATISTICS**

- (a) The Contractor will maintain records and statistics of complaints, field observations including missed Services collections, contamination issues or placement issues and will supply the Community with such records as required as part of the performance of this Agreement.
- (b) The Community may direct the Contractor as to the format of such reports. All such reports will be signed by the Contractor.

## 1.9 **TEMPORARY ROAD CLOSURES**

- (a) Where utilities or other contractors, including those of the Community, are working on the street, the Contractor will return to that street later when access has improved or been restored. The Contractor will co-operate with other contractors where necessary in order to complete collection.
- (b) In those cases where, due to the temporary closing of any road or limited access as a result of construction or for any other reason, the Contractor will be required to ensure that the necessary action is taken to collect Materials.

## 1.10 **CONTAINERS**

All receptacles, including waste receptacles, shall be placed in an upright position in the same location in which they were located prior to collection. Care shall be used not to damage receptacles. Receptacles that are damaged by the Contractor, or are thrown into the collection vehicles, shall be replaced before the next collection day by receptacles of equal quality by the Contractor at the Contractor's sole expense and to the satisfaction of the Community.

## 1.11 NUMBER OF COLLECTION VEHICLES

- (a) The Contractor shall at all times provide, maintain and operate a sufficient number of vehicles as determined by the Community to properly perform the Services.
- (b) The Contractor shall keep a sufficient number of spare vehicles in the Contractor's yard to ensure that, in the event of a breakdown, the performance of the Services will not be interrupted.
- (c) The Contractor will be required to supply whatever additional vehicles are necessary to adequately handle any additional collections required under this Agreement. Such supply will not increase or decrease any payments to be made to the Contractor.
- (d) If, in the opinion of the Community, the Contractor does not have sufficient number of regular or spare vehicles to properly provide service in accordance with this Agreement, the Community will have the right to instruct the Contractor, at any time after the beginning of the Contractor's operations, to increase the number of regular or spare vehicles to ensure that the performance is in accordance with the terms of this Agreement. The Contractor shall receive no additional compensation over and above the contract prices as a result of any requirements for these resources.
- (e) When additionally hired vehicles are required, the Contractor will immediately supply to the Community the identification numbers of any of these spare vehicles to be used or any further subsequent changes during that day of collection. Otherwise, the Contractor will be charged with the landfill fees for those vehicles not listed for that day's operation.
- (f) The Contractor must utilize vehicles that are totally dedicated to this Agreement only and identified as such to the satisfaction of the Community.

## 1.12 TYPE OF COLLECTION VEHICLES

- (a) All vehicles supplied under the Agreement must meet the provisions of all applicable federal and provincial legislation which are in effect on the day of the manufacture of each vehicle.
- (b) All vehicles must be fitted with necessary and functioning safety devices and must pass any required provincial inspection prior to the commencement of this Agreement. Any deficiencies shall be corrected at the cost of the Contractor.
- (c) The vehicles are to be properly constructed and maintained to eliminate the depositing of Materials or liquids onto the streets during the performance of the Services. It is the Contractor's responsibility to immediately clean up any debris or liquid which falls from the vehicle onto the street.

- (d) Each vehicle shall carry hand tools (brush and shovels) to facilitate the sweeping up of any Materials which may be spilled.

#### **1.13 MAINTENANCE OF COLLECTION VEHICLES**

- (a) The Contractor will be responsible for maintenance of the collection vehicles and shall produce certificates of inspection by authorized inspectors upon being requested to do so, the inspection being made immediately following the request by the Community. All expenses incurred in these inspections will be borne by the Contractor. All equipment used in the execution of this Agreement shall be mechanically sound.

#### **1.14 CLEANLINESS OF COLLECTION VEHICLES**

- (a) All vehicles purchased, acquired or supplied by the Contractor must be kept clean, well painted and disinfected inside and out at all times so as not to cause any offence, odoriferous or otherwise to the public.
- (b) The washing of the vehicles shall be done on a weekly basis with a proper cleaning solution.
- (c) The Community may levy a charge of breach of this Section of \$100.00 per vehicle, as a genuine pre-estimate of liquidated damage for breach of this Section 1.14, which sum shall be deducted from any payment owed to the Contractor should the Contractor, in the Community's opinion, without prejudice to any of the Community's rights or remedies provided for herein, at law or in equity.

#### **1.15 IDENTIFICATION OF COLLECTIONS VEHICLES**

- (a) The Community may require the Contractor to display such markings or descriptions on the Contractor's vehicles, as the Community deems necessary.
- (b) The name of the Contractor shall be affixed upon all vehicles. Each vehicle will be numbered, this information to be on the front, rear and both side panels. Any additional hired vehicles which may be required during peak periods shall be subject to a similar identification system.

#### **1.16 EXCESS LOADING OF COLLECTION VEHICLES**

- (a) The Contractor shall at all times abide by all applicable road bans which may be in affect from time to time.
- (b) Where, in the opinion of the Community, equipment used by the Contractor is causing or is likely to cause damage to any private or public roadway, the Community may direct the Contractor, at its own expense, to make changes in, or substitutions for such equipment, to use alternate routes for hauls, to alter loading or to remove the cause of such damage in some other manner to the satisfaction of

the Community. The Contractor will be responsible for the consequences of the overload of vehicles.

- (c) Where, in the opinion of the Community, the operator working on behalf of the Contractor is causing or is likely to cause damage to any private or public roadway through the course of their work, the Community may direct the Contractor to replace such operator at its own expense. The Contractor will be responsible for the total repair or replacement costs for damaged roadways.
- (d) The Community shall not be required to pay under this Agreement, or otherwise, for any load that exceeds the maximum load size prescribed in Section 1.16(a) above. In addition the Community may, in its absolute discretion, levy a \$500.00 overweight charge as a genuine pre-estimate of liquidated damages for breach of this Section against the Contractor, which sum shall be deducted from any payment owing to the Contractor, without prejudice to any of the Community's rights or remedies provided for herein, at law or in equity.

#### 1.17 **PROVISION OF COMPACTORS**

- (a) On or before May 30, 2015, the Contractor shall supply, in good working order, a cardboard compactor to be placed on the concrete pad located at the Disposal Site, and capable of full operation utilizing the three-phase power supplied at the Disposal Site.
- (b) The cardboard compactor shall be solely used by Community personnel.
- (c) Charges for electricity consumed by the operation of the cardboard compactor shall be borne by the Community.
- (d) Periodic maintenance and repair of the cardboard compactor shall be carried out by the Contractor at the Contractor's sole cost and expense.
- (e) The Contractor shall ensure that adequate cardboard compactor bin capacity is available at the Disposal Site to service daily demand.
- (f) The Contractor shall empty the cardboard compactor's bin in the applicable processing facility, and return same within the same business day upon 48 hours' notice from the Community.



- (g) For every 24 hour period where the cardboard compactor is out of service, and an alternative acceptable to the Community has not been provided, the Community will be entitled to levy a charge of \$200.00 per 24 hour period, as a genuine pre-estimate of liquidated damages for breach of this Section, which sum shall be deducted from any payment owed to the Contractor hereunder, without prejudice to any of the Community's rights or remedies provided for herein, at law or in equity.
- (h) On or before May 30, 2015, the Contractor shall supply, in good working order, a garbage compactor to be placed on the concrete pad located at the Disposal Site, and capable of full operation utilizing the three-phase power supplied at the Disposal Site.
- (i) The garbage compactor shall be used solely by Community personnel.
- (j) Charges for electricity consumed by the operation of the garbage compactor shall be borne by the Community.
- (k) Periodic maintenance and repair of the garbage compactor shall be carried out by the Contractor at the Contractor's sole cost and expense.
- (l) The Contractor shall ensure that adequate garbage compactor bin capacity is available at the Disposal Site to service daily demand.
- (m) The Contractor shall empty the garbage compactor's bin in the applicable processing facility, and return same within the same business day upon 48 hours' notice from the Community.
- (n) For every 24 hour period where the garbage compactor is out of service, and an alternative acceptable to the Community has not been provided, the Community will be entitled to levy a charge of \$200.00 per 24 hour period, as a genuine estimate of liquidated damages for breach of this Section, which sum shall be deducted from any payment owed to the Contractor hereunder, without prejudice to any of the Community's rights or remedies provided for herein, at law or in equity.

#### 1.18 SAFETY RESPONSIBILITIES

- (a) The Contractor shall be bound by and observe all applicable Federal, Provincial and municipal legislation and related regulations, all as amended from time to time.
- (b) The Contractor shall be deemed at all times throughout the Term, and any renewal or extension thereof, the "prime contractor" for the purposes of the *Safety Act* (Northwest Territories). The Contractor shall have employer responsibilities for the safety of its personnel and any agents or subcontractors, and all property of

the Contractor or its personnel, agents or subcontractors while providing the Services. The Community shall not be responsible for any personal property, tools or equipment that the Contractor or its personnel, agents or subcontractors may use when providing the Collection Services.

- (c) The contractor shall provide safety reports and statistics including the reports of claims, damages and incidents.
  - (i) All vehicle collisions will be reported to the Community immediately.
  - (ii) All incidents involving residents, employee injuries and service delivery will be reported to the Community.
  - (iii) Copies of all claims and reported damages must be submitted to the Community in written form for each occurrence.
  - (iv) The Contractor will maintain records of safety inspections, hazard assessments, incidents and claims and will supply the Community with such records as required as part of the performance of this Agreement.
  - (v) The Community may direct the Contractor as to the format of such reports. All such reports will be signed by the Contractor.
- (d) The Contractor shall provide a copy of their Health and Safety Manual/Program with Certificate of Recognition, if available. The Contractor shall review, sign and comply with the Community's "Contractor Safety Agreement" on an annual basis.

#### 1.19 **SPILLAGE AND LEAKAGE**

- (a) Any and all fluid, substances, hydraulic or oil spills must be reported to the Community immediately. As soon as a spill starts, the vehicle will cease operations immediately until the Contractor's foreman arrives on site.
- (b) Dry-all, sorb-all or other absorbent will be laid down immediately. As soon as the absorbent has absorbed the spillage or leakage, it is to be scraped from the road or affected property. If residue still remains, the Contractor will apply another layer of absorbent and will leave the site in a clean and tidy condition. Failure to respond immediately to this kind of spill may result in asphalt or other damage for which the Contractor will be responsible.
- (c) If necessary, at the Community's discretion, a power wash or black-topping will be utilized at the Contractor's expense.

#### 1.20 **PERSONNEL**

- (a) The Contractor shall ensure that all employees are provided with a neat, clean and distinctive work uniform, including protective footwear, traffic safety vests, gloves, and eye protection acceptable to the Community which is to be worn at all times while on duty. The uniform will be in the company colors of the Contractor.
- (b) During inclement weather, adequate rain wear shall be available.
- (c) The Contractor shall provide sufficient drivers trained in the operation of the vehicles, familiar with routes, schedules and able to operate the vehicles safely and efficiently.
- (d) For this purpose, the Contractor will implement a full training program to ensure the drivers' complete familiarization with operations, public relations, and policy and complaint procedures.
- (e) The Contractor shall discipline any vehicle operator or other employee found to be in breach of the terms and conditions of this Agreement or in breach of the law or the subject of consistent complaints.
- (f) Any employee not meeting the criteria in this clause or soliciting or accepting any gratuity for work done under this Agreement shall be summarily removed from the work.

#### **1.21 SUPERVISION OF OPERATION BY CONTRACTOR**

- (a) The Community shall be provided with the address and telephone number of the Contractor's representatives who may be contacted and must be available during all collection times, on matters related to this Agreement and who shall have overall responsibility for the Agreement.
- (b) The Contractor shall have on duty a route supervisor on all collection days.
- (c) The foremen must thoroughly understand the Agreement and be thoroughly experienced in carrying out the Services. They shall receive instructions from the Community on the Contractor's behalf and must be able to communicate adequately with the Community.
- (d) The Contractor's foremen shall further ensure that all complaints regarding the collection will be answered. They will also follow any instructions from the Community to ensure adequate, courteous, prompt and efficient service.
- (e) The Contractor shall ensure that the foreman has available a vehicle for his own use to ensure adequate, efficient response to any concerns involving collection operations.

## 1.22 COMMUNICATIONS

- (a) The Contractor shall establish regular contact with the Community's designated representative verbally, through email, or in person, in order to coordinate route scheduling and any other accommodations the Contractor must make in light of Community undertakings to ensure there are no interruptions in the provision of the Services by the Contractor.
- (b) The Community shall maintain a telephone to be attended at all times during the Community's normal office hours to which all Community's queries and complaints regarding Services performed pursuant to this Agreement may be directed. The Contractor shall supply and maintain a telephone to be attended by a competent representative at all times during the Community's normal office business hours to which the Community may convey complaints regarding Services performed pursuant to this Agreement. Complaints deemed legitimate by the Community must be rectified without delay to the satisfaction of the Community.
- (c) The Community reserves the right, in the event that a legitimate complaint is not satisfactorily corrected by the Contractor, within 24 hours from the time that the Contractor received such complaint, all as determined by the Community, to take necessary action to remedy the complaint and charge the complete cost of remedial work, plus applicable administrative and operating costs to the Contractor and to set-off and deduct such amount from any payment(s) due to the Contractor.
- (d) The Contractor shall maintain a complete log, including names and addresses, of all complaints and inquiries received and the action taken to rectify the matters in question. A copy of the log shall be provided to the Community upon request.
- (e) The Contractor shall report to the Community immediately any refusal by it or its employees to collect any Materials placed for pickup which the Contractor feels are contrary to the terms of this Agreement. The Community shall have exclusive authority to determine an appropriate solution to resolve such refusals, which solution shall be binding upon the Contractor.

## **SCHEDULE "B"**

### **1. TERMS OF PAYMENT**

On satisfactory performance of the Services, and strictly in accordance with the provisions of the Agreement and the rates contained in the Solid Waste Services Collection Proposal, the Contractor will be paid as follows:

- (a) On the first business day of each calendar month, an invoice shall be submitted to the Community by the Contractor in respect of Services provided during the immediately preceding calendar month. Each invoice shall, in respect of such month:
  - (i) detail the volume and tonnage each type of Materials transported;
  - (ii) contain the number of Residential Properties the Contractor attended;
  - (iii) disposal fees incurred in conjunction with disposal at Community approved processing facilities, if any, and in respect of disposals at the Landfill; and
  - (iv) such other information and particulars as reasonably required by the Community.

(an "Invoice")

- (b) Subject to the verification of each Invoice by the Community, acting reasonably 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 30 days of receipt of same.

### **2. COLLECTION RATES**

The applicable collection rates for the Services, exclusive of any applicable Goods and Services Tax, shall be as follows:

### **3. ANNUAL BONUSES**

- (a) Should the Community receive Community complaints that total less than 0.15% of the annual number of individual Services collections performed by the Contractor, the Contractor shall be entitled to a bonus of 2% of the payments made by the Community in relation to the Services contemplated by Sections 1.0 and 1.1 of Schedule "A" over that same year.
- (b) Should the Contractor breach Section 1.3(c) of Schedule "A" fewer than 5 times within a calendar year commencing on the Commencement Date, and every calendar year thereafter, the Contractor shall be entitled to receive a bonus of 2% of the annual 40 yard roll-off receptacle rental rate, as calculated by \_\_\_\_\_.

- (c) Should the cardboard compactor provided by the Contractor be out of services for less than 5, 24-hour periods within a calendar year commencing on the Commencement Date, and every calendar year thereafter, the Contractor shall be entitled to receive a bonus of 5% of the annual cardboard compactor lease rate, as calculated by \_\_\_\_\_.

#### **4. ADJUSTMENT**

The collection rates payable by the Community shall be adjusted on an annual basis, commencing on the first anniversary of the Commencement Date, and every anniversary thereafter throughout the Term and any renewal or extension thereof, based upon increases in the Northwest Territories Consumer Price Index, as calculated by Statistics Canada, for that applicable year, up to a maximum of 5%.

## SCHEDULE "C"

### **THE DISPUTE RESOLUTION PROCEDURE**

1. In this Schedule, the following words and phrases have the following meanings:
  - (a) "Arbitrator" means the person appointed to act as such to resolve any Dispute;
  - (b) "Arbitration" means a process whereby each of the Parties, with or without legal counsel, agrees to jointly engage and meet with an Arbitrator who will render a binding decision in respect of any Disputes;
  - (c) "Dispute" means the disagreements or controversies between the Parties described within Section 8.1 of this Agreement;
  - (d) "Disclosed Information" means the information disclosed by a Party for the purpose of settlement, negotiation, Mediation or Arbitration;
  - (e) "Mediation" means a process whereby a Representative of each Party, with or without legal counsel, agrees to jointly engage the services and meet with a Mediator to participate in a mediation, conciliation or similar dispute resolution process;
  - (f) "Mediator" means the person appointed to facilitate the resolution of a Dispute between the Parties;
  - (g) "Party" means a party to the agreement to which this Dispute Resolution Procedure is attached, and "Parties" means more than one of them; and
  - (h) "Representative" means an individual who holds a senior position with a Party and who has full authority to settle a Dispute.
  
2. Dispute Process

In the event of any Dispute, the Parties agree that prior to commencing litigation, they shall undertake a process to promote the resolution of a Dispute in the following order:

- (a) first, by negotiation;
- (b) second, by way of Mediation; and
- (c) third, by arbitration, if mutually agreed to in writing at the time of the Dispute, by the Parties.

### 3. Negotiation

A Party shall give written notice (“Dispute Notice”) to the other Party of a Dispute and outline in reasonable detail the relevant information concerning the Dispute. Within 7 days following receipt of the Dispute Notice, the Parties shall each appoint a Representative, who shall meet and attempt to resolve the Dispute through discussion and negotiation. If the Dispute is not resolved within 30 days of receipt of the Dispute Notice, the negotiation shall be deemed to have failed.

### 4. Mediation

If the Representatives cannot resolve the Dispute within such 30 day period, then the Dispute shall be referred to Mediation. Any one of the Parties shall provide the other Party with written notice (“Mediation Notice”) specifying the subject matters remaining in Dispute, and the details of the matters in Dispute that are to be mediated. If the Mediation is not completed within 60 days from the date of receipt of the Dispute Notice, the Dispute shall be deemed to have terminated and failed to be resolved by Mediation.

### 5. Arbitration

If the Mediation fails to resolve the Dispute and if both Parties so agree in writing, at the time of the dispute, the Dispute shall be submitted to binding Arbitration. One of the Parties shall provide the other Party with written notice (“Arbitration Notice”) specifying the subject matters remaining in Dispute and the details of the matters in Dispute that are to be arbitrated. If the other Party agrees to proceed to Arbitration, such Dispute shall proceed to Arbitration. A failure to respond to the Arbitration Notice shall be deemed to constitute a refusal to proceed with Arbitration.

The Arbitrator shall conduct the Arbitration in accordance with the commercial arbitration rules (the “Rules”) established from time to time by the ADR Institute of Canada Inc., unless the Parties agree to modify the same pursuant to any arbitration agreement. The *Arbitration Act* (Northwest Territories) shall apply to all Arbitrations but if there is a conflict between the Rules and the provisions of the Act, the Rules shall prevail.

The Arbitrator shall proceed to hear and render a written decision concerning any Dispute.

The Arbitrator has the right to award solicitor-client costs against the unsuccessful Party and to award interest but does not have the right to award punitive, consequential or other exemplary damages.

The Arbitrator’s decision is final and binding but is subject to appeal or review by any court of tribunal on points of law.

### 6. Participation

The Parties and their Representatives will participate in good faith in the negotiation, Mediation and, if applicable, Arbitration processes and provide such assistance and Disclosed Information



as may be reasonably necessary and notwithstanding that litigation may have commenced as contemplated in this Schedule.

7. Location

The place for Mediation and Arbitration shall be \_\_\_\_\_ (**BLLP NTD: INSERT LOCATION**), unless otherwise agreed to by the parties in writing.

8. Selection of Mediator and Arbitrator

If the Parties are unable to agree upon the appointment of a single Mediator or Arbitrator within 10 days after receipt of the Mediation Notice or Arbitration Notice, either of the Parties may request that a single Mediator or Arbitrator, as the case may be, of suitable training and experience and who in respect of the subject matter of the Dispute has a reasonable practical understanding, be appointed by the executive director or other individual fulfilling that role for the ADR Institute of Canada, Inc. The executive director shall be requested to make this determination within 5 days of receipt of the request.

9. Costs

Subject to the decisions of the Arbitrator pursuant to clause 5 of this Schedule in the case of an Arbitration, the Parties shall bear their respective costs incurred in connection with the negotiation, Mediation and, if applicable, Arbitration except that the Parties shall equally share the fees and expenses of the Mediator and Arbitrator and the cost of the facilities required for Mediation and Arbitration.

10. Disclosed Information

All Disclosed Information shall be treated as confidential and neither its delivery nor disclosure shall represent any waiver of privilege by a Party disclosing such Disclosed Information. Subject only to the rules of discovery, each Party agrees not to disclose the Disclosed Information to any other person or for any other purpose. Such Disclosed Information cannot be used in any subsequent proceedings without the consent of the Party who has made the disclosure. The Parties agree that any Representative, Mediator and, if applicable, Arbitrator shall not be subpoenaed or otherwise compelled as a witness in any proceedings for the purpose of testifying with respect to the nature or substance of any dispute resolution process that may arise in relation to any matter that is a subject of this agreement. Nothing in this dispute resolution procedure shall require a Party to disclose information that is subject to confidentiality provisions with third parties.

11. Litigation and *Limitations Act*

No Party shall commence litigation concerning the Dispute until the negotiation and Mediation processes have concluded. The Parties agree that during the time any Dispute is subject to the negotiation and Mediation processes, the limitation periods set forth in the *Limitation of Actions Act* (Northwest Territories) shall be stayed. The limitation periods shall be reinstated once the Mediation terminates or is deemed terminated so that each of the Parties shall have the respective

rights and remedies that were available to them before the commencement of these processes. Any Party may commence litigation on any date, if necessary, to preserve its legal rights and remedies if the commencement of litigation after that date would otherwise be banned by any applicable limitation period or if the commencement of litigation is otherwise necessary to prevent irreparable harm to that Party.

12. Confidentiality

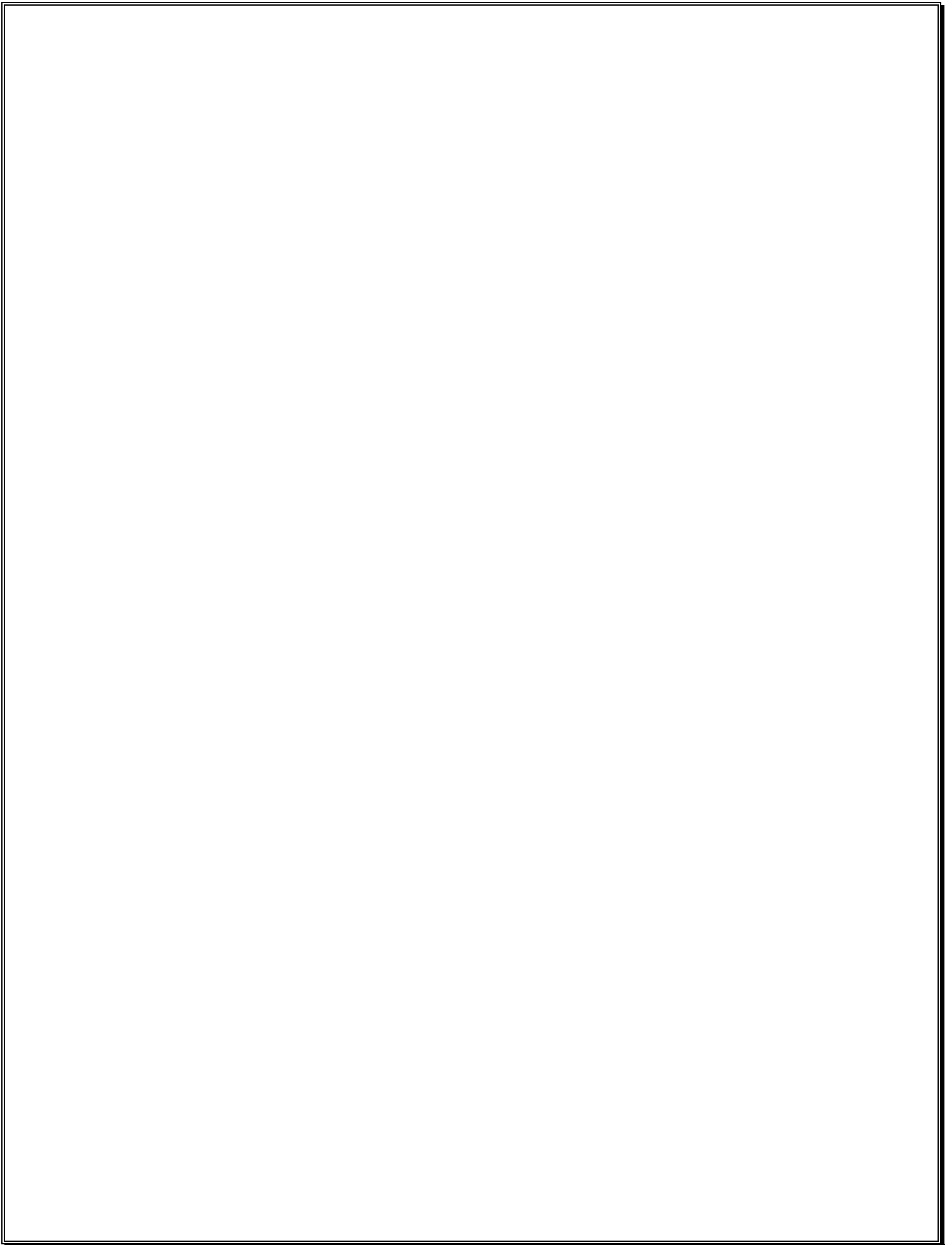
The Parties agree that there is a real risk that substantial damage to a Party's commercial interests may result if Disclosed Information or confidential information is obtained by third parties because a Dispute becomes the subject matter of litigation. The Parties agree not to contest or oppose, directly or indirectly, an application by a Party to the court, that the court's file relating to such litigation, including this agreement and supporting financial information, be sealed upon commencement of the litigation (subject always to the parties' respective obligations pursuant to any statute).

**SCHEDULE "D"**

**[APPEND RFP AND ADDENDUM]**

**SCHEDULE "E"**

**[APPEND SOLID WASTE SERVICES COLLECTION PROPOSAL SELECTED]**



**Name of Community**

**NORTHWEST TERRITORIES**

**CONTRACT FOR POTABLE WATER DELIVERY**

**Name of Contractor**

**CONTRACT NUMBER:**

**Date**

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**Contract No.**  
**Name of Contractor**

**POTABLE WATER DELIVERY CONTRACT**

This contract made the   1   day of   July  , 2008:

**BETWEEN:**

**Community**

**OF THE FIRST PART**

**AND:**

Contractor Name

**OF THE SECOND PART**

**WHEREAS:**

The contractor wishes to provide trucked potable water delivery service for the of approximately twelve million five hundreds thousand (12,500,000) gallons annually (“the Service”) and the wishes to retain the Contractor to provide the Service;

NOW THEREFORE, in consideration of covenants and agreements hereinafter reserved and contained, the parties agree as follows:

**ARTICLES**

**1 TECHNICAL**

**1.1 SCOPE OF SERVICE**

Except as expressly stated herein, the Contractor shall provide a trucked potable water delivery service within the Community, in accordance with the specifications set out in the Schedules attached to and forming part of this Contract and the terms and conditions of this Agreement (“the Service”). Without limiting the generality of the foregoing, the Contractor shall, at its own risk and expense:

- 1.1.1 organize and perform the Service in accordance with this Contract, including Schedule A ‘Scope of Trucked Potable Water Delivery’ attached hereto;

- 1.1.2 unless otherwise expressly stated herein, furnish at its own expense all appropriate supervision, labor, repair, maintenance, equipment and materials necessary to provide the Service;
- 1.1.3 pay for all other charges incurred under this Contract;
- 1.1.4 complete all record keeping and reports required by the Community; and
- 1.1.5 obtain all licenses and permits required for the provision of the Service.

1.2 TERM OF CONTRACT

1.2.1 The Service shall commence on July 1, 2008 and shall continue until June 30, 2013.

1.2.2 At the end of the contract period, if the Contractor performs the covenants contained herein, provides acceptable service and maintains pricing that is satisfactory to the Community, and unless the Community provides written notice to the contrary to the Contractor at least ninety (90) days before the termination of this contract, the contract will be renewed for a further three (3) year term commencing on July 1st, 2013 and ending June 30, 2016.

1.3 COMMUNITY'S REPRESENTATIVE

1.3.1 For the purposes hereof, the Community's representative will be the Director of Public Works and Engineering.

1.4 CONTRACTOR'S REPRESENTATIVE

1.4.1 For the purposes hereof, the Contractor's representative will be \_\_\_\_\_.

**2 FINANCIAL**

2.1 PAYMENT

2.1.1 As full consideration for performance hereof, the Community will pay the Contractor according to Schedule B "Financial".

### **3 GENERAL TERMS AND CONDITIONS**

#### **3.1 COMMUNITY'S OPERATIONS**

- 3.1.1 The Contractor has observed the operations of the Community and is aware of the general conditions.
- 3.1.2 The Contractor shall not impede or interfere with the Community's operations in performing the Service.

#### **3.2 INDEPENDENT CONTRACTOR**

- 3.2.1 The Contractor is an independent Contractor, and all persons employed by the Contractor in connection herewith shall be employees of the Contractor, and not employees of the Community in any respect.
- 3.2.2 The Contractor is not and shall not hold itself out to be an agent of the Community.

#### **3.3 CONTROL OF THE SERVICE**

- 3.3.1 Although the provision of the Service is the sole responsibility of the Contractor, the Community reserves the right to inspect, oversee, and make inquiries into the provision of the Service. The Community may issue directives to the Contractor to remedy any conditions which the Community considers to be detrimental to the Service or a breach of this agreement. The Contractor will be required to carry out the terms of such directives as soon as possible and, in any event, not more than seven (7) days after receipt of a notice in writing from the Community.
- 3.3.2 The Contractor shall effectively direct and supervise the Service to ensure compliance with this Contract.
- 3.3.3 The Community has final approval on all matters relating to the provision of the Service, including, but not limited to, frequency of deliveries and the terms and conditions upon which the Service is to be operated.
- 3.3.4 Any person employed by the Contractor who is deemed by the Community's Representative to be incompetent shall be removed from the job, at the request of the Community's representative, acting reasonably.
- 3.3.5 The Contractor shall at all times co-operate with the Community's representative, the Chief of the Fire Department, or their designates, the Health Officer and any other officer, agent or employee of the Community in reference to compliance with laws and regulations.

#### **3.4 CONTRACT PERFORMANCE**

- 3.4.1 Payments to the Contractor shall not be a waiver of any breach of this Contract by the Contractor or relieve the Contractor from the performance of any obligations under this Contract.

3.5 CONFIDENTIALITY

3.5.1 The Contractor acknowledges that in performing the Services, the Contractor may be exposed to certain confidential information. The Contractor agrees it will not make use of any of that information without the express permission of the Community. This clause shall survive beyond the term of this contract and any renewals thereof.

3.6 RECORD KEEPING

3.6.1 The Contractor, to the satisfaction of and under the direction of the Community's representative, shall obtain, prepare, and maintain books, receipts, and records of all water received and of all deliveries for which payment is claimed from the Community or which is deemed to be a private sale. The Contractor shall permit the Community's representative and the Community's Auditors to inspect and take copies of any entry in such books and records at all reasonable times during or after the contract period.

3.6.2 The Community's Finance Department will forward "meter books" to the Contractor near the end of each and every month. The Contractor shall complete the meter books, by filling in the total volume of water delivered to each user during the month, and shall return the meter books to the Community's Finance Department by the end of the 5th working day of the following month.

3.6.3 The Contractor shall submit a written report at the end of each calendar year outlining the meter reading for each truck fill station, and the total overall volume of water received and delivered under this Contract, or delivered under any private sales. The report shall be submitted to the Community's Representative by the 15th day of January of each year.

3.6.4 The Contractor and the Community each agree to explore options of electronically transferring water delivery data from the Contractor's computer database to the Community's computer database. This is intended to replace the requirement outlined in 3.6.2.

3.7 COMPLIANCE WITH LAWS AND REGULATIONS

3.7.1 The Contractor shall observe and comply with all applicable federal and territorial statutes and regulations and all municipal by-laws in providing the Service.

3.7.2 The Contractor shall obtain all licenses and permits required for the provision of the Service. Without limiting the generality of the foregoing, the Contractor shall obtain and maintain a valid Community business license throughout the term of the Contract and any renewal.

3.7.3 The Community will not be responsible for the Contractor's failure to perform the Service in accordance with the Contract documents, nor for its failure to comply with applicable laws and regulations.

3.8 WATER QUALITY

3.8.1 The Contractor shall ensure that its equipment is properly maintained so as to remain free of contamination at all times and be in a clean and sanitary condition for the delivery of potable water that meets all applicable standards.

3.8.2 The Contractor shall have access to all relevant Community water test results for the purpose of confirming that the water supplied to the Contractor by the Community meets all applicable standards.

3.9 STANDBY TRUCK

3.9.1 The Contractor shall at all times maintain, in fully operable condition and repair, a standby potable water delivery truck suitable and capable of deliveries in accordance with the terms and conditions herein set out.

3.10 INDEMNIFICATION

3.10.1 The Contractor agrees to defend, indemnify and hold harmless the Community, its Council, officers, employees and agents, against and from any and all loss, claims, actions or suits, including costs and legal fees (on a solicitor and his own client basis), for or on account of injury, bodily or otherwise, to or death of persons, damage to or destruction of property belonging to the Community, or others, resulting from, arising out of, or in any way connected with the Contractor's operations and performance of work hereunder, excepting only such injury or harm as may be caused solely by the fault of negligence of the Community, its Council, officers, employees or agents.

3.11 APPLICABLE LAW

3.11.1 This Contract shall be governed by the laws of the Northwest Territories.

3.12 INSURANCE

3.12.1 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 with insurance companies who are licenced to provide insurance in the Northwest Territories. The amount and type of insurance specified herein in no way reduces or limits the liability or responsibility of the Contractor hereunder.

3.12.2 Within 30 days after acceptance of the Contractors tender and within 14 days of the start of the contract, the Contractor shall, unless otherwise directed in writing by 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 Contractor will provide to the Community on the annual anniversary date of the contract an insurer's certificate of insurance providing evidence of continued insurance coverage.

3.12.3 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 Contractor's own discretion and expense.

3.12.4 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.

**3.12.5 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 must 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 as an additional insured but only with respect to the operations of the named insured.

This policy shall be endorsed to provide 30 days written notice to the Community for cancellation, termination or material change to the insurance coverage.

**3.12.6 Automobile liability insurance** with respect to Contractor's owned and leased 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.

**3.12.7 All perils physical damage coverage** on the vehicles providing the water delivery services with a deductible not more than \$5,000.

The policy will also be endorsed by the insurer to provide 30 days advance written notice to the Community for any cancellation, termination or material change in the insurance coverage provided to the contractor.

**3.12.8 PROPERTY INSURANCE:** provide All Risks property insurance including replacement cost on the parking garage owned, leased, rented or used by the contractor.

The policy will also be endorsed by the insurer to provide 30 days advance written notice to the Community for any cancellation, termination or material change in the insurance coverage provided to the contractor

3.13 BONDING

3.13.1 The Contractor shall not be required to provide a performance bond.

3.14 WORKERS' COMPENSATION

3.14.1 Prior to commencing Service, the Contractor shall comply with all applicable Workers' Compensation and Employers Liability Acts in the Northwest Territories and, upon request, shall furnish proof thereof satisfactory to the Community.

3.15 FORCE MAJEURE

3.15.1 If the Contractor or the Community is prevented from or delayed in its performance under this Contract as an unavoidable result of fire, delays in transportation, an act of God or of the Queen's Enemies, an order of a governmental official body, or other cause beyond its reasonable control, the time for performance of that party shall be extended by the length of time it is so prevented or delayed. If any event of force majeure involving the Contractor or its subcontractors disrupts, or threatens to disrupt, the Community's operations, the Community may cancel this Contract by written notice terminating without liability all obligations imposed by this Contract. For greater certainty, a labour dispute at the Community or between the Contractor and its employees shall not be an excuse for non-performance by either party.

3.16 NO ASSIGNMENT, DELEGATION OR SUB-CONTRACT

3.16.1 The Contractor shall not assign this Contract or its interest therein nor delegate or sub-contract any of the Services to be performed by it hereunder without the express written consent of the Community, and any such attempted assignment, delegation or sub-contract shall entitle the Community to terminate the Contract. If assignment, delegation or sub-contract is done with such consent it shall not relieve the Contractor from its responsibility for the performance of any of its obligations hereunder.

3.17 NONWAIVER

3.17.1 The failure of the Community to insist upon or enforce strict performance by the Contractor of any of the terms of this Contract or to exercise any rights herein shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

3.18 SUSPENSION OF SERVICE

3.18.1 The Community may, at any time, suspend any part of the Service, including all remaining Service, for any reason whatsoever by giving notice to the Contractor specifying the part of Service to be suspended and the effective date of suspension. The Contractor shall continue to perform any unsuspended part of the Service. Suspension shall not limit or waive the Contractor's responsibility pursuant to Article 1. The Community shall not be held liable for any damages or loss of anticipated profits on

account of suspension of any part of the Service. Without limiting the generality of the foregoing:

3.19 TERMINATION FOR CONVENIENCE

3.19.1 Either party may terminate this Contract at any time without cause by giving four (4) months' notice to the other party. Such termination shall not affect the rights of the parties which have accrued prior to the date of termination and shall not relieve any party from obligations arising during the term of this agreement. In the event of termination, the Contractor and Community shall each be released and discharged from any claims by one against the other in connection with the termination of this Contract or the Service herein described. The Community shall not be held liable for damages or loss of anticipated profits on account of such termination.

3.20 RENEGOTIATION

3.20.1 Either party may request a revision of rates under this agreement by providing written notification to the other party not later than October 15 of any given year. Unless agreed otherwise, any rate adjustments shall be effective as of the first day of the following January.

3.21 CANCELLATION FOR CAUSE

3.21.1 Community retains the right to terminate this Contract without notice or penalty if Contractor does not provide acceptable service or does not maintain competitive prices.

3.22 CHANGES

3.22.1 Each change in the Service shall be authorized in advance by written change order issued by the Community.

3.23 PURCHASE RIGHTS

3.23.1 Right of First Offer

If the Contractor intends to sell all or substantially all of the assets used in the performance of this contract and to assign the remaining term of this contract to the purchaser of the assets, prior to offering the assets for sale to such third party, the Contractor shall notify the Community in writing of its intent and shall specify in the notice in reasonable detail the assets the Contractor proposes to sell and terms of sale that would be acceptable to the Contractor. The Community shall have 10 business days after receipt of the Contractor's notice in which to elect to purchase all, but not less than all, of the assets (including the remaining term of this contract) specified in the notice on the terms set forth in the notice or upon such other terms as may be agreed upon between the Community and the Contractor. If the Community does not elect to purchase the assets, the Contractor may offer the assets for sale to third parties, subject to the Community's right of first refusal set forth below. If the assets are sold to a third party, this Right of First Offer shall apply to any assignee of this contract and to any assets used by the assignee in performing the contract.



### 3.23.2 Right of First Refusal

If at any time during the term of this contract, the Contractor receives a *bona fide* offer for the purchase of the remaining term of this contract together with all or substantially all of the assets the Contractor uses to perform this contract, which is acceptable to the Contractor in all respects (“the Acceptable Offer”), the Contractor shall give the Community notice of the Acceptable Offer, together with a true and complete copy of the Acceptable Offer. An Acceptable Offer shall provide that the purchase price thereunder shall be payable by cash or a combination of cash and vendor financing. An agreement that is conditional upon the Community not exercising this Right of First Refusal shall be deemed to be an Acceptable Offer. The Contractor agrees that the Community shall have the right to purchase the assets set forth in the Acceptable Offer for the price and on the terms and conditions contained in the Acceptable Offer. The Community may exercise this right at any time within 10 business days following receipt of the written notice of the Acceptable Offer. If the Community elects to exercise the right, the Community’s notice to the Contractor shall constitute a binding agreement of purchase and sale. If the Community does not so elect, the Contractor shall be free to sell the Premises on the terms and conditions set forth in the Acceptable Offer, but this Right of First Refusal shall thereafter remain in full force and effect during the balance of the term of this agreement. If the Acceptable Offer is not completed, this Right of First Refusal shall remain in force for any subsequent Acceptable Offer. The Contractor agrees not to assign this contract unless the Contractor has complied with this clause first. The Contractor shall be entitled to transfer this contract and any part of the assets used in performing this contract to a corporation controlled by the Contractor or controlled by the same shareholders who control the Contractor without triggering this Right of First Refusal.

### 3.24 DEFAULT

If:

- 3.24.1 The Contractor fails to comply with any of the terms or conditions of this contract;
- 3.24.2 a proceeding in bankruptcy, receivership or insolvency is instituted by or against the Contractor or his property; or

3.24.3 the Contractor makes an assignment for the benefit of creditors;

the Community may sue the Contractor for damages or terminate the Contract without notice or penalty.

### 3.25 COMPLETE AGREEMENT

3.25.1 This Contract and attachments constitute the complete Contract between the parties. It is subject to change only by an instrument executed by the Community.

3.25.2 In the event of a conflict between this Contract and the Contractor’s proposal submission or the Community’s original Request for Proposals, this Contract shall apply.

3.26 OTHER CONDITIONS

- 3.26.1 The Contract shall operate for the benefit of and be binding upon the respective executors, administrators, successors and assigns of the Community and the Contractor.
- 3.26.2 Headings, titles and marginal notes which appear in the Contract documents are inserted for convenience only and shall not be used to explain or clarify the clauses or paragraphs below or opposite which they appear.
- 3.26.3 Absolutely no deviations from the Terms and Conditions as contained in this agreement will be permitted.
- 3.26.4 The words “Contractor” and “he” or any derivative thereof shall have a plural, feminine or neuter meaning where the context so requires.

3.27 NOTICES

- 3.27.1 Where notice is required or permitted to be served by one party on the other, the notice shall be given in writing and may be delivered personally, delivered or sent by mail or facsimile transmission at the following addresses:

Notices to:                      **Community of**  
   P.O. Box  
   Attention:  
   Fax:

Notices to:                      Contractor  
   Att:

Notwithstanding the above, each party shall use the most expeditious method of giving the written notice or communication.

A written notice or communication sent by mail shall be deemed to have been received ten (10) days from the date of posting. Whenever a notice or communication is sent by facsimile transmission, acknowledgement from the receiving party must be given to the other party that the notice or communication has in fact been received, for it to be effective; if no such acknowledgment is given, it shall be deemed to have been received ten (10) days from the date of posting of the original document.

3.28 RESOLUTION OF DISPUTES

- 3.28.1 Except as otherwise provided herein, any dispute arising hereunder which is not disposed of by agreement, may be referred to a single arbitrator appointed by agreement of the parties or, if the parties are unable to agree upon an arbitrator, by a sole arbitrator appointed under the Arbitration Act. The decision of the arbitrator shall be final and binding upon the parties. Each party shall continue to perform their obligations under this agreement while the decision of the arbitrator is pending.

#### 4 EXECUTION

IN WITNESS WHEREOF, the parties hereto have entered into this Contract to be effective the date it is executed by the Community.

CONTRACTOR

THE COMMUNITY OF

By \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date Executed

\_\_\_\_\_  
Date Executed

(SEAL)

By \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date Executed

(SEAL)

**COMMUNITY OF**  
**Contract No.**  
**Contractor**

**Schedule A**

**SCOPE OF TRUCKED POTABLE WATER DELIVERY**

A1 EQUIPMENT SPECIFICATIONS

All trucks and accessories shall be operating at 206 meters (676 feet) above sea level with ambient air temperatures ranging from -50 degrees Celsius to +32 degrees Celsius. All trucks and accessories must be able to operate under these conditions.

A2 DELIVERIES

A2.1 Except as otherwise notified by the Community's representative, the Contractor shall make two regular scheduled deliveries per week to each identified user, within the following areas of the Community of Yellowknife, on the days specified:

AREA	DAYS
Location	Monday & Thursday
Location	Tuesday & Friday
Location	Wednesday & Saturday

A2.2 For convenience, the Contractor may alter summer deliveries to \_\_\_\_\_ and \_\_\_\_\_ as follows:

AREA	DAYS
Location	Monday and Thursday
Location	Tuesday & Friday

A2.3 The quantity of potable water to be delivered at a single delivery to any household or business establishment shall be the quantity reasonable specified by the householder or manager of the establishment, as the case may be.

A2.4 No delivery shall be made to a household or business except as authorized by the Community. The Contractor shall report any situations obstructing the performance of his duties as per the Trucked Water Service Standards outlined in

Schedule C Specifications of **Water and Sewer Services By-law No. \_\_\_\_\_** to the Community's representative.

A2.5 The Contractor is not required to make deliveries to any residence or business, the property of which is in an unsanitary condition.

A2.7 In addition to the deliveries herein referenced, the Contractor, without delay and at all times during the contract period, as required and directed by the Chief of the Fire Department or his designate, shall provide all such personnel, equipment and water supplies as are then available to the Contractor. The Contractor shall be paid for this service at a rate of \$90.00 (ninety dollars) per hour per water truck in attendance. Furthermore, if water needs to be obtained from a fill station, the Contractor shall maintain a record of the number of gallons used. If water is obtained from a fire hydrant, no record is necessary.

A3 PRIVATE SALE OF BULK POTABLE WATER

A3.1 The Contractor shall be provided with potable water for private bulk sales (including call out services to current users) to the public at the rate identified in the **Water and Sewer Services Bylaw \_\_\_\_\_** and any amendments.

A3.2 **If a current user requests the delivery of additional water during regular office hours, they will be charged a callout fee of \$65.00 (sixty-five dollars) for a 600 gallon delivery. If such a request is made after hours, they will be charged a call-out fee of \$90.00 (ninety dollars) for a 600 gallon deliver. Additional gallons requested will be charged out at \$0.05 (five cents) per gallon. Call-out fees are the responsibility of the requester; they are treated as a private sale and not added to their Community account.**

A3.3 Notwithstanding A3.2, the Contractor will not sell potable water to any residence or business within the boundaries of the Community without obtaining the prior approval of the Community's representative.

A3.4 This section will not prevent the Community from entering into agreements for the bulk sale of water for private use with other parties.

**COMMUNITY OF**

**Contract No.  
Contractor**

**Schedule B**

**FINANCIAL**

B1 CONSIDERATION IS BASED ON

- B1.1 Prices are in Canadian Currency.
- B1.2 Water volumes are in imperial gallons.
- B1.3 Prices are exclusive of the Goods and Services Tax.
- B1.4 Terms of payment are net 30 days.

B2 PAYMENT

- B2.1 Reconciliation for volumes in excess of or less than **twelve million and five hundred thousand (12,500,000) gallons** and for private sales shall be calculated and form a part of the December invoice in each year of this agreement. Calculations shall include an adjustment for the interim allowance of **one million two hundred and fifty thousand (1,250,000) gallons.**

- B2.2 Monthly Invoicing – The Contractor will submit a monthly invoice for water delivery based on:

Delivery rate **of \$0.042 per gallon;**

And;

Fuel Surcharge – The contractor may add a Fuel Surcharge delivering water to compensate for fluctuations in fuel prices that will arise during the term of the Contract. The Fuel Surcharge may be added to each invoice as a “below the line” surcharge item on the water delivery services. The fuel surcharge will be calculated in the following manner:

**Fuel prices are referenced to the cost per litre of diesel (automobile) fuel in Yellowknife based on the Weekly Pump Price Survey posted by MJ Ervin and Associates Inc.([http://www.mjervin.com?WPPS\\_Public.htm](http://www.mjervin.com?WPPS_Public.htm))**

The Contractor’s submission was based on the rate (week of June 1, 2008) of **\$1.499/litre.**

Fuel surcharge rates will be calculated at the start of each moth (12 times per year) based on the price of fuel from the last day of the previous month.

For the purpose of calculating the fuel cost adjustment, it will be assumed that nine and sixteen one hundredths percent (9.16%) of the **delivery rate (\$0.042 per gallon)** or \$0.00384744 per gallon (**which is a portion of that will be subtracted from the haul rate of \$0.042 per gallon**) is considered to be allocated to fuel consumption.

The Fuel Surcharge may only be applied to water delivery services

For greater certainty, the Fuel Surcharge is in addition to any price increase calculated under paragraph below, but there will be no Consumer Price Index adjustment to portion of the delivery rates allocated to fuel costs.

Example 1:

$$\$0.00384744/\text{gal (original)} \times \frac{\$1.25 \text{ (Fuel Price Last day Previous Month)}}{\$1.20 \text{ (Original Fuel Price)}}$$

$$= \$0.0040775/\text{gal (Revised Rate)}$$

CPI adjustment – The base price for delivery shall be adjusted effective January 1 of each year for the year, beginning January 1, 2009, and shall be based on the percentage increase or decrease in the most broadly based Consumer Price Index used by Statistics Canada for Yellowknife over the same index as of December 31, 2007.

The Percentage Change in the CPI Index shall be expressed as a decimal, rounded to 5 decimal points, calculated as follows:

$$\frac{(\text{CPI Index as of December 31 of the year just ended} \\ \text{MINUS Same CPI Index as of December 31, 2007})}{(\text{Same CPI Index as of December 31, 2007})} = \text{Percentage Change} \\ \text{in the CPI Index}$$

The applicable rate increase or decrease over the original rate of \$0.03815256 per gallon (exclusive of any fuel adjustment).

Any price adjustments shall be deferred until the necessary price information or index becomes available, but shall be paid within 30 days of receipt of an invoice for any balance owed or overpaid once the applicable rates are established.



# Invitation to Tender

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**(Community)**



## INVITATION TO TENDER / ADVERTISEMENT

Sealed Tenders  
for:

\_\_\_\_\_ (description of work or services)  
(the "Goods" – or "**Work**" or "**Services**" depending on which applies)  
Tender Number: \_\_\_\_\_

Will be received  
by:

\_\_\_\_\_  
(the "COMMUNITY ")

at:

**[address and contact person]**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
(867) \_\_\_\_\_

Time and date for Tender Closing is:

**date]** 2:00:00 p.m. MST on \_\_\_\_\_, 20\_\_ **[COMMUNITY to insert**  
(the "Tender Closing")

1. The Goods to be supplied are as follows **[used by Community if the items for tender is Goods]:**

\_\_\_\_\_

The Goods shall meet, or exceed, the specifications described as follows:

(hereinafter the "Specifications").

2. **[Optional: Community to insert this clause when dealing with "Work" or "Services"]**

**The work/services to be undertaken generally involve, but are not necessarily limited to:**

\_\_\_\_\_ (the "Work"/"Services") as set out on the list of specifications described as follows:

**[Community to insert particulars of specifications, if applicable, or a more detailed description of "Work" or "Services" requested]**

(hereinafter the "Specifications").

3. **[Optional]**

**The Community's consultant for the Project is [Community to insert contact information of consultant if applicable].**

4. The Successful Bidder shall deliver the Goods to the Community by:

**[Community to insert date]**

5. **[Optional: Community to insert this clause when dealing with "Work" or "Services"]**

**The Successful Bidder shall achieve substantial performance of the Work/completion of the Services by:**

**[COMMUNITY to insert date if applicable].**

6. The Specifications for the **Goods/Services/Work** can be obtained from **[COMMUNITY to insert contact information]** at a cost of \$ **[COMMUNITY to insert cost if applicable]**. Deposits paid to obtain the Specifications will be refunded to unsuccessful bidder(s) at the discretion of the COMMUNITY.

7. All written inquiries regarding the technical aspects of the Specifications for the **Goods/Services/Work** shall be faxed to **[COMMUNITY to insert contact information]**, however the Bidder(s) acknowledge and agree that the COMMUNITY does not have an obligation to provide a response to any written inquiry and that it is in the sole and unfettered discretion of the COMMUNITY to provide any written response to a written inquiry. Telephone inquiries and email inquiries will not be replied to.

8. Submission of a tender by a Bidder gives the COMMUNITY the right to require the Bidder to execute the contract for the **Goods/Services/Work** as set out within the tender documents. Tenders may not be withdrawn after the Tender Closing and will be irrevocable and open for acceptance by the COMMUNITY for a period of sixty (60) days **[or COMMUNITY to insert other time period]** following the end of the day of the Tender Closing. The Successful Bidder will be notified in writing of the award of the Tender when the COMMUNITY delivers a letter of intent to the Successful Bidder.

# **INSTRUCTIONS TO BIDDERS**

**(name of Community)\_**

# INSTRUCTIONS TO BIDDERS

## 1 BACKGROUND

- 1.1 The \_\_\_\_\_ (the "Community") is seeking tenders for the delivery of a Wheel Loader (the "Goods") **[Optional: Community to insert description of the Work/Services to be performed]** as set out on the list of Specifications described as follows:

**[Community to insert particulars of Specifications for Wheel Loader, or attach as Schedule "A"]**.

- 1.2 The Community will receive sealed tenders until 2:00:00 p.m. MST on **[Community to insert date]** ("Tender Closing"). Faxed tenders will not be accepted and will be returned to the Bidder.

## 2 SUBMISSION OF TENDERS

- 2.1 Each Tender shall be addressed to the Community in a sealed envelope clearly marked with the Bidder's name, address and tender number. The sealed envelope containing the Tender shall be delivered before the Tender Closing to the Community in accordance with the Invitation to Tender and the Instructions to Bidders at:

\_\_\_\_\_ **(Community to insert contact information)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 2.2 In the event of a dispute or issue about whether or not a tender complies with the Instructions to Bidders, the Community reserves the right to retain and open a copy of the tender in question in order to seek and obtain a legal opinion in relation thereto.

## 3 TENDER FORM

- 3.1 Each Bidder shall submit a complete tender on the Tender Form which forms part of the Tender Documents with the blank spaces filled in. The Tender Sum must be written in words as well as figures, and must be for a sum in Canadian Dollars including all tariffs, freight, duties and taxes other than the Goods and Services Tax which must be shown as a separate amount unless otherwise specifically stipulated (hereinafter referred to as the "Tender Sum"). In the event of a discrepancy between an amount written in words and an amount written in figures, the amount written in words shall be deemed the intended amount. Tenders shall be written in English.
- 3.2 Notwithstanding the foregoing, the Community shall be entitled to accept a Tender in such form as the Community in its sole and unfettered discretion deems acceptable irrespective of irregularities whether of a trivial **[optional] or substantial**

nature, or whether the Tender is noncompliant in a trivial **[optional] or substantial** manner.

- 3.3 The Community shall not be obligated to accept Tenders that are unsigned, incomplete, conditional, illegible, unbalanced, obscure, contain irregularities of any kind, or mathematical or calculation errors of any kind. On Unit Price Tenders, if there is a discrepancy found between the unit price and the extended amount, the unit price shall be deemed to represent the intention of the Bidder. Discrepancies between words and figures will be resolved in favour of the words. Discrepancies between the indicated sum of any figures and the correct sum thereof will be resolved in favour of the correct sum. Any discrepancies between the Tender Form and a post Tender Closing submission required by the Tender Documents will be resolved in favour of the post Tender Closing submission.
- 3.4 Tenders shall not be withdrawn, modified or clarified after being delivered in accordance with the Tender Documents unless such withdrawal, modification or clarification is made in writing and actually received by **[insert name of Community's representative]** of the Community prior to the Tender Closing. Any withdrawal, modification or clarification of the Tender must be followed by a letter of confirmation signed and sealed in the same manner as the Tender and delivered to the address for the Community in the Invitation to Tender within 48 hours of the Notice of the Withdrawal, Modification or Clarification.

#### 4 THE ACCESS TO INFORMATION AND PROTECTION OF PRIVACY ACT

- 4.1 All documents submitted to the Community will be subject to the protection and disclosure provisions of Access to Information and Protection of Privacy Act ("AOIP"). AOIP allows persons a right of access to records in the Community's custody or control. It also prohibits the Community from disclosing the Bidder's personal or business information where disclosure would be harmful to the Bidder's business interests or would be an unreasonable invasion of personal privacy as defined in section 24 of AOIP, and elsewhere in AOIP. Bidders are encouraged to identify what portions of their submissions are confidential and what harm could reasonably be expected from its disclosure. However, the Community cannot assure Bidders that any portion of the Bidder's documents can be kept confidential under AOIP.

## 5 TENDER DOCUMENTS

- 5.1 The documents for the Tender are:
- Invitation to Tender
  - Instructions to Bidders
  - **[insert particulars of Specifications if applicable ]**
  - Addenda No. \_\_\_\_\_
  - Contract attached as Schedule “B” hereto.

(hereinafter collectively referred to as the “Tender Documents”)

By submitting its Tender, the Bidder acknowledges and agrees that it has received and reviewed the Tender Documents.

## 6 VARIATION IN TENDER DOCUMENTS AND NO IMPLIED OBLIGATIONS

- 6.1 The Bidder shall carefully examine the Tender Documents. Any errors, omissions, discrepancies or clauses requiring clarification shall be reported in writing to the Community at least 10 calendar days prior to the Tender Closing. Where necessary the Community shall respond to reported errors, omissions, discrepancies or clauses requiring clarification by way of Addenda.
- 6.2 Should a Bidder fail to report any such errors, omissions, discrepancies or clauses requiring clarification at least 10 calendar days prior to the Tender Closing, the Community shall be the sole judge as to the intent of the Tender Documents.
- 6.3 No implied obligation of any kind by or on behalf of the Community shall arise from anything in the Tender Documents, and the express covenants and agreements contained in the Tender Documents and made by the Community, are and shall be the only covenants and agreements that apply.
- 6.4 Without limiting the generality of Article 6.3, the Tender Documents supercede all communications, negotiations, agreements, representations and warranties either written or oral relating to the subject matter of the Tender made prior to the Tender Closing, and no changes shall be made to the Tender Documents except by written Addenda.

## 7 ADDENDA

- 7.1 Any changes to the Tender shall be in writing in the form of Addenda. Any Addenda issued to the Tender shall form part of the Tender Documents, whether or not the receipt of same has been acknowledged by a Bidder, and the cost for doing the work therein shall be included in the Tender Sum. Verbal representations shall not be binding on the Community nor form part of the Tender Documents. Technical inquiries into the meaning or intent of the Tender Documents must be submitted in writing to the person identified in section 2.1 of the Instructions to Bidders.

## 8 TENDER

- 8.1 Bidders submitting Tenders shall be actively engaged in the line of work required by the Tender Documents and shall be able to refer to work of a similar nature

performed by them. They shall be fully conversant with the general technical phraseology in the English language of the lines of work covered by the Tender Documents.

- 8.2 Each Bidder shall review the Tender Documents provided by the Community and confirm that it is in possession of a full set of Tender Documents when preparing its Tender.
- 8.3 Tenders shall be properly executed in full compliance with the following requirements:
- 8.3.1 The signatures of persons executing the Tender must be in their respective handwriting; and
  - 8.3.2 If the Tender is made by a limited company, the full name of the company shall be accurately printed immediately above the signatures of its duly authorized officers and the corporate seal shall be affixed;
  - 8.3.3 If the Tender is made by a partnership, the firm name or business name shall be accurately printed above the signature of the firm and the Tender shall be signed by a partner or partners who have authority to sign for the partnership;
  - 8.3.4 If the Tender is made by an individual carrying on business under the name other than its own, its business name together with its name shall be printed immediately above its signature or
  - 8.3.5 If the Tender is made by a sole proprietor who carries on business in its own name, the proprietor shall print its name immediately below its signature.
- 8.4 Tenders received from agents representing principals must be accompanied by a Power of Attorney signed by the said principals showing that the agents are duly authorized to sign and submit the Tender and have full power to execute the Contract on behalf of their principals. The execution of the Contract will bind the principals and have the same effect as if it were duly signed by the principals.

## 9 TENDER DEPOSIT

The Bidder is required to submit with its Tender, **[Optional: a Consent of Surety]** and a Bid Bond in a form acceptable to the Community, or in lieu of a Bid Bond, a Bidder may submit, **[Optional: along with a Consent of Surety]**, a certified cheque or an irrevocable letter of credit in favour of the Community equal to 10% of the Tender Sum as a guarantee that, if awarded the contract for the **Goods/Services/Work**, the Bidder will execute the Contract attached as Schedule "B" hereto **[Optional: and submit the Performance Bond and the Labour and Material Payment Bond referred to in Article 10 within the specified time frames]**.

- 9.1 The Bid Bonds, certified cheques or irrevocable letters of credit of the unsuccessful Bidders shall be returned as soon as possible after the Contract has been duly executed by the Successful Bidder.

- 9.2 The Community will not pay any interest on money furnished as security.
- 9.3 The Bid Bond [**Optional: and Consent of Surety**] shall be issued by a Surety Company licensed in the Northwest Territories and satisfactory to the Community.

## **10 PERFORMANCE AND LABOUR AND MATERIAL PAYMENT BONDS**

**[Optional: Article 10 if the Community wants tender for provisions of provision of work as opposed to purchasing items such as equipment]**

- 10.1 The Successful Bidder shall be required to furnish at its own expense a Performance Bond and Labour and Materials Payment Bond. For the purposes of this Article, both of these bonds shall be referred to as the "Bonds".
- 10.2 The Performance Bond shall guarantee the faithful performance of the Contract, and in default thereof, shall protect the Community against any losses or damage arising by reason of failure of the Successful Bidder to faithfully perform the Contract.
- 10.3 The Bonds are to be issued by a Surety Company licensed in the Northwest Territories and satisfactory to the Community in the amount of 50% of the Contract Price [insert 100% if so desired].
- 10.4 The Performance Bond shall remain in force as a Maintenance Bond for the Warranty Period as defined in the Contract.
- 10.5 The Bonds shall be in the form set out in the Tender Documents or in such other form as may be acceptable to the Community.
- 10.6 The Community may consider alternate forms of security in lieu of the Bonds. The Bidder shall make known any alternative form of security it wishes the Community to consider and obtain the Community's approval prior to submitting a Tender.
- 10.7 The Successful Bidder shall provide all required Bonds to the Community no later than 10 working days after receipt of the Letter of Intent from the Community provided in accordance with Article 16.
- 10.8 The Successful Bidder shall supply all required Bonds before any Work is undertaken by the Successful Bidder.
- 10.9 No payment shall be made by the Community to the Successful Bidder for any of the Work performed by the Successful Bidder until the required Bonds have been provided.



## 11 INSURANCE

**[Optional: Article 11 may not apply to tender for purchase of items such as equipment but would be applicable for tenders for the performance of work or provision of services]**

- 11.1 The Tender shall be accompanied by a Certificate of Insurance, certifying that the insurance as required by the Contract, is in place or, if the required insurance is not in place, by a Letter of Insurability or Undertaking of Insurance in standard form from the Bidder's Insurance Broker certifying that the required insurance will be issued to the Bidder if the Bidder is the Successful Bidder.**
- 11.2 The Successful Bidder shall be required to secure and maintain at its own expense the insurance provided for in the Contract.**
- 11.3 The Successful Bidder shall provide all required insurance to the Community no later than 10 working days after receipt of a Letter of Intent from the Community provided in accordance with Article 16.**

## 12 DELIVERY OF GOODS **[Optional: or COMMENCEMENT AND COMPLETION OF WORK]**

- 12.1 The Successful Bidder shall deliver the Goods **[Optional: or commence the Work within 10 working days after receipt of the Letter of Intent from the Community and shall complete the Work]** by the date specified in the Invitation to Tender **[Community to insert date—the same date as noted in the Invitation to Tender]**.**

## 13 SITE CONDITIONS

**[Optional: Article 13 may not apply to tender for purchase of items such as equipment but would be applicable for tenders for the performance of work or provision of services]**

- 13.1 The Bidder is responsible for inspecting the site of the Work and for making whatever inquiries or arrangements necessary for it to become fully informed of the nature of the site of the Work, including the soil structure and topography of the site, and of the Work to be performed and all matters which may in any way affect the Work. Without limiting the foregoing, by the submission of its Tender, the Bidder acknowledges that it has investigated and satisfied itself as to:**
  - a) the nature of the Work;**
  - b) the location and all conditions relating to the location of the Work including, but not limited to, accessibility, general character, surface and sub-surface conditions, soil structure, utilities, road, uncertainties of seasonal weather and all other physical, topographical, geological and geographic conditions;**
  - c) the general character, conditions, laws and restrictions applicable to the Work that might affect the performance of the Work;**

- d) all environmental risks, conditions, laws and restrictions applicable to the Work that might affect the Work; and
- e) the magnitude of the construction work required to execute and complete the Work.

**13.2** The Bidder is fully responsible for obtaining all information required for the preparation of its Tender and for the execution of the Work. The Community is not responsible for undertaking any investigations to assist the Bidder. Any information, plans, drawings, shop drawings or existing equipment or facilities, photos of the original construction, reports or other documents which are not included or referred to in the Tender Documents (the “Non-Tender Information”), form no part of this Tender. The Community and the Community’s Consultants assume no responsibility of any kind whatsoever arising from or relating to its failure to include or refer to such Non-Tender Information. Bidders who obtain or rely upon such Non-Tender Information or other documents, do so entirely at their own risk.

**13.3** The Bidder’s obligation to become familiar with the information described in Article 13.1 is not lessened or discharged by reason of any technical reports, including soils reports or data, test hole drilling reports or other soils information, made available or supplied in conjunction with the tendering process. Any technical reports so provided are for information only and neither the Community nor the Community’s Consultants accept or assume any responsibility for the contents or accuracy of such technical reports and the Bidder agrees that the Community, the Community’s Consultants and their representatives shall not be liable in any way to the Bidder in respect of such technical reports. The Bidder further agrees that it shall not rely upon any oral information provided to it by the Community, the Community’s Consultants or their representatives.

#### **14 PRIME COST AND CONTINGENCY SUMS**

- 14.1 The Bidder shall include in its Tender Sum any prime cost sums or contingency sums. The Goods and Services Tax shall be shown as a separate amount.
- 14.2 Any tax rebates that apply under current legislation will be claimed by and will be accrue to the benefit of the Community.

#### **15 PERMITS AND INSPECTIONS [Optional: Article 1 may not apply to tender for purchase of items such as equipment but would be applicable for tenders for the performance of work or provision of services 5 ]**

- 15.1 The Bidder shall include in its Tender Sum the cost of building and other permits and inspections required by any governmental or other authority having jurisdiction or as required to fully perform the Work in accordance with the Contract.

#### **16 SUCCESSFUL BIDDER**

- 16.1 Award of Contract by the Community occurs once the Bidder receives a Letter of Intent duly executed by [insert name of Community’s representative] of the

Community after **[insert name of Community's representative]** has been duly and legally authorized by the Community to send such Letter of Intent.

- 16.2 [Optional: Article 16.2-16.5 may not apply to tender for purchase of items such as equipment but would be applicable for tenders for the performance of work or provision of services]**

**Following the receipt of the Letter of Intent, the Successful Bidder shall provide the Performance Bond and Labour and Material Payment Bond within the time required in Article 10.7. The Successful Bidder shall also provide a Certificate of Insurance unless previously provided.**

**16.2.1 Upon the Successful Bidder complying with the requirements of both Articles 16.2 and 16.4, the certified cheque or Bid Bond or irrevocable letter of credit, as the case may be, shall be returned to the Successful Bidder.**

**16.2.2 If the Successful Bidder fails to comply with either or both of the requirements of Articles 16.2 and 16.4, the certified cheque or Bid Bond or irrevocable letter of credit, as the case may be, shall be forfeited to the Community as compensation for damages the Community may suffer.**

- 16.3 The forfeiture of a Successful Bidder's certified cheque or Bid Bond or irrevocable letter of credit shall not be construed as a waiver of any rights or remedies which the Community may have against such Bidder for loss or damages incurred or suffered in excess of the amount of such certified cheque or Bid Bond or irrevocable letter of credit.**
- 16.4 Within 10 working days of receipt of the Contract from the Community, the Successful Bidder shall duly execute the Contract and return the Contract to the Community.**
- 16.5 Within [Community to insert number of days] working days of receipt of a Letter of Intent in accordance with Article 16.1, the Successful Bidder shall submit a proposed Construction Schedule showing the anticipated time of commencement and completion of each of the various operations to be performed under the Contract.**

## **17. TENDER EVALUATION CRITERIA**

- 17.1 Each Tender will be evaluated on the basis of the criteria listed below and the Community will have the sole and unfettered discretion to award up to the maximum number of points for each criteria as listed below. By submitting a Tender, the Bidder acknowledges and agrees that the Community has, and it is hereby entitled to exercise, the sole and unfettered discretion to award the points for the evaluation of the noted criteria.**
- 17.2 By submitting its Tender, each Bidder acknowledges and agrees that it waives any right to contest in any legal proceedings, the decision of the Community to award**

points in respect of the criteria noted below. The criteria and the maximum number of points for each criteria are as follows:

**[Insert criteria and maximum number of points which can be awarded. The maximum number of points should total 100. Some examples are:**

1. Price	30 points.
2. Responsiveness to Specifications	20 points
3. Delivery Date	20 points
4. Warranty	30 points
Total Points	100 points.]

## **18 WORKERS' COMPENSATION**

**[Optional: Article 18 may not apply to tender for purchase of items such as equipment but would be applicable for tenders for the performance of work or provision of services]**

- 18.1 Each Bidder is to submit with its Tender, a letter of account from the Workers' Compensation Board – Northwest Territories. This letter is to be current and not dated 14 calendar days prior to the Tender Closing.**
- 18.2 The Bidders who do not have an account with the Workers' Compensation Board- Northwest Territories shall provide with their Tender evidence of a subcontractor or other company that will carry such coverage on their behalf.**
- 18.3 The Community will reject any Tender which fails to comply with the provisions set out in Article 18.**

## **18 REGISTRATION**

- 19.1 Prior to commencing the Work, the Successful Bidder shall obtain all authorizations required by the laws of the Northwest Territories and of the Country of Canada enabling it to carry on business to complete the Work required under the Contract. Failure to be properly authorized shall entitle the Community to forthwith terminate the Contract without compensation.**

## **20 TENDERS EXCEEDING BUDGET**

- 20.1 In addition to the rights contained within Article 20 herein, if the Tender Sum of every Bidder exceeds the amount the Community has budgeted for the **Goods/Services/Work**, the Community may reject all Tenders or attempt to negotiate a lower price with the Bidder who, in the sole and unfettered discretion of the Community, has submitted the most advantageous Tender.**
- 20.2 Each Bidder acknowledges and agrees that the Community has the sole and unfettered discretion to employ any criteria in order to determine the Tender most**

advantageous to the Community, that the Community has no obligation to disclose such criteria nor employ the criteria listed in Article 17 Tender Evaluation Criteria.

20.3 By submitting its Tender, each Bidder waives its right to contest in any action, application, case or legal proceeding in any court, the decision which the Community may pursue under Article 20.1 and 20.2 herein.

20.4 If the Tender Sum of every Bidder exceeds the amount budgeted for the **Goods/Services/Work** and the Community negotiates with the Bidder who has submitted the Tender considered most advantageous to the Community:

20.4.1 All statements made by either side in the course of negotiation are without prejudice and confidential;

20.4.2 In particular, the Community's attempt to negotiate with such Bidder does not constitute a rejection of its Tender; and

20.4.3 The Community will not attempt to obtain a lower price for the same **Goods/Services/Work** that the Bidder originally bid on, but may attempt to obtain a lower price for revised **Goods/Services/Work**. In no event will the Community be obliged to disclose the amount budgeted for the **Goods/Services/Work**.

## 21 CERTIFICATE OF RECOGNITION ("C.O.R.") SAFETY PROGRAM REQUIREMENT

[Optional: Article 21 may not apply to Wheel Loader tender]

21.1 Unless otherwise stated, Tenders will only be considered when the Bidder, prior to Tender Closing, has either full certification in a Northern Safety Association approved Certificate of Recognition ("C.O.R.") Program appropriate to their industry or a temporary letter of certification issued by the Northern Safety Association or other appropriate industry association.

21.2 Certification shall be evident by inclusion of the Bidders name on the Northern Safety Association ("N.S.A.") C.O.R. certification list current at the Tender Closing, or submission of a copy of the Northern Safety Association COR or a temporary letter of certification with the Tender.

21.3 The Community will assume no liability for the non-inclusion of any Bidder on the N.S.A. C.O.R. certification lists for any reason whatsoever.

21.4 The Community reserves the right to terminate the Contract during the course of which the Contractor is decertified from the C.O.R. program or has their temporary letter of certification expire.

21.5 The Community will reject any Tender which fails to comply with the provisions set out in Article 21.

## 22 AGREEMENT ON INTERNAL TRADE

22.1 The provisions of the Agreement on Internal Trade, Part IV, Chapter Five – Procurement and Annex 502.4, (“AIT”).

## 23 ACCEPTANCE OR REJECTION OF TENDERS

23.1 As it is the purpose of the Community to obtain the Tender most suitable and most advantageous to the interests of the Community, notwithstanding anything else contained within the Tender Documents, the Community reserves the right, in its sole and unfettered discretion, to reject or accept any Tender, including the right to reject all Tenders. Without limiting the generality of the foregoing, any Tender which

- a) is incomplete, obscure, irregular or unrealistic;
- b) [Optional] is non-compliant in a trivial/immaterial or substantial/material manner, or conditional;**
- c) has erasures or corrections;
- d) omits a price on any one or more items in the Tender;
- e) fails to complete the information required in the Tender;
- f) is accompanied by an insufficient certified cheque, irrevocable letter of credit or by a Bid Bond in an unsatisfactory form,

may at the Community’s sole and unfettered discretion be rejected or accepted. **[Optional] Further, a Tender may be rejected or accepted on the basis of the Community’s unfettered assessment of its best interest, which includes the Community’s unfettered assessment as to a Bidder’s past work performance for the Community or for anyone else or as to a Bidder’s financial capabilities, completion schedule, or ability to perform the Work, or the Community’s desire to reduce the number of different contractors on the location of the Work at any given time. The Community reserves the right to negotiate after Tender Closing time with the Bidder that the Community deems has provided the most advantageous Tender; in no event will the Community be required to offer any modified terms to any other Bidder prior to entering into a Contract with the Successful Bidder and the Community shall incur no liability to any other Bidders as a result of such negotiation or modification.**

## 24 LAW AND FORUM OF TENDER

24.1 The law to be applied in respect of the Tender Documents and the Contract shall be the law of the Northwest Territories and all civil actions commenced in relation to the Tender Documents or Contract shall be adjudicated by the Courts of the Northwest Territories and by submitting Tenders, Bidders are taken to have agreed to attorn to the jurisdiction of the Courts of the said Territory.

25 ACCEPTANCE PERIOD

25.1 The Tender shall be irrevocable and open for acceptance by the Community for the period of time contained in the Invitation to Tender, namely, sixty (60) days following the end of the day of the Tender Closing. The time and date of the Tender Closing is as defined in the Invitation to Tender.