



REQUEST FOR PROPOSAL

Qualified firms are invited to submit a proposal for
Supply of Flow Monitoring Equipment

Work Consists of:

The supply of flow monitoring equipment to be used within the City's sanitary sewer network.

Proposal documents can be obtained electronically on the City of Moose Jaw's website:

www.moosejaw.ca/tenders

Submit sealed proposals to the Engineering Department by **2:00 PM CST, Thursday, August 22, 2019.**



The City of Moose Jaw is accepting proposals for the services described below. Please submit the documents listed and described in the Instructions to Bidders in a sealed opaque envelope, clearly identified with Bidder's name, Project name, and Owner's name on the outside.

City of Moose Jaw
Engineering Department, 3rd Floor
228 Main Street North
Moose Jaw, SK, S6H 3J8

Proposal Close:
Thursday, August 22, 2019
2:00 PM CST

INTENT

The City of Moose Jaw is seeking proposals for the supply of flow monitoring equipment to be used within its sanitary sewer network.

SCOPE OF WORK

The supply of any and all sensors, data loggers, transmitters, installation hardware, and software that is required to carry out a flow monitoring program.

LOCATION

All equipment is F.O.B. delivered to City of Moose Jaw.

DATE OF DELIVERY

Completion Date: September 30, 2019



REQUEST FOR PROPOSALS
July 31, 2019

FOR THE SUPPLY OF FLOW MONITORING EQUIPMENT

CITY OF MOOSE JAW
SASKATCHEWAN

CLOSING DATE:
August 22, 2019 at 2:00 p.m. (Central Standard Time)

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INSTRUCTIONS TO PROPONENTS

INTRODUCTION

1. The City of Moose Jaw ("Moose Jaw") is inviting proposals from qualified suppliers to provide the supply of flow monitoring equipment (the "Services").
2. The purpose of this Request for Proposals ("RFP") process is to select a qualified supplier to enter into a Services Agreement with Moose Jaw for the performance of the Services. Further details about the Services required by Moose Jaw are set out in Schedule "A" – Services Requirements.
3. **This RFP is not a tender and is not subject to the laws of competitive bidding. No bid contract or agreement is created by the submission of a proposal.**

RFP DOCUMENTS

4. The following documents are attached to and form part of this RFP:
 - Schedule "A" – Services Requirements
 - Schedule "B" – Proposal Content Requirements
 - Schedule "C" – Form of Services Agreement

INQUIRIES

5. Any inquiries concerning this RFP should be directed in writing to the following:
 - Dustin Hayward, Engineering Technician II
 - City of Moose Jaw
 - Phone: 306-694-4416
 - E-mail: dhayward@moosejaw.ca
 - City of Moose Jaw
 - 228 Main Street N,
 - Moose Jaw, SK S6H 3J8
6. All inquiries should be in writing and received by Moose Jaw on or before August 21, 2019.
7. Moose Jaw may circulate its response to any inquiries to all proponents, along with the original inquiry and may post such response and original inquiry on www.sasktenders.ca or may choose not to reply to any inquiry.
8. Proponents should refrain from contacting other employees, agents or members of Council of Moose Jaw in respect of this RFP process, including for the purposes of lobbying or attempting to influence the outcome of this RFP process. Any such contact may, in Moose Jaw's sole discretion, result in disqualification.

SUBMISSION OF PROPOSALS

9. Proposals should be in both paper and electronic format. Proponents should submit three (3) hard copies of their proposal (including one unbound copy for photocopying) plus an electronic copy on a memory stick or USB indicating the RFP title and Closing Date to the following address by **2:00 p.m. (Central Standard Time) August 22, 2019:**

Dustin Hayward, Engineering Technician II
City of Moose Jaw
Phone: 306-694-4416
E-mail: dhayward@moosejaw.ca

City of Moose Jaw
228 Main Street N,
Moose Jaw, SK S6H 3J8

10. Moose Jaw's office hours for the purpose of receiving proposals are 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:30 p.m. (Central Standard Time), Monday to Friday, excluding statutory holidays.
11. If you require additional time to submit your proposal, you should contact Dustin Hayward by e-mail to dhayward@moosejaw.ca. Moose Jaw may, in its sole discretion, allow additional time for proponents to submit a proposal.
12. Proposals and accompanying documentation provided to Moose Jaw in response to this RFP will not be returned.

CONTENT OF PROPOSALS

13. Proposals should address the items set out in Schedule "B" - Proposal Content Requirements.
14. Proponents may provide additional information beyond that requested in the RFP for Moose Jaw's consideration. Any such additional information may be considered by Moose Jaw in its sole discretion.
15. Proponents may be asked to submit additional information pertaining to their past experience, qualifications and such other information that Moose Jaw might reasonably require.

COST OF PROPOSALS

16. Moose Jaw is not responsible for any costs incurred by proponents in preparing their proposals, attending any meetings or interviews with Moose Jaw, making any presentations to Moose Jaw in connection with their proposals, or otherwise incurred in connection with this RFP process.
17. This RFP does not create any legal obligations between Moose Jaw and any proponent.

EVALUATION PROCESS

18. Proposals will be opened and evaluated privately.
19. In assessing proposals, Moose Jaw will take into consideration the following evaluation criteria:
 - a) the capacity of the proponent to provide and successfully complete the services required by Moose Jaw as well as any optional services offered by the Proponent, in a timely, safe, efficient and quality manner;
 - b) proponent's overall fee proposal, including any reimbursable expenses;
 - c) terms of the Services Agreement that the proponent is prepared to accept;
 - d) the completeness of a proponent's proposal; and
 - e) such other criteria as Moose Jaw considers relevant.
20. Moose Jaw has not predetermined the relative importance of the above evaluation criteria. Moose Jaw expects to select the proponent that provides the best overall value, as determined by Moose

Jaw in its sole discretion, having regard to the evaluation criteria referred to above.

21. Proposals will be evaluated on the basis of the information provided in response to these Instructions to Proponents. In addition, in assessing the proponent's qualifications, experience and capacity, Moose Jaw may also consider the following:
 - a) clarifications and/or additional information that may be supplied pursuant to requests from Moose Jaw;
 - b) interviews and/or reference checks that may be conducted at Moose Jaw's discretion;
 - c) previous experience of Moose Jaw in working with the proponent; and
 - d) information received from any source that Moose Jaw considers reliable.
22. Moose Jaw may, in its sole discretion, request clarification from a proponent during the evaluation process.
23. Proponents are advised that the evaluation process is subjective in nature and Moose Jaw's intention is to consider, in its sole discretion, each proposal on its merits, without regard to the rules or principles of competitive bidding, including without regard to whether a proposal is compliant with this RFP.
24. Moose Jaw may short-list proponents and conduct interviews with short-listed proponents at its sole discretion. Furthermore, Moose Jaw may negotiate any and all aspects of a proposal, including but not limited to the fee proposal, and the Services Agreement terms.
25. An invitation to interview or to negotiate does not obligate Moose Jaw to conclude the Services Agreement with that proponent. Moose Jaw may interview or may negotiate any aspect of any proposal with one or more proponents at any time.
26. Moose Jaw will notify all unsuccessful proponents after entering into a definitive agreement with the successful proponent. Unsuccessful proponents may request a debriefing interview to obtain feedback on their proposal, within three (3) weeks after receiving a notification letter.

ANTICIPATED SCHEDULE OF EVENTS

27. The following is the anticipated schedule of events related to this RFP. These dates are provided as target dates only and may be changed at any time by Moose Jaw in its sole discretion:
 - a) RFP Released **July 31, 2019**
 - b) Inquiries respecting RFP **August 17, 2019**
 - c) Closing Date **August 22, 2019**
 - d) Tentative Evaluation approx. **2 weeks**
following the Closing
Date
 - e) Tentative Services Agreement Execution **September 5, 2019**

FORM OF AGREEMENT

28. Any successful proponent(s) will be expected to enter into a Services Agreement for professional or consulting services based on the form of agreement attached at Schedule "C" (the "Services Agreement"), with such modifications as agreed to by Moose Jaw and a chosen proponent.

EFFECT OF RFP

29. This RFP is not intended to be a tender or otherwise subject to the laws applicable to competitive bidding. Until such time as Moose Jaw signs a definitive Services Agreement with a proponent, Moose Jaw does not intend to create a contractual relationship including a bid contract (either express or implied) with any proponent submitting a response to this RFP.
30. Submission of a proposal does not obligate Moose Jaw to accept any proposal or to proceed further with any of the Services. Consideration of any proposal shall be in Moose Jaw's sole discretion.
31. Proposals may be withdrawn or amended by proponents at any time by written notice to Moose Jaw prior to Moose Jaw and a proponent signing a formal contract.
32. Proponents are advised that Moose Jaw is intending to conduct a flexible procurement process, not subject to the law of competitive bidding, and that Moose Jaw may, in its sole discretion, at any time and for any reason:
 - a) reject any and all proposals (including, for greater certainty, the lowest cost proposal);
 - b) modify or vary any aspect of this RFP at any time before or after the time for submission of proposals;
 - c) extend the deadline for submission of proposals at any time before or after the time for submission of proposals;
 - d) accept any non-compliant, conditional or irregular proposal or any alternate proposal, in whole or in part;
 - e) discuss the terms of a proposal submitted by a proponent with that proponent at any time, on a confidential basis, for the purposes of clarification and/or negotiation of that proposal;
 - f) allow any proponent submitting a proposal to modify or vary any aspect of its proposal at any time;
 - g) verify or seek clarification of any and all information provided pursuant to this RFP and provide proponents with an opportunity to correct any defects, informalities or irregularities in their proposal;
 - h) negotiate any and all aspects of any proposal and the provisions of the Services Agreement (including, without limitation, those provisions relating to fees and/or any scope of services) with any one or more proponents at any time in its sole discretion, whether before, during or after the selection and evaluation process; and
 - i) cancel this RFP at any time for any reason and thereafter proceed in any manner it sees fit, in its sole discretion, including:
 - i. issuing a new request for proposals or other procurement document based on the same or changed scope of services or other requirements;
 - ii. entering into sole source negotiations with any one or more of the proponents or any other person; or
 - iii. cancelling the procurement in its entirety.

CONFIDENTIALITY, PUBLIC ANNOUNCEMENTS

33. Proponents are expected to keep confidential all documents, data, information and other materials of Moose Jaw which are provided to or obtained or accessed by a proponent in relation to this RFP, other than documents which Moose Jaw places in the public domain. Proponents are expected not to make any public announcements or news releases regarding this RFP or the

- entering into a Services Agreement pursuant to this RFP, without the prior written approval of Moose Jaw.
34. Proponents are advised that as a city, Moose Jaw is subject to the provisions of *The Local Authority Freedom of Information and Protection of Privacy Act* (Saskatchewan), which provides a right of access to information in records under the control of a municipality. Proponents are advised that Moose Jaw may be required to disclose the RFP documents and a part or parts of any proposal in response to this RFP pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* (Saskatchewan).
35. Proponents are also advised that *The Local Authority Freedom of Information and Protection of Privacy Act* (Saskatchewan) does provide protection for confidential and proprietary business information; however, proponents are strongly advised to consult their own legal advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in their proposal in response to this RFP. **Proponents should identify any information in their proposals that they consider to be confidential or proprietary business information.**

AGREEMENT ON INTERNAL TRADE

36. This procurement is subject to Annex 502.4 of the Agreement on Internal Trade.

Schedule "A" – Services Requirements

Background and Description of the Project

The City of Moose Jaw is seeking proposals for the supply of flow monitoring equipment to be used within its sanitary sewer network.

Scope of the Services

The scope shall include the supply of any and all sensors, data loggers, transmitters, installation hardware, and software that is required to carry out a flow monitoring program.

Include unit prices for eight (8) flow monitors, one (1) rain gauge, along with any and all additional equipment necessary to satisfy the technical requirements as set out in Standards of the Services below.

Standards of the Services

1. The equipment quoted shall be suitable for installation and use within a municipal sanitary sewer network with access via manholes. The equipment shall be portable and capable of being moved to different locations within the sanitary sewer network as per the needs of the City.
2. The quote shall include pricing for any and all hardware and software that is needed to operate the sensor, data loggers, transmitters, etc. within sanitary sewer pipes made of various materials and with various diameters, from 100 mm to 900 mm.
3. The equipment shall be able to provide reliable data under all flow conditions, including, but not limited to surcharging events, full-pipe flow, and low flow conditions.
4. The equipment shall be capable of measuring, logging, and transmitting instantaneous flow data. Totalizer-type equipment that can only provide average values are not acceptable.
5. The equipment shall be capable of transmitting data via a wireless method that does not require City personnel to physically attend the installation site of the flow monitoring equipment.
6. Any cellular modems shall be LTE compatible.
7. Proponents are encouraged to propose Software-as-a-Service (SaaS) solutions in addition to hosted on-premises solutions. At a minimum, the proponent shall propose a hosted on-premises solution.
8. All on-premises solutions shall run on a Microsoft SQL database server.
9. The equipment shall not rely on an external power source for operation.

10. The equipment shall be contained entirely within the manhole and sewer network and not require any external infrastructure to support its operation.
11. The equipment shall be completely serviced by the dealer before it is delivered to the City of Moose Jaw and shall be subject to inspection and approval by the City.
12. Any equipment not explicitly stated herein but deemed necessary by the vendor to achieve satisfactory operation of the flow monitors and other equipment shall be included in the bid pricing.
13. The City of Moose Jaw reserves the right, at its sole discretion, to reduce the quantity of any or all equipment listed in the vendor's quote.

Schedule

All equipment is F.O.B. delivered to City of Moose Jaw by September 30, 2019.

Related Deliverables

1. Vendors shall supply all specifications and cut sheets for equipment, hardware, and software being quoted.
2. Vendors shall supply a list of all consumables and typical consumable life, including but not limited to batteries (number and type) and any desiccant used by the equipment.
3. Vendors shall supply all instruction manuals and procedures required for optimal operations, including but not limited to: calibration frequency, cleaning frequency, etc.

Schedule "B" - Proposal Content Requirements

Proponents should, at a minimum, address the following in their Proposals.

Firm Detail

1. A brief description of your firm including any qualifications you consider relevant.

Relevant Experience

2. A description of your firm's experience in performing similar work, including two (2) references of work performed for municipalities or other government bodies or agencies in the previous five (5) years, and appropriate contact information for references.

Subconsultants

3. Provide the same information as provided for item 1 and 2, above, for any subconsultant that you propose to engage to provide the services.

Fee Proposal

4. Proponents should provide a fee proposal which addresses the following:

Fixed Fee

Please provide the fixed fee you are prepared to offer for completing the Services.

Reimbursable Expenses

Please describe any other reimbursable expense categories and any proposed mark-up. The City prefers that no mark-up is proposed for reimbursable expenses.

5. All prices/rates should be quoted in Canadian Dollars, exclusive of any applicable GST.

Schedule

6. Proposals should include a confirmation of whether your company is capable of meeting Moose Jaw's schedule for completion of the Services, as set out in this RFP.

Exceptions to Services Agreement Terms

7. A detailed description of any exceptions or additions to the Services Agreement should be clearly set out in a proponent's proposal. Moose Jaw will assume, in the absence of any such exceptions or additions, that the proponent accepts the form of Services Agreement.

Conflict of Interest Disclosure

8. Disclose any actual or potential conflicts of interest that may exist between your firm and its management, and Moose Jaw, its members of Council and management, and the nature of such conflict of interest. If a proponent has no such conflict of interest, a statement to that effect should be included in its proposal. Moose Jaw employees are ineligible to participate, directly or indirectly, with any proponent.

Confidentiality

9. Proponents are advised that as a city, Moose Jaw is subject to the provisions of *The Local Authority Freedom of Information and Protection of Privacy Act* (Saskatchewan), which provides a right of access to information in records under the control of a municipality. Proponents are advised that Moose Jaw may be required to disclose the RFP documents and a part or parts of any proposal in response to this RFP pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* (Saskatchewan).
10. Proponents are also advised that *The Local Authority Freedom of Information and Protection of Privacy Act* (Saskatchewan) does provide protection for confidential and proprietary business information; however, proponents are strongly advised to consult their own legal advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in their proposal in response to this RFP. **Proponents should identify any information in their proposals that they consider to be confidential or proprietary business information.**

Schedule "C" – Form of Services Agreement



CONSULTING SERVICES AGREEMENT

(Consulting or Professional Services)

This Consulting Services Agreement is made as of the _____ day of _____, 20__

Between:

CITY OF MOOSE JAW
("Moose Jaw")

and **<NAME OF CONTRACTOR>**
(the "Consultant")

Moose Jaw wishes to engage the Consultant to perform certain consulting services for Moose Jaw. Accordingly, Moose Jaw and the Consultant agree as follows:

1. **Contract Documents:** The rights and obligations of Moose Jaw and the Consultant are set forth in this Agreement, which includes the following attached Schedules:

Schedule A - Services
Schedule B - Payment for Services
Schedule C - General Conditions

All capitalized terms used in this Agreement and not otherwise defined shall have the meanings given to such terms in Schedule C – General Conditions.

2. **Services:** The Consultant shall perform the Services described in the attached Schedule A – Services in accordance with this Agreement.
3. **Payment:** Moose Jaw agrees to pay the Consultant for the Services performed, the amounts set forth in the attached Schedule B – Payment for Services, at the times and in the manner prescribed by this Agreement.
4. **Counterparts:** This Agreement may be executed in one or more counterparts and may be executed and delivered by facsimile or electronic mail, and all the counterparts taken together constitute one and the same instrument.
5. **Notices:** All notices or other communications between the parties under this Agreement shall be in writing and delivered to the address set out below:

Moose Jaw:
<insert address>

Consultant:
<insert address>

Fax: (<area code>) <fax number>
Attention: <name or title>

Fax: (<area code>) <fax number>
Attention: <name or title>

6. **Binding Agreement:** Moose Jaw and the Consultant, intending to be legally bound, have signed this Agreement.

CITY OF MOOSE JAW

[CONSULTANT]

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A – SERVICES

Scope of Services

The City of Moose Jaw is seeking proposals for the supply of flow monitoring equipment to be used within its sanitary sewer network.

The scope shall include the supply of any and all sensors, data loggers, transmitters, installation hardware, and software that is required to carry out a flow monitoring program.

Details about the scope of services are set out in Schedule “A” – Services Requirements in the Instructions to Proponents.

Schedule

All equipment is F.O.B. delivered to City of Moose Jaw by September 30, 2019.

Sub-consultants

The following are the approved sub-consultants for the Services:

<u>Scope of Services</u>	<u>Sub-consultant</u>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

SCHEDULE B – PAYMENT FOR SERVICES

1. Fees Payable for Services

1.1 For the performance of the Services, Moose Jaw shall pay the Consultant (select one):

☐ a fixed sum of \$<amount>.

2. Taxes

2.1 The fixed fee/hourly rates set out in Section 1 above, as applicable, are exclusive of applicable GST and PST, but are inclusive of all other taxes or charges in connection with the Services.

3. Reimbursable Expenses

3.1 In addition to the fees set out in Section 1 above, Moose Jaw shall reimburse the Consultant for the following out-of-pocket expenses incurred by the Consultant in performing the Services, at actual cost with no markup:

(a) [List specific expenses/disbursements that are reimbursable, or state "N/A" if there are none.];

(b) •

(c) other reimbursable expenses specifically approved in writing by Moose Jaw prior to being incurred.

3.2 The Consultant shall maintain proper records of reimbursable expenses, and shall make such records to Moose Jaw on request.

4. Invoicing

4.1 The Consultant may invoice Moose Jaw on completion of the Services.

4.2 Invoices may be submitted electronically to dhayward@moosejaw.ca. Invoices shall be accompanied by such documentation and information as Moose Jaw may reasonably require in order to substantiate the Services performed to which the invoice relates.

4.3 Payment of the Consultant's invoice(s) shall be due 30 days after receipt by Moose Jaw, unless Moose Jaw contests all or any part of the invoice in good faith.

4.4 If the scope of the Consultant's Services is to be changed, any such change or adjustment to the Services or fees must be confirmed in writing before any additional services are undertaken by the Consultant.

SCHEDULE C – GENERAL CONDITIONS

Article 1: INTERPRETATION

1.1 Definitions

In this Schedule C – General Conditions:

- (1) **"Agreement"** and **"Contract Documents"** each mean, collectively, (i) the Consulting Services Agreement signed by Moose Jaw and the Consultant, (ii) all of the schedules or other documents attached to the this Agreement, or otherwise incorporated by reference from time to time, and (iii) all amendments to the foregoing from time to time duly executed by Moose Jaw and the Consultant
- (2) **"Confidential Information"** has the meaning given in Section 6.5.
- (3) **"Documents"** has the meaning given in Section 2.12.
- (4) **"Owner Indemnified Parties"** means, collectively, Moose Jaw, its Mayor and Councilors, and its employees, agents and representatives.
- (5) **"Personnel"** means, collectively, the Consultant's employees, agents and representatives, and any other individuals under the direction of the Consultant involved in the performance of the Services.
- (6) **"Services"** means the carrying out and doing of all things that are to be done or supplied by the Consultant pursuant to this Agreement.

Other defined terms have the meaning ascribed to them elsewhere in the Contract Documents.

1.2 Governing Law

The laws of the Province of Saskatchewan govern the interpretation, validity and enforceability of this Agreement. Each party agrees to submit to the jurisdiction of the courts of the Province of Saskatchewan.

1.3 Governing Terms and Conditions

The terms and conditions set forth in this Agreement constitute the exclusive agreement between Moose Jaw and the Consultant and this Agreement supersedes all prior agreements or commitments, whether oral or written, with respect to the Services. No representation, inducement, promise, understanding, condition or warranty not set forth in this Agreement has been made or relied upon by either party. No agreement or understanding modifying the terms of this Agreement will be binding on Moose Jaw or the Consultant unless made in writing and signed on behalf of Moose Jaw and the Consultant.

Article 2: PERFORMANCE OF THE SERVICES

2.1 Performance of the Services

The Consultant shall have complete control of the Services and shall effectively direct and supervise the Personnel involved in the Services so as to ensure compliance with the Contract Documents.

2.2 Standard of Care

The Consultant shall perform the Services with the degree of diligence, skill and care required by customarily accepted procedures and practices for comparable services in the Consultant's industry, at the time that the Services are performed.

2.3 Time for Performance

The Consultant shall perform the services diligently at all times and within any timelines or schedule specified in Schedule A – Scope of Services.

2.4 Subcontracts

The Consultant will not employ any subcontractors or sub-consultants to perform any part of the Services without first obtaining the written authorization of Moose Jaw. No subcontracting by the Consultant, nor the granting of any authorization to subcontract by Moose Jaw, will relieve the Consultant of any of its liabilities or obligations under the Contract Documents.

2.5 Additional Instructions

Moose Jaw may furnish additional instructions as necessary for the performance of the Services. All such additional instructions must be consistent with the general scope and intent of the Services. In giving such additional instructions, Moose Jaw will have authority to make minor changes in the Services, not inconsistent with the general scope and intent of the Contract Documents.

2.6 Additional Services

Moose Jaw and the Consultant may, by mutual agreement, make changes to the Services. Any adjustment to the amounts payable to the Consultant for such additional services must be confirmed in writing before any additional Services are undertaken by the Consultant.

2.7 Compliance with Rules and Regulations

The Consultant shall, and shall cause each of the Personnel to, comply with all rules and regulations established or adopted by Moose Jaw with respect to occupational health and safety, environmental management, emergency response and evacuation, fire prevention, site security and administrative and operational rules and regulations, as may be supplemented or modified by Moose Jaw from time to time for any Moose Jaw facility or work site where the Consultant or the Personnel may attend in connection with the Services.

2.8 Compliance with Laws and Codes

The Consultant shall, and shall cause each of the Personnel to, comply with all federal, provincial, local or other laws, ordinances, rules, codes, regulations and permits of any relevant government or governmental authority which affect the Services as well as all industry codes and standards customarily applicable to the Services.

2.9 Permits and Licenses

Except as otherwise specified elsewhere in the Contract Documents, the Consultant shall, at its expense, obtain and comply with all necessary permits, licenses, certificates, clearances, approvals, authorizations or consents required by any relevant government or governmental authority for the performance of the Services.

2.10 Responsibility for Taxes

All sales or use taxes applicable to the amounts charged by the Consultant under this Agreement shall be separately identified in all invoices delivered by the Consultant. The Consultant shall promptly pay when due and shall indemnify and save harmless Moose Jaw from all taxes, withholding taxes, duties, levies, contributions, assessments or other charges in relation to the Services or this Agreement that may be payable to any federal, provincial, local or other government authority in connection with the amounts paid by Moose Jaw to the Consultant under this Agreement.

2.11 Expenses

Except where expressly provided otherwise in this Agreement, the Consultant shall be solely responsible for all supervision, certification, training and all other expenses relating to the employment of Personnel, and the cost of all items consumed by the Consultant in the course of providing the Services.

2.12 Documents

All drawings, specifications, plans, studies, models, data, reports, specifications, surveys, calculations and any other documents, information and material (collectively, the "**Documents**"), collected, compiled, or produced during the performance of the Services shall be works for hire and shall upon their development be and become the property of Moose Jaw. Any copyright arising in respect of any of the Documents is hereby assigned to Moose Jaw, and the Consultant hereby waives any moral rights it may have in or related to the copyright in respect of any of the Documents.

2.13 Intellectual Property

The Consultant shall ensure that neither the Services nor any of the Documents will constitute or result in any infringement or violation of any intellectual property right including, without limitation, any patent, copyright or industrial design protection or any law relating thereto. The Consultant shall indemnify and save harmless Moose Jaw from all claims, demands, actions, costs, expenses, judgements, losses or damages which may arise out of or result from the assertion by any person that the supply by the Consultant for use or other application by Moose Jaw of all or any portion of the Services or Documents furnished under this Agreement infringes any industrial or intellectual property rights, or law relating thereto.

Article 3: TERMINATION

3.1 Termination for Cause

In addition to any other rights and remedies which it may have, Moose Jaw may terminate this Agreement if the Consultant:

- (1) fails to comply with any of the terms or conditions of this Agreement including, without limitation, late performance of Services or performance of the Services in a manner which does not conform with this Agreement; or
- (2) is adjudged bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, institutes or becomes subject to proceedings under any laws for the relief of debtors, or if a receiver, monitor, trustee or liquidator is appointed over the Consultant's business.

3.2 Termination Without Cause

Moose Jaw may, at any time, terminate this Agreement without cause at its sole option by giving at least thirty (30) days written notice to the Consultant to that effect. Upon Moose Jaw giving such notice to the Consultant, the Consultant shall take all reasonable steps to wind-down the Services as soon as reasonably practical. Moose Jaw shall pay the Consultant for the Services completed prior to the effective date of termination, together with any actual direct costs resulting from such termination. Payment of such amounts will be the Consultant's exclusive remedy, and will constitute satisfaction of any and all liabilities of Moose Jaw, with respect to any such termination of this Agreement.

3.3 Rights on Termination

Upon termination of this Agreement and the engagement of the Consultant:

- (1) the Consultant shall, within seven days of notice of the termination, deliver to Moose Jaw all components and items of its Services and the Documents, as they exist as of the date of termination; and
- (2) all property, title and interest of the Consultant in the Services and Documents, as the same exists to the effective date of termination, shall immediately pass to and vest in Moose Jaw.

Article 4: INDEMNIFICATION AND LIMITATION OF LIABILITY

4.1 Consultant Indemnity

The Consultant shall indemnify and hold harmless the Owner Indemnified Parties from and against all liability, damages, losses, expenses or costs (including legal fees on a solicitor/client basis) suffered or incurred by Moose Jaw as a result of claims, demands, actions, causes of action, suits or proceedings, which may be made or brought or prosecuted against Owner Indemnified Parties or any of them by a third party, to the extent arising out of, resulting from or attributable to:

- (1) the acts or omissions, including, without limitation, negligence, gross negligence, or willful, wanton or intentional misconduct of the Consultant or the Personnel in the performance of the Services; or
- (2) a breach of this Agreement by the Consultant.

4.2 Consequential Damages

Notwithstanding any other provision of this Agreement, the Consultant shall not be liable to Moose Jaw in relation to this Agreement, whether due to breach of contract, tort, negligence, warranty, strict liability or otherwise, for consequential damages, including, without limitation, loss of profits, loss of revenue or loss of anticipated business suffered or incurred by Moose Jaw arising from the performance of Services.

Article 5: INSURANCE

5.1 Consultant's Insurance

The Consultant shall, without limiting its obligations or liabilities herein, maintain and keep in force during the performance of the Services at its expense the following insurance with limits specified below:

- (1) commercial general liability insurance with a combined single limit of \$5,000,000 per occurrence and in the aggregate, covering all operations by or on behalf of the Consultant against claims for personal injury (including bodily injury and death) and property damage;
- (2) automobile liability insurance with a combined single limit of not less than \$2,000,000.00 for each occurrence of bodily injury (including passenger hazard), and property damage. Such insurance shall cover all owned, hired or non-owned motor vehicles;
- (3) professional liability (errors and omissions) insurance with a limit of \$2,000,000 for each claim and in the aggregate, covering losses arising from the performance of the Services; and
- (4) any other insurance which the Consultant is required by law to provide.

5.2 Terms of Insurance

The insurance obtained by the Consultant pursuant to Section 5.1 shall be provided in accordance with the following terms and conditions:

- (1) all insurance coverage specified in Section 5.1 shall be in a form and with insurers acceptable to Moose Jaw, acting reasonably.
- (2) the Consultant shall provide Moose Jaw with satisfactory proof of insurance coverage required by Section 5.1 prior to commencing the Services. The Consultant will provide certified copies of actual insurance documents if requested by Moose Jaw.
- (3) Moose Jaw shall be included as an additional insured for the Consultant's commercial general liability insurance for liability arising out of or in relation to the Services or the Consultant's work or operations performed under or incidental to this Agreement.

Article 6: GENERAL PROVISIONS

6.1 Rights and Remedies

Except as otherwise expressly provided in this Agreement, the rights and remedies of the parties specified in this Agreement are cumulative and are not exclusive of any other rights or remedies which the parties would otherwise have.

6.2 Survival

All provisions of this Agreement which expressly or by their nature survive the termination of this Agreement or the completion of the Services will continue in full force and effect after any termination of this Agreement or the completion of the Services.

6.3 Independent Contractor

The Consultant shall be an independent contractor and not an agent or representative of Moose Jaw. Nothing contained in this Agreement shall create any contractual relationship between Moose Jaw and any subcontractor, nor an employment relationship between Moose Jaw and any of the Personnel.

6.4 Conflict of Interest

The Consultant and the Personnel:

- (1) shall conduct their duties related to this Agreement in good faith and with impartiality and if, in the course of their duties, they exercise inspection or other discretionary authority over any party with whom a separate relationship between them and such party could bring their impartiality in relation to this contract into question, the Consultant must notify Moose Jaw as to the nature and extent of such relationship;
- (2) shall not influence, seek to influence, or otherwise take part in a decision of Moose Jaw, knowing that the decision might further their private interests; and
- (3) shall not accept any commission, discount, allowance, payment, gift, or other benefit that is connected, directly or indirectly, with the performance of their duties related to this Agreement or, that causes, or would appear to cause, a conflict of interest.

6.5 Confidentiality

- (1) In this Section, "**Confidential Information**" means: (i) the terms and conditions of this Agreement; (ii) all knowledge and information concerning the technical, commercial, business, and public service operations of Moose Jaw; (iii) any third party proprietary information in the custody and control of Moose Jaw; or (iv) any personal information as defined in *The Local Authority Freedom of Information and Protection of Privacy Act* (Saskatchewan), any of which may be acquired by the Consultant in the course of the performance of the Services;
- (2) The Consultant shall keep all Confidential Information strictly confidential. The Consultant shall not, without the prior written consent of Moose Jaw, divulge to any third party any of the Confidential Information, or make any commercial use whatsoever of the Confidential Information. The Consultant agrees that the Confidential Information shall be used solely for the Consultant's performance of the Services. The obligations of the Consultant under this Section 6.5 shall survive completion of the performance of the Services or the termination of this Agreement, for a period of ten years.
- (3) The Consultant further agrees that only those of its Personnel who have a need to receive Confidential Information for the performance of its obligations under this Agreement shall have access thereto and, in such event, the Consultant agrees and undertakes to cause the Personnel to hold such Confidential Information so received under the obligations of confidentiality imposed by this Section.
- (4) For greater certainty, the Consultant shall be responsible to Moose Jaw for any disclosure or use of the Confidential Information contrary to this Agreement by any of the Personnel or any other party to whom the Consultant has disclosed such Confidential Information.

6.6 Assignment

This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns, as the case may be. The Consultant shall not assign this Agreement, or any part, benefit or interest in this Agreement, without the prior written consent of Moose Jaw.

6.7 Survival of Covenants

All provisions of this Agreement which expressly or by their nature survive the termination of this Agreement or the completion of the Services will continue in full force and effect after any termination of this Agreement or completion of the Services.

6.8 Entire Agreement

This Agreement constitutes the entire agreement between the parties in respect of its subject matter and supersedes all prior agreements, proposals or tender submissions, quotation requests, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter (if any) made or given prior to the date of this Agreement.