

CONSULTING SERVICES AGREEMENT

Dated for reference March 10, 2015

Between:

THE CITY OF REGINA, a municipal corporation incorporated pursuant to the laws of Saskatchewan (the "**City**")

- and -

MMM GROUP LIMITED, an active business corporation, incorporated according to the laws of Saskatchewan

(the "**Consultant**")

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and promises hereinafter contained, and for other good and valuable consideration now paid and delivered by each party to the other, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, the City and the Consultant each agree with the other as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

Whenever used in this Agreement, including the recitals and schedules hereto, the following terms shall have the meanings set out below:

- (a) "**Applicable Laws**" collectively means the common law and any and all statutes, by-laws regulations, permits, approvals, certificates of approval, licenses, judgments, orders, injunctions, authorizations, directives, whether federal, provincial or municipal;
- (b) "**Business Day**" means any day except Saturday, Sunday or any statutory holiday in the Province of Saskatchewan;
- (c) "**Force Majeure**" means, as long as the occurrence or effects of the event could not have been avoided, prevented or provided against by the party relying on the event with the exercise of reasonable care and/or diligence or by making commercially reasonable alternative arrangements, any act of God, including storms, tornados, earthquakes, landslides, floods, washouts, and fires; any act of terrorism, sabotage, war, insurrections, vandalism, riots, epidemics; restraints by governments or governmental agencies; any court order, or directive or ruling of any governmental or administrative body; or any other similar cause beyond the reasonable control of the party relying on the event, but does not include:

- (i) equipment failure, strikes, lockouts, and any other industrial concerted action by workers of the Consultant;
 - (ii) shortages of labour, materials, transportation or utilities unless caused by circumstances that are themselves Force Majeure; or
 - (iii) lack of finances or any inability to perform because of the financial condition of the Consultant.
- (d) **“Intellectual Property”** means any process, information, technology, know-how, software (whether compiled or source code), formulation, substance, model, drawing, specification, design, industrial design, or invention, whether or not capable of protection by law relating to patent, copyright, trade-mark, industrial design, privacy, trade secret, or some other form of intellectual property right;
 - (e) **“Project”** shall have the meaning ascribed to it in Section 2.1 hereof;
 - (f) **“RFP”** shall have the meaning ascribed to it in Section 1.2 hereof;
 - (g) **“RFP Response”** shall have the meaning ascribed to it in Section 1.2 hereof;
 - (h) **“Services”** shall have the meaning ascribed to it in Section 2.1 hererof; and
 - (i) **“Work”** means the labour, materials, and services required to be performed by a Contractor to complete the Project;
 - (j) **“Work Product”** collectively means all documents, drawings, data, and other materials, including all input, advice and commentary, whether written or unwritten, relating to the Services produced by the Consultant pursuant to this Agreement.

1.2 Schedules

The following are the schedules attached to and incorporated in this Agreement by reference and deemed to be part hereof:

- (a) the Consultant’s Proposal for Services dated February 25. 2015 attached hereto and marked as Schedule “A” (the **“RFP Response”**).

1.3 References

For all purposes of this Agreement, except as otherwise expressly provided, or unless the context otherwise requires:

- (a) the headings are for convenience of reference and do not form a part of this Agreement nor are they intended to interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions;

(b) any reference to a currency is a reference to Canadian currency;

(c) "in writing" or "written" includes printing and typewriting, which may be communicated by facsimile or other electronic means;

(d) the word "including", when following any general statement, term or matter, is not to be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather is to be construed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;

(e) any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing or superseding such statute or such regulation; and

(f) words importing the masculine gender include the feminine or neuter gender and words importing the feminine gender include the masculine or neuter gender and words in the singular include the plural, and words importing the neuter gender include the masculine or feminine gender and words in the plural include the singular.

1.4 Invalidity of Provisions; Severability

If any covenant, obligation or agreement 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 covenant, obligation or agreement to persons, or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each covenant, obligation and agreement of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

1.5 Waiver

No failure or delay on the part of any party in exercising any right, remedy, recourse, power or privilege (for the purposes of this Section 1.5, collectively, a "**Right**") under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any Right preclude any other or further exercise thereof or the exercise of any other Right. Except as may be limited herein, any party may, in its sole discretion, exercise any and all Rights available to it under this Agreement or any other remedy available to it at law or in equity and such Rights may be exercised concurrently or individually without the necessity of making any election.

1.6 Governing Law, Attornment

This Agreement shall be governed by and construed in accordance with the laws of the Province of Saskatchewan and the laws of Canada applicable therein and the parties hereto hereby irrevocably attorn to the jurisdiction of the courts of Saskatchewan.

1.7 Interpretation Not Affected by Party Drafting

Each party hereto acknowledges that he, she or it and his, her or its legal counsel have reviewed and participated in settling the terms of this Agreement, and the parties hereby agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Agreement.

1.8 Conflicts and Paramountcy

In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement will take precedence over the Schedules and any inconsistency between the Schedules will be resolved in the following order of priority:

- (a) the RFP; and
- (b) the RFP Response.

ARTICLE 2 PROVISION OF SERVICES

2.1 Engagement and Project Scope

The City hereby engages the professional services of the Consultant and the Consultant agrees to provide the City with professional services in connection with Evraz Place Traffic and Parking Plans (the "**Project**"), the details of such services as are set out in the RFP and the RFP Response, which are attached hereto and form part of this Agreement (collectively, the "**Services**").

2.2 Consultant's Covenants

The Consultant shall:

- (a) before starting the Services, appoint a competent, authorized representative acceptable to the City to represent and act for the Consultant, inform the City in writing of the name and address of such representative together with a clear statement of the scope of authority to represent and act for the Consultant, and specify any and all limitations of such authority;
- (b) furnish at its own expense and cost any and all necessary labour, machinery, equipment, tools, transportation, permits, materials, and whatever else is necessary in the performance and completion of the Services other than such items therefore as the City specifically agrees to furnish;

- (c) cause a minimum of interference with the City's operations and the operations of other contractors on the premises, take all necessary precautions to protect the premises and all persons and property thereon from damage, and, on completion of the Services, leave the premises clean and free of all tools, equipment, waste material, and rubbish;
- (d) acquaint itself with the job site and with all conditions pertaining to the performance of the Services. The City accepts no responsibility for the failure of Consultant to familiarize itself as required, and is not prepared to allow any claim for an increase in fees or compensation arising from any failure of Consultant to reasonably anticipate difficulties;
- (e) perform the Services in accordance with industry standards in a good and workmanlike manner and with that degree of care, skill and diligence normally provided in the performance of services of a similar nature with to those contemplated by this Agreement;
- (f) deliver to the City all Work Product in accordance with the requirements of this Agreement;
- (g) comply and observe all occupational health and safety requirements that may be applicable and carry out the Services with due regard for public safety and shall provide the City with prompt notice of any occupational health and safety order that the Consultant receives in respect of the Project;
- (h) obtain all required permits, licenses, authorizations, approvals and accreditation, including (without limitation) a business license from the City;
- (i) comply with all Applicable Laws, regulations, bylaws, orders and decrees of government or other authorities with jurisdiction; and
- (j) promptly pay all due taxes, duties, fees or other amounts imposed by law, any government, or other authority having jurisdiction, including all amounts required to be paid under *The Workers' Compensation Act, 1979*, as amended;
- (k) review and provide opinion and advice to the City as may be required from time to time such that the City can advance the Project and ensure completion of the Project is obtained in accordance with the standards and requirements specified by the City.

2.3 Consultant's Representations and Warranties

The Consultant represents and warrants to the City that:

- (a) it is knowledgeable and experienced with respect to the execution of projects such as the Project and with respect to services such as the Services, and that it has the resources necessary to perform the Services in accordance with the standard of care applicable to the Services; and
- (b) it owns the Intellectual Property rights associated with the deliverables under this Agreement, including the right to grant the City the right to use the deliverables pursuant to Section 9.3, free from all encumbrances, that its Intellectual Property rights and the City's right to use them as granted pursuant to Section 9.3 do not infringe upon the intellectual property rights of any third party, and that the execution of this Agreement does not violate any other arrangements entered into by the Engineer.

2.4 City's Covenants

The City shall:

- (a) upon request by the Consultant, make available relevant information or data pertinent to the Project; provided, however, that the Consultant agrees to return or destroy all data and information (written or electronic) specifically indicating underground utility locations or which has been otherwise identified by the City, in writing, to be destroyed. No guarantee expressed or implied is given to the accuracy and completeness of such information or data so provided;
- (b) give prompt consideration to all preliminary reports and other documents relating to the Project presented to it by the Consultant. Whenever prompt action is necessary, inform the Consultant of its decisions in such reasonable time so not to delay the Services;
- (c) arrange and make provision for the Consultant's entry and ready access to the property (public and private) as well as to the Project site, as is necessary to enable the Consultant to perform the Services; and
- (d) give prompt written notice to the Consultant whenever the City or its representative become aware of any defects or deficiencies in the Work Product.

2.5 Administration and Co-ordination of Project

- (a) The authority for the general co-ordination of the Project shall reside with the City and the Consultant.
- (b) The Consultant agrees that it shall assist the City with the coordination of the Project as may be directed by the City from time to time.

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**ARTICLE 3
FEES AND EXPENSES**

3.1 Fees and Expenses

(a) For the completion of the Services, the City will pay the Consultant at the hourly rates identified within the RFP Response a total fee of \$25,000 (plus applicable taxes), which sum is an all inclusive fee for the Services, expenses and disbursements.

(b) Any amount of consideration or reimbursement over the amounts in Section 3.1(a) must receive the formal written approval of the City before the City will become liable to pay such amounts to the Consultant.

3.2 Payment of Fees and Expenses

(a) The City will make payments to the Consultant for the Services no later than 30 days after receiving an itemized invoice from the Consultant for all the Services provided and disbursements incurred in the 30 day period immediately prior to the date of the invoice.

(b) The Consultant shall include a reference to Purchase Order #7804 on all invoices submitted to the City and forward all invoices or any payments to P.O. Box 5095, Regina, Saskatchewan, S4P 3M3 to the attention of 5th Floor City Hall.

(c) The City may, in its sole discretion, delay its payment of any part of an invoice that is related to Services not yet performed or disbursements not yet incurred until the Services are performed and the disbursements are incurred.

(d) The Consultant shall maintain detailed records of hours worked, salaries paid and receipts for chargeable disbursements, which shall be made available for inspection and audit during normal working hours by the City when so requested.

3.3 Taxes

The Consultant represents, warrants and convents that:

- (a) the Consultant is a registrant for the purposes of the Goods and Services Tax (Canada) (GST) with the following registration # _____
- (b) if the Consultant is a non-resident of Canada as such term is defined in the Income Tax Act (Canada), then the Consultant authorizes the City to withhold such amounts as may be required by the Income Tax Act (Canada) from the fees payable pursuant to this Article 3; and
- (c) the Consultant shall pay any and all income taxes, good and services taxes, excise taxes, provincial sales taxes or other taxes as may be assessed or payable by law (collectively, the "Taxes") upon the fees payable pursuant to this Agreement. The

Consultant agrees to indemnify and save the City harmless from and against any and all claims, demands, suits, causes of action, losses, damages, liabilities and costs relating to, arising out of, or connected to, directly or indirectly, with the Consultant's failure to pay or remit any Taxes.

ARTICLE 4 TERMINATION

4.1 Termination and Suspension by the City

(a) The City may, without prejudice to any other right or remedy it may have, terminate or suspend the Agreement by written notice to the Consultant if:

- (a) the Consultant becomes bankrupt or insolvent or is so adjudged;
- (b) the Consultant makes a general assignment for the benefit of creditors;
- (c) the Consultant's goods and chattels are liable to seizure by any secured party or lienholder;
- (d) a writ of execution, sequestration or extent issues against the goods or chattels of the Consultant;
- (e) the Consultant becomes the subject of any Act respecting liquidation or winding-up;
- (f) the Consultant is in default of its obligations under the Agreement, fails to commence to remedy such default within thirty (30) days after the receipt of a notice of default and fails to diligently complete such remedy thereafter; or
- (g) the Consultant is practising as an individual and dies before the Services have been completed, then this Agreement shall terminate as of the date of death.

(b) The City may also without cause and without prejudice to any other right or remedy it may have, terminate or suspend the Agreement upon 30 days prior written notice to the Consultant if:

- (a) the City, in its sole discretion, determines that it is unwilling or unable to proceed with the Project or any related phase or element of the Project for any reason; or
- (b) the Consultant is practising as an individual and is unable to satisfactorily perform the Services for a period of 30 calendar days or for an aggregate of 45 calendar days in any 3 month period.

(c) The City may without cause and at any time, terminate this Agreement by providing 60 calendar days prior written notice to the Consultant.

4.2 Cessation of Services and Payments in Event of Termination by City

If the City terminates the Agreement pursuant to section 4.1 herein:

- (a) the termination becomes effective upon written notice of termination being given to the Consultant;
- (b) upon receipt of written notice of termination, the Consultant shall perform no further Services other than those reasonably necessary to close out its Services; and
- (c) the City shall pay for the cost of the Services performed and for all disbursements incurred by the Consultant pursuant to this Agreement and remaining unpaid as of the effective date of such termination.

4.3 Termination by Consultant

The Consultant may, without prejudice to any other right or remedy it may have, terminate the Agreement by written notice to the City if:

- (a) the City is in default of its obligations under the Agreement, fails to commence to remedy such default within thirty (30) days after the receipt of a notice of default and fails to diligently complete such remedy thereafter; or
- (b) the Services are suspended by the City at any time for more than 30 calendar days through no fault of the Consultant.

4.4 Cessation of Services and Payments in Event of Termination by the Consultant

If the Consultant terminates the Agreement pursuant to section 4.3 herein:

- (a) the termination becomes effective upon written notice of termination being given to the City;
- (b) upon provision of written notice of termination, the Consultant shall perform no further Services other than those reasonably necessary to close out its Services; and
- (c) the City shall pay for the cost of the Services performed and for all disbursements incurred by the Consultant pursuant to this Agreement and remaining unpaid as of the effective date of such termination.

4.5 Provision of Work Product to the City

In the event that this Agreement is terminated or suspended for any reason pursuant to this Article 4, the Consultant shall provide the City with a copy of all Work Product developed to the date of termination within ten (10) days of the date of termination or suspension.

ARTICLE 5 INSURANCE AND INDEMNITY

5.1 Insurance Requirements

(a) The Consultant shall obtain and keep in force the following insurance coverage during the term of this Agreement, and shall provide to the City from time to time at the City's request, a certificate of insurance as evidence that such insurance is in place and that the Consultant's insurer has been notified that the City is an interested party:

(i) comprehensive commercial general liability insurance with a limit of liability of \$2,000,000, combined single limit, for bodily injury and property damage, for each claim or series of claims arising from the same originating cause and such policy shall include:

- i) The City as an Additional Insured;
- ii) A Cross Liability clause; and
- iii) Contractual liability coverage.

(ii) Comprehensive automobile liability insurance covering all vehicles, hired, owned and non-owned, with a limit of liability of \$1,000,000 combined single limit per occurrence for bodily injury and property damage;

(iii) Professional liability insurance with a limit of liability of \$1,000,000 for each claim or series of claims arising from the same originating cause, such policy shall remain in operation for at least twelve (12) months after end of this Agreement;

(iv) Statutory worker's compensation insurance for all personnel covering all claims filed under the applicable worker's compensation law.

(b) Insurance obtained and provided under this Agreement in accordance with Section 5.1(a) shall include provision for the City to be given thirty (30) days written notice prior to cancellation, and thirty (30) days prior notice of any material change requested by the successful Proponent of said insurance policies.

(c) The Consultant covenants and agrees that the City's insurance requirements mentioned above will not be construed to and shall in no manner limit or restricts the liability of the Consultant.



5.2 Consultant Responsible for all Premiums

The Consultant is solely responsible for full payment of any premium amounts and any deductible amounts which may be due in the event of any and all claims under policies required by this Agreement and shall provide the City with proof of the insurance required pursuant to this Agreement annually in a form satisfactory to the City's Risk Manager.

5.3 Incident Notification

The Consultant shall, within 7 days of becoming aware of an incident, notify the City of any incident that may result in a claim against either the Consultant or the City, including, but not limited to such losses as, property damage to City assets, third party property damage, injury or death of any Consultant member, employee, instructor or volunteer and any third party bodily injury.

5.4 Indemnification of the Consultant

The City shall defend, indemnify and hold the Consultant, its associated, affiliated or subsidiary companies, and their respective officers, directors, employees, agents, engineers, contractors, subcontractors, successors and assigns free and harmless from and against any and all losses, claims, liens, demands, debts, liabilities, damages, losses, fines, actions, suits, penalties and causes of action including actual legal fees on a solicitor and client basis and disbursements and court costs arising from or related to the City's wrongful or negligent (including, grossly negligent) acts, errors or omissions in performance of the City's obligations under this Agreement. In cases of claims arising from joint negligence of the City and the Consultant, liability will be shared by the parties in proportion to their respective negligence.

5.5 Indemnification of the City

The Consultant shall defend, indemnify and hold the City, its associated, affiliated or subsidiary companies, and their respective officers, directors, employees, agents, engineers, contractors, subcontractors, insurers, successors and assigns free and harmless from and against any and all losses, claims, liens, demands, debts, liabilities, damages, losses, fines, actions, suits, penalties and causes of action including actual legal fees on a solicitor and client basis and disbursements and court costs arising from or related to the Consultant's wrongful or negligent (including, grossly negligent) acts, errors or omissions in performance of the Consultant's obligations under this Agreement. In cases of claims arising from joint negligence of the City and the Consultant, liability will be shared by the parties in proportion to their respective negligence.

5.6 Limitation of Liability

Regardless of any other provision of this Agreement, neither party shall be liable to the other party, 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, except for any: (a) damages payable as liquidated damages as expressly provided for in this Agreement; (b) claims for indemnity provided in section 5.4 and section 5.5 and claims relating to any willful, wanton or intentional misconduct or the gross negligence of either party or anyone for whose acts any of them is liable.

ARTICLE 6 WORKERS' COMPENSATION

6.1 Compliance with Workers' Compensation Legislation

(a) The Consultant shall at all times comply with *The Workers' Compensation Act, 1979* (Saskatchewan).

(b) The Consultant shall provide the City with a copy of its certificate from the Workers' Compensation Board showing that it is registered and is in good standing with the Board or that the Consultant is excluded from the provisions of *The Workers' Compensation Act, 1979* (Saskatchewan).

(c) The Consultant agrees to indemnify and save the City harmless if the City is required to pay any Workers' Compensation charges arising from the Consultant's provision of the Services, the provision of the Services by a subcontractor of the Consultant or if the City is held liable for any damages or injury to any employee, partner, or subcontractor of the Consultant while on City-controlled or City-owned property.

ARTICLE 7 ASSIGNMENT AND SUB-CONSULTING

7.1 Prohibition on Assignment

Neither the City nor the Consultant may assign this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

ARTICLE 8 RELATIONSHIP OF PARTIES

8.1 Independent Contractor

(a) The Consultant's performance of this Agreement does not create an employee/employer relationship between the Consultant and the City. The Consultant and the City each agree that they are independent and each of them shall not state, imply or knowingly permit anyone to infer that any other relationship exists between them without the other party's prior written consent.

(b) The Consultant and anyone the Consultant employs or allows to perform any part of the Services are not and will not ever be considered employees of the City within the meaning of *The Labour Standards Act* of Saskatchewan (or otherwise) or entitled to any of the benefits of an employee of the City as a result of their performance of any part of the Services.

(c) The Consultant acknowledges that:

(a) the consideration provided to the Consultant by the City under this Agreement is income and subject to the provisions of the *Canadian Income Tax Act*, the *Canada Pension Plan*, and the *Employment Insurance Act*;

(b) the Consultant is solely responsible for remitting any amounts that the statutes listed in clause (a) require to be remitted; and

(c) if a decision-maker of competent jurisdiction decides that the City ought to have remitted any amounts that the statutes in clause (a) require to be remitted, then the Consultant will pay the City an amount equal to the amount the City is required to remit and all the costs (including solicitor-client costs) that the City incurs as a result of the Consultant failing to remit the required amounts.

(d) If the Labour Standards Branch of the Saskatchewan Department of Labour or the Canada Revenue Agency (CRA) (or both of them) determines or deems the City to be an employer under this Agreement, then the Consultant agrees that the Services performed under this Agreement should be considered entirely of a managerial character.

8.2 No Partnership or Joint Venture

Nothing herein shall imply a relationship of employment, agency, association of persons, partnership or joint venture between the Consultant and the City. The Consultant shall not indicate or represent to any third party that the City is an employee or agent of the Consultant. The Consultant shall have no authority to commit the City to any third party. The Consultant shall be responsible for all business taxes, payroll remittances, benefits, assessments, remittances and all other applicable statutory payments and deductions for the Consultant, its employees, and all subcontractors, including any required federal and provincial withholding, self-employment and social security taxes, unemployment insurance, and worker's compensation insurance and assessments.

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**ARTICLE 9
CONFIDENTIALITY AND
OWNERSHIP OF DOCUMENTS**

9.1 City's Confidential Information

The Consultant will:

- (a) keep strictly confidential any confidential information of the City, as identified by the City upon provision of such information (the "**City's Confidential Information**"), of which the Consultant (including the Consultant's individual partners, employees, contractors, and agents) obtains knowledge of or to which it has access; and
- (b) within seven (7) days from the expiration or termination of this Agreement, or upon receiving a request from the City, the Consultant shall either, at the City's option, return to the City or destroy all of the City's Confidential Information and all other the City information in the Consultant's possession or under its control, except that the Consultant may retain one copy of the City's Confidential Information for its internal, archival business purposes; and
- (c) ensure that its individual partners, employees and agents:
 - (i) only have access to the City's Confidential Information or other information as is strictly necessary for the performance of their particular role in performing the Consultant's covenants under this Agreement; and
 - (ii) are aware of and comply with section 9.1 of this Agreement.

9.2 Consultant's Confidential Information

Subject to *The Cities Act* (Saskatchewan) and *The Local Authority Freedom of Information and Protection of Privacy Act* (Saskatchewan), the City will keep strictly confidential any confidential information of the Consultant, as identified by the Consultant upon provision of such information (the "**Consultant's Confidential Information**"), of which the City (including the City's employees, contractors, and agents) obtains knowledge of or to which it has access.

9.3 Intellectual Property - Ownership and Use of Documents

(a) Save and except for any pre-existing Intellectual Property developed or owned by the Consultant and subject to Section 9.3(b), all Work Product prepared by the Consultant pursuant to this Agreement and for the Project are works for hire and are the City's sole property and as a result may become public information. The Consultant shall not permit the use or application of any Work Product for any purpose, other than for the Project, unless the City grants prior written consent. For greater certainty, the Consultant may not use the Work Product with other clients

without the City's prior written consent. The Consultant may retain, in a secure location, one copy of the Work Product, solely for its records.

(b) All concepts, products or processes developed by the Consultant in the provision of the Services that are capable of being patented or trademarked shall be the property of the Consultant. The Consultant agrees that it shall grant the City a permanent, non-exclusive, royalty-free licence to use any concept, product or process that is patented or trademarks in accordance with this section 9.3(b).

(c) The Consultant shall do all things necessary to ensure the City's license to use Intellectual Property as described in Section 9.3(b) is forever free and clear of claims or limitations of any kind, and is fully secured and indisputable, including (without limitation) the obtainment of any waiver, assignment, or transfer.

(d) The Consultant represents and warrants that the Services, any result of the Services, and all Intellectual Property licensed to the City under this Agreement does not, and will never constitute or result in any infringement or violation of any third party Intellectual Property right or related laws and shall indemnify and save harmless the City from all claims, demands, actions, costs, expenses, judgments, losses or damages that may arise out of or result from the assertion by any person that any of the Services, their performance, their use or the use of the product or the Services or any portion of the Project designed as part of the Services, constitutes an infringement or violation of any industrial or intellectual property right protected by law including (without limitation) any patent, trademark, copyright or industrial design protection or any Applicable Laws.

ARTICLE 10 CONFLICT OF INTEREST

10.1 Conflict of Interest

(a) The Consultant will not undertake other work that creates or might create a conflict of interest with the provision of the Services without the City's prior written consent.

(b) The Consultant and the Consultant's employees, officer and directors will not serve as a member of any of the City's advisory committees or subcommittees during the term of this Agreement.

(c) The Consultant acknowledges and agrees that it may be prevented from bidding on contracts in relation to a future development or services related to the Project as the Consultant has been involved with, provided information for or has an advanced knowledge of the underlying specifications related to the procurement

(d) The Consultant acknowledges and agrees that it is required during the term of this Agreement to identify any potential conflict of interest that may be present through past or present business relationships in respect to the Project with any member of a bid team or other interested parties, once such bidders and other interested parties have been identified. Any

identified potential conflict of interest will be reviewed by the City and the successful proponent shall take all steps required by the City to eliminate the actual or perceived conflict of interest. In the event that the conflict of interest is not able to be remedied, the City reserves the right to terminate this Agreement in accordance with section 4.2 herein.

ARTICLE 11 ARBITRATION

11.1 Arbitration

The parties shall attempt to resolve any dispute arising out of or in connection with this Agreement including in respect of this Agreement's existence, validity or termination (collectively, a "**Dispute**") through good faith, without prejudice negotiation between selected members of their respective senior management team commenced by delivery of a written and dated notice of a Dispute (a "**Dispute Notice**"). If the parties do not reach an agreement which finally disposes of the Dispute within sixty (60) days after the delivery of the first Dispute Notice, the Dispute shall be referred to binding arbitration as follows:

- (a) No arbitration proceeding shall be commenced after expiry of the time specified for commencement of actions or proceedings under the applicable statute of limitations;
- (b) The arbitration shall be conducted in accordance with *The Arbitration Act, 1992* (Saskatchewan) (the "**Arbitration Act**"). If there is a conflict between the provisions of this Agreement and the provisions of the Arbitration Act, the provisions of this Agreement shall prevail;
- (c) Unless the parties otherwise agree in writing, the place of arbitration shall be Regina, Saskatchewan, and the arbitration proceedings shall be conducted in the English language;
- (d) The arbitration shall be the sole and exclusive forum for resolution of the Dispute and the award shall be final and binding. The parties agree that the award may be enforced in any jurisdiction in which either party does business or its assets are located;
- (e) The parties shall jointly appoint the arbiter as soon as possible and, in any event, within 5 Business Days after delivery of the Dispute Notice. If the parties fail to agree or jointly appoint the arbiter within such 5 Business Day period, either party may apply to the Court of Queen's Bench of Saskatchewan to appoint the arbiter, in which case the court shall appoint the arbiter at the earliest opportunity from the list of potential arbiters submitted by the parties or, if either or both parties fail to submit their list of potential arbiters within 7 Business Days, the court may appoint such person as the arbiter that it sees fit;
- (f) Except to the extent necessary to enforce this Agreement or as required by law, the parties, their respective employees, officers, directors, counsel, consultants, and expert witnesses shall keep confidential the fact of the arbitration proceeding, the arbitral award,

all contemporaneous or historical documents exchanged or produced during the arbitration proceeding, and all memoranda, briefs and other documents prepared for the arbitration; and

(g) Costs of the arbitration shall be paid to the winning party unless otherwise ordered by the arbitration panel.

ARTICLE 12 MISCELLANEOUS

12.1 Further Assurances

Each party upon the request of the other shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances and assurances as may be reasonably necessary or desirable to effect complete consummation of the transactions contemplated by this Agreement.

12.2 Notices

Any notice, consent, authorization, direction or other communication required or permitted to be given hereunder shall be in writing and shall be delivered either by personal delivery or by telex, telecopier or similar telecommunications device and addressed as follows:

in the case of the City at:

City of Regina
5th Floor, 2476 Victoria Avenue,
P.O. Box 1790
Regina, SK S4P 3C8
Attention: Natalie Malbeuf

in the case of the Consultant, to it at:

MMM Group Ltd
1853 Hamilton St, Unit 601
Regina, SK S4P 2C1
Attention: Bruce Belmore

Any notice, consent, authorization, direction or other communication delivered as aforesaid shall be deemed to have been effectively delivered and received, if sent by telex, telecopier or similar telecommunications device on the Business Day next following sending of such transmission or, if delivered, to have been delivered and received on the date of such delivery provided, however, that if such date is not a Business Day than it shall be deemed to have been delivered and received on the Business Day next following such delivery. Either party may change its address for service by notice delivered as aforesaid.

12.3 Publicity and Communications

The Consultant shall not make any public statements or release any information to the public through any means or medium in relation to the Agreement or its engagement by the City without first obtaining the City's prior written approval, such approval not to be unreasonably withheld or delayed.

12.4 Entire Agreement

This Agreement and the schedules, together with all agreements and other documents to be delivered pursuant to this Agreement, constitute the entire agreement between the parties pertaining to the subject-matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and, except as stated, contain all of the representations and warranties of the respective parties. This Agreement may not be amended or modified in any respect, except by written instrument executed by the parties.

12.5 Time of Essence

Time shall be of the essence of this Agreement.

12.6 Restriction on Assignment

This Agreement shall enure to the benefit of the parties hereto and their respective successors, administrators and (permitted) assigns. Neither party may assign this Agreement without the prior written consent of the other, such consent to not be unreasonably withheld or delayed, provided however that this Agreement may be assigned by the City to any of its affiliates, associates, subsidiaries, partners and related entities.

12.7 Force Majeure

If either party shall be unable to carry out any obligation under this Agreement due to Force Majeure, this Agreement shall remain in effect, but such obligation shall be suspended for the period necessary as a result of the Force Majeure, provided that:

- (a) the non-performing party gives the other party written notice not later than forty-eight (48) hours after the occurrence of the Force Majeure describing the particulars of the Force Majeure, including but not limited to the nature of the occurrence and the expected duration of this disability, and continues to furnish timely regular reports with respect thereto during the period of Force Majeure and the disability;
- (b) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure; and

(c) the non-performing party uses its best efforts to remedy its inability to perform.

Notwithstanding any of the foregoing, the settlement of strikes, lockouts, and other labour disputes shall be entirely within the discretion of the affected party, and such party shall not be required to settle any strike, lockout or other labour dispute on terms which it deems inadvisable.

12.8 Survival

All representations, warranties and indemnities set out in this Agreement shall survive the termination or expiration of this Agreement.

12.9 Counterparts

This Agreement may be executed in counterparts and such counterparts together shall constitute a single instrument. Delivery of an executed counterpart of this Agreement by electronic means, including, without limitation, by facsimile transmission or by electronic delivery in portable document format (".pdf"), shall be equally effective as delivery of a manually executed counterpart hereof. The parties hereto acknowledges and agree that in any legal proceedings between them respecting or in any way relating to this Agreement, each waives the right to raise any defence based on the execution hereof in counterparts or the delivery of such executed counterparts by electronic means.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

THE CITY OF REGINA on the 27th day of March 2015

Per: [Signature]
The City Clerk



{affix seal}

MMM GROUP LIMITED on the 13 day of March 2015

Per: Mike Koziol, V.P. Transportation West
Name/Position of Authorized Corporate Signing Officer

Jon Heisler, V.P. Infrastructure Alberta

Signature Removed

{affix seal} Signature Removed

AFFIDAVIT OF CORPORATE SIGNING AUTHORITY

CANADA
SASKATCHEWAN

I, _____ of Regina, Saskatchewan,
Print Full Name of Signing Authority

MAKE OATH/AFFIRM AS FOLLOWS:

1. I am a Director or Officer of **MMM GROUP LIMITED** ("Consultant") named in the Services Contract to which this Affidavit is attached.
2. I am authorized by the Consultant to execute the Services Contract without affixing the Corporate Seal of the Consultant

Sworn/Affirmed before me at Regina, Saskatchewan
on _____, 2015
Month Date

A Commissioner for Oaths or a Notary Public in and for the
Province of Saskatchewan.
Being a lawyer —or—
My appointment expires:

Signature of Signing Authority

AFFIDAVIT OF EXECUTION

CANADA
SASKATCHEWAN

I, _____ of, _____
Print Full Name of Witness City/Town Prov./State

MAKE OATH/AFFIRM AS FOLLOWS:

1. I was personally present and saw _____, who is at least 18 years of age, sign and execute the _____ ("Agreement") to which this affidavit is attached.
2. The Agreement was executed at _____
City/Town Prov./State
3. I am the subscribing witness to the Agreement.

SWORN/AFFIRMED before me at:

City/Town Prov./State

On _____, 20____
Month Date Year

Signature Witness

A Commissioner for Oaths or a Notary Public in and for the Province of Saskatchewan. Being a lawyer —or—

My appointment expires: _____



SCHEDULE "A"
Consultant's Proposal for Consulting Services dated February 25, 2015

This schedule has been intentionally removed.