

THE EFFECTIVE DATE OF THIS AGREEMENT IS

REFEREE SERVICES AGREEMENT

BETWEEN:

THE CITY OF EDMONTON
(referred to as "the City")

-and-

(referred to as "the Contractor")

-and-

(referred to as "the Referee")

PREAMBLE

The City and the Contractor have entered into the Contract dated _____, for the _____ with documents entitled _____, Tender Number _____ (referred to as "the Contract");

The City and the Contractor wish to retain the services of a qualified and competent person to perform the duties of the Referee under the Contract; The City and the Contractor require the person appointed as Referee to act fairly and impartially in all respects and to expeditiously dispose of any disputes between the City and the Contractor

IN CONSIDERATION of the mutual covenants set out in this Agreement, the parties agree as follows:

1.0 APPOINTMENT

- 1.1 The City and the Contractor hereby name personally, to act as the Referee under the Contract, a copy of which has been provided to the Referee, and which Contract forms part of this Agreement, and accepts the appointment.

2.0 BIAS

- 2.1 The Referee confirms that he or she has disclosed, and shall disclose in the future, any facts or circumstances that may give rise to a reasonable apprehension of bias by the City or the Contractor.

3.0 DUTIES

- 3.1 The Referee shall perform all the duties, discharge all the responsibilities and comply with all the requirements respecting the Referee which are specified under this Agreement and the Contract.
- 3.2 The Referee shall give full and immediate attention to the performance of the duties and discharging of the responsibilities as required under this Agreement and the Contract and deliver decisions within the times required under this Agreement and the Contract.

4.0 COOPERATION

- 4.1 The City and the Contractor and their representatives shall cooperate with each other and with the Referee to assist the Referee in performing the duties and discharge the responsibilities as expeditiously as possible.

5.0 COMMUNICATIONS

- 5.1 Except for matters of a purely administrative nature, the Referee shall not communicate orally with the City or the Contractor or their representatives respecting any matters arising out of the Referee's duties or responsibilities under this Agreement, unless both parties or their representatives are present.
- 5.2 The Referee shall send copies of any communications sent to a party, or received, from a party to the other party as well.

6.0 EVIDENCE

- 6.1 Except as provided in this Agreement, the Referee shall not solicit any evidence from, or the opinion of, any person respecting any matters arising out of the Referee's duties or responsibilities.
- 6.2 The Referee is not bound by the strict rules of evidence.

7.0 EXPERTS

- 7.1 After consultation with the City and the Contractor and with the written consent of the City and the Contractor, the Referee may appoint any legal or technical experts considered necessary to assist in the performance of the duties or the discharge of the responsibilities of the Referee.
- 7.2 Subject to an order made under Article _____ of the General Terms/Conditions of the Contract, the fees and costs of appointing any experts shall be borne equally by the City and the Contractor.
- 7.3 The Referee shall impose a confidentiality obligation on all experts identical to that imposed on the Referee under this Agreement.

7.4 The Referee shall not delegate any of the Referee's responsibilities to an expert or any other person.

7.5 The Referee shall direct an expert to give advice or report, in writing, to the Referee along with copies to the City and the Contractor.

7.6 The City and the Contractor may each give the Referee a written response to the advice or report given by an expert.

8.0 TIME

8.1 The appointment of an expert under Article 7.0 on any matter does not excuse the Referee from making a decision on any particular matter within the time required under the Contract.

8.2 The City and the Contractor or their representatives may agree to extend the time specified in Article _____ of the General Terms/Conditions of the Contract in respect of any particular matter under consideration by the Referee.

9.0 SITE PRESENCE

9.1 The Referee shall visit the site where the Contract is performed whenever two of the three parties to this Agreement decide that a site visit is required. This Article shall not be interpreted to restrict in any way the power the Referee has under Article _____ of the General Terms/Conditions of the Contract.

9.2 Where required by the City and the Contractor, the Referee shall establish a site office.

10.0 FEES AND DISBURSEMENTS

10.1 Subject to Article _____ of the General Terms/Conditions of the Contract, the City and the Contractor shall share equally the cost of, and shall pay the Referee for:

- i) duties performed and responsibilities discharged under this Agreement, and
- ii) all reasonable disbursements required to perform the services and discharge the responsibilities, in accordance with Appendix "A" which is attached to and forms part of this Agreement.

11.0 FAILURE TO PAY

11.1 If either the City or the Contractor fails to pay any amount as required under Article 10.0, the other party may pay the required amount and the amount so paid is recoverable from the nonpaying party as if it were an obligation to pay under the Contract.

12.0 REVOCATION

12.1 The City and the Contractor may, by mutual agreement and by written notice, revoke the appointment of the Referee and terminate this Agreement at any time for any reason whatsoever.

13.0 RESIGNATION

13.1 The Referee may, by written notice, resign the appointment and terminate this Agreement for good reason.

14.0 CONFIDENTIALITY

14.1 The Referee shall hold in strict confidence and shall not copy or disclose to any person, other than an expert retained under Article 7.0, any documents or information provided or to which he or she gains access in the course of performing the duties or discharging the responsibilities under this Agreement, without the prior written permission of both the City and the Contractor.

15.0 NOTICES

15.1 Any notices required to be given under this Agreement shall be sent in writing by pre-paid recorded delivery mail, courier, or fax transmission to the respective parties as follow:

TO: The City of Edmonton

TO:

TO:

15.2 The parties may change the information provided above by written notice to each other and that change shall take effect on receipt.

16.0 RIGHTS NOT ASSIGNABLE

16.1 The appointment of the Referee and any rights arising out of this Agreement are personal to the Referee and may not be assigned.

17.0 EXECUTION OF AGREEMENT

17.1 This Agreement may be executed in several counterparts, each of which when so executed, shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. A fax transmission of this Agreement shall be deemed to be an original.

THIS AGREEMENT HAS BEEN EXECUTED in quadruplicate, on the dates shown below, each party taking one copy.

Per: _____

Date:

Per: _____

Date:

The City of Edmonton

As represented by

Date: