

BUYER'S RIGHT TO CANCEL AND GENERAL CONDITIONS ON PAGE 2

PROJECT AGREEMENT

This Agreement dated _____ is among:

[PROPERTY OWNER]

(the "Participant" or the "Buyer")

AND

[QUALIFIED CONTRACTOR NAME]

(the "Qualified Contractor" or the "Seller")

AND

ALBERTA MUNICIPAL SERVICES CORPORATION

(**"AMSC"**)

PREAMBLE:

- A. The Clean Energy Improvement Program (the "Program") is administered by the Alberta Municipal Services Corporation ("AMSC").
- B. The AMSC administers and delivers the Program on behalf of the Municipality pursuant to which Upgrade(s) may be made on eligible private property pursuant to the *Municipal Government Act*, R.S.A. 2000, c. M-26 and the Municipality's Clean Energy Improvement Bylaw.
- C. This Project Agreement is required by Section 11 of the *Clean Energy Improvements Regulation*, Alta Reg 212/2018.
- D. The Qualified Contractor is in the business of providing Services relating to the Project.
- E. The Qualified Contractor has agreed to the Qualified Contractor Terms and Conditions and is listed on the Contractor Directory.
- F. The Participant is the legal and beneficial owner(s) of the Property.
- G. The Participant submitted a Project Application Form that was approved by the AMSC and the Municipality.
- H. The Qualified Contractor has agreed to complete the Project for the Participant pursuant to the terms and conditions of this Agreement and the most recent version of the Qualified Contractor Terms and Conditions.
- I. The Qualified Contractor understands its obligations under the *Consumer Protection Act* RSA 2000 c. C-26.3 and will perform all such obligations in performance of this Project Agreement.

J. The Qualified Contractor has reviewed and agreed to the most current version of the Qualified Contractor Code of Conduct and Issue Escalation Framework, and Qualified Contractor Marketing Guidelines, prior to entering into this Project Agreement.

K. The Participant and the Municipality have entered into a Clean Energy Improvement Agreement.

BUYER'S RIGHT TO CANCEL

You may cancel this contract from the day you enter into the contract until 10 days after you receive a copy of the contract. You do not need a reason to cancel.

If you do not receive the goods or services within 30 days of the date stated in the contract, you may cancel this contract within one year of the contract date. You lose that right if you accept delivery after the 30 days. There are other grounds for extended cancellation. For more information, you may contact your provincial/territorial consumer affairs office.

If you cancel this contract, the Seller has 15 days to refund your money and any trade-in, or the cash value of the trade-in. You must then return the goods. To cancel, you must give notice of cancellation at the address in this contract. You must give notice of cancellation by a method that will allow you to prove that you gave notice, including registered mail, fax or by personal delivery.

AGREEMENT:

In consideration of the mutual promises made by each Party as set out in this Project Agreement and such other consideration, the receipt and sufficiency of which each Party acknowledges, the Parties agree as follows:

1. DEFINITIONS

1.1 Each of the following words and phrases used in this Agreement shall have the following meaning unless otherwise specifically provided:

- (a) **"Agreement"** or **"Project Agreement"** means this Project Agreement;
- (b) **"AMSC"** means Alberta Municipal Services Corporation, a subsidiary of the Alberta Urban Municipalities Association (AUMA) which operates as Alberta Municipalities. AMSC is the program administrator for the Clean Energy Improvement Program designated in the Clean Energy Improvements Regulation, Alta Reg 212/2018;
- (c) **"Business Day"** means any day except Saturday, Sunday or statutory holidays in the Province of Alberta;
- (d) **"Capital Cost"** means the cost to purchase and install the Upgrade, and does not include Professional Service costs or Incidental Costs;
- (e) **"CEIP"** or **"Program"** means the Clean Energy Improvement Program administered by AMSC;

- (f) **“Change Order”** means a record of change, including any addition, modification or deletion to the Project or the Completion Date or the replacement of any supplier or any subcontractor which results in a change to the Project or Project Cost;
- (g) **“Clean Energy Improvement Agreement”** means the agreement signed between the Participant and the Municipality which sets out the terms and conditions of the Program participation and Project financing;
- (h) **“Clean Energy Improvement Charge”** means the sum of all Eligible Costs approved by the AMSC and the Municipality, the Program Administration Fee, and the interest, that is recorded on the Participant’s property tax roll for repayment;
- (i) **“Qualified Contractor Code of Conduct and Issue Escalation Framework”** means the Code of Conduct and Issue Escalation Framework posted by AMSC on the Program website;
- (j) **“Commencement Date”** means the date of issue of the Installation Authorization Notice;
- (k) **“Completion Date”** means the date when the Project has reached Substantial Performance;
- (l) **“Contractor Directory”** means a list of Qualified Contractors that is established and maintained on the Program website;
- (m) **“Deficiency List”** has the meaning set forth in Section 6.1;
- (n) **“Direction to Pay”** means the authorization from the Participant which allows AMSC to pay the Qualified Contractor on the Participant’s behalf found in Schedule B;
- (o) **“Eligible Cost”** means a cost eligible for financing under the Program as determined by the Program Administrator and shall include the Capital Costs, Professional Service costs, and Incidental Costs for the Project;
- (p) **“Event of Force Majeure”** means any cause(s) beyond the Qualified Contractor’s control and for which the Qualified Contractor is not responsible, including but not limited to, delay in delivery or shortages of materials, products or labour or inability to obtain necessary permits from any governmental authority, but shall not include a shortage of funds;
- (q) **“Incidental Cost”** means any costs or amounts expended on preparation or upgrading of the Property that are incidental to the installation of the Upgrade(s) on the Property but required for successful execution;
- (r) **“Incidental Work”** means only those Services that have a direct Incidental Cost;
- (s) **“Installation Authorization Notice”** means the notification provided by AMSC to the Participant and the Qualified Contractor to authorize the start of the Upgrade installations;

- (t) **“Marketing Guidelines”** means the marketing guidelines for Qualified Contractors posted by AMSC on the Program website;
- (u) **“Municipality”** means [NTD: Insert name of the municipality where the Property is located];
- (v) **“Municipality Funding”** means the funds provided by the Municipality to AMSC or its lawful designee to pay for any Eligible Cost;
- (w) **“Notice”** means any notice, demand or other communication required or permitted to be given under this Agreement;
- (x) **“Participant”** or **“Buyer”** or **“You”** or **“you”** means the individual(s) or legal entity that is the registered owner of the Property where the Upgrades are to be installed [NTD: Insert name(s) of Participant/Buyer];
- (y) **“Party”** means AMSC, the Qualified Contractor or the Participant and **“Parties”** means all of them;
- (z) **“Personnel”** means all personnel involved in the development and/or provision of Services and/or deliverables by a Qualified Contractor hereunder, whether they are employees, Subcontractors or other agents of the Qualified Contractor engaged in Program-eligible Services;
- (aa) **“Professional Service”** means a Service provided by a professional with specialized education or training, including engineering studies, ASHRAE audits, NRCan certified home energy evaluations, feasibility studies, or related studies, but exempting installation of the Upgrade or Incidental Work;
- (bb) **“Program”** means the Clean Energy Improvement Program administered by AMSC;
- (cc) **“Program Terms and Conditions”** or **“CEIP Terms and Conditions”** means the terms and conditions found on the Program website on the Municipality’s webpage that the Participant must agree and adhere to for participation in the Municipality’s Program;
- (dd) **“Project”** means the installation of Upgrades at the Participant’s Property by the Qualified Contractor(s) and any associated Services, as detailed in the Project Application Form;
- (ee) **“Project Application Form”** means the form completed and submitted by the Participant after receiving pre-qualification approval, which lists the proposed Upgrades and Project Cost;
- (ff) **“Project Cost”** means the sum of all Eligible Costs for the Project, detailed in Schedule A;
- (gg) **“Property”** means the land and premises where the Upgrades are to be installed located in [Municipality], Alberta, more particularly described as:

Legal Address: ◆

- (hh) **“Qualified Contractor”** has the definition as set out in the *Clean Energy Improvements Regulation*, Alta Reg 212/2018 and for this Agreement means [NTD: Insert name of Qualified Contractor], as the primary Qualified Contractor for the Project;
- (ii) **“Qualified Contractor Terms and Conditions”** means the terms and conditions that govern the inclusion of the Qualified Contractor in the Contractor Directory;
- (jj) **“Services”** means all work for the purposes of the Program, including but not limited to ordering materials required for the Project, Upgrade installation, Incidental Work, compliance processes, feasibility and engineering studies, energy audits, and NRCan Certified Home Energy Evaluations provided by a Qualified Contractor;
- (kk) **“Subcontractor”** means any Qualified Contractor who has contracted with another Qualified Contractor to deliver Services;
- (ll) **“Substantial Performance”** means the date on which all required approvals of public authorities having jurisdiction over the Upgrade have been obtained and the Upgrade is ready for use or is being used for its intended purpose;
- (mm) **“Supporting Documentation”** means any documentation required by AMSC to collect for each Upgrade, as specified in the Upgrade Eligibility Requirements on the Program website;
- (nn) **“Upgrade”** means an energy-efficient or renewable energy product or installation that meets the Upgrade Eligibility Requirements specified on the Program website;
- (oo) **“Upgrade Completion Form”** means the form completed and submitted by the Participant to the AMSC, once an Upgrade has reached Substantial Performance, which lists the final Upgrade installed and confirms the Project Costs;
- (pp) **“Upgrade Eligibility Requirements”** means eligibility requirements, including Supporting Documentation required for each Upgrade, as specified on the Program website.

2. INTERPRETATION

2.1 In this Agreement, unless the context requires otherwise:

- (a) “including” and “includes” mean including without limitation;
- (b) words importing the singular shall include the plural and vice versa;
- (c) words importing gender shall include all genders;
- (d) any technical or industry-specific words or phrases not otherwise defined herein have the meaning given to such terms in the industry in which they are normally used;
- (e) references to currency shall be to Canadian dollars (\$CAD);

- (f) any reference to an agreement or instrument, including this Agreement, is a reference to it as varied, amended, modified, supplemented or replaced from time to time, and a reference to any law is a reference to it as re-enacted, varied, amended, modified, supplemented or replaced from time to time; and
- (g) the use of headings and the division of this Agreement into articles, sections and schedules is for convenience only and shall not affect the interpretation of this Agreement.

2.2 The following schedules are incorporated in and form a part of this Agreement:

- Schedule A – Scope of Project
- Schedule B – Direction to Pay
- Schedule C – Sample Change Order
- Schedule D – Additional Insurance Requirements (if applicable)

3. THE PROJECT

- 3.1 The Qualified Contractor agrees to complete the Project as approved by the AMSC and described in Schedule A. The Qualified Contractor must ensure each Upgrade installed as part of the Project meets the Upgrade Eligibility Requirements.
- 3.2 The Participant and the Qualified Contractor acknowledge and agree that the scope of the Project is as set out in Schedule A, and that changes to the scope of the Project require a Change Order and the written consent of AMSC. The Qualified Contractor and the Participant acknowledge the quotes and warranty information provided by the Qualified Contractor will form part of this Agreement.
- 3.3 The Qualified Contractor will perform the Services for the Project, in a professional, competent, and safe manner with workmanship that meets or exceeds industry standards.
- 3.4 Subject to Sections 3.5 and 3.6, the Qualified Contractor may engage any Personnel as it may designate to complete all or any portion of the Project provided that the Qualified Contractor will remain fully liable to the Participant for the performance of the Project by the Personnel, and for any and all acts and omissions of such Personnel and of all persons employed or engaged by them, directly or indirectly.
- 3.5 The Qualified Contractor shall ensure that none of its Personnel have been previously suspended or removed from the Contractor Directory.
- 3.6 The Qualified Contractor shall ensure that all its Personnel are registered and in good standing with the Workers' Compensation Board of Alberta (WCB-Alberta).
- 3.7 The Qualified Contractor is responsible for the occupational health and safety of all workers on the Project site, as well as for ensuring the compliance with all applicable occupational health and safety acts, regulations and codes. The Qualified Contractor will abide by and comply with all provisions of the *Workers' Compensation Act* with respect to the performance of the Project and will make all payments, contributions and other remittances and all reports, returns and statements required of employers under that Act. The Qualified Contractor further

- unconditionally guarantees full compliance with that Act by all Personnel and other persons employed by the Qualified Contractor or with whom the Qualified Contractor may make any contract for the performance of any part of the Project.
- 3.8 The Qualified Contractor shall obtain all permits, licences, approvals and building occupancy permits necessary to perform the Services for the Project and as may be required by provincial or local governmental authorities.
 - 3.9 The Qualified Contractor shall contact the appropriate authorities for any inspections or approvals as required by provincial or municipal authorities.
 - 3.10 The Qualified Contractor will complete all Services in accordance with all laws including all local codes and regulations.
 - 3.11 The Qualified Contractor shall supply all labour, tools, equipment, machinery, and other services necessary to perform the Services for the Project.
 - 3.12 The Qualified Contractor agrees to provide the Participant with all necessary information relevant to the Upgrade(s) including, but not limited to, operator's manuals, equipment specification sheets, and instruction on how to operate and maintain the Upgrade(s).
 - 3.13 The Qualified Contractor agrees to indemnify the Participant against all cost, loss, liability, obligation and lien which may arise as a consequence of any failure by the Qualified Contractor or any Personnel or other person to fully comply with the *Workers' Compensation Act*. The Qualified Contractor will deliver to the Participant and the AMSC, before any work is begun and at any time during the term of the Agreement when requested by the Participant or the AMSC, satisfactory evidence and certificates showing compliance with the *Workers' Compensation Act*.
 - 3.14 The Qualified Contractor will protect the Project and the Participant's Property and the properties adjacent thereto from damage and will be responsible for any damage which may arise as a result of the completion of the Project.
 - 3.15 The Qualified Contractor will maintain the Project site in a tidy condition, free from the accumulation of waste products and debris, other than that caused by the Participant. At the Completion Date, the Qualified Contractor will remove all products, tools and construction machinery and equipment not required for the performance of any remaining Services and will remove all waste products and debris other than that caused by the Participant, and will leave the Project in a clean state and suitable for occupancy by the Participant, and in the same or better state than when the Qualified Contractor first commenced Services on the Project.
 - 3.16 The Qualified Contractor must remove and properly dispose of or recycle the equipment being replaced by the Upgrades in accordance with any applicable laws and local requirements. Equipment being replaced cannot be resold or reused. The AMSC, the Municipality and the Participant are not responsible for disposal or recycling of any waste generated as a result of the Project.
 - 3.17 The Participant will make the Property available to the Qualified Contractor to complete the Project in a timely manner including, but not limited to, ensuring that the Qualified Contractor has full access to the Property five days a week from 8am to 6pm or other timing mutually agreed

on between the Participant and the Qualified Contractor, to perform the Services required to complete the Project.

4. TIMING

4.1 The Qualified Contractor will not commence the Upgrade installation and/or Incidental Work until the Commencement Date.

4.2 The Completion Date must be within six months of the Commencement Date for residential Projects and within one year of the Commencement Date for commercial Projects.

4.3 If the Qualified Contractor is delayed in the performance of the Project by an act or omission of the Participant, or by an Event of Force Majeure, the Completion Date deadlines noted in Section 4.2 may be extended by the length of such delay, subject to AMSC and Municipality approval. In the event of delay caused by an act or omission of the Participant, then the Qualified Contractor will be reimbursed by the Participant for all reasonable costs incurred by the Qualified Contractor as the result of such delay. In the event the request for extension is not approved by the AMSC and the Municipality, and the Upgrade does not reach Substantial Performance in accordance with the deadlines set out in Section 4.2, neither the AMSC nor the Municipality are liable for any costs incurred.

4.4 The Qualified Contractor and the Participant agree that in the event the Qualified Contractor is not able to commence the Services for the Project within a period of sixty (60) days from the date of this Agreement due to an Event of Force Majeure then the Qualified Contractor may cancel this Agreement with ten (10) days' written Notice to the Participant without penalty.

(a) In the event of cancellation under this Section, the Qualified Contractor shall return any additional sums paid by the Participant or by the AMSC to the Qualified Contractor, less only those actual costs paid by the Qualified Contractor for Services or materials already provided, and only those reasonable and necessary expenses already incurred by the Qualified Contractor prior to and as of the date of cancellation.

(i) In the event the AMSC has paid a deposit to the Qualified Contractor on behalf of the Participant and the full deposit amount is not returned to AMSC by the Qualified Contractor, the Participant agrees to pay to AMSC any remaining amount of the full deposit not returned, as the Participant is only eligible for financing if the Upgrade reaches Substantial Performance.

(b) Under no circumstances shall the Participant be entitled to payment or compensation for any claims incurred or suffered as a result of an Event of Force Majeure.

5. PROJECT AMENDMENTS

5.1 Additions, removals, variations, substitutions, delay in Project completion, or price changes to the Project require a Change Order approved by the AMSC and the Municipality. Upon request by the Participant, the AMSC will provide the Participant with a Change Order form to complete with the support of the Qualified Contractor. The AMSC will review the Change Order form and upon approval by the AMSC and the Municipality, the AMSC will append the Change Order form to this Agreement and send for signature by all Parties.

- (a) If the amendment is expected to cause a delay in the Project, extending the Completion Date past the deadlines outlined in Section 4.2, an extension request must be included in the Change Order. The request for extension will be approved at the sole discretion of the AMSC and the Municipality.
- 5.2 The Change Order must be signed by the Qualified Contractor, the Participant, the Municipality and the AMSC and will form part of this Agreement once signed by all Parties and the Municipality.
- 5.3 If the Participant, AMSC, and/or the Municipality do not agree to sign the Change Order within ten (10) Business Days of receipt of the Change Order, the Qualified Contractor may complete the Project according to the original terms of this Agreement, and the description of the Project set out in Schedule A hereto, upon AMSC and the Qualified Contractor receiving written notice from the Participant.
- 6. REVIEW AND INSPECTION OF THE WORK**
- 6.1 The Qualified Contractor shall provide the Participant a certificate of Substantial Performance of the Upgrade. When a certificate of Substantial Performance is received, the Participant shall conduct a walk-through inspection of the Upgrade with a representative of the Qualified Contractor at which time any deficiencies will be noted in writing (the “**Deficiency List**”). For greater certainty, a deficiency constitutes work which is defective or work which is not performed as provided for in Schedule A.
- 6.2 The Participant shall be deemed to accept the Upgrade has reached Substantial Performance, subject to only the correction of such defects or deficiencies identified in the Deficiency List, which the Qualified Contractor agrees to rectify within a reasonable period of time.
- 6.3 The Participant acknowledges that if the Qualified Contractor issues a certificate of Substantial Performance under the *Builders’ Liens Act* (Alberta), the Qualified Contractor is required to post the certificate on the Property in a conspicuous place within 3 days from the date of issuing the certificate. The Participant agrees that this certificate will not be disturbed and will remain in place for a period of not less than 60 days from the date of posting.
- 6.4 The Qualified Contractor and the Participant acknowledge that the AMSC, the Municipality or their agents may conduct a site inspection prior to or during the installation of Upgrades in order to verify information submitted on the Project Application Form, and may also conduct a site inspection after the Completion Date in order to verify installation of Upgrades. The Qualified Contractor and the Participant acknowledge that the AMSC or the Municipality has no obligation whatsoever to conduct any site inspections and is entitled to rely on the terms of this Agreement and the documents provided herein. However, if the AMSC or the Municipality chooses to conduct a site inspection, the Participant will provide reasonable access to the Property for the purposes of a site inspection.
- (a) If the site inspection reveals any discrepancies between the Upgrade(s) listed on the Upgrade Completion Form and the Upgrade(s) that were installed, AMSC will endeavour to work with the Participant and Qualified Contractor to attempt to resolve the issue and facilitate a Project amendment, if required; and

(b) If, due to any of the discrepancies in Section 6.4 (a), any of the Program eligibility criteria posted on the Program website and in the Program Terms and Conditions are no longer met and the issue cannot be resolved, the Participant is not eligible for financing under the Program for the Upgrade and any Services related to that Upgrade, and the Qualified Contractor is considered to be in default. In such case, AMSC may terminate this Agreement upon Notice to the Participant and the Qualified Contractor.

6.5 The Qualified Contractor shall assist and cooperate with the completion of any site inspection (before, during or after completion of Upgrade(s)) by the AMSC, the Municipality or their agents, along with any reports or other documentation required by the AMSC or otherwise required for the Project to be eligible for the Program.

7. PRICE AND PAYMENT TERMS

7.1 On the date of Substantial Performance, the Qualified Contractor must provide the Participant with all required Supporting Documentation for the installed Upgrades as set out in the Upgrade Eligibility Requirements on the Program website. This includes itemized proper invoices detailing the Upgrade name, make and model number, number of units installed, cost, date of installation, and Services performed to complete the Project. These invoices will only contain costs relevant to an Upgrade that meets the Upgrade Eligibility Requirements.

7.2 Within three calendar days of receiving all required Supporting Documentation from the Qualified Contractor, the Participant must submit the completed Upgrade Completion Form, copies of invoices, and any other Supporting Documentation to AMSC. If the AMSC determines that an Upgrade Completion Form and/or Supporting Documentation is deficient or incomplete, the AMSC will notify the Participant and the Qualified Contractor and provide them with an opportunity to rectify the deficiency.

7.3 The Participant and Qualified Contractor may agree to a deposit payment to be paid to the Qualified Contractor upon execution of this Agreement, provided that the Qualified Contractor holds a valid and subsisting Prepaid Contracting Business Licence pursuant to the *Consumer Protection Act*, R.S.A. 2000, C-26.3.

(a) Where applicable, the deposit payment is detailed in Schedule A based on the Project Application Form submitted by the Participant and the limits imposed by the Municipality.

(b) When a deposit payment is agreed to between the Participant and the Qualified Contractor and if the Municipality authorizes payments to be directed to the Qualified Contractor for deposits:

(i) the Participant must inform the Qualified Contractor of any limits placed on the deposit amount by the Municipality.

(ii) an invoice for the deposit payment must be provided to the Participant by the Qualified Contractor and be submitted to the AMSC with the Project Application Form.

(iii) the AMSC will remit payment, on behalf of the Municipality and in the amount agreed to in Schedule A, to the Qualified Contractor electronically to the account

provided within 30 calendar days of the date this Agreement is executed, provided a proper invoice has been received and all information is accurate and complete.

- (iv) for any deposit amounts requested by the Qualified Contractor that exceed the deposit amount limits imposed by the Municipality, the Participant will remit payment, as agreed to in Schedule A, to the Qualified Contractor within 30 calendar days of the date this Agreement is executed, provided a proper invoice has been received and all information is accurate and complete.
- (c) When a deposit payment is agreed to between the Participant and the Qualified Contractor and the Municipality does not allow deposit payments to be made to the Qualified Contractor:
- (i) the Participant will pay for the deposit out of pocket within 30 calendar days of receiving a proper invoice.
 - (ii) the Participant is not required to finance such deposit amount through the Program.
 - (iii) the Participant may request the deposit amount be added to the financing amount, and the Participant will be reimbursed the deposit amount upon receipt and approval of an Upgrade Completion Form and Supporting Documentation for the Upgrade and the amount will be added to the Clean Energy Improvement Charge.
 - A. The deposit amount paid by the Participant to the Qualified Contractor may only be financed if the payment occurred after the date of execution of this Agreement.
 - B. The Participant will provide to the AMSC a completed electronic funds transfer form and void cheque, clearly identifying their name and the branch, transit, and account numbers in order for the AMSC to direct payments, on behalf of the Municipality, to the Participant electronically. No payments will be made to the Participant until the information required by this Section has been provided to the AMSC.

7.4 Subject to Section 6.4, the AMSC, on behalf of the Municipality, will pay Qualified Contractors directly for Eligible Costs associated with the Project provided the following requirements are met:

- (a) All information provided on the Upgrade Completion Form is complete and accurate, including:
 - (i) All required Supporting Documentation as listed in the Upgrade Eligibility Requirements on the Program website, including but not limited to a proper invoice detailing the Upgrade name, make and model number, number of units installed, cost, date of installation, and Services performed to complete the

Project. These invoices will only contain costs relevant to an Upgrade that meets the Upgrade Eligibility Requirements.

- (ii) Proof of payment for any costs incurred by the Qualified Contractor that are associated and invoiced to the Project, if requested by the AMSC.
 - (iii) Signature of the Participant indicating that the Upgrade(s) were installed successfully.
- (b) The Parties agree to the Direction to Pay in Schedule B of this Agreement.
- (c) AMSC will not pay the Qualified Contractor for any Eligible Costs until at least one Upgrade with a minimum of \$3,000 in Capital Costs has reached Substantial Performance and an Upgrade Completion Form and Supporting Documentation has been submitted and approved by the AMSC.
- (i) In the event that Services for Professional Services and/or Incidental Work are completed prior to installation of the associated Upgrade, the Participant shall be responsible to pay the Qualified Contractor for those Services. Once the associated Upgrade has a minimum Capital Cost of \$3,000 and has reached Substantial Performance, the Participant may submit an Upgrade Completion Form and Supporting Documentation for payment of Professional Services costs and/or Incidental Costs to the Participant, if the Participant paid such costs, or to the Qualified Contractor, if not previously paid by the Participant.
- (d) AMSC will not pay the Qualified Contractor or the Participant for Eligible Costs related to Professional Services and/or Incidental Work unless the associated Upgrade has reached Substantial Performance and an Upgrade Completion Form and Supporting Documentation have been submitted and approved by the AMSC.
- (e) For each subsequent Upgrade after the first Upgrade, AMSC will not pay the Qualified Contractor for any Eligible Costs related to the Upgrade, until the Upgrade has reached Substantial Performance and an Upgrade Completion Form and Supporting Documentation have been submitted and approved by the AMSC.
- (f) The Qualified Contractor will provide to the AMSC a completed electronic funds transfer form and void cheque, clearly identifying their name and the branch, transit, and account numbers in order for the AMSC to direct payments to the Qualified Contractor electronically. No payments will be made to the Qualified Contractor until the information required by this Section has been provided to the AMSC.
- 7.5 Provided the AMSC has received the Municipality Funding from the Municipality, and the requirements in Sections 7.4(a) – (f) have been met, the AMSC will remit payment to the Qualified Contractor electronically to the Qualified Contractor’s account within 28 calendar days of the date of receipt of a proper invoice provided all information is accurate and complete.
- 7.6 All payments herein shall be released to the Qualified Contractor subject to statutory exceptions, or Court order, including required holdbacks under the *Builders’ Lien Act*.

8. INSURANCE

- 8.1 The Qualified Contractor shall hold and maintain the following current insurance policies from the Commencement Date until all deficiencies in the Deficiency List have been completed to the Participant's satisfaction and the warranty period in Section 11.3 has expired:
- (a) General liability insurance, written on an occurrence basis, including bodily injury, property damage, personal injury, advertising injury, products and completed operations, and contractual liability, in an amount not less than:
 - (i) Each Occurrence Limit \$2,000,000 for residential Projects;
 - (ii) Each Occurrence Limit \$5,000,000 for non-residential Projects;
 - (b) Automobile liability insurance that covers business use with a minimum limit of \$2,000,000 liability for bodily injury and property damage for all owned, rented, leased or hired vehicles used in conjunction with this Agreement;
 - (c) Additional insurance requirements agreed to between the Qualified Contractor and Property Owner in Schedule D of this Agreement.
 - (i) In the event of any conflict between the requirements in Sections 8.1(a) or (b) and Section 8.1(c) of this Agreement, Sections 8.1(a) and (b) shall take precedence.
- 8.2 The Qualified Contractor must ensure that all Personnel are covered under the Qualified Contractor's policies or hold their own policies of insurance listed in Section 8.1.
- 8.3 If requested, the Qualified Contractor shall deliver to the Participant and/or the AMSC certificates of insurance evidencing such coverage within five (5) Business Days of the date of the request.
- 8.4 When the *Workers' Compensation Act* (Alberta), as amended from time to time, applies, and upon request from the AMSC or the Participant, the Qualified Contractor shall deliver proof from the Workers' Compensation Board showing that the Qualified Contractor is registered and in good standing with the WCB-Alberta.
- 8.5 The Participant must hold and maintain the following policies of insurance for their Property, from the Commencement Date until all deficiencies in the Deficiency List have been remedied to the Participant's satisfaction:
- (a) For a Participant completing the Project on a residential property, homeowners' insurance with a minimum of \$1,000,000 in liability coverage.
 - (b) For a Participant completing the Project on a non-residential property; commercial broad form property insurance and a minimum of \$1,000,000 in commercial general liability coverage.

9. DEFAULT BY QUALIFIED CONTRACTOR

- 9.1 If the Qualified Contractor fails to perform the Services in accordance with the terms of this Agreement, or fails to make timely payment to Personnel or suppliers, or if Qualified Contractors' Personnel have registered liens against the Property, the Participant may give written Notice to the Qualified Contractor that the Qualified Contractor is in default of its contractual obligations and instruct the Qualified Contractor to remedy the default within seven (7) Business Days immediately following the receipt of the Notice.
- (a) If the Qualified Contractor fails to remedy the default within the time specified or within such time subsequently agreed upon by the Parties, the Participant may immediately terminate the Agreement by providing the Qualified Contractor written Notice. In the event the Participant terminates the Agreement, the Qualified Contractor shall cease work on the Project.
- 9.2 If the Qualified Contractor has breached a material term of the Qualified Contractor Terms and Conditions, has become insolvent or bankrupt, made a general assignment for the benefit of creditors, or if a receiver should be appointed, the Participant or the AMSC may terminate this Agreement immediately by giving Notice to the Qualified Contractor or receiver.
- 9.3 If the Qualified Contractor is suspended or removed from the Contractor Directory in accordance with the Qualified Contractor Code of Conduct and Issue Escalation Framework, the Qualified Contractor is unable to perform any Services during the period of suspension or removal. If the Qualified Contractor is removed from the Contractor Directory or not reinstated to the Contractor Directory within thirty (30) Business Days of suspension, the Participant or the AMSC shall have the right to terminate the Agreement by providing the Qualified Contractor written Notice.
- 9.4 In the event of termination under Section 6.4(b) or Sections 9.1, 9.2, or 9.3, all amounts due under this Agreement as at the date of termination shall become due and payable and neither the AMSC nor the Municipality are liable for any costs incurred due to the default by the Qualified Contractor.
- (a) The Participant shall only be responsible for payments, liabilities, and settlements for Services completed and/or equipment installed by the Qualified Contractor prior to and as of the date of termination.
- (b) The Qualified Contractor shall immediately return any additional sums paid by the Participant or the AMSC to the Qualified Contractor, less actual costs paid by the Qualified Contractor and all reasonable and necessary expenses incurred by the Qualified Contractor for Services completed and/or equipment installed by the Qualified Contractor prior to and as of the date of termination.
- (c) If the AMSC paid a deposit to the Qualified Contractor on behalf of the Participant and the full deposit amount was not returned to AMSC by the Qualified Contractor, the Participant shall pay AMSC any remaining amount of the full deposit.
- (d) The Qualified Contractor will be liable for any and all damages resulting from its termination.

- (e) Under no circumstances shall the Participant or the Qualified Contractor be entitled to payment or compensation from the AMSC or the Municipality for any claims incurred or suffered as a result of termination.

10. DEFAULT BY PARTICIPANT

- 10.1 If payment of any of the amounts in this Agreement to be paid to the Qualified Contractor are not so made, or in the event that the Participant should default in any of the other covenants or agreements herein, or if the Municipality shall become insolvent or bankrupt or shall make a general assignment for the benefit of creditors, or if the Project is suspended or otherwise delayed for a period of fifteen (15) Business Days or more under an order of a court or other public authority provided that such order is not issued as a result of an act or omission of the Qualified Contractor, the Qualified Contractor may, without prejudice to any other right or remedy it has, terminate the Agreement immediately by providing the Participant and the AMSC written Notice.
- 10.2 On the occurrence of such default as set out herein:
 - (a) the Qualified Contractor shall be entitled to recover payment from the Participant for the Services already completed proportionately to the Project price. The Participant shall have no right to claim any monies paid to the Qualified Contractor under this Agreement and the same may be retained by the Qualified Contractor as liquidated damages without limiting or prejudicing the Qualified Contractor's right to claim for damages or seek other remedies.
 - (b) the AMSC shall be entitled to recover payment from the Participant for any and all payments made by AMSC to the Qualified Contractor.

11. WARRANTY

- 11.1 The Qualified Contractor agrees that any Upgrade, product or service the Qualified Contractor installs or otherwise provides for the purpose of the Project has a manufacturer or supplier's warranty:
 - (a) with a warranty period that is consistent with the industry standard, provided that the warranty period is not less than one year and complies with the requirements set out in the Upgrade Eligibility Requirements specified on the Program website, beginning on the date of Substantial Performance; and
 - (b) that is transferrable to the Participant and any subsequent owner of the Property.
- 11.2 The Qualified Contractor will be responsible for the proper performance of the Upgrade and the Qualified Contractor agrees to provide a warranty for defects in materials and labour for a reasonable period of time, provided that the warranty period is not less than one year, beginning on the date of Substantial Performance.
- 11.3 The terms of the warranties referenced in Sections 11.1 and 11.2 will be provided by the Qualified Contractor to the Participant upon the Participant's request and no later than the date of Substantial Performance of the associated Upgrade(s).

11.4 The Qualified Contractor agrees to promptly correct, at its own expense, defects or deficiencies in the Project which appear prior to and during the warranty period.

12. INDEMNITY AND LIMITATION OF LIABILITY

12.1 The Participant and the Qualified Contractor acknowledge and agree that none of the Municipality, the AMSC, nor their respective affiliates, agents, subcontractors, successors or consultants will be liable under any theory of relief or recovery to the Participant or the Qualified Contractor for any damages of any kind or nature arising at law or in equity (whether in negligence, because of breach of contract, in tort or under any other provision of law) including but not limited to property damage, direct or consequential losses, economic loss, or personal injury, that arises from or is related to the design, installation or operation of the Upgrade(s) or anything done under this Agreement or Program, including but not limited to, removal of the Qualified Contractor or any Personnel from the Contractor Directory, or termination of this Agreement.

12.2 There is no implied nor express representation or warranty by the Municipality, the AMSC, or their respective affiliates, agents, subcontractors, successors and assigns related to the design, installation, functionality or performance of the Upgrade(s), and the Municipality, the AMSC and their respective affiliates, agents, subcontractors, successors and assigns expressly disclaim any and all warranties relating to the Upgrade(s), associated equipment or materials as to workmanship, quality, fitness for purpose or performance.

12.3 The Participant and the Qualified Contractor each indemnify and save harmless the Municipality, the AMSC and their respective officers, employees, elected officials, members of the board of directors, and agents from and against any losses, costs (including legal costs on a solicitor and his own client basis), damages, liens, charges, claims, demands, suits, proceedings, recoveries and judgments arising from or related to the performance or non-performance of this Agreement.

13. DISPUTE RESOLUTION

13.1 In the event of any dispute regarding the interpretation or application of any provision of this Agreement, the Parties in dispute shall refer the matter for joint discussion by individuals with the authority to implement a resolution. In the case of a Party that is a corporate body, this will include senior representatives of the Party. If the Parties in dispute cannot resolve a dispute, the Parties in dispute shall participate in mediation with a mutually acceptable mediator. Mediation shall proceed on the following basis:

- (a) only the Parties in dispute shall participate in mediation, however, if AMSC is not one of the Parties in dispute, AMSC may, in its sole discretion, decide to participate in the dispute resolution process;
- (b) if the Parties in dispute cannot agree on a mediator, they shall ask the President or Executive Director of the Alberta Arbitration and Mediation Society to assist in the selection process;
- (c) the Parties in dispute shall share the cost of the mediator equally and bear their own costs incurred with respect to the mediation, however, it is understood AMSC will not be liable for any costs of the mediator;

- (d) no evidence of anything said or of any admission or communication made in the course of the mediation shall be admissible in any legal proceeding, except with the consent of all the Parties; and
- (e) any resolution reached shall be based on the full participation of and an agreement made between the Parties in dispute.

14. DECLARATION OF QUALIFIED CONTRACTOR CONFLICT OF INTEREST

14.1 If the Qualified Contractor or any of its Personnel are the same person as the Participant, the Qualified Contractor and the Participant must disclose this information to the AMSC within three days of signing this Agreement. In such cases, the following will apply in addition to all other terms and conditions contained in this Agreement:

- (a) the Qualified Contractor will be required to provide a warranty for defects in materials and labour for a period of no less than two years, beginning on the date of Substantial Performance;
- (b) the warranty for defects in materials and labour is transferrable to the subsequent owner(s) of the Property;
- (c) the Qualified Contractor may be subject to additional oversight and reporting requirements which will be determined by the AMSC on a case-by-case basis and communicated in writing to the Qualified Contractor and the Participant prior to the signing of this Agreement; and
- (d) each of the Qualified Contractor and each Participant acknowledge and accept they each have separate and distinct rights and obligations under this Agreement in their capacities as a Qualified Contractor and as a Participant.
- (e) in the event of a default under Section 9.1 or 10.1, the AMSC may terminate the Agreement immediately by providing the Participant and the Qualified Contractor written Notice.

15. GENERAL

15.1 Participant's Acknowledgment. The Participant acknowledges it has read and understood this Agreement and the terms, conditions, limits and exclusions that are specified in this Agreement. The Participant agrees to be bound by its obligations hereunder.

15.2 Sole Agreement for Services Between Parties. As stated in the Clean Energy Improvement Regulation under section 4, subsection (6)(d), the Qualified Contractor shall not enter into an agreement with the Participant for the provision of Services for the Project other than this Agreement.

15.3 Independent Legal Advice. The Participant acknowledges it has been given an opportunity to seek independent legal advice with respect to the terms of this Agreement prior to its execution and has been advised to do so by the Qualified Contractor and AMSC.

- 15.4 Further Assurances. The Parties will execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary, to give full effect to this Agreement and to make this Agreement legally effective, binding, and enforceable as between them and as against third parties.
- 15.5 Waivers. The failure of a Party to insist upon the strict performance of any term of this Agreement, or to exercise any right or remedy contained in this Agreement, will not be construed as a waiver or a relinquishment by that Party for the future of that term, right, or remedy.
- 15.6 Binding Agreement. This Agreement will bind and benefit each of the Parties including their respective successors and permitted assigns.
- 15.7 Expenses. Each Party will pay any expense it incurs in authorizing, executing, and performing this Agreement and any transaction contemplated by it, whether or not that transaction is completed, including any fee and expense of its legal counsel, banker, investment banker, broker, accountant, or other consultant.
- 15.8 No Partnership. Neither the execution of this Agreement nor the performance by a Party of any of its rights and obligations under this Agreement will create any partnership between the Parties.
- 15.9 Assignment. Subject to Section 3.4, no Party may assign this Agreement nor any of the Schedules hereto without the prior consent of the other Parties.
- 15.10 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and there are no representations or warranties, express or implied, statutory or otherwise and no agreements collateral to this Agreement other than as expressly set out or referred to in this Agreement.
- 15.11 Severability. If any term of this Agreement is determined to be invalid or unenforceable, in whole or in part, the invalidity or unenforceability will attach only to that term or part term, and the remaining part of the term and all other terms of this Agreement will continue in full force and effect. The Parties will negotiate in good faith to agree to a substitute term that will be as close as possible to the intention of any invalid or unenforceable term while being valid and enforceable. The invalidity or unenforceability of any term in any particular jurisdiction will not affect its validity or enforceability in any other jurisdiction where it is valid or enforceable.
- 15.12 Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the Province of Alberta and the federal laws of Canada applicable therein.
- 15.13 Time. Time will be of the essence of this Agreement.
- 15.14 Notice.
- (a) Any Notice shall be in writing and shall be sufficiently given if:
 - (i) delivered in person on a Business Day;
 - (ii) delivered via Canada Post registered mail or internationally recognized courier delivery service; or

- (iii) sent by e-mail or other means of electronic transmission.
- (b) Any Notices shall be delivered as follows:
 - (i) if to AMSC at:

Alberta Municipal Services Corporation
Alberta Municipal Place
300, 8616 – 51 Avenue
Edmonton, Alberta T6E 6E6

Attention: **Steven Ottoni**
E-mail: **sottoni@auma.ca**
 - (ii) if to the Participant at:

[insert address]

Attention: <Addressee>
E-mail: <e-mail address>
 - (iii) if to the Qualified Contractor at:

[insert address]

Attention: <Addressee>
E-mail: <e-mail address>
Telephone: <telephone number>
Fax: <fax number>
- (c) Any Notice so given shall be deemed to have been given and to have been received:
 - (i) on the day of delivery, if delivered in person;
 - (ii) on the third Business Day (excluding each day during which there exists any interruption of postal services due to a strike, lockout or other cause) following the mailing thereof, if so mailed; and
 - (iii) on the day that Notice was sent by e-mail or other electronic transmission, provided that such day is a Business Day and if not, on the first following Business Day.
- (d) Addresses for Notice may be changed by giving Notice in accordance with this Section 14.13.

15.15 Currency. All transactions referred to in this Agreement will be made in lawful currency of Canada in immediately available funds.

- 15.16 Environmental Attributes. Any emission credits, offsets, renewable energy certificates or other environmental attributes related to the Upgrade will be owned by the Participant unless specified otherwise in the Clean Energy Improvement Agreement between the Participant and the Municipality.
- 15.17 Amendment. This Agreement may be amended or supplemented only by a written agreement signed by each Party and that agreement need not be executed under seal.
- 15.18 Counterparts. This Agreement may be signed by originals or other electronic transmission (including portable document format) and executed in any number of counterparts, and each executed counterpart shall be considered to be an original. All executed counterparts taken together shall constitute one agreement.

SAMPLE

TO EVIDENCE THEIR AGREEMENT each of the Parties has executed this Agreement on the date first appearing above.

[PARTICIPANT NAME(S)]

By:

Signature

Name (please print)

[QUALIFIED CONTRACTOR NAME]

By signing below, the Qualified Contractor acknowledges that they are required to declare any conflict of interest that may be present, in accordance with Section 14 of this Agreement.

By:

Authorized Signatory

Name (please print)

ALBERTA MUNICIPAL SERVICES CORPORATION

By:

Authorized Signatory

Name (please print)

**SCHEDULE A
SCOPE OF PROJECT**

The information contained in Schedule A of this Agreement was submitted by the Participant in the Project Application Form and reviewed and approved by the AMSC and the Municipality. The Qualified Contractor provided the Participant the Supporting Documentation for completing the Services.

Project Agreement Cost Summary

CEIP Project ID	
Participant(s)	
Qualified Contractor	
Total cost associated with all Upgrades	\$XXXX (including GST)
Payment Details	
Payments to the Qualified Contractor will be directed in accordance with Section 7 and Schedule B of this Agreement.	
Deposit Amount <i>(if applicable)</i>	\$XXXX <ul style="list-style-type: none"> • \$XXXX of Eligible Costs to be paid by AMSC to the Qualified Contractor (using Municipality Funding) • \$XXXX to be paid by the Participant to the Qualified Contractor
Total remaining amount to be paid for costs associated with Upgrade <i>(net of deposit)</i>	\$XXXX <ul style="list-style-type: none"> • \$XXXX of Eligible Costs to be paid by AMSC to the Qualified Contractor (using Municipality Funding) • \$XXXX to be paid by the Participant to the Qualified Contractor

Upgrade A

Upgrade Information	
Upgrade Name	
Upgrade Specifications <i>(Make/Model/Type/Efficiency Rating)</i>	
Number of Units (#)	
Expected Installation Date	
Costs associated with Upgrade	
Upgrade Cost <i>(equipment and installation)</i>	\$
Incidental Cost <i>(if applicable)</i>	\$
Professional Service Cost <i>(if applicable)</i>	\$
Total GST	\$
Total including GST	\$

See next page for additional details related to the equipment and installation of the upgrade

Additional details for Upgrade A

If there are any additional details related to the equipment or installation of Upgrade A that the contractor or the property owner would like to include in the agreement, they are added here. Note that any details that may be included below must be compliant with all other clauses in this document.



Note: Additional Upgrade tables will be added to Schedule A as required.

**SCHEDULE B
DIRECTION TO PAY**

Participant:

Date:

Qualified Contractor:

This Direction to Pay is given in accordance with this Agreement. All terms used herein shall have the meaning set out in the Agreement.

1. The Participant directs the AMSC to pay the Qualified Contractor on behalf of the Municipality, all Eligible Costs incurred to complete the Upgrade(s) as evidenced by the Upgrade Completion Form, invoices, and other materials provided by the Participant to AMSC.
2. Only the Eligible Costs detailed in Schedule A of this Agreement will be directed to the Qualified Contractor unless a Change Order has been submitted and approved by the AMSC and the Municipality and appended to this Agreement.
3. The Participant and the Qualified Contractor agree that the Upgrade must reach Substantial Performance before the payment can be directed to the Qualified Contractor.
 - a. In the event a deposit is requested by the Qualified Contractor and approved subject to the terms of this Agreement and provided the AMSC has received the requisite Municipality Funding, the Participant agrees the deposit payment will be directed to the Qualified Contractor by AMSC within 30 days of execution of this Agreement and receipt of an approved invoice.
4. The Qualified Contractor agrees to submit bank account information to enable AMSC to direct the payment to the Qualified Contractor electronically. The Qualified Contractor acknowledges no payment will be directed to the Qualified Contractor until the financial account information is received by AMSC.

Agreement of Direction to Pay

Qualified Contractor

Date (YYYY-MM-DD)

Participant

Date (YYYY-MM-DD)

Alberta Municipal Services Corporation

Date (YYYY-MM-DD)

**SCHEDULE C
SAMPLE - CHANGE ORDER**

CEIP Project ID		Date:	
Qualified Contractor		Change Order #:	
Participant(s)			

Provide justification for the change to the Project (completed by the Participant)

Changes to Upgrade A (completed by the Participant)

	Original Project Agreement Information	Change Required?	Provide Updated Information if a Change is Required
Upgrade Information			
Upgrade Name		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Upgrade Specifications <i>(Make/Model/Type/Efficiency Rating)</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Number of Units (#)		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Expected Installation Date		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Costs Associated with Upgrade			
Upgrade Cost <i>(equipment and installation)</i>	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Incidental Cost <i>(if applicable)</i>	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Professional Service Cost <i>(if applicable)</i>	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Total GST	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Total cost including GST	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Updated Project Deadline Information (completed by the Participant)	
Please indicate if this Change Order requires an extension to the Project completion deadline [which is six months from the Commencement Date or the date specified in previously approved change orders] and provide the revised Project completion deadline being requested.	
Please note – extensions will be granted at the sole discretion of AMSC and the Municipality.	
Previously approved Project completion deadline	
Extension requested?	<input type="checkbox"/> YES <input type="checkbox"/> NO
Revised Project completion deadline	

Updated Agreement Cost Summary (completed by the AMSC)	
Previously approved total cost associated with all Upgrades	\$XXXX (including GST)
Cost changes included in this Change Order	\$XXXX (including GST)
Revised total cost associated with all Upgrades	\$XXXX (including GST)

Payment Details (completed by AMSC)	
Payments to the Qualified Contractor will be directed in accordance with Section 7 and Schedule B of this Agreement.	
Deposit Amount <i>(if applicable)</i>	\$XXXX <ul style="list-style-type: none"> • \$XXXX of Eligible Costs to be paid by AMSC to the Qualified Contractor (using Municipality Funding) • \$XXXX to be paid by the Participant to the Qualified Contractor
Total remaining amount to be paid for costs associated with Upgrade <i>(net of deposit)</i>	\$XXXX <ul style="list-style-type: none"> • \$XXXX of Eligible Costs to be paid by AMSC to the Qualified Contractor (using Municipality Funding) • \$XXXX to be paid by the Participant to the Qualified Contractor

By signing and returning this Change Order, the Participant acknowledges that the changes specified in this Change Order will be incorporated into the Clean Energy Improvement Agreement signed with the Municipality.

Approval

_____	_____
Qualified Contractor	Date (dd-mm-yyyy)
_____	_____
Participant	Date (dd-mm-yyyy)
_____	_____
Alberta Municipal Services Corporation	Date (dd-mm-yyyy)
_____	_____
[insert Municipality name]	Date (dd-mm-yyyy)

SCHEDULE D
SAMPLE - ADDITIONAL INSURANCE REQUIREMENTS

SAMPLE