

THIS AGREEMENT is made as of [day] [Month], [year] between:

Town of Edson

a Municipal Corporation of the Province of Alberta
(the “Town”)

-and-

[Consultant Name]

(the “Consultant”)

WHEREAS the Town desires to procure [name of goods or brief description] (the “Project”);

AND WHEREAS the Consultant has agreed to provide services to the Town to deliver this work, as presented in their Proposal and more particularly defined in the Statement of Work incorporated in Schedule A (the “Work”);

AND WHEREAS the Town has agreed to compensate the Consultant according to the payment schedule incorporated in Schedule B;

AND WHEREAS the Town and the Consultant wish to agree on the terms for carrying out the Project;

NOW THEREFORE IN CONSIDERATION of this background, the covenants in this Agreement, and other good and valuable consideration (the receipt and adequacy of which are acknowledged by both parties), the Town and Consultant agree:

Article 1. Agreement

- 1.1 This Agreement constitutes the entire agreement between the parties with respect to the subject matter and cancels and supersedes any prior agreements, undertakings, negotiations or discussions, written or oral, between the parties.
- 1.2 This Agreement in its entirety consists of the following Contract Documents:
 - a) This Agreement
 - b) The Consultant’s Proposal dated [date]
 - c) Request for Proposals Addendum number [numbers]
 - d) The Town’s Request for Proposals number [number]
- 1.3 In the event of an inconsistency between the Contract Documents, the documents will take precedence in the order listed in clause 1.2. If the order is insufficient to resolve the inconsistency, then the inconsistency may be resolved based upon:
 - a) The most recent provision, or
 - b) The most specific provision.

Article 2. Services To Be Provided

- 2.1 The Consultant will perform all of the Consultant's obligations set forth in this agreement. Without limiting the generality of the foregoing, the Consultant will perform the services:
- a) in a professional manner consistent with the degree of care, skill and diligence normally provided by members of the same profession performing the similar services in respect of projects of a similar nature in similar circumstances;
 - b) to the reasonable satisfaction of the Town's Project Manager;
 - c) expeditiously to meet the timelines for the completion of each deliverable of the services as approved by the Town;
 - d) in such a manner as is in the best interests of the Town; and
 - e) in compliance with all applicable laws, including applicable Town by-laws and policies.
- 2.2 The Consultant will furnish all labour, supervision, skill, knowledge, equipment and materials required to deliver all of the Work required or implied based on the Contract Documents, other than such items as the Town specifically agrees to furnish.
- 2.3 The Consultant will, as may be required throughout the course of the Project, participate in meetings with, make presentations to, and respond to questions from such groups and individuals as identified by the Town's Project Manager respecting any aspect of the Project.
- 2.4 The Consultant will attend progress, planning and other meetings as outlined in this Agreement and as otherwise may be reasonably requested by the Town.
- 2.5 The Consultant will prepare progress reports in the form, content and frequency as outlined in this Agreement and as otherwise may be reasonably requested by the Town.
- 2.6 Before starting work under this Agreement, the Consultant will appoint a competent, authorized representative acceptable to the Town to represent and act for the Consultant. The Consultant will inform the Town 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. The Consultant's representative will:
- a) have overall responsibility for managing and coordinating the performance of the Consultant in a prompt and professional manner;
 - b) be authorized to act for and on behalf of the Consultant;
 - c) meet with the Town's Project Manager at regular agreed-upon intervals to review progress and resolve any issues relating to the services; and
 - d) attempt to resolve disputes in accordance with this Agreement.
- 2.7 The Consultant will acquaint itself with the job site and with all conditions pertaining to the performance of the services. The Town 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.
- 2.8 The services to be performed by the Consultant under this Agreement will be performed by the persons identified as the project team members in the Consultant's proposal ("Consultant Personnel"). The Consultant agrees that it will not change any of the Consultant personnel and/or their respective roles as listed in the Consultant's proposal unless such changes are approved by the Town in writing, or such changes are requested by the Town in writing. If the Town requests such a change in writing then the Consultant will make the changes as required within five (5) business days or in such other reasonable time frame as approved by the Town.
- 2.9 The Consultant will be responsible for any impact on the Project sustained by removal and/or changes to the Consultant Personnel, including all costs incurred, unless such changes are requested by the Town and not as a result of a performance issue with the Consultant Personnel. In any event, no changes to the fees as indicated in Schedule B will be permitted without the approval of the Town.
- 2.10 The Consultant will not proceed with making any alterations, changes or additions to the Work that deviate from the Statement of Work unless notice has been given and the written approval of the Town has been obtained.
- 2.11 Subject to subsection clause 2.13, neither party will gain by virtue of this Agreement any rights of ownership of copyrights, patents, trade secrets, trademarks or any other intellectual property rights owned by the other.
- 2.12 The Town will retain exclusive ownership in all components and deliverables created under this Agreement and will own all copyright, patent, and any other intellectual property rights, title and interest in any ideas, designs, concepts, know how, components and deliverables, documentation or techniques, or any other material developed pursuant to this Agreement.
- 2.13 In the event that any Consultant's specifications, designs, plans, drawings, software, data prototypes or other technical or business information that existed prior to the performance of the services ("Pre-existing Information") is incorporated in any components or deliverables created pursuant to this Agreement, the Consultant grants to the Town a non-exclusive, irrevocable, perpetual, royalty-free license to use such Pre-existing Information as part of the components and deliverables created under this Agreement, including the use of such components or deliverables for use by third parties authorized by the Town.
- 2.14 The services, including any deliverables to be completed under this Agreement, may contain or be derived from portions of materials provided by third-party suppliers and service providers under license to the Consultant. The Consultant represents and warrants to the Town that it has the full and unencumbered right to grant to the Town such materials either through ownership or license, including updates, modifications of and/or enhancements thereto, and that the ownership, license to and use of such materials by the Town in accordance with the terms of this Agreement will not violate the terms of its agreements with its third-party suppliers and service providers.

- 2.15 The Consultant will waive any and all moral rights arising under the Copyright Act or at common law in any designs, concepts, component, documentation or any other material developed pursuant to this Agreement as against the Town and anyone claiming rights of such nature from or through the Town.
- 2.16 Time is of the essence with respect to the delivery of all goods and performance of all services under this Agreement.

Article 3. Payment Terms

- 3.1 Invoices will be submitted monthly by the Consultant, and will include:
- a) A detailed accounting of the goods and services delivered, conforming to the reporting requirements of the Town, acting reasonably.
 - b) Separate identification of GST and any other taxes payable by the Town.
 - c) Reference the GST registration number and any other applicable tax registration numbers of the Consultant. If the Consultant is an unregistered supplier or "small supplier" as defined in the Excise Tax Act, then it will indicate this status on its invoices.
- 3.2 If the Work involves progress payments, the invoice schedule shall be based on the work schedule and milestones as outlined in this Agreement.
- 3.3 Invoices will be paid by the Town within 30 days of the receipt of a completed and accurate invoice.
- 3.4 The total amount payable will not exceed the contract maximum amount set out in Schedule "B", if applicable, unless the Town has provided prior approval in writing.
- 3.5 Unless otherwise specified and agreed to in writing, all invoices will be submitted in Canadian dollars.
- 3.6 If the Consultant is considered to be a non-resident, the Consultant acknowledges that the Town is required by the Income Tax Act (Canada) to deduct a percentage identified by the Canada Revenue Agency (CRA) unless the Town is provided with a waiver letter from the CRA.

Article 4. Term and Termination

- 4.1 This Agreement will be effective until such time as all the services required to be performed under this Agreement are completely performed by the Consultant, unless otherwise terminated in accordance with the terms of this Agreement.
- 4.2 When the full scope of the Statement of Work as required under this Agreement is satisfactorily and completely performed by the Consultant as determined by the Town, the Town will provide written notice to the Consultant of the completion of the Project.
- 4.3 In addition to the rights of termination set forth in paragraph 10.11, and without restricting those rights, the Town may terminate this Agreement, without cause, upon thirty (30) days written notice to the Consultant. The Consultant will be entitled only to any amounts owing to the Consultant by the Town up to the effective date of the termination, plus any reasonable cancellation costs incurred

directly by the Consultant as a result of the termination, subject to any rights of the Town to set-off amounts owed to the Town as provided for in this Agreement, and shall have no further claims against the Town, including for any loss of profit.

Article 5. Insurance and Indemnification

- 5.1 The Consultant shall indemnify and save harmless the Town, its agents, employees and elected officials, from and against any and all losses, claims, demands, payments, suits, judgments, charges, expenses, actions, causes of actions and costs (including legal costs on a solicitor and his own client basis) suffered by any or all of them where such losses, claims, demands, payments, suits, judgments, expenses, charges, actions, causes of action or costs result from or occur by reason of any error, omission or willful or negligent act or breach of this Agreement arising out of the performance of the services by the Consultant or its agents, employees or subcontractors.
- 5.2 The Town will not be liable nor responsible for any bodily or personal injury or property damage of any nature that may be suffered by Consultant, its employees, agents or subcontractors in the performance of any part of this Agreement, except to the extent caused by negligence or misconduct on the part of The Town.
- 5.3 The Consultant will at its own cost and expense obtain and maintain in force during the full term of this Agreement a commercial general liability (CGL) insurance policy with a minimum single limit of liability of two million dollars (\$2,000,000.00) per occurrence. Such policy will:
- a) Include the Town as an additional insured,
 - b) contain a cross liability clause
 - c) contain a contractual liability clause
 - d) contain a non-owned automobile liability clause
 - e) include a waiver of subrogation in favour of the Town
 - f) cover bodily injury, property damage, products and completed operations liability, and advertising injury,
 - g) be incapable of being cancelled without first giving thirty days prior notice to the Town.
 - h) Have a reasonable deductible (at the determination of the Town), with the Consultant to be responsible for payment of all deductibles

The Consultant shall also obtain and maintain at its own expense a professional liability insurance policy with a minimum single limit of liability of one million dollars (\$1,000,000.00) per occurrence, which will also be incapable of being cancelled without first giving thirty days prior notice to the Town.

The Consultant shall also obtain and maintain at its own expense automobile liability insurance on all vehicles owned, operated, or licensed in the consultant's name, with limits of not less than two million dollars (\$2,000,000) per occurrence.

- 5.4 Upon request, the Consultant shall provide the Town with a Certificate of Insurance demonstrating to the satisfaction of the Town that they have met the insurance requirements outlined in subsection 5.3.
- 5.5 The Consultant will comply with the Workers Compensation Act, if applicable, and will, upon demand by the Town, provide the Town with a certificate from the Workers Compensation Board confirming that the Consultant is registered and its account is in good standing.
- 5.6 If any goods or services furnished under this contract are subject to a claim or allegation of violation, infringement, or misappropriation of intellectual property rights or any other right of any third party, the Consultant will, at its sole cost, and expense, and without prejudice to any other right or remedy available to the Town, promptly provide the Town with a commercially reasonable alternative, including the procurement for the Town of the right to continue using the goods and services in question, the replacement of such goods and services with a non- infringing alternative satisfactory to the Town, or the modification of such goods and services (without affecting functionality) to render them non-infringing.

Article 6. Confidentiality

- 6.1 The Consultant agrees to hold in strict confidence and not disclose any information that it receives in connection with this Agreement and performing the Work hereunder, howsoever obtained (the “Confidential Information”), unless the Town consents to such disclosure. Confidential Information will not include any information that is already in the public domain through no fault or action of the Consultant, its directors, officers, employees, representatives, agents or contractors.
- 6.2 The Consultant further agrees and expressly undertakes to:
 - a) Keep all records in relation to this Agreement and the obligations provided hereunder, including the Confidential Information, in a secure place and store them in accordance with the requirements of this Agreement.
 - b) Treat and protect the Confidential Information in the same fashion as would a prudent owner of such information. The Consultant agrees to prevent and protect the Confidential Information from unauthorized disclosure, use or knowledge by the Consultant’s directors, officers, employees, agents, consultants or other persons, whether under the Consultant’s direct control or otherwise.
 - c) Notify the Town immediately of the unauthorized disclosure, use or knowledge of the Confidential Information, including any unauthorized possession of any recorded information by any person not authorized to it under this Agreement and to promptly furnish the Town with the full details of such unauthorized disclosure, use, possession, or knowledge to the extent known by the Consultant. For greater clarity, this notification requirement does not replace the Consultant’s other confidentiality obligations contained herein.

- d) Provide a statutory declaration on request with respect to any breach of security and confidentiality.
- 6.3 The Consultant understands and acknowledges that it is responsible for maintaining the security and confidentiality of records obtained or accessible as a result of, or received pursuant to this Agreement, including the Confidential Information. The Consultant further acknowledges that any unauthorized disclosure of the Confidential Information would be detrimental to the Town that may not be adequately compensated by a monetary award. Accordingly, in addition to any other remedies of the Town at law or in equity, the Town will be entitled as a matter of right to apply to a court of competent jurisdiction for such relief by restraining order, injunction, decree or otherwise as may be appropriate to ensure the Consultant's compliance with the confidentiality provisions of this Agreement.

Article 7. Freedom of Information and Protection of Privacy

- 7.1 The Consultant acknowledges that the Freedom of Information and Protection of Privacy Act, 2000, RSA, c, F-25 (the "FOIPP Act") applies to all information and records related to, or obtained, generated, collected or provided under or pursuant to the Agreement that are in the custody or control of the Town, which may include documents in the custody of the Consultant.
- 7.2 The Consultant acknowledges that the FOIPP Act specifies penalties for any person who willfully destroys any records which are subject to the FOIPP Act, with the intent to evade a request for access to records under the FOIPP Act.
- 7.3 The Consultant is responsible for ensuring complete compliance of its employees and agents with all the terms and conditions of the FOIPP Act relating to protection of privacy. In the event that the Consultant becomes aware of a breach of any of these terms and conditions, the Consultant will notify the Town immediately in writing.
- 7.4 The Consultant acknowledges that the records named in this Agreement under paragraph 7.1 may be the subject of requests for access under the FOIPP Act. Upon request by the Town, the Consultant will provide to the Town, at the Consultant's expense, any of the records requested that fall within the parameters of the FOIPP Act, within 14 calendar days of request by the Town.
- 7.5 The Consultant should identify appropriate parts of any proposal or submission as confidential, in order to clearly establish its expectations towards the document, both to the Town as a public body and to the Information and Privacy Commissioner in any review of or refusal of access. The Town, however, may not be able to meet these expectations in every instance.

Article 8. Governing Law

- 8.1 This Agreement will be governed and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein. The parties

irrevocably submit to the exclusive jurisdiction of the courts of the Province of Alberta sitting in Edmonton in relation to any dispute or proceeding

Article 9. Dispute Resolution

- 9.1 In the event of any dispute arising out of or relating to interpretation, performance or acceptance of Work under this Agreement or the breach thereof, the Town and the Consultant will use their best efforts to settle the dispute by directing negotiations to individuals with full settlement authority.
- 9.2 If the dispute is not settled promptly through negotiation, the parties may submit the dispute to mediation pursuant to the National Mediation Rules of the ADR Institute of Canada, Inc. The Consultant and the Town will share equally the mediator's fees and any administrative fee, but will otherwise bear their own expense. The place of mediation will be Edson, Alberta.
- 9.3 Any unresolved dispute arising out of or relating to this Agreement or the breach thereof, will be decided by binding arbitration by a single arbitrator under the arbitration rules of the Arbitration Act of Alberta, as amended from time to time. The Town and the Consultant will equally share the arbitrator's fee and any administrative fee, but will otherwise bear their own expenses. The arbitrator will not award multiple damages, punitive damages, prejudgment interest, or attorney's fees.

Article 10. General Clauses

- 10.1 **Interpretation.** In this Agreement, words in the singular include the plural, words in the plural include the singular, words in the neuter include the masculine or the feminine as the case may be.
- 10.2 **Independent Consultant.** The Consultant is an independent contractor and this Agreement does not create an employer-employee, principal-agent, partnership or joint venture relationship with the Town. No provision contained in this Agreement will be interpreted to characterize the role of the Consultant other than as an independent contractor. Except as specifically authorized in this Agreement, the Consultant will not have any authority of any kind to act on behalf of the Town and will not purport to do so.
- 10.3 **Compliance with Laws.** The Consultant will comply with all applicable federal, provincial, and municipal laws, regulations, standards, and codes relevant to the performance and execution of the Work and the Consultant's obligations under this Agreement.
- 10.4 **Payment of Taxes.** The Consultant will pay before delinquency every tax, assessment, license fee, excise fee (including GST) and other charge which is imposed, levied, assessed or charged by any governmental or quasi-governmental authority having jurisdiction which is payable in relation to the conduct of its business, including carrying out its obligations under this Agreement.

- 10.5 **Licenses.** The Consultant will before executing this Agreement obtain all applicable permits, licenses, exemptions, consents and approvals required for Consultant to manufacture (if applicable) and deliver the goods and perform the Work.
- 10.6 **Assignment.** The Consultant will not assign this Agreement or any portion hereof, without first obtaining the prior written consent of the Town. If the Consultant is a corporation, any transfer of the voting shares in the corporation which results in a change in control of the corporation will be deemed to be an assignment.
- 10.7 **Subcontracting.** The Consultant will not hire or allow any subcontractors other than those identified in the Proposal to carry out the Consultant's obligations under this Agreement, without first obtaining the prior written consent of the Town, which such consent may be arbitrarily withheld. Should any subcontractor fail to perform the services in a satisfactory manner, the Town may, in its sole discretion, require the Consultant to replace such subcontractor. The Town will have no obligation to deal directly with any subcontractor. The Consultant will be solely responsible for the payment of all amounts owing to subcontractors. The Consultant will coordinate the provision of the products and/or services by subcontractors in a manner acceptable to the Town, and will ensure that subcontractors comply with the terms and conditions of this Agreement.
- 10.8 **Evaluation.** At any time during performance of the Contract, the Town may complete an evaluation of the Consultants' performance. A copy of this evaluation may be given to the Consultant. The evaluation may be placed on file with the Town. The evaluation may be made available to persons requesting Town references for the Contract and also may be reviewed and may form part of the Town's criteria when awarding future contracts; Consultant hereby acknowledges, agrees and consents to such maintenance, use and disclosure.
- 10.9 **Communication.** The Consultant will not issue a press release or make any public statements to the general public concerning this Agreement without the express prior written consent of the Town.
- 10.10 **Force Majeure.** Neither party is liable for delays or failures in performance under this Agreement due to a force majeure event, including, without limitation, war, an act of God, a foreign enemy, civil war, earthquake, flood, fire or other natural physical disaster, a strike, a change in government policy or legislation or any other matter similar in nature and severity to the foregoing, that is beyond the reasonable control of the party. Without limiting the generality of the foregoing, a force majeure event will not include a pandemic or similar form of epidemic or, for greater certainty, financial hardship, a change in government policy, legislation or administration that makes the performance of the affected party's obligations under this Agreement more difficult but does not render it impossible for that party to fulfill its obligations under this Agreement or substantially delay such fulfillment.
- 10.11 **Default in Performance.** If the Consultant defaults in the performance of any of the provisions of this Agreement, the Town may give notice of the default to the Consultant. If the Consultant fails to remedy the default within fifteen (15) days after receiving notice of the default, or where the default cannot be cured within such period, fails to commence substantial and meaningful steps to remedy the

default within such period and continue to diligently remedy the default until cured, then the Town may either:

- a) take reasonable steps to remedy the default and the Consultant will pay the Town all the costs and expenses incurred by the Town in doing so; or
- b) terminate this Agreement.

Notwithstanding the foregoing, the Town may immediately terminate this Agreement in the event the Consultant becomes insolvent, commits an act of bankruptcy, makes a general assignment for the benefit of its creditors or is subject to an appointment of a receiver or abandons the Work.

In the event of a termination pursuant to this section, the Consultant shall be liable for, and upon demand shall pay to the Town an amount equal to, all losses, damages or costs (including legal costs on a solicitor and his own client basis) suffered, both directly and indirectly by the Town as a result of the non-completion of the Work. If the Consultant fails to pay the Town for any such loss or damage on demand, the Town shall be entitled to deduct the same from any payments due and payable to the Consultant, without prejudice to the Town's right to exercise any other remedies available to the Town at common law or at equity or under any statute.

- 10.12 **Remedies.** All rights and remedies available to the Town are distinct, separate and cumulative and will not be exclusive of any rights or remedies available to the Town under the Agreement or otherwise at law or in equity. No delay or omission by the Town in exercising such a right or remedy or single or partial exercise of any right or remedy will include any other or further exercise of such right or remedy or the exercise of any other right or remedy.
- 10.13 **Set-Offs.** In the event the Town becomes entitled to any damages, reimbursement or other claims as against the Consultant, the Consultant agrees that the Town will be entitled to set off and deduct the full value of any such claims from any monies payable by the Town to the Consultant under this Agreement.
- 10.14 **Waiver.** No waiver of any term of this Agreement will be binding unless it is set out in writing. No failure to exercise, or delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any term of this Agreement will be deemed to be a waiver of any subsequent breach of that term.
- 10.15 **Severability.** In the event that any provision of this Agreement is held invalid by any court or other authority having jurisdiction hereunder, the remaining provisions of this Agreement will not be affected and will remain valid and enforceable.
- 10.16 **Surviving Terms.** Neither the expiration nor the earlier termination of this Agreement will release either party from any obligation or liability which arose prior to such expiration or termination. The parties agree that the provisions of this Agreement requiring performance or fulfillment after the expiration or early termination of this Agreement, including the provisions set out in Sections 5, 6 and 7, will continue to operate after the expiration or earlier termination of this Agreement.
- 10.17 **Binding on Successors.** This Agreement is binding upon the Parties and their respective successors and permitted assigns or, if the Consultant is an individual,

this Agreement is binding upon his or her heirs, attorneys, guardians, estate trustees, executors, trustees and permitted assigns.

- 10.18 **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, where the signature of each party is on a separate signature page, each of which will be deemed to be an original, and all of which taken together will be deemed to constitute one and the same instrument. Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy thereof by such party.

Article 11. Health and Safety

- 11.1 The Consultant shall maintain for the duration of the Project a valid Certificate of Recognition (COR), Small Employer Certificate of Recognition (SECOR), or Temporary Letter of Certification (TLC) that has been issued by the Alberta Construction Safety Association (ACSA), and shall provide proof of this status to the Town upon request. If at any time the Consultant's COR, SECOR, or TLC is revoked or suspended, the Town may, without limitation to any other rights or remedies hereunder, immediately suspend the Services at the Consultant's cost until the COR, SECOR, or TLC has been restored, or may terminate this Agreement in accordance with Article 10.11.
- 11.2 In addition to the requirements under Articles 11.1, the Consultant shall provide, upon request by and to the satisfaction of the Town, documentation outlining the Health and Safety program maintained by the Consultant, to verify compliance with the Health and Safety standards of the Town. The Town may require the Consultant to undertake such actions as may be necessary to bring the Consultant's Health and Safety program into alignment with the standards of the Town.

Article 12. Notifications

- 12.1 All notices regarding this Agreement will be in writing and will be deemed effectively given:
- a) upon personal delivery to the party to be notified;
 - b) when sent by confirmed facsimile if sent during normal business hours of the recipient, and if not during normal business hours of the recipient, then on the next business day;
 - c) five calendar days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or
 - d) one business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt.
- 12.2 The Town designates the following person as its representative for this Agreement:
- | | |
|-----------------|--|
| Name: | Attention: [Name/Position of Contact] |
| Address: | 605 - 50 Street |

PO Box 6300
Edson, AB
T7E 1T7

Email/Fax:

12.3 The Consultant designates the following person as its representative for this Agreement:

Name:

Address:

Email/Fax:

IN WITNESS WHEREOF the Town and the Consultant have executed this agreement.

Town of Edson

Date: _____

Per: _____ (corporate seal)

Name: _____

Position: _____

Date: _____

Per: _____

Name: _____

Position: _____

[Consultant Name]

Date: _____

Per: _____ (corporate seal)

Name: _____

Position: _____

I have authority to bind the corporation

SCHEDULE "A"
STATEMENT OF WORK

SCHEDULE "B"
PAYMENT SCHEDULE