

MADE AS OF THIS DATE: _____.

BETWEEN:

CONSULTANT NAME HERE
(hereinafter called the "Consultant")

-and-

COUNTY OF VERMILION RIVER
(hereinafter called the "County")

-and-

THE CITY OF LLOYDMINSTER
(hereinafter called the "City")

INDEPENDENT CONSULTANT AGREEMENT

WHEREAS the County of Vermilion River and City of Lloydminster ("The Municipalities") issued the Request for Proposals attached as Schedule "B" to this Agreement (the "RFP");

AND WHEREAS the Consultant submitted the Proposal attached as Schedule "C" to this Agreement (the "Proposal") and was the successful proponent with respect to the RFP:

AND WHEREAS The Municipalities wish to enter into an agreement with the Consultant as an independent consultant for the provision of those professional services described in the RFP and Proposal;

AND WHEREAS The Municipalities and the Consultant have reached agreement with respect to the terms and conditions under which the Consultant is to provide the professional services;

NOW THEREFORE IN CONSIDERATION of the mutual covenants herein contained, the parties hereby covenant and agree as follows:

1. The Municipalities hereby engage the Consultant to provide the professional services described in Schedule "A" to this Agreement and further described in the RFP and Proposal described in Schedules "B" and "C" to this Agreement (hereinafter called the "Work").
2. The Consultant will prioritize the Work and direct and control the manner and method in which the Work is performed. The Consultant represents and covenants to and with The Municipalities that: (i) the Consultant has all expertise, knowledge and training required to perform the Work skilfully and safely; (ii) the Consultant shall perform the Work skilfully and safely; (iii) the Consultant shall honestly and diligently perform the Work in good faith with a view to the best interests of The Municipalities and at all times exercise the professionalism, diligence and skill that a reasonably prudent

person would exercise in comparable circumstances; and (iv) the Consultant shall if applicable hire, train, maintain, utilize and properly supervise sufficient, qualified and competent personnel to carry out its duties hereunder.

3. The Consultant may enter into contracts to provide services to others while the Consultant provides services during the term of this Agreement, provided that such other contracts do not interfere with the ability of the Consultant to meet its obligations under this Agreement.
4. The Consultant represents that the Consultant is a resident of Canada for the purposes of the *Income Tax Act*, RSC 1985, c. 1 (5th supp.), as amended from time to time.
5. The Consultant shall immediately disclose to The Municipalities any breach of this Agreement or any occurrence or situation which may be harmful to The Municipalities or which may prejudice or delay the completion of the Work.
6. The Municipalities may, at any time, evaluate any aspect of the Work performed by the Consultant pursuant to this Agreement.

Term

7. This Agreement shall continue in full force and effect for the term set out in Schedule "A" to this Agreement, subject to earlier termination as set out below.

Termination

8. This Agreement may be terminated by The Municipalities at any time without notice and without penalty where there is a material breach of a term of this Agreement by the Consultant.
9. In addition to The Municipalities' right to terminate under paragraph 8, this Agreement may be terminated as set out in Schedule "A" to this Agreement.
10. It is understood and agreed that the notice of termination in accordance with the terms and conditions of this Agreement is reasonable and adequate notice, and will fulfill all requirements for notice, or payment in lieu of notice imposed by law or otherwise.
11. In the event this Agreement is terminated by either party, the contract payment will be prorated for the Work provided by the Consultant under this Agreement to the date of termination.

Compensation

12. The Municipalities shall pay a consulting fee to the Consultant as set out in Schedule "A" to this Agreement.
13. The Municipalities may withhold payment of any monies payable to the Consultant while the Consultant is in default of any provision in this Agreement.
14. In the event that this Agreement is terminated by either party, The Municipalities have the right to set off against or deduct from any monies payable to the Consultant any payment, entitlement, or sum of money that is owing to The Municipalities at the time of termination.

15. Any adjustments for overpayment of monies to the Consultant may be made by The Municipalities at any time, notwithstanding that full payment for the Work may have already been made to the Consultant.

Legislation, Policies & Procedures

16. The Consultant shall comply with all applicable statutes, orders, regulations, by-laws, and licensing requirements of local authorities in effect at any time.
17. The Consultant shall follow and comply with all policies and procedures of The Municipalities which have application to the Consultant while performing the Work, unless otherwise directed by The Municipalities.
18. The Consultant is expected, and required, to follow all applicable Federal, Provincial and Municipalities Occupational Health and Safety requirements.

Confidentiality

19. The Consultant shall not, either during the term of this Agreement or at any time thereafter, other than as is authorized to perform the Work, disclose to any person, employee, agent, subcontractor, third party, firm, association, entity, regulatory authority or government, unless required by law or as is authorized to perform the Work, any confidential information concerning the business or affairs of The Municipalities or any of its affiliates, including such affairs under this Agreement. The Consultant shall ensure that any party to whom such confidential information has been disclosed in accordance with this paragraph 19 agrees to observe the confidentiality obligations outlined within this Agreement provided however that the Consultant will at no time be relieved of its obligations as set out herein. Further, the Consultant agrees to the following:
 - a. The Consultant will not, without the prior written consent of the disclosing party, make any copies, duplicates, recordings or other reproductions of the confidential information unless they are reasonably required to do so in relation to the scope of work as outlined within this Agreement. And further, that all such copies, duplicates, recordings or other reproductions will contain the same proprietary and confidential notices and legends, if any, which appear on the original confidential information; and
 - b. The Consultant will not at any time use the confidential information for any purpose not directly related to the scope of the work as outlined within this Agreement.
20. Confidential information shall include, but not be limited to, business opportunities, business practices, business information, computer programs, electronic information and data, records capable of being represented or reproduced visually or by sound, trade or other secrets, designs, business plans, blue prints, ratepayer information, markets and marketing techniques, knowledge of contracts with employees and third parties, details of pricing, supply and marketing strategies and financial information, regardless of whether such information is provided to the Consultant prior to the parties entering into this Agreement or during the term of this Agreement. Confidential information does not include information which is lawfully in the public domain.
21. Upon the termination of this Agreement, regardless of the reason for the termination, the Consultant shall forthwith return all The Municipalities property, written

information, electronic information, data and records capable of being represented or produced visually or by sound and documents to The Municipalities. The Consultant agrees that it has no right to possession of any confidential information or other data pertaining to the business or affairs of The Municipalities or any of their affiliates.

22. The Consultant must protect personal information in its custody that is subject to this Agreement by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, disposal and disaster. The Consultant is responsible for ensuring that it is aware of and understands and complies with the requirements of the *Freedom of Information and Protection of Privacy Act* (FOIP) and *Local Authority Freedom of Information and Protection of Privacy Act* (LAFOIP), as amended from time to time, as they relate to the Agreement.
23. The Consultant acknowledges that information and records compiled or created under this Agreement which are in the custody of the Consultant are subject to the *Freedom of Information and Protection of Privacy Act* (Alberta), as well as the *Local Authority Freedom of Information and Protection of Privacy Act* (Saskatchewan). If The Municipalities receive a request for any such record, the Consultant shall at the Consultant's sole expense forward the information and records to The Municipalities within five (5) calendar days of notification of such request by The Municipalities. This provision shall survive the termination or expiry of this Agreement howsoever it occurs.

Proprietary Rights

24. All product of the Work, including without limitation any data, information, tangible property or any trade-mark, copyright, patent, trade secret, or other intellectual property (hereinafter referred to as "Work Product") shall be the property of The Municipalities. The Municipalities will retain all proprietary rights in the Work Product and The Municipalities shall be permitted to use the Work Product for its own purposes. The Consultant shall not be liable for reasonable loss or damages suffered or sustained by The Municipalities as a result of The Municipalities use of the Work Product for purposes other than those contemplated by this Agreement.
25. The Consultant hereby waives any moral rights the Consultant may have in relation to the Work Product. The templates, models, and processes used by the Consultant are the property of the Consultant, and remain the property of the Consultant; the Consultant retains the sole right to use and distribute said templates, models and processes.

Independent Consultant

26. The parties hereto agree that no oral agreement or provisions of this Agreement shall be construed so as to constitute the Consultant as being the agent, servant or employee of The Municipalities. The Consultant shall have no authority to make any statements, representations or commitments of any kind, or take any action, which may be binding upon The Municipalities, except as done pursuant to the duties and responsibilities set out in Schedule "A" and as may be authorized in writing by The Municipalities.
27. The Consultant shall not be deemed to be an employee of The Municipalities. The Consultant shall at all times be deemed to be an independent Consultant and consequently no deductions whatsoever will be made from the compensation payable, including:

- a. for employee benefits such as disability insurance, health and pension plans;
- b. for contributions and payments pursuant to the *Employment Insurance Act*, SC 1996, c. 23, *Employment Insurance Contributions*, *Canada Pension Plan*, RSC 1985, c. C-8, *Income Tax Act*, or the applicable provincial workers' compensation legislation, all as amended from time to time. Payments related to any of the foregoing shall be the sole responsibility of the Consultant and shall be forwarded to the appropriate government agencies as required by law. Proof of compliance with this requirement shall be available to The Municipalities on request.

Publicity

28. The Consultant shall not use The Municipalities' name in any advertising or promotional material or publicity release or any like purpose relating to the Work without the prior written approval of The Municipalities.

Insurance and Other Requirements

29. The Consultant shall at its own expense keep and maintain liability insurance in a form satisfactory to The Municipalities in accordance with the following requirements:
 - a. Commercial general liability of not less than two million dollars (\$2,000,000) (combined single limit on each occurrence), such coverage to include blanket contractual liability, contingent employer's liability, cross liability, consultants' protective liability, non-owned automobile, attached equipment, broad form property damage, products and completed operations and sudden and accidental pollution.
 - b. Automobile liability insurance for owned, leased, hired, operated or licensed vehicles with limits of two million dollars (\$2,000,000) for accidental injury to or death of one or more persons or damage to or destruction of property as a result of one accident or occurrence.
 - c. Professional Liability Insurance covering the services provided by the Consultant with policy limits not less than two million dollars (\$2,000,000) per claim.
30. Commercial General Liability insurance shall include both the County of Vermilion River and City of Lloydminster as an additional insured and shall not be capable of cancellation without the insurer giving prior written notice to the Consultant and The Municipalities.
31. The Consultant shall provide a minimum of sixty (60) days written notice to The Municipalities in the event the policy is to be cancelled or altered for any reason.
32. The Consultant shall be responsible for the payment of all premium and deductible amounts relating to the insurance policies and shall maintain the insurance at all times during the term of this Agreement.
33. Proof of compliance with the requirement of paragraphs 29 and 30 of this Agreement shall be provided to The Municipalities prior to execution of this Agreement.

Liability and Indemnity

34. The Consultant agrees to indemnify and hold harmless The Municipalities, including The Municipalities employees, elected officials and officers (the "Municipalities Indemnitees"), from any and all claims, suits, proceedings, damages, loss or expense, including legal fees on a full indemnity solicitor and own client basis, incurred by the Municipalities Indemnitees on account of any breach by the Consultant of its obligations under this Agreement or to the extent caused by errors, omissions, or negligence or unlawful performance of the Work by the Consultant. The Consultant's obligations to indemnify the Municipalities Indemnitees shall survive the expiry or termination of this Agreement and shall be without any limitation to any other right or remedy that may be available to the Municipalities Indemnitees.
35. The Municipalities agree to indemnify and hold harmless the Consultant, including the Consultant's employees and agents (the "Consultant Indemnitees"), from any and all claims, suits, proceedings, damages (including liquidated damages), loss or expense incurred by the Consultant Indemnitees on account of any breach by The Municipalities of any of its obligations under this Agreement. The Municipalities' obligations to indemnify the Consultant Indemnitees shall survive the expiry or termination of this Agreement and shall be without any limitation to any other right or remedy that may be available to the Consultant Indemnitees.
36. The Municipalities shall not be liable or responsible for any bodily or personal injury or property damage of any nature whatsoever that may be suffered or sustained by the Consultant, its employees, representatives or subcontractors in the performance of this Agreement.

Survival of Representations

37. Notwithstanding any provision to the contrary in this Agreement, it is hereby agreed by the parties that the representations contained herein shall survive the termination of this Agreement.

General

38. The following documents form a part of this Agreement and, except where expressly indicated otherwise, are binding on the parties in the same manner as if they were included in the body of this Agreement:
 - a. Schedule A: Additional Terms and Conditions
 - b. Schedule B: Request for Proposal
 - c. Schedule C: Proposal
 - d. Schedule D: Data Sharing and Usage Agreement(the "Contract Documents")
39. In the event of any ambiguity, conflict or inconsistency among or between the Contract Documents, the Contract Documents shall be construed, interpreted and applied so as to give effect to their express terms, as amended, restated, revised, supplemented or replaced by agreement of both parties in writing, in the following order of precedence

such that the first mentioned document below shall prevail, notwithstanding any term or aspect of a later mentioned document:

- a. The body of this Agreement;
 - b. Schedule A;
 - c. Schedule B;
 - d. Schedule C; and
 - e. Schedule D.
40. The Schedules to this Agreement form a part of this Agreement and shall have effect as if set out in full in the body of this Agreement.
 41. If any provision of this Agreement is invalid, illegal, or incapable of being enforced by reason of any rule of law or public policy, all other provisions of this Agreement shall, nevertheless, remain in full force and effect. No provision of this Agreement shall be deemed dependent on any other provision unless expressly so stated herein.
 42. This Agreement embodies the entire Agreement between the parties, superseding any prior Agreement, either oral or in writing, and may only be amended by a subsequent written instrument signed by both parties hereto.
 43. The failure of either party to insist in any one or more instances upon the performance of any of the terms and conditions of this Agreement, shall not be construed as a waiver or relinquishment of any right granted hereunder of the future performance of any such term, covenant or condition, and the obligation of either party with respect thereto shall continue in full force and effect. Any forbearance by The Municipalities to seek a remedy for any breach by the Consultant shall not be a waiver by The Municipalities of its rights and remedies with respect to any subsequent breach.
 44. This Agreement shall be binding upon and shall enure to the benefit of the successors and assigns to the parties hereto.
 45. Any word or words in this Agreement importing the singular shall include the plural and vice versa.
 46. All references to the Consultant shall include the Consultant's agents, employees, subcontractors or representatives, if applicable.
 47. The headings in this Agreement are for reference purposes only and shall not affect in any way the meaning and interpretation of this Agreement.
 48. The Consultant covenants that in entering into this Agreement, the Consultant has taken as much time as thought necessary to investigate the nature and facts of this Agreement, and has sought as much independent advice as the Consultant deems necessary after time, before executing this Agreement.
 49. This Agreement may be executed in counterparts, each of which when so executed shall constitute an original and all of which together shall constitute one and the same Agreement, which shall be sufficiently evidenced by either such original counterpart.

50. This agreement may be executed by electronic signature. The parties agree that electronic signatures will have the same legally binding effect as a manually signed and delivered paper copy of this document.

Arbitration

51. Any dispute or claim between The Municipalities and Consultant arising out of or relating to this Agreement shall, at The Municipalities' sole option, be resolved by litigation or final and binding arbitration in accordance with the *Arbitration Act* of Alberta, as amended. The Consultant does not object to and consents to the joinder and participation of any person or entity in an arbitration that arises out of or relates to this Agreement or the Work. Pending a final determination of a dispute or claim, the Consultant shall proceed diligently and expeditiously with the Work in accordance with this Agreement.
52. If either party wishes to adjudicate any dispute pursuant to the applicable lien legislation, unless the parties agree otherwise, the operation of section 51 of this Agreement shall be suspended from the date on which the notice of adjudication, under the applicable lien legislation, is served on the other party and recommence on the date of delivery of the determination by the adjudicator.
53. In the event that either party refers a dispute to adjudication pursuant to this Agreement and the applicable lien legislation, the parties hereby agree that if applicable Nominating authority shall be the Nominating Authority to assign an adjudication.
54. For the purposes of this Agreement the "applicable lien legislation" shall mean the *Prompt Payment and Construction Lien Act* (Alberta) or *The Builders Lien Act* (Saskatchewan) and regulations enacted thereunder, as amended or replaced from time to time. The applicable lien legislation shall be determined by the place of the Work.

IN WITNESS WHEREOF the parties acknowledge and agree that they have read and understood the terms of this Agreement and have had an opportunity to seek independent legal advice prior to entering into this Agreement, and that they have executed this Agreement with full force and effect effective the date first above written.

CONSULTANT BUSINESS NAME HERE

Print Name and Title of Signer Here

Witness (Print Name)

Witness (Signature)

COUNTY OF VERMILION RIVER

Per: _____
Print Name and Title Here

Per: _____
Print Name and Title Here

CITY OF LLOYDMINSTER

Per: _____
Print Name and Title Here

Per: _____
Print Name and Title Here

SCHEDULE "A"

POSITION TITLE AND REPORTING

1. The Consultant shall report to Roger Garnett (County of Vermilion River), and Natasha Pidkova (City of Lloydminster).
2. The Consultant shall submit to The Municipalities regular progress reports with respect to the Work performed by the Consultant. If The Municipalities, acting reasonably, determines that additional progress reports are necessary, the Consultant shall submit all additional progress reports requested at no additional cost to The Municipalities.
3. The Consultant shall meet with The Municipalities' project managers and any municipal staff as appropriate to discuss the project's progress, to review interim results, and to receive direction as required. If The Municipalities, acting reasonably, deems additional meetings necessary, the Consultant shall attend those meetings.

DUTIES AND RESPONSIBILITIES

4. The Consultant shall fulfill the duties and responsibilities as outlined in Schedule "B" as well as in accordance with the terms and conditions of this Agreement.

WORKSPACE, EQUIPMENT AND RESOURCES

5. The Municipalities will not provide any workspace, equipment or resources for use by the Consultant in performing the Work. The Consultant will be responsible for providing all necessary equipment, materials, manpower and facilities to perform the Work.

TERM OF THE AGREEMENT

6. The term of this Agreement shall be for the duration of the Work.

COMPENSATION

7. The Consultant shall issue a proper invoice, to The Municipalities in accordance with the requirements of the applicable lien legislation, at least monthly. The proper invoices must show a narrative describing work performed during the billing period, progress by major tasks, costs incurred, person-hours expended, and a task completion report.
8. Subject to any requirement to retain a holdback in accordance with the *PPCLA* and provided that no lien, pending lien, or written notice of lien has been filed in respect of the Work that has not been satisfied, released, vacated, or discharged by the Consultant, The Municipalities shall, no later than twenty-eight (28) days after the Consultant has given a proper invoice to The Municipalities pursuant to the applicable lien legislation, pay the amount payable to the Consultant, unless The Municipalities issue a notice of dispute or non-payment pursuant to the applicable lien legislation.

Initial

Consultant County City

9. If The Municipalities issue a notice of dispute or non-payment pursuant to the applicable lien legislation, the parties shall comply with the Dispute Resolution process at sections 51-54 of the Agreement.
10. The maximum upset limit of fees shall be _____ dollars, (\$ _____), plus GST, for the Consultant's performance of the Work in accordance with the terms and conditions of this Agreement.
11. The Consultant shall not be entitled to reimbursement for any expenses incurred by the Consultant in carrying out the Work pursuant to this Agreement, unless stated otherwise in this Agreement.

ASSIGNMENT

12. The Consultant agrees not to subcontract all or any portion of the Work except with the prior written consent of The Municipalities which will not be unreasonably withheld and then only to subcontractors or suppliers acceptable to The Municipalities acting reasonably.
13. The Consultant shall not transfer or assign this Agreement or any of its right, privilege, or obligations hereunder, in whole or in part, without the prior written consent of The Municipalities which may be withheld in The Municipalities' sole discretion.

INDEMNITY

14. As all or any portion of the contract price is funded by grants or contributions from third parties including the Government of Canada, Government of Alberta or Saskatchewan or related entities (the Grantor), the Consultant agrees to indemnify and hold harmless the Grantor, including the Grantor's officers, employees and agents from and against all claims, suits, proceedings, damages, loss or expense, incurred by the Grantor on account of any breach by the Consultant of its obligations under this Agreement or to the extent caused by errors, omissions, or negligence or unlawful performance of the Work by the Consultant. The Consultant's obligations to indemnify the Grantor shall survive the expiry or termination of this Agreement and shall be without any limitation to any other right or remedy that may be available to the Grantor.

TERMINATION

15. The Municipalities may terminate this Agreement at any time, without cause, and without penalty upon giving the Consultant thirty (30) days written notice of such termination.
16. The Consultant may terminate this Agreement at any time, without cause, and without penalty upon giving The Municipalities thirty (30) days written notice of such termination. The Municipalities reserve its right, in its sole discretion, to waive the Consultant's required notice of termination.
17. The Municipalities may terminate this Agreement immediately by giving the Consultant written notice if the Consultant:

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- a. In the opinion of The Municipalities, fails to complete the services or any portion thereof within the time stated in this Agreement for such completion; or
- b. Becomes insolvent or commits an act of bankruptcy; or
- c. Abandons the Project; or
- d. Assigns this Agreement without the required written consent; or
- e. Fails to observe or perform any of the provisions of this Agreement; or
- f. Has any conflict of interest, which may, in the opinion of The Municipalities, have an adverse effect on the Project.

NOTICE

18. Subject to the requirements of the *PPCLA* and any regulations thereto, all notices required or permitted under this Agreement, including any notice of adjudication or notice of dispute under the *PPCLA*, shall be in writing and (a) delivered personally, (b) sent by recognized express mail or courier service, with delivery receipt requested, or (c) sent by e-mail to the parties to this Agreement as follows:

County of Vermilion River

Attention: Roger Garnett
 Address: Box 69
 Kitscoty, AB T0B 2P0
 Email: rgarnett@county24.com

City of Lloydminster

Attention: Natasha Pidkowa
 Address: 4420 50 Avenue
 Lloydminster, AB T9V 0W2
 Email: npidkowa@lloydminster.ca

Company Name Here

Attention: _____
 Address: _____

 Email: _____

Initial

Consultant	County	City

19. Any notice given electronically in accordance with section 32 of the Prompt Payment and Adjudication Regulation, Alta Reg 23/2022 shall be sent to the email addresses identified above.

CHOICE OF LAW

20. This Agreement shall be construed and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and the parties hereto do hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Alberta.

UNAPPROVED

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Consultant	County	City

SCHEDULE "B"
REQUEST FOR PROPOSAL

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**SCHEDULE "C"
PROPOSAL**

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Consultant	County	City

SCHEDULE "D"
DATA SHARING AND USAGE AGREEMENT

Data Sharing and Usage Agreement

WHEREAS the Consultant and The Municipalities wish to enter into a Data Sharing and Usage Agreement;

NOW THEREFORE this Agreement establishes the terms and conditions under which the Recipient uses the data shared by The Municipalities:

1. The data pertaining to [description of the data] in [format] format(s) ("the Data") are shared with the Consultant.
2. The Data provided will be utilized solely by the Recipient and other parties conducting work on behalf of the Consultant. The Data must not be shared with other parties without prior written approval from The Municipalities.
3. The Data shared pursuant to the terms of this Agreement shall be utilized solely for the purposes of the Intermunicipal Development Plan (IDP) Project for The Municipalities.
4. The data provided is compiled from records maintained by The Municipalities. The Consultant acknowledges that The Municipalities makes no representations, warranties, or guarantees as to the accuracy or completeness of the Data, and the Recipient further acknowledges that they make use of the Data at their own risk.
5. The Consultant shall indemnify and save harmless The Municipalities, its elected officials, officers, employees, contractors and agents from, of, and against all losses, claims, proceedings, demands, damages, actions, fees, judgments, expenses and costs (including legal costs on a solicitor and its own client full indemnity basis) of every nature or kind arising out of any cause or event which is attributable to the Consultant's use or possession of the Data.
6. This Agreement will terminate on April 1, 2025, or upon written notification from The Municipalities.
7. The Consultant shall notify The Municipalities immediately of any Data breach that has occurred.
8. The Consultant, upon request of The Municipalities, shall promptly destroy all copies of the Data in their possession and/or the possession of other parties conducting work on behalf of the Consultant, and provide written confirmation of the same.

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