

APPENDIX C – FORM OF AGREEMENT

MASTER AGREEMENT FOR ROSTER FRAMEWORK (the “Master Agreement”)

BETWEEN:

PARKLAND COUNTY
(referred to as the “County”)

AND:

[*INSERT FULL LEGAL NAME OF CONTRACTOR*]
(referred to as the “Contractor”)

WHEREAS, the County issued RFPQ No. **[*insert RFPQ #*]** (the “RFPQ”) to qualify potential contractors for eligibility to provide **[*insert name of Deliverables*]** (the “Deliverables”);

AND WHEREAS, pursuant to the RFPQ, the Contractor was selected to be included on a roster of qualified contractors (the “Qualified Contractor Roster”) for eligibility to participate in potential competitive processes (“Roster Competitions”) for the procurement of the Deliverables in accordance with Schedule 3;

NOW THEREFORE, the parties agree as follows:

1. Term of Master Agreement

This Master Agreement shall take effect on the **[*insert date*]** and shall remain in effect until **[*insert date*]**, with an option in favour of the County to extend the term for an additional period of up to **[*insert # of years*]** years, unless it is terminated earlier in accordance with the terms of this Master Agreement or otherwise by operation of law.

2. County and Contractor Representatives

The County Representative and contact information for the Master Agreement is:

[*insert name and title of the County’s representative in charge of the contract and contact details, including mailing address and email address*]

The Contractor Representative and contact information for the Master Agreement is:

[*insert name and title of Contractor representative in charge of the contact and contact details, including mailing address and email address*]

3. Scope of Master Agreement

3.1 This Master Agreement governs the relationship between the County and the Contractor in respect of the potential provision of the Deliverables by the Contractor to the County.

- 3.2 The Contractor acknowledges that there is no obligation whatsoever on the County to invite or select the Contractor to provide any Deliverables under this Master Agreement.
- 3.3 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the County in respect of the total quantities or values of the Deliverables to be requested by them pursuant to this Master Agreement and the Contractor acknowledges and agrees that it has not entered into this Master Agreement on the basis of any such undertaking, statement, promise or representation.
- 3.4 The Contractor acknowledges that in entering into this Master Agreement no form of exclusivity has been conferred on, or volume guarantee has been granted by the County in relation to the provision of the Deliverables by the Contractor and that the County is at all times entitled to enter into other contracts and agreements with other Contractors for the provision of any or all services or goods which are the same as or similar to the Deliverables.

4. Management of the Qualified Contractor Roster

- 4.1 The Contractor acknowledges that, during the term of this Master Agreement, the County may permit other contractors to apply for qualification and inclusion on the Qualified Contractor Roster. The same qualification requirements, evaluation process and Master Agreement that are set out in the RFPQ will apply to the ongoing application process for the purpose of qualifying new contractors for inclusion on the Qualified Contractor Roster.
- 4.2 The Contractor acknowledges that, during the term of this Master Agreement, the County may suspend or remove contractors from the Qualified Contractor Roster for reasons of poor performance, conflict of interest or unethical conduct in respect of the provision of Deliverables.
- 4.3 If suspended from the Qualified Contractor Roster, the Contractor will not be eligible to participate in Roster Competitions during the period of suspension. If removed from the Qualified Contractor Roster, the Contractor will no longer be eligible to participate in Roster Competitions and will not be eligible to re-qualify during the term of the Qualified Contractor Roster.

5. Provision of Deliverables

- 5.1 The Contractor is a potential provider of the Deliverables and the Contractor may be selected by the County to provide the Deliverables to the County during the term of this Master Agreement.
- 5.2 If and when the County requires the Deliverables, the County will invite contractors on the Qualified Contractor Roster to participate in a Roster Competition as outlined in Schedule 3 - Contractor Engagement Process of this Master Agreement.
- 5.3 If the Contractor is selected to provide the Deliverables to the County, the Contractor will enter into a Request for Service (RFS) form attached as Schedule 2 to this Master Agreement.
- 5.4 The provision of the Deliverables will be governed by the terms and conditions contained in Schedule 1 of this Master Agreement – Standard Terms and Conditions - and the specific terms and conditions of the Roster Competition and any RFS entered into between the County and Contractor in respect of the Deliverables.

6. Execution

This Agreement may be executed and (i) delivered by facsimile transmission or (ii) scanned and delivered by electronic transmission, and when so executed and delivered, will be deemed an original.

IN WITNESS WHEREOF the parties hereto have executed this Master Agreement as of the date written below.

PARKLAND COUNTY

Signature:

Name:

Title:

Date of Signature:

I have the authority to bind the County.

[Insert Contractor's Full Legal Name**]**

Signature:

Name:

Title:

Date of Signature:

I have the authority to bind the Contractor.

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ARTICLE 1 – INTERPRETATION

1.01 Defined Terms

When used in the Contract, the following words or expressions have the following meanings:

“Authority” means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over the Contract; and **“Authorities”** means all such authorities, agencies, bodies and departments;

“Business Day” means any working day, Monday to Friday inclusive, but excluding statutory holidays and other days on which the County has elected to be closed for business;

“County Representative” is as set out in the RFS;

“County Confidential Information” means all information of the County that is of a confidential nature, including all confidential information in the custody or control of the County, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Contractor in connection with the Contract. For greater certainty, County Confidential Information shall: (a) include: (i) all new information derived at any time from any such information whether created by the County, the Contractor or any third-party; (ii) all information (including Personal Information) that the County is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law; but (b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Contractor of any duty of confidentiality owed by the Contractor to the County or to any third-party; (ii) the Contractor can demonstrate to have been rightfully obtained by the Contractor, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Contractor free of any obligation of confidence; (iii) the Contractor can demonstrate to have been rightfully known to or in the possession of the Contractor at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Contractor; but the exclusions in this subparagraph shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Contract or at law;

“Conflict of Interest” includes, but is not limited to, any situation or circumstance where (a) in relation to the procurement process, the Contractor had an unfair advantage or engaged in conduct, directly or indirectly, that may have given it an unfair advantage, including but not limited to (i) having access to information that is confidential to the County and not available to other bidders or proponents; (ii) communicating with any person with a view to influencing preferred treatment in the procurement process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive procurement process; or (b) in relation to the performance of the Contract, the Contractor’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;

“Contract” means the aggregate of:

- (a) any RFS entered into by the Contractor;
- (b) the Master Agreement, including these Standard Terms and Conditions;
- (c) the RFPQ, including any addenda; and
- (d) the Contractor’s Submission in response to the RFPQ.

Any ambiguity, conflict or inconsistency between or among the documents comprising the Contract will be resolved by giving precedence to the express terms of the documents in the order in which they appear above, so that a first mentioned document shall prevail notwithstanding any term or aspect of a later mentioned document.

“Deliverables” means everything developed for or provided to the County in the course of performing under the Contract or agreed to be provided to the County under the Contract by the Contractor or its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors, as further defined, but not limited by, the RFS, including but not limited to any goods or services or any and all Intellectual Property and any and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided;

“Effective Date” is as set out in the RFS;

“FOIP” means the *Freedom of Information and Protection of Privacy Act*, Revised Statutes of Alberta 2000, Chapter F-25, as amended;

“Indemnified Parties” means the County and the County’s officials, directors, officers, agents, employees and volunteers;

“Industry Standards” include, but are not limited to (a) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in Canada and; (b) adherence to commonly accepted norms of ethical business practices, which shall include the Contractor establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality to any person acting on behalf of or employed by the County;

“Intellectual Property” means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity;

“Newly Created Intellectual Property” means any Intellectual Property created by the Contractor in the course of performance of its obligations under the Contract;

“Person” if the context allows, includes any individuals, persons, firms, partnerships or corporations or any combination thereof;

“Personal Information” means recorded information about an identifiable individual or that may identify an individual;

“Proceeding” means any action, claim, demand, lawsuit, or other proceeding;

“Rates” means the applicable price, in Canadian funds, to be charged for the applicable Deliverables, as set out in the RFS;

“Record” means any recorded information, including any Personal Information, in any form: (a) provided by the County to the Contractor, or provided by the Contractor to the County, for the purposes of the Contract; or (b) created by the Contractor in the performance of the Contract;

“Request for Service” or “RFS” means the document used by the County Representative to obtain services under this Contract. This RFS must include a description of required services and schedule. It is to be emailed or faxed to the Contractor who in turn will provide a detailed costing for services. The RFS must be reviewed and approved by the County Representative before the work is to proceed. A sample of the RFS Form is attached as Schedule 2 and detailed Contractor Engagement Process is attached as Schedule 3.

“Requirements of Law” mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations, directions, and agreements with all Authorities that now or at any time hereafter may be applicable to either the Contract or the Deliverables or any part of them;

“Contractor Representative” is as set out in Master Agreement;

“Contractor’s Intellectual Property” means Intellectual Property owned by the Contractor prior to its performance under the Contract or created by the Contractor during the term of the Contract independently of the performance of its obligations under the Contract; and

“Third-Party Intellectual Property” means any Intellectual Property owned by a party other than the County or the Contractor.

ARTICLE 2 – GENERAL TERMS

2.01 No Indemnities from the County

Notwithstanding anything else in the Contract, any express or implied reference to the County providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the County beyond the obligation to pay the Rates in respect of Deliverables accepted by the County, whether at the time of entering into the Contract or at any time during the term of the Contract, shall be void and of no legal effect.

2.02 Entire Contract

The Contract embodies the entire agreement between the parties with regard to the provision of the Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the Deliverables, existing between the parties at the Effective Date of the Contract.

2.03 Severability

If any term or condition of the Contract, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition to the parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

2.04 Failure to Enforce Not a Waiver

Any failure by the County to insist in one or more instances upon strict performance by the Contractor of any of the terms or conditions of the Contract shall not be construed as a waiver by the County of its right to require strict performance of any such terms or conditions, and the obligations of the Contractor with respect to such performance shall continue in full force and effect.

2.05 Changes by Written Amendment Only

Any changes to the Contract shall be by written amendment signed by the parties. No changes shall be effective or shall be carried out in the absence of such an amendment. Any such written changes shall be included in the definition of Contract.

2.06 Force Majeure

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services. If a party seeks to excuse itself from its obligations under the Contract due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Contract by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Contract, at law or in equity.

2.07 Notices by Prescribed Means

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or email and shall be addressed to, respectively, the County Representative and the Contractor Representative. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery or email one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery or by email. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

2.08 Governing Law

The Contract shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

ARTICLE 3 – NATURE OF RELATIONSHIP BETWEEN COUNTY AND CONTRACTOR

3.01 Contractor’s Power to Contract

The Contractor represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other Person which would in any way interfere with the rights of the County under the Contract.

3.02 Representatives May Bind the Parties

The parties represent that their respective representatives have the authority to legally bind them to the extent permissible by the Requirements of Law.

3.03 Contractor Not a Partner, Agent or Employee

The Contractor shall have no power or authority to bind the County or to assume or create any obligation or responsibility, express or implied, on behalf of the County. The Contractor shall not hold itself out as an agent, partner or employee of the County. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between the County and the Contractor or any of the Contractor’s directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors.

3.04 Non-Exclusive Contract, Work Volumes

The Contractor acknowledges that it is providing the Deliverables to the County on a non-exclusive basis. The County makes no representation regarding the volume of goods and services required under the Contract. The County reserves the right to contract with other parties for the same or similar goods and services as those provided by the Contractor and reserves the right to obtain the same or similar goods and services internally.

3.05 Responsibility of Contractor

The Contractor agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors. This paragraph is in addition to any and all of the Contractor’s liabilities under the Contract and under the general application of law. The Contractor shall advise these individuals and entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract. In addition to any other liabilities of the Contractor pursuant to the Contract or otherwise at law or in equity, the Contractor shall be liable for all damages, costs, expenses, losses, claims or actions arising from any breach of the Contract resulting from the actions of the above mentioned individuals and entities This paragraph shall survive the termination or expiry of the Contract.

3.06 No Subcontracting or Assignment

The Contractor shall not subcontract or assign the whole or any part of the Contract or any monies due under it without the prior written consent of the County. Such consent shall be in the sole discretion of the County and subject to the terms and conditions that may be imposed by the County. Without limiting the generality of the conditions which the County may require prior to consenting to the Contractor’s use of a subcontractor, every contract entered into by the Contractor with a subcontractor shall adopt all of the terms and conditions of the Contract as far as applicable to those parts of the Deliverables provided by the subcontractor. Nothing contained in the Contract shall create a contractual relationship between any subcontractor or its directors, officers, employees, agents, partners, affiliates or volunteers and the County.

3.07 **Duty to Disclose Change of Control**

In the event that the Contractor undergoes a change in control the Contractor shall immediately disclose such change in control to the County and shall comply with any terms and conditions subsequently prescribed by the County resulting from the disclosure.

3.08 **Conflict of Interest**

The Contractor shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to the County without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the County to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the County may immediately terminate the Contract upon giving notice to the Contractor where: (a) the Contractor fails to disclose an actual or potential Conflict of Interest; (b) the Contractor fails to comply with any requirements prescribed by the County to resolve a Conflict of Interest; or (c) the Contractor's Conflict of Interest cannot be resolved to the satisfaction of the County. This paragraph shall survive any termination or expiry of the Contract.

3.08 **Contract Binding**

The Contract can be enforced by and is binding upon the parties and their successors, executors, administrators and their permitted assigns.

ARTICLE 4 – PERFORMANCE BY CONTRACTOR

4.01 **Commencement of Performance**

The Contractor shall commence performance upon receipt of written instructions from the County.

4.02 **Deliverables Warranty**

The Contractor hereby represents and warrants that the Deliverables (i) shall be provided fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations; and (ii) shall be free from defects in material, workmanship and design, suitable for the purposes intended, in compliance with all applicable specifications and free from liens or encumbrance on title; and furthermore that all Deliverables shall be provided in accordance with: (a) the Contract; (b) Industry Standards; and (c) Requirements of Law. If any of the Deliverables, in the opinion of the County, are inadequately provided or require corrections, the Contractor shall forthwith make the necessary corrections at its own expense as specified by the County in a rectification notice.

4.03 **Health and Safety**

Without limiting the generality of section 4.02, the Contractor warrants and agrees that it has complied with and will comply with, and ensure that any subcontractors comply with, all applicable occupational health and safety laws and regulations in relation to the performance of the Contractor's obligations under the Contract. The Contractor shall provide the County with evidence of the Contractor's compliance with this section upon request by the County.

Upon the occurrence of any incident arising from or during the performance of the Agreement, including property damage, an accident, an environmental incident, a safety incident, an injury, a near miss and any other form of loss or damage, the Contractor shall immediately investigate the matter and submit a report on the matter to a County Representative and to any government authorities as required by law.

4.04 **Shipment of Goods**

To the extent that the Deliverables include the shipment of goods to the County, all such goods shall be Delivered Duty Paid (DDP) (Incoterms 2010) to the County's place of business or such other location as may be specified in the Contract. No transportation or delivery charges of any kind, including, without limitation, packing, boxing, storage, cartage or customs brokerage charges, shall be paid by the County, unless specifically agreed by the County in writing. The Deliverables will be suitably packed in such a manner as will ensure their safe transportation undamaged to their destination. The Deliverables will remain at the risk of the Contractor until the Deliverables are received by the County. Receipt of the Deliverables at the County's location does not constitute acceptance of the Deliverables by the County. The Deliverables are subject to the County's inspection and acceptance within a reasonable period of time after delivery. If any of the Deliverables, in the opinion of the County, are inadequately provided or require corrections, the Contractor shall make the necessary corrections at its own expense as specified by the County in a rectification notice.

4.05 **Use and Access Restrictions**

The Contractor acknowledges that unless it obtains specific written preauthorization from the County, any access to or use of the County property, technology or information that is not necessary for the performance of its contractual obligations with the County is strictly prohibited. The Contractor further acknowledges that the County may monitor the Contractor to ensure compliance with this paragraph. This paragraph is in addition to and shall not limit any other obligation or restriction placed upon the Contractor.

4.06 **Notification by Contractor of Discrepancies**

During the term of the Contract, the Contractor shall advise the County promptly of: (a) any contradictions, discrepancies or errors found or noted in the Contract; (b) supplementary details, instructions or directions that do not correspond with those contained in the Contract; and (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Contract and Requirements of Law.

4.07 **Contractor to Comply with Reasonable Change Requests**

The County may, in writing, request changes to the Contract, which may include altering, adding to, or deleting any of the Deliverables. The Contractor shall comply with all reasonable County change requests and the performance of such request shall be in accordance with the terms and conditions of the Contract. If the Contractor is unable to comply with the change request, it shall promptly notify the County and provide reasons for such non-compliance. In any event, any such change request shall not be effective until a written amendment reflecting the change has been executed by the parties.

4.08 **Pricing for Requested Changes**

Where a County change request includes an increase in the scope of the previously contemplated Deliverables, the County shall set out, in its change request, the proposed prices for the contemplated changes. Where the Rates in effect at the time of the change request (a) include pricing for the particular type of goods or services contemplated in the change request, the Contractor shall not unreasonably refuse to provide those goods or services at prices consistent with those Rates; or (b) are silent to the applicable price for the particular goods or services contemplated in the change request, the price shall be negotiated between the County and the Contractor within a reasonable period of time and in any event, such change request shall not become effective until a written amendment reflecting the change has been executed by the parties.

4.09 Performance by Specified Individuals Only

The Contractor agrees that to the extent that specific individuals are named in the Contract as being responsible for the provision of the Deliverables, only those individuals shall provide the Deliverables under the Contract. The Contractor shall not replace or substitute any of the individuals named in the Contract without the prior written approval of the County, which may not arbitrarily or unreasonably be withheld. Should the Contractor require the substitution or replacement of any of the individuals named in the Contract, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Contract. The Contractor shall not claim fees for any replacement individual greater than the Rates established under the Contract.

4.10 Time

Time is of the essence.

4.11 County Rights and Remedies and Contractor Obligations Not Limited to Contract

The express rights and remedies of the County and obligations of the Contractor set out in the Contract are in addition to and shall not limit any other rights and remedies available to the County or any other obligations of the Contractor at law or in equity.

ARTICLE 5 – PAYMENT FOR PERFORMANCE AND AUDIT

5.01 Payment According to Contract Rates

The County shall, subject to the Contractor's compliance with the provisions of the Contract, pay the Contractor for the Deliverables provided at the Rates established under the Contract.

5.02 Hold Back or Set Off

The County may hold back payment or set off against payment if, in the opinion of the County acting reasonably, the Contractor has failed to comply with any requirements of the Contract.

5.03 No Expenses or Additional Charges

There shall be no other charges payable by the County under the Contract to the Contractor other than the Rates established under the Contract.

5.04 Payment of Taxes and Duties

Unless otherwise stated, the Contractor shall pay all applicable taxes, including excise taxes incurred by or on the Contractor's behalf with respect to the Contract.

5.05 Withholding Tax

The County shall withhold any applicable withholding tax from amounts due and owing to the Contractor under the Contract and shall remit it to the appropriate government in accordance with applicable tax laws. This paragraph shall survive any termination or expiry of the Contract.

5.06 Interest on Late Payment

If a payment is in arrears through no fault of the Contractor, the interest charged by the Contractor, if any, for any late payment shall not exceed the Bank of Canada's prime rate, in effect on the date that the payment went into arrears.

5.07 Document Retention and Audit

For seven (7) years after the Expiry Date or any date of termination of the Contract, the Contractor shall maintain all necessary records to substantiate (a) all charges and payments under the Contract and (b) that the Deliverables were provided in accordance with the Contract and with Requirements of Law. During the Contract, and for seven (7) years after the expiry or termination of the Contract, the Contractor shall permit and assist the County in conducting audits of the operations of the Contractor to verify (a) and (b) above. The County shall provide the Contractor with at least ten (10) Business Days prior notice of its requirement for such audit. The Contractor's obligations under this paragraph shall survive any termination or expiry of the Contract.

ARTICLE 6 – CONFIDENTIALITY

6.01 Confidentiality and Promotion Restrictions

Any publicity or publications related to the Contract shall be at the sole discretion of the County. The County may, in its sole discretion, acknowledge the Deliverables provided by the Contractor in any such publicity or publication. The Contractor shall not make use of its association with the County without the prior written consent of the County. Without limiting the generality of this paragraph, the Contractor shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Contract unless it has first obtained the express written authorization to do so by the County.

6.02 County Confidential Information

During and following the term of the Contract, the Contractor shall: (a) keep all County Confidential Information confidential and secure; (b) limit the disclosure of County Confidential Information to only those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any County Confidential Information (except for the purpose of providing the Deliverables, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the County and (ii) in respect of any County Confidential Information about any third-party, the written consent of such third-party; (d) provide County Confidential Information to the County on demand; and (e) return all County Confidential Information to the County on or before the expiry or termination of the Contract, with no copy or portion kept by the Contractor.

6.03 Restrictions on Copying

The Contractor shall not copy any County Confidential Information, in whole or in part, unless copying is essential for the provision of the Deliverables. On each copy made by the Contractor, the Contractor must reproduce all notices which appear on the original.

6.04 Notice of Breach

The Contractor shall notify the County promptly upon the discovery of loss, unauthorized disclosure, unauthorized access or unauthorized use of County Confidential Information.

6.05 Injunctive and Other Relief

The Contractor acknowledges that breach of any provisions of this Article may cause irreparable harm to the County or to any third-party to whom the County owes a duty of confidence, and that the injury to the County or to any third-party may be difficult to calculate and inadequately compensable in damages. The Contractor agrees that the County is entitled to obtain injunctive relief (without proving any damage

sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

6.06 Notice and Protective Order

If the Contractor or any of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors become legally compelled to disclose any County Confidential Information, the Contractor will provide the County with prompt notice to that effect in order to allow the County to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the County and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Contractor will disclose only that portion of County Confidential Information which the Contractor is legally compelled to disclose, only to such person or persons to which the Contractor is legally compelled to disclose, and the Contractor shall provide notice to each such recipient (in cooperation with legal counsel for the County) that such County Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Contract and, if possible, shall obtain each recipient's written agreement to receive and use such County Confidential Information subject to those terms and conditions.

6.07 FOIP Records and Compliance

The Contractor and the County acknowledge and agree that FOIP applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Contractor agrees (a) to keep Records secure; (b) to provide Records to the County within seven (7) calendar days of being directed to do so by the County for any reason including an access request or privacy issue; (c) not to access any Personal Information unless the County determines, in its sole discretion, that access is permitted under FOIP and is necessary in order to provide the Deliverables; (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the County; (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so; (f) to restrict access to Personal Information to those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by a County representative to have such access for the purpose of providing the Deliverables; (g) to implement other specific security measures that in the reasonable opinion of the County would improve the adequacy and effectiveness of the Contractor's measures to ensure the security and integrity of Personal Information and Records generally; and (h) that any confidential information supplied to the County may be disclosed by the County where it is obligated to do so under FOIP, by an order of a court or tribunal or pursuant to a legal proceeding and the provisions of this paragraph shall prevail over any inconsistent provisions in the Contract.

6.08 Survival

The provisions of this Article shall survive any termination or expiry of the Contract.

ARTICLE 7 – INTELLECTUAL PROPERTY

7.01 County Intellectual Property

The Contractor agrees that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by the County to the Contractor shall remain the sole property of the County at all times.

7.02 No Use of the County Insignia

The Contractor shall not use any insignia or logo of the County except where required to provide the Deliverables, and only if it has received the prior written permission of the County to do so.

7.03 Ownership of Intellectual Property

The County shall be the sole owner of any Newly Created Intellectual Property. The Contractor irrevocably assigns to and in favour of the County and the County accepts every right, title and interest in and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time and irrevocably waives in favour of the County all rights of integrity and other moral rights to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time. To the extent that any of the Deliverables include, in whole or in part, the Contractor's Intellectual Property, the Contractor grants to the County a licence to use that Contractor Intellectual Property in the manner contemplated in this Article, the total consideration for which shall be payment of the Rates to the Contractor by the County.

7.04 Contractor's Grant of License

For those parts of the Deliverables that are Contractor Intellectual Property, the Contractor grants to the County a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and license: (a) to use, modify, reproduce and distribute, in any form, those Deliverables; and (b) to authorize other Persons, including agents, contractors or sub-contractors, to do any of the former on behalf of the County.

7.05 No Restrictive Material in Deliverables

The Contractor shall not incorporate into any Deliverables anything that would restrict the right of the County to modify, further develop or otherwise use the Deliverables in any way that the County deems necessary, or that would prevent the County from entering into any contract with any contractor other than the Contractor for the modification, further development of or other use of the Deliverables.

7.06 Contractor Representation and Warranty Regarding Third-Party Intellectual Property

The Contractor represents and warrants that the provision of the Deliverables shall not infringe or induce the infringement of any Third-Party Intellectual Property rights. The Contractor further represents and warrants that it has obtained assurances with respect to any Contractor Intellectual Property and Third-Party Intellectual Property that any rights of integrity or any other moral rights associated therewith have been waived.

7.07 Survival

The obligations contained in this Article shall survive the termination or expiry of the Contract.

ARTICLE 8 – INDEMNITIES AND INSURANCE

8.01 Contractor Indemnity

The Contractor hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively, “Claims”), by whomever made, sustained, incurred, brought or prosecuted, including for breaches of confidentiality or privacy or Intellectual Property rights or for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Contractor, its subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the Contractor’s obligations under, or otherwise in connection with, the Contract. The Contractor further agrees to indemnify and hold harmless the Indemnified Parties for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, by any person, entity or organization, including, without limitation, the County, claimed or resulting from such Claims. The obligations contained in this paragraph shall survive the termination or expiry of the Contract.

8.02 Insurance

Before the start date of the Contract or upon full-execution of the Contract, whichever is earlier, and thereafter upon request by the County’s Representative, the Contractor shall provide the County’s Representative with insurance certificates describing the insurance policies required as follows:

- a. Commercial General Liability Insurance covering the legal liability of the Contractor providing at least five (5) million dollars (Cdn. \$5,000,000.00) coverage, each occurrence, for injury, death, or property damage, including contractual liability. The Contractor agrees to reimburse the County for any and all damage(s) to County’s property caused by the Contractor, or its permitted subcontractors, in performing the work. The Contractor shall provide the County with evidence of coverage which includes (i) broad form property damage (ii) “loss of use” in the definition of property damage and (iii) non-owned automobile coverage of not less than two (2) million dollars (Cdn. \$2,000,000.00) inclusive, per occurrence. The Contractor shall provide insurance certificate(s) naming Parkland County as “an additional insured” for the coverage described in this paragraph.
- b. Where any automobile is used for the performance of the work for the County in this Contract, Contractor will provide Automobile liability insurance covering all automobiles licensed in the name of the Contractor that are used in connection with the work, and providing at least five (5) million dollars (Cdn. \$5,000,000.00) coverage, each occurrence, for injury, death, or property damage resulting from each accident.
- c. The insurance policies described in paragraphs a. and b. above shall not be canceled or changed in any manner which could negatively affect the County’s interests unless the County has been given thirty (30) consecutive days’ prior written notice of any such cancellation or change.

The Contractor shall be responsible for the payment of all deductibles on insurance policies that the Contractor is required to maintain under the Contract. Further, the Contractor shall immediately advise the County’s Representative of any loss or potential loss that has or may have occurred in conjunction with the Contractor performing the work. In addition, within three (3) consecutive days of any such loss

or potential loss coming to the attention of the Contractor, the Contractor shall provide written notice of such loss or potential loss to the County's Representative, including full particulars thereof.

8.03 Proof of Insurance

The Contractor shall provide the County with proof of the insurance required by the Contract in the form of valid certificates of insurance that reference the Contract and confirm the required coverage. The Contractor shall provide the County with renewal replacements on or before the expiry of any such insurance. Upon the request of the County, a copy of each insurance policy shall be made available to it. The Contractor shall ensure that each of its subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the subcontractor would maintain and that the County and Indemnified Parties are named as additional insured with respect to any liability arising in the course of performance of the subcontractor's obligations under the subcontract for the provision of the Deliverables.

8.04 Workplace Safety and Insurance

The Contractor warrants and agrees that it has complied and will comply with all applicable workplace safety and insurance laws and regulations and, if applicable will provide proof of valid coverage by means of a current clearance certificate to the County upon request. The Contractor covenants and agrees to pay when due, and to ensure that each of its subcontractors pays when due, all amounts required to be paid by it and its subcontractors under all applicable workplace safety and insurance laws and regulations during the Term. The Contractor further agrees to indemnify the County for any and all liability, loss, costs, damages and expenses (including legal fees) or other charges in connection with the Contractor's failure to comply with any applicable workplace safety and insurance laws or related to the Contractor's status with any workplace safety and insurance board or body.

Before commencing or performing the work, the Contractor shall obtain and provide to the County a letter or similar document, confirming that the Contractor has an active account that is in good standing from each Worker's Compensation Board or similar body constituted in accordance with the workers' compensation legislation of each jurisdiction in Canada in which the work will be performed, and that the Contractor has not opted out of workers compensation, where allowed.

ARTICLE 9 – TERMINATION, EXPIRY AND EXTENSION

9.01 Immediate Termination of Contract

The County may immediately terminate the Contract upon giving notice to the Contractor where (a) the Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Contractor's insolvency; (b) the Contractor breaches any provision in Article 6 (Confidentiality); (c) the Contractor breaches the Conflict of Interest paragraph in Article 3 (Nature of Relationship Between County and Contractor); (d) the Contractor breaches applicable workplace safety laws; (e) the Contractor, prior to or after entering into the Contract, makes a material misrepresentation or omission or provides materially inaccurate information to the County; (f) the Contractor undergoes a change in control which adversely affects the Contractor's ability to satisfy some or all of its obligations under the Contract; (g) the Contractor subcontracts for the provision of part or all of the Deliverables or assigns the Contract without first obtaining the written approval of the County; or (h) the Contractor's acts or omissions constitute a substantial failure of performance and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

9.02 Dispute Resolution by Rectification Notice

Subject to the above paragraph, where the Contractor fails to comply with any of its obligations under the Contract, the County may issue a rectification notice to the Contractor setting out the manner and timeframe for rectification. Within seven (7) Business Days of receipt of that notice, the Contractor shall either: (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to the County. If the Contractor fails to either comply with that rectification notice or provide a satisfactory rectification plan, the County may immediately terminate the Contract. Where the Contractor has been given a prior rectification notice, the same subsequent type of non-compliance by the Contractor shall allow the County to immediately terminate the Contract.

9.03 Termination on Notice

The County reserves the right to terminate the Contract, without cause, upon thirty (30) calendar days prior notice to the Contractor.

9.04 Contractor's Obligations on Termination

On termination of the Contract, the Contractor shall, in addition to its other obligations under the Contract and at law (a) at the request of the County, provide the County with any completed or partially completed Deliverables; (b) provide the County with a report detailing: (i) the current state of the provision of Deliverables by the Contractor at the date of termination; and (ii) any other information requested by the County pertaining to the provision of the Deliverables and performance of the Contract; (c) execute such documentation as may be required by the County to give effect to the termination of the Contract; and (d) comply with any other instructions provided by the County, including but not limited to instructions for facilitating the transfer of its obligations to another Person. This paragraph shall survive any termination of the Contract.

9.05 Contractor's Payment Upon Termination

On termination of the Contract, the County shall only be responsible for the payment of the Deliverables provided under the Contract up to and including the effective date of any termination. Termination shall not relieve the Contractor of its warranties and other responsibilities relating to the Deliverables performed or money paid. In addition to its other rights of hold back or set off, the County may hold back payment or set off against any payments owed if the Contractor fails to comply with its obligations on termination.

9.06 Termination in Addition to Other Rights

The express rights of termination in the Contract are in addition to and shall in no way limit any rights or remedies of the County under the Contract, at law or in equity.

SCHEDULE 2 – REQUEST FOR SERVICE (RFS) FORM

Pursuant to the Master Agreement, the County and the Contractor shall enter into RFS(s) for the provision of assignment-specific Deliverables in accordance with the following form:

| | | |
|---|-------------------------|--|
| County: Parkland County 53109A Hwy 779, Parkland County, Alberta, T7Z 1R1 | Contractor: Fax: | Contract No. RFS No. Issue Date: |
| County Project Manager: CC: | | No. of Pages: |

Contemplated Request for Service (Note: An invitational tender document may be attached)

The following is a description of the nature and scope of Services being requested by the County in accordance with the terms of the Agreement. The work is not to proceed unless authorized by a fully executed RFS by the County. All materials and workmanship are to be in accordance with the Agreement unless otherwise stated. Please submit an itemized fee quotation and completion schedule applicable to the Services described herein, within ____ days of the date specified above.

Title:

Description of Services:

Contractor will be designated Prime Contractor: Yes No

Required Schedule:

| |
|---|
| <p>Contractor’s Proposal</p> <p>Subject to the Terms and Conditions of the Contract, the Contractor hereby offers to perform the work described above for the following Price (based upon the rates and payment terms specified in the Agreement) to be completed in accordance with the Required Schedule: \$_____, plus GST as applicable. See attached.</p> <p>Contractor Signed: _____ Date: _____</p> |
| <p>Approval</p> <p>Subject to the Terms and Conditions of the Agreement and based on Contractor’s proposal as mentioned above, the Contractor is hereby directed to promptly proceed with the work described above.</p> <p><u>Price for RFS No.</u> : _____</p> <p><u>Schedule for RFS No.</u> : _____</p> <p><u>PO Number</u> : _____</p> <p>RFS authorized by County Representative: _____ Date: _____</p> |

SCHEDULE 3 – CONTRACTOR ENGAGEMENT PROCESS FOR MASTER AGREEMENT

1.0 Introduction and Overview

- 1.1. The process to establish Deliverables for each request and Contractor engagement process are both identified in this Schedule 3.
- 1.2. Pursuant to the term of the Agreement, the County may (but is not obligated to) request the Services or portion thereof from the Contractor from time to time during the term of the Agreement.
- 1.3. Values expressed in this Schedule 3 are inclusive of all fees, costs and taxes except GST as applicable.
- 1.4. Each instance of the service is subject to the relevant process set out herein and unless prior written approval is given by the County, as specified by the relevant process, the Contractor shall not commence the Services or any portion thereof.
- 1.5. Services may be requested from the Contractor as per the process described in Section 2.0 below.

2.0 Request for Services Process

- 2.1. Contractor shall not commence the Services or any portion thereof until the County issues an approved “Request for Service” (RFS) and an associated purchase order number to the Contractor, unless prior written approval is given by the County.
- 2.2. In case the County requires the Services of the Contractor for a particular project, it will be obtained as per the following procedure:
 - a) The County identifies need for Services and completes RFS and sends it to the Contractor for quotation.
 - b) Upon receipt of RFS, and tender document where applicable, the Contractor completes the pricing provision, including a detailed costing of the Services by the activity (such as but not limited to hourly rates for professional services, technical services, sub-consultants, or sub-contractors, disbursements, mileage, or any other rates that may apply etc.) and submits their response to the RFS to the County. Such pricing shall be in compliance with and not exceed the unit rates set out in the Master Agreement.

- c) The County may request additional information (i.e. resumes for proposed project team, subcontractors, project schedule including a Gantt chart) from the Contractor in the RFS or tender document.
- d) The County will then review the RFS responses, including price, and if acceptable, the County will send the fully executed RFS to the Contractor with a unique PO number.

2.3. Specific conditions to the Contractor Engagement Process:

- a) For Services up to \$25,000, the County will make best efforts to engage Contractors from the Qualified Contractor Roster on a rotational basis as follows:
 - i. the RFS Process is followed;
 - ii. the RFS will be prepared and sent by the County;
 - iii. the RFS may be sent to one pre-qualified Contractor for obtaining a quotation; and
 - iv. If acceptable, then fully executed RFS will be sent to the Contractor.
- b) For Services over \$25,000 but less than \$75,000, the County will make best efforts to engage Contractors from the Qualified Contractor Roster on a rotational basis as follows:
 - i. the RFS Process is followed;
 - ii. the RFS will be prepared and sent by the County;
 - iii. the RFS may be sent to a minimum of three (3) pre-qualified Contractors for obtaining quotations; and
 - iv. the RFS that provides best overall value, including best pricing, may be selected.
- c) For Services over \$75,000 and more, the County in its sole discretion, may issue a tender document through the RFS Process to all prequalified Contractors on the Qualified Contractor Roster as follows:
 - i. the RFS Process is followed;
 - ii. the RFS will be prepared and may include a tender document sent by the County;
 - iii. the RFS may be sent to all pre-qualified Contractors for obtaining submissions; and
 - iv. the RFS that provides best overall value, including best pricing, may be selected, or when a tender document is issued, the process rules set out in the tender document will prevail.

2.4. The County may in its sole discretion obtain these services through another process when the project requirements cannot be met by any Contractor on the Qualified Contractor Roster, or when the County deems it to be advantageous to use another process.

3.0 ON-CALL REQUESTS

- 3.1. Services of limited and smaller scope may be required by the County from time to time (an “On-Call Request”) and accordingly, the process set out in this section 3.0 shall apply to any On-Call Requests placed by the County.
- 3.2. The County may place On-Call Requests directly with any of the Contractor; with whom the County has a Master Agreement in place. The request will be placed via telephone or in writing (may include fully executed RFS, e-mail, facsimile or otherwise). The County will provide the necessary details (such as services required, location, schedule and any other details, which the County may deem necessary) of the On-Call Request to the Contractor.
- 3.3. If an On-Call Request is placed through a telephone call, the Contractor shall promptly follow-up with an e-mail confirmation to the County summarizing and acknowledging the details of the On-Call Request.
- 3.4. Each instance of On-Call Requests will be followed by the issuance of fully executed RFS and PO by the County. Each request shall be invoiced on a time and material basis consistent with the unit rates set out in the Master Agreement, mentioning corresponding PO Number.