THIS AGREEMENT dated the _____ day of _____, _____.

BETWEEN:

VILLAGE OF MANNVILLE
A municipal Corporation
(the "Village")

- and -

_____
(hereinafter called "the Consultant")

WHEREAS the Consultant is in the business of providing consulting services of the following kind:

_____

_____

AND WHEREAS the Village wishes to retain the services of the Consultant as more particularly specified in the Village's email request to carry out work generally described as:

_____

_____

_____

_____

(hereinafter referred to as the "Project");

NOW THEREFORE the Village and the Consultant mutually covenant and agree, each with the other, as follows:

1. **SERVICES**

1.1. The Consultant shall provide the services described in the Consultant's Proposal submitted by email on DATE (the "Proposal") and submitted in reply to a Request for Proposal dated DATE (hereinafter referred to as the "Services"). The Consultant warrants that the Services shall only be performed by the Consultant, unless prior written consent is provided by the Village. Notwithstanding the foregoing, the Village may in its sole and unfettered discretion require that an individual performing the Services be removed and replaced by a competent professional replacement to the satisfaction of the Village.

DRAFT

1.2. The Consultant shall commence the Services no later than _____ and shall complete each phase of the Services in accordance with the schedule or time limitations set out in the [RFP / Proposal / Schedule ___]. The Consultant acknowledges and accepts that time is of the essence of this Agreement.

1.3. The Consultant shall comply with all reasonable requirements established by the Chief Administrative Officer or his/her designate (hereinafter called "the Project Manager") for the performance of the Services, including but not limited to security, safety, environmental protection, emergency procedures and access.

1.4. The Consultant shall exercise the degree of care, skill and diligence normally provided by a qualified professional consultant in the performance of services of a similar nature to the Services required under this Agreement.

1.5. The Village and the Consultant, by agreement in writing, may from time to time alter, add to or deduct from the scope of the Services, and in such case the time for completion shall be adjusted accordingly.

1.6. No payment shall be made to the Consultant as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the Project, unless due to the Village's wilful act or negligence.

2. AGREEMENT DOCUMENTS

2.1. The RFP and the Proposal are incorporated by reference and form part of this Agreement.

3. PAYMENT

3.1. The Village will pay the Consultant [*insert one of (a) or (b): (a)* the total lump sum of $_____ (exclusive of Goods and Service Tax) *or (b)* the rates provided for in the Proposal up to a maximum of $XXXXXX] upon the prompt and faithful performance of the Services to the satisfaction of the Village. Payment shall be subject to all applicable legislation, including without limitation the holdback requirements of the Alberta *Builder's Lien Act*.

3.2. The Village shall not under any circumstances be obligated to pay to the Consultant any amount exceeding the sum set out in Clause 3.1 unless prior written authorization has been obtained by the Consultant from the Village. Without limiting the generality of the foregoing, the Village shall not be required to make payment for any cost or disbursement incurred by or on behalf of the Consultant for the purpose of rectifying errors or omissions for which, in the reasonable opinion of the Village, the Consultant is responsible.

3.3. Where changes have been made to the scope of the Services in accordance with Clause 1.5, the Village and the Consultant may adjust the Consultant's fee accordingly. If the Village and the Consultant cannot agree to the terms of the adjustment, then the dispute may be submitted to arbitration as set out in this Agreement. The Consultant shall have no other claim against the Village for any adjustment to the Consultant's fee as a result of any change to the Services, except as set out within this Clause 3.3.

4. INFORMATION AND PROPERTY RIGHTS

4.1. The Consultant agrees that all data, information and material provided to the Consultant by the Village are and shall be confidential, both during and after the term of this Agreement. The Consultant acknowledges that this is a fundamental term of this Agreement.

4.2. The Village agrees to provide the Consultant with such information as may be reasonably required by the Consultant in the performance of the Services.

4.3. The Consultant agrees that all base materials, research results, computer programs, drawings, documents and notes or materials of any type whatsoever developed or prepared by the Consultant (hereinafter called the "Documents") in performance of the Services shall vest and become the absolute property of the Village, including copyright of such and upon completion of the Services or termination of this Agreement, all copies of the Documents shall be delivered by the Consultant to the Village upon demand by the Village. Once the Village has possession of the Documents, the Village is solely responsible for the use the Village makes of them.

5. **REPORTING**

5.1. The Consultant shall submit to the Project Manager regular progress reports with respect to the Services. If the Project Manager, acting reasonably, deems additional progress reports necessary the Consultant shall submit all additional progress reports requested by the Project Manager.

5.2. The Consultant shall meet with the Project Manager from time to time as requested by the Project Manager to review the progress of the Project and the performance of the Services. The designated representatives of the Consultant for the purpose of such meetings are the following persons:

_____

_____

6. **SUSPENSION OF AGREEMENT**

6.1. The Village may, at any time by notice in writing, at its sole and unfettered discretion suspend the performance of the Services.

6.2. The Village shall pay all fees accrued due to the Consultant to the time of suspension, but payment of all other fees may be suspended by the Village.

6.3. The Village shall not be responsible for any fees incurred by the Consultant during the period of any suspension unless the Consultant satisfies the Project Manager, before incurring any such fees, of the necessity for the same and provides the Project Manager with such documentation as may be required by the Project Manager in support of the claim for fees.

6.4. The Consultant shall resume and complete the Services in accordance with the terms of this Agreement upon written notice from the Village. The Village shall make an equitable adjustment for terms of this Agreement which are affected by the suspension including time requirements and payment. Any dispute as to what constitutes an equitable adjustment may be decided by arbitration in the manner herein provided.

7. **TERMINATION OF AGREEMENT**

7.1. The Village may terminate this Agreement by giving notice in writing which is delivered (not by normal mail service) to the address in Clause 13.1 (or as changed pursuant to Clause 13.3) for the Consultant, if the Consultant:

7.1.1. in the opinion of the Village, fails to complete the Services or any portion thereof within the time limited by the Agreement for such completion, or
7.1.2. becomes insolvent, or
7.1.3. commits an act of bankruptcy, or
7.1.4. abandons the Project, or
7.1.5. assigns its interest in this Agreement without the required written consent, or
7.1.6. fails to observe or perform any of the provisions of this Agreement, or
7.1.7. has any conflict of interest which may, in the opinion of the Village, have an adverse effect on the Project.

7.2. Notwithstanding the foregoing, the Village may terminate this Agreement at its sole and unfettered discretion for its convenience upon seven (7) days written notice, delivered (not by normal mail services) to the address given in Clause 13.1 (or as changed pursuant to Clause 13.3).

7.3. The Consultant, upon termination of this Agreement for any of the reasons set out in Clause 7.1, shall be liable for, and upon demand shall pay to the Village an amount equal to, all loss or damage suffered, both directly and indirectly by the Village as a result of the non-completion of the Services. If the Consultant fails to pay the Village for any such loss or damage on demand, the Village shall be entitled to deduct the same from any payments due and payable to the Consultant, without prejudice to the Village's right to exercise any other remedies available to the Village at common law or at equity or under any statute.

7.4. The Consultant agrees that termination or suspension of this Agreement or a change to the Services in accordance with Article 1.5 does not operate so as to relieve or discharge the Consultant from any obligation under the Agreement or imposed upon him by law in respect to the Services or any portion of the Services.

7.5. Subject to Article 7.3 the Village shall, in the event of any termination of this Agreement, pay to the Consultant all amounts for completed work due to the Consultant in accordance with this Agreement as well as all reasonable fees incurred up to the date of termination. The Village shall have no further liability of any nature whatsoever to the Consultant for any loss of profit or for loss of business opportunity or for any other losses suffered whatsoever, either directly or indirectly, by the Consultant as a result of the termination of this Agreement.

7.6. The Consultant shall, upon termination, forthwith deliver to the Village a reproducible copy of all materials used by the Consultant or prepared by the Consultant in relation to the Project.

8. **INDEMNITY AND INSURANCE**

8.1. The Consultant shall indemnify and save harmless the Village, its servants, 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 costs on a solicitor and its own client basis) suffered by any or all of them in respect to any and all claims, demands, suits, judgments, charges, actions or causes of action lawfully brought or made by any person against the Village, its servants, agents, employees and elected officials 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 wilful or negligent act or breach of this Agreement arising out of the performance of the Services by the Consultant or its servants, agents, employees or subconsultants.

8.2. The Consultant shall maintain, in full force and effect with insurers licensed in the Province of Alberta, the following insurance:

8.2.1. Comprehensive General Liability Insurance in respect to the Services and operations of the Consultant for bodily injury and/or property damage with policy limits of not less than [Five Million Dollars ($5,000,000.00)] per occurrence, which includes the Village as an additional insured and requires 30 days' prior notice of cancellation.

8.2.2. Professional Liability Insurance in respect to the Services with policy limits of not less than One Million Dollars ($1,000,000.00) per claim and with a deductible of not more than $25,000 and with an aggregate limit of not less than $2,000,000.

8.2.3. Automobile Insurance with policy limits of not less than Two Million Dollars ($2,000,000.00) inclusive per occurrence for bodily injury, death and damage to property, covering all vehicles owned or leased by the Consultant.

8.3. The aforementioned insurance shall be in a form and with insurers acceptable to the Village's Insurance Broker. Certified copies of the policies shall be provided to the Village by the Consultant or the Consultant's broker upon request by the Village, and evidence of renewal shall be provided to the Village not less than thirty (30) days prior to the expiry dates of the policies.

8.4. The Consultant shall be responsible for the payment of all premium and deductible amounts relating to the said insurance policies and the Consultant shall maintain the aforementioned insurance from the date of this Agreement until the Services are fully completed.

9. **ARBITRATION**

9.1. In the event of a dispute arising between the parties hereto as to the interpretation, application, operation or alleged violation of this Agreement or any of the provisions hereof (but not with respect to termination) such dispute may be determined by arbitration in accordance with the following terms and conditions:

9.1.1. The party desiring to refer a dispute for arbitration shall notify the other party in writing of the details of the nature and extent of the dispute and the desire of the notifying party to refer the matter to arbitration. Thereafter the following steps shall apply.

9.1.2. Within seven (7) days of receipt of such notice, the receiving party shall, by written notice, advise the party requesting the arbitration of its position with respect to all matters set forth in the initial notice. The receiving party's notice may admit responsibility and propose remedial action, for some or all of the matters raised in the initial notice, and the receiving party shall then forthwith undertake such remedial action.

9.1.3. The terms of reference for arbitration shall be those areas of dispute referred to in the initial notice in respect of which the receiving party has not admitted responsibility or taken remedial action.

9.1.4. The Village and the Consultant shall, within seven (7) days of the establishment of the terms of reference, propose one or more arbitrators to the other party.

9.1.5. If within seven (7) days of receiving such proposals the parties are unable to agree on an Arbitrator, then both parties or either of them may apply to a Justice of the Court of King's Bench of Alberta to have the Arbitrator appointed.

9.1.6. Within thirty (30) days of the appointment of the Arbitrator, or such further period as may be agreed upon by the parties, the Arbitrator shall resolve all matters in dispute in accordance with the terms of reference.

9.1.7. The decision of the Arbitrator shall be final and binding upon the parties.

9.1.8. The costs of the Arbitrator shall be borne by each party as specified by the Arbitrator.

9.1.9. Except as hereby modified, the provisions of the *Arbitration Act* R.S.A. 2000, Chapter A-43, as amended (or any successor legislation thereto) shall apply to the arbitration procedure.

9.1.10. Unless the parties agree otherwise, any arbitration proceeding shall take place in the City of Edmonton in the Province of Alberta.

9.2. Unless instructed otherwise in writing by the Village, the Consultant shall continue to carry out the Services during any arbitration proceedings.

9.3. The Consultant agrees that in the event the Village enters into arbitration or other dispute resolution proceedings with a contractor whose scope of work is connected to the Services, and where the Village believes there may be claims or cross-claims against the Consultant arising from the issues in such arbitration or other dispute resolution process, the Consultant may be required by the Village to join as a party to such arbitration and agrees to be bound by the outcome of such arbitration or other dispute resolution process.

10. **SUBCONSULTANTS**

10.1. The Consultant may, upon first obtaining the written approval of the Village, retain the services of one or more subconsultants as may be required to perform the Services. The Consultant shall obtain the approval of the Village before changing any Subconsultant.

10.2. The Consultant shall remain fully responsible for the performance of the Services even if the Subconsultants retained are approved pursuant to Article 10.1 by the Village.

10.3. The Consultant shall take all necessary measures to bind all Subconsultants to the terms of this Agreement.

11. LEGAL REQUIREMENTS

11.1. The Consultant shall ensure that the Services comply with all relevant legislation including codes, bylaws and regulations as well as Village policies and procedures. Where there are two or more laws, ordinances, rules, regulations or codes applicable to the Services, the more restrictive shall apply.

11.2. The Consultant shall apply and pay for all necessary permits or licences required for the performance of the Services.

11.3. The Consultant shall at all times observe all the provisions of the *Labour Relations Code*, *Workers' Compensation Act*, *Environmental Protection and Enhancement Act* and the *Occupational Health and Safety Act* as well as rules and regulations pursuant thereto. In the event the Consultant fails to comply with any legislation or any regulations there under and the Village is required to do any act or thing or take any steps or pay any sums to rectify such non-compliance, the Village may subtract the cost of any such rectifications from any monies owed to the Consultant. Such action shall not be deemed a waiver of any action that the Village may pursue to collect any monies paid herewith that exceed the monies owed to the Consultant.

11.4. The Consultant shall be responsible for the safety of workers and equipment on the Project, and for the protection of the environment in relation to the Project. The Consultant shall bring to the attention of all Subconsultants all pertinent provisions of the *Occupational Health and Safety Act* and the *Environmental Protection and Enhancement Act* and regulations there under.

11.5. The Consultant shall follow the requirements of the Alberta *Engineering and Geoscience Professions Act*, as amended from time to time, including all applicable regulations, for work within this agreement that falls under the jurisdiction of this Act. This includes, without limitation, authenticating all professional documents, as applicable, and accepting professional responsibility for work performed by the Consultant in accordance with the Act and regulations. The Consultant shall provide the Village with a copy of the Consultant's Professional Practice Management Plan (PPMP) upon demand by the Village. A professional document prepared by the Consultant cannot include a disclaimer statement that limits the Consultant's responsibility under this clause unless the Village specifically authorizes a specific disclaimer or limitation in writing.

12. **ASSIGNMENT**

12.1. The Consultant shall not, without the prior written consent of the Village, assign or in any way transfer its interest in or obligations under this Agreement to any other party. The Consultant acknowledges and accepts that the Village has chosen the Consultant to perform the Services because of the reputation of the Consultant and the qualifications of the persons identified in the Proposal, and the Consultant therefore agrees that the Village may in its absolute discretion refuse to accept any assignment or transfer of the Consultant's interest in or obligations hereunder, even if such refusal may be construed to be arbitrary or unreasonable.

13. **NOTICES**

13.1. Any notices or other correspondence required to be given to an opposite party except for notice of termination shall be deemed to be adequately given if sent by prepaid registered mail addressed as follows:

13.1.1. To the Consultant at:

_____

_____

_____

13.1.2. To the Village at:

_____

_____

_____

13.2. Notice given as aforesaid, if posted in Alberta, shall conclusively be deemed to have been given on the fifth (5th) business day following the date on which such notice is mailed.

13.3. Either party may, at any time, give notice in writing to the other of any change of address of the party giving such notice and after the giving of such notice, the address therein specified shall be deemed to be the address of the said party for the giving of notice there under.

13.4. The word "notice" in this section shall be deemed to include any requests, statements or other writing in this Agreement provided or permitted to be given by the Village to the Consultant or by the Consultant to the Village.

14. **SINGULAR AND MASCULINE**

14.1. Words importing the singular or masculine also include the plural or feminine or body corporate where the context requires.

15. **LAWS OF ALBERTA**

15.1. This Agreement shall be construed in accordance with the laws of the Province of Alberta, and for the purposes of all legal proceedings this Agreement shall be deemed to have been performed in the said Province. If any provision herein contained shall in any way contravene the laws of the Province of Alberta, such provision shall be severed from the Agreement and the remaining provisions shall continue in force and effect. Nothing herein shall restrict the right of the Village to bring action against the Consultant in any Court of competent jurisdiction.

16. **INTERPRETATION**

16.1. The headings in this Agreement are for ease of reference only and shall not be taken into consideration in construing or interpreting this Agreement.

17. **SUCCESSORS**

17.1. This Agreement shall enure to the benefit of and be binding upon the parties hereto and, except as hereinbefore provided, the successors and assigns thereof.

IN WITNESS WHEREOF the parties hereto have affixed their corporate seals by the hands of their proper signing officers in that behalf, effective the day and year first above written.

VILLAGE OF MANNVILLE	(Insert Name of Consultant)
_____	_____
_____	_____