

**APPENDIX E**  
**FORM OF AGREEMENT**

This Agreement made on **[insert date of Agreement]** (the “**Effective Date**”).

**BETWEEN:**

**MUNICIPALITY OF THE COUNTY OF KINGS**, a body corporate governed by the *Municipal Government Act* (Nova Scotia) and having an office at 181 Coldbrook Village Park Dr., Coldbrook, NS (the “**Municipality**”);

and

**[INSERT NAME OF SERVICE PROVIDER AND ADDRESS]** (the “**Service Provider**”)

(each a “**Party**” and together, the “**Parties**”)

**BACKGROUND:**

- A. The Municipality issued a Non-Binding Request for Proposals, Project Reference #**[insert project reference number from NRFP]** (“**NRFP**”).
- B. The Service Provider was the successful proponent under the NRFP.
- C. The Municipality wishes to engage the Service Provider to provide the Services (as defined herein) in connection with the Project.

In consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the Parties agree as follows:

**Article 1. SCHEDULES.**

This Agreement contains the following Schedules, which are incorporated in, and form part of this Agreement:

- Schedule 1: General Terms and Conditions
- Schedule 2: Contract Price and Payment Terms
- Schedule 3: Project Description and Services
- Schedule 4: Proposal Extracts

**Article 2. DEFINITIONS.**

In this Agreement the following terms shall have the following meanings:

- a) “**Agreement**” means this agreement in writing between the Parties, including the recitals, and any schedules attached hereto, as it may be amended or supplemented from time to time; and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and unless otherwise indicated, references to section are to sections in this Agreement.
- b) “**Contract Price**” means as set out in **Schedule 2** of this Agreement.

- c) **“Deliverables”** means all base materials, information, research results, computer programs, data analyses, drawings, documents and notes or materials of any type whatsoever developed or prepared by the Service Provider (or its employees, subcontractors or employees of its subcontractors) in performance of the Services and otherwise arising out of the Service Provider’s engagement under this Agreement.
- d) **“Event of Force Majeure”** means any cause beyond the control of the Municipality or the Service Provider which prevents the performance by either party of any of its duties, liabilities and obligations under this Agreement not caused by its default or act of commission or omission and not avoidable by the exercise of reasonable effort or foresight by that Party including explosion, fire, casualty or accidents, epidemics, cyclones, earthquakes, floods, droughts, war, civil commotion, terrorism, blockade or embargo, and acts of God, but excluding lack of or insufficient financial resources to discharge and pay any monetary obligations and excluding increases in commodity prices, inability to obtain labour, equipment or materials, strikes, lockouts or other labour disputes.
- e) **“General Terms and Conditions”** or **“GC”** means the Agreement’s General Terms and Conditions, attached to this Agreement as **Schedule 1**.
- f) **“Liquidated Damages”** means an amount equal to **[CAD\$ number or % of the total Contract Price]** for each day a Period of Delay continues.
- g) **“Municipality Party”** means any agency, board or commission owned, governed or controlled by or affiliated with the Municipality (including inter-municipal arrangements to which the Municipality is a party).
- h) **“NRFP”** has the meaning as set out in the recitals to this Agreement.
- i) **“Period of Delay”** means the days during which the Service Provider fails to complete the Services or any part of the Services.
- j) **“Project”** means the Project as described in **Schedule 3**.
- k) **“Proposal”** means the response to the NRFP as provided by the Service Provider.
- l) **“Proposal Extracts”** means the documents attached as **Schedule 4**.
- m) **“Service Provider IP”** means the Service Provider’s pre-existing intellectual property or derivatives thereto, owned by the Service Provider and used in the performance of the Services.
- n) **“Services”** mean the work, tasks, activities, materials and other deliverables to be performed or provided by the Service Provider as described in **Schedule 3** and the Proposal Extracts.
- o) **“Term”** means the period commencing as of the Effective Date until the Services are acceptably completed (as determined by the Municipality, acting reasonably) or until the earlier termination of the Agreement in accordance with this Agreement.

All other capitalized terms shall have the meaning ascribed to them in this Agreement.

### **Article 3. INTERPRETATION.**

- a) **Headings.** The division of this Agreement into sections and the insertion of the recitals and headings are for convenience and reference only and shall not affect the construction or interpretation of the Agreement.
- b) **Currency.** All transactions referred to in this Agreement will be made in Canadian Dollars.

- c) **Accounting Terms.** All accounting terms not specifically defined shall be construed in accordance with Canadian Generally Accepted Accounting Principles.
- d) **Time is of the Essence.** Time shall be of the essence in this Agreement.
- e) **Days.** All references to “days” in this Agreement shall refer to calendar days. In the event that any date on which any action is required to be taken under this Agreement is not a business day, such action shall be required to be taken on the next succeeding day which is a business day unless otherwise provided in this Agreement.
- f) **Interpretation.** Wherever in this Agreement the context so requires, the singular number shall include the plural number and vice versa and any gender used shall be deemed to include the feminine, masculine or neuter gender and “person” shall mean an individual, partnership, consortium, corporation, joint venture or other entity or government or any agency, department or instrumentality thereof and vice versa.

**Article 4. ENGAGEMENT FOR SERVICES.**

The Municipality hereby engages the Service Provider for the Term to render the Services. The Service Provider hereby accepts the engagement and covenants to render the Services in accordance with this Agreement and in a timely manner and at such times as are agreed upon by the Service Provider and the Municipality.

**Article 5. CONTRACT PRICE.**

The Municipality shall pay the Service Provider the Contract Price, in accordance with the terms set out in this Agreement.

**Article 6. MODIFICATION OF CONTRACT PRICE.**

Without limiting the generality of Article 5, the Contract Price may be modified to reflect any change in the scope of Services pursuant to GC 1.03, and any extension of the Services to a Municipality Party pursuant to GC 1.02.

**Article 7. LICENSING AND REGISTRATION.**

In addition to the representations and warranties contained in GC 4, the Service Provider represents and warrants that:

- a) it is registered to conduct business in **[jurisdiction required for registration]**, and it shall remain so registered for the duration of the Term.
- b) as may be required by Project, the Service Provider’s employees and subcontractors are licensed, certified, registered or otherwise authorized to provide the necessary professional services to the full extent that may be required by law and applicable professional associations and shall maintain such license, certification, registration or authorization for the duration of the Term.

**Article 8. INSURANCE.**

During the term of this Agreement, the Service Provider shall carry the following insurance:

- a) **General Liability Insurance.** General liability insurance covering the services and operations of the Service Provider for bodily injury and/or property damage with policy limits of not less than **[\$amount]** per occurrence. Such policy shall include the following:

- **[list all required coverages]**
- b) **Professional Liability Insurance.** Professional liability insurance covering the services provided by the Service Provider with policy limits of not less than \$**[amount]** per claim and in the aggregate. The Service Provider shall obtain such insurance when the Service Provider subcontracts for any work from such a design professional, and prior to the submission of construction documents. Any design professional required to obtain professional liability insurance must maintain proof of insurance for the term of the Agreement.
- c) **[List any other insurances particular to the Project and associated amounts].**

**Article 9. PARTIES' REPRESENTATIVES.**

Unless otherwise specified in writing to the Service Provider, for the purpose of this Agreement, the Parties' representatives for this Agreement shall be as follows:

Municipality representative	Service Provider representative
The Municipality of the County of Kings 181 Coldbrook Village Park Drive, Coldbrook NS, B4P 1B9 Fax: 902-679-9279 Attention: <b>[insert name of Municipality representative]</b> Email: <b>[insert Municipality email]</b>	<b>[insert Service Provider mailing address]</b> Attention: <b>[insert name of Service Provider representative]</b> Email: <b>[insert Service Provider email]</b>

**Article 10. NOTICES.**

All notices, consents or other communications other than day-to-day communications, provided for under this Agreement shall be in writing and shall be deemed to have been duly given and to be effective, if addressed to a Party's representative pursuant to Article 9 and

- a) if mailed, three business days after being deposited in the post as registered, postage prepaid, return receipt requested, or
- b) if delivered or sent by electronic communication, on the date of delivery, to the appropriate Party's representative at the respective addresses specified in this Article.

*[Signature page follows]*

IN WITNESS WHEREOF the Parties hereto have executed this Agreement under their respective corporate seals and by the hands of their duly authorized representatives.

**THE MUNICIPALITY OF THE COUNTY OF  
KINGS**

**[INSERT NAME OF SERVICE PROVIDER]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Signature

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Signature

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Name and Title

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Name and Title

**SCHEDULE 1  
GENERAL TERMS AND CONDITIONS**

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**GC 1. SERVICES**

- GC 1.01. **Standards.** The Service Provider shall provide continuous and uninterrupted Services to the highest standard of care, skill and diligence maintained by persons providing similar services. In the performance of the Services, the Service Provider shall act honestly and in good faith with a view to the best interests of the Municipality. Should any work or materials be required for the proper performance of the Agreement which are not expressly or completely described in the Agreement and are reasonably associated with or necessary for the proper and timely performance and provision of the Services, then such work or materials shall be deemed to be implied and required by the Agreement and the Service Provider shall furnish them as if they were specifically described in the Agreement as part of the Services.
- GC 1.02. **Extension of Services to Related Entities.** The Municipality may, at their option, upon not less than 30 days' written notice to the Service Provider, extend the scope of the Agreement to a Municipality Party on the same terms and conditions as contained in the Agreement. The Parties agree that each Municipality Party shall execute and become a Party to this Agreement.
- GC 1.03. **Changes.** In addition to the rights as outlined in Section GC 1.02, the Municipality shall also have the right to request a change to the scope of Services by providing a written request to the Service Provider which will include the nature of the change requested. The Service Provider will assess the change and within five days will provide a written response indicating (i) the estimated cost of implementing the change (if any) and (ii) the estimated time required to implement the change. The Service Provider will not proceed with implementing the change unless the Parties agree in writing to the change.
- GC 1.04. **Improvements and Efficiencies.** The Service Provider shall at its cost continuously develop and implement improvements and efficiencies in the performance of its Services through improved familiarity with the environment, redeployment of resources, workload balancing, lowering unit costs through utilization of shared equipment, simplified and streamlined processes, lower carrying and delivering charges and other strategies. The Service Provider will identify all potential performance improvements and efficiencies to the Municipality and

- shall at the same time provide the Municipality with a calculation of the corresponding savings to the Service Provider and the costs of providing such Services. The Municipality will assess whether the proposed performance improvements and efficiencies may be carried out without compromising the service standards and if the Municipality approves same, the Service Provider will implement such improvements and efficiencies for the benefit of the Municipality.
- GC 1.05. **Value Added Services.** The Service Provider shall provide the Municipality with any value added services described in the Proposal Extracts. Such value added services shall be provided to the Municipality at no additional charge.
- GC 1.06. **No Substitutions.** No exchanges of products, or substitute or alternate products or equipment will be used unless agreed to by the Municipality. All equipment, supplies and materials used by the Service Provider shall be in good working order and free from defects.
- GC 1.07. **Canadian Standards Association (CSA) Compliance.** All machinery and electrical devices used shall conform to CSA standards and bear CSA approval labels. Costs of approval to obtain the required certification will be the sole responsibility of the Service Provider.

## **GC 2. COMPENSATION AND EXPENSES**

- GC 2.01. **Costs and Expenses.** The Service Provider shall be responsible for paying for:
- (a) its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Agreement;
  - (b) all necessary permits, licenses and approvals required for the execution of the Services (including, without limitation, permits, licenses and approvals obtained from the Municipality); and
  - (c) all materials, supplies and equipment for the performance of the Services, which are not otherwise included in the Contract Price.
- GC 2.02. **Taxes.**
- (a) HST. The Municipality will pay any HST payable in respect of the various goods and services provided by the Service Provider in accordance with the requirements under the *Excise Tax Act* (Canada). The Service Provider is and shall remain an HST registrant under the *Excise Tax Act* throughout the Term.
  - (b) Other Taxes. The Service Provider shall pay when due all other taxes, rates, duties, assessments and license fees that may be payable by the Service Provider under applicable law or levied, rated, charged or assessed by any governmental authority in respect of the provisions of the Services to the Municipality.
- GC 2.03. **Payment and Process for Payment.** Reimbursement will be as set out in this Section and on the basis as set out in **Schedule 2**.
- GC 2.04. **Disputes.** The amount of any reduction or increase in the Contract Price shall be determined by the Municipality and the Service Provider by taking into account any reduction or increase in capital or labour costs based on the pricing methodology, rates, and costs for the Services set forth in the Proposal. If the Municipality and the Service Provider are unable to agree on the appropriate reduction or increase in the Contract Price the matter shall be referred for resolution pursuant to binding arbitration in accordance with the *Commercial Arbitration Act* (Nova Scotia). The Municipality shall not be liable to the Service Provider for any loss (including

loss of anticipated profit) or damage of any nature arising out of any reduction or deletion in Services.

- GC 2.05. **Set-off.** The Municipality shall be entitled at all times to set-off any amount due or owing to the Service Provider by the Municipality under the Agreement against any amount or amounts for which the Service Provider is or may be liable by virtue of the Service Provider's failure to comply with any statutory or regulatory requirement, any duty, or any obligation arising out of or relating to the performance of the Agreement. The Municipality shall also have the right to withhold any payment which relates to that portion of the Services which have not been provided by the Service Provider in accordance with the terms of the Agreement, or which relates to a dispute between the Parties (until such time as the dispute is resolved).

### **GC 3. TERMINATION**

- GC 3.01. **Termination for Cause.** The Municipality may terminate the Agreement immediately by giving the Service Provider notice in writing, if the Service Provider:

- (a) In the opinion of the Municipality, fails to perform the Services or any portion thereof within the time stated in the Agreement for such completion;
- (b) Becomes insolvent;
- (c) Commits an act of bankruptcy;
- (d) Abandons the Services or the Project;
- (e) Assigns the Agreement without the required written consent;
- (f) Performs conduct detrimental to the Municipality;
- (g) Has any conflict of interest which may, in the opinion of the Municipality, have an adverse effect on the Project, or
- (h) Fails to cure the default of a material obligation in accordance with Section GC 5.04.

- GC 3.02. **Termination for Convenience.**

- (a) The Municipality may terminate the Agreement by giving the Service Provider 30 days' advance notice in writing of the date on which the Agreement is terminated.
- (b) In the event of termination pursuant to Section GC 3.02, the Municipality shall pay to the Service Provider all reasonable fees and distributions incurred by the Service Provider in accordance with the Agreement up to the date of termination. The Municipality shall have no further liability whatsoever to the Service Provider for any loss of profit or any losses suffered either directly or indirectly, by the Service Provider as a result of the termination of this Agreement.

- GC 3.03. **Material Adverse Changes.** In the event of an adverse material change in the Municipality's capital or operating budgets, the Municipality reserves the right to cancel or reduce its contractual obligations without penalty.

- GC 3.04. **Obligations on Termination.** The Service Provider agrees that termination or suspension of the Agreement or a change to the Services to be provided under this Agreement does not operate so as to relieve or discharge the Service Provider from any obligation under this



Agreement or imposed upon the Service Provider by law in respect to the Services or any portion of the Services that the Service Provider has completed.

**GC 4. REPRESENTATIONS, WARRANTIES AND COVENANTS**

- GC 4.01. **Authority.** Each Party represents and warrants it has full power and authority to enter into and perform its obligations under this Agreement and the person signing this Agreement on behalf of the Party has been properly authorized and empowered to enter into such Agreement. Each Party further acknowledges that it has read all of the terms, conditions and provisions of this Agreement and understands all provisions thereof and agrees to be bound thereby.
- GC 4.02. **Title.** The Service Provider warrants clear title to goods and equipment supplied by it in performance of the Services.
- GC 4.03. **Conflict of Interest.** The Service Provider and its employees shall take all reasonable steps to ensure avoidance of all direct or indirect conflicts of interest between any of their individual interests and those of the Municipality. If the Service Provider or any one of its personnel becomes aware of any reasonable possibility of any such conflicts, then the Service Provider shall promptly disclose to the Municipality the facts and circumstances pertaining to same.
- GC 4.04. **Performance of Services.** The Service Provider warrants that all Services will be performed with reasonable care, diligence and skill and at least in accordance with the standards of care generally practiced by competing providers of similar services.
- GC 4.05. **Compliance with COVID-19 Protocols.** The Service Provider warrants that it will comply with all relevant authoritative guidance and governmental directives relating to COVID-19 workplace safety operating practices, including cleaning and disinfecting, employee wellness checks and sick leave and absenteeism policies, personal protective equipment, social distancing and limits on gatherings, masks and face coverings and hand washing. The Service Provider represents and warrants that all personnel working on the Project have received and will continue to receive safety training and information.
- GC 4.06. **Personnel.** The Service Provider is solely responsible for all aspects of employment and labour relations in connection with its workforce. All employees of the Service Provider shall be under the direct management and sole supervision of the Service Provider. The Service Provider shall be responsible for all payroll functions and shall pay in a timely manner all salaries and benefits, taxes, employment insurance premiums, Canada Pension Plan premiums or contributions, *Workers Compensation Act* (Nova Scotia) assessments and any other assessments or contributions of any kind or nature whatsoever that are payable to any governmental authority in respect of the Service Provider's employees. It is the express mutual understanding and intention of the Service Provider and the Municipality that the Service Provider is not a successor to, or common employer with the Municipality and nothing in the Agreement shall be construed, interpreted, understood or implied contrary to that mutual intention and understanding.
- GC 4.07. **Qualifications.** The Service Provider shall ensure its employees are competent to perform the Services and are properly qualified, trained and supervised in keeping with the qualification, training and supervision provided by a reasonably prudent Service Provider of similar services in a public environment.
- GC 4.08. **Policies.** The Service Provider shall require all of its employees and approved subcontractors performing Services to adhere to the policies and by-laws of the Municipality (<https://www.countyofkings.ca/government/policies.aspx> and <https://www.countyofkings.ca/government/bylaws.aspx>), as may be amended or replaced from time to time. The Service Provider shall ensure that any employees who do not meet the

standards required by this Agreement do not provide Services at any facilities and are promptly removed from the work site. Failure to comply with these provisions constitutes a material breach of the Agreement entitling the Municipality to immediately terminate the Agreement pursuant to Section GC 3.01.

**GC 4.09. Personnel Changes.**

- (a) The Service Provider shall use all reasonable efforts to minimize the possibility of changes in its human resources assigned to perform the Service Provider's obligations under this Agreement. If a change is necessary, the Service Provider is required to promptly notify the Municipality. Notification shall include:
  - (i) the reason for the proposed change;
  - (ii) a comprehensive description of the proposed change; and
  - (iii) detailed resumes for each new proposed resource documents the resource's specific relevant experience and expertise related to the Services, credentials, accreditations, awards and background.
- (b) The Service Provider shall use all reasonable efforts to promptly replace such resource with another that is of at least equal competence.
- (c) All resource replacements contemplated in this Section are subject to the Municipality's written approval.
- (d) The Service Provider shall bear all additional costs incurred as a consequence of any replacements.

**GC 4.10. Use of Subcontractors.**

- (a) The Service Provider may, upon first obtaining the written approval of the Municipality, retain the services of a subcontractor as may be required to perform the Services. In seeking such approval, the Service Provider shall provide to the Municipality the names of any proposed subcontractors and activities to be performed by them.
- (b) The Municipality, acting reasonably, shall be entitled to impose any term or condition in connection with any approval of any proposed assignment or subcontract in order to ensure the continued and effective provision of goods or services to the Municipality. Subcontracting or assigning the Agreement to any firm or individual whose current or past or other interests may, in the Municipality's opinion, give rise to a conflict of interest in connection with the Agreement will not be permitted.
- (c) The Service Provider shall be responsible for the performance of the Services under this Agreement and for the acts and omissions and errors of all subcontractors and of persons directly or indirectly employed or contracted by them and for coordinating activities of the approved subcontractors.
- (d) For subcontractors retained by the Service Provider and approved by the Municipality, the Service Provider shall bind the subcontractors to a contract containing terms and conditions which are consistent with the terms of this Agreement.
- (e) Nothing contained in this Agreement creates any contractual relationship between any of the Service Provider's subcontractors and the Municipality.

GC 4.11. **Security.** Only employees of the Service Provider specifically assigned to perform the Services or approved subcontractors pursuant to Section GC 4.10 will be allowed to enter the Municipality's facilities or sites. Where required by the Municipality, the Service Provider shall ensure that all approved subcontractors and service representatives that enter the Municipality's facilities or sites are reported to the Municipality's representative, so that the Municipality's representative will be aware of who is at the facility or site and the duration of that person's visit. The Service Provider shall comply with all of the Municipality's relevant policies relating to building security and card access systems and shall be held responsible for any damages or injuries resulting from the misuse or loss of keys and/or access cards.

GC 4.12. **Criminal Record Checks.**

- (a) If requested by the Municipality at any time, the Service Provider shall ensure that their employees or subcontractors have security clearance, obtained from the Royal Canadian Mounted Police, Kentville Police Services or similar law enforcement agency, to work in any of the Municipality's buildings and properties.
- (b) If requested by the Municipality at any time, the Service Provider shall ensure that their employees or subcontractors have a Criminal Record Check and Vulnerable Sector Check. If this security clearance is not available, the reason for unavailability must be clearly stated, and may be grounds for removal of such employee or subcontractor from the Project at the discretion of the Municipality.

## **GC 5. DELAY, DEFAULT, AND SUSPENSION OF SERVICES**

GC 5.01. **Delay.** Except when due to an Event of Force Majeure, if the Service Provider fails to complete the Services or any part of the Services by any date or deadline specified in the Agreement or approved change orders, the Municipality may elect to:

- (a) Obtain substitute services from a third party, in which case the Service Provider must reimburse the Municipality for the difference, if any, between the charges incurred by the Municipality for the substitute services and the charges specified in the Agreement that the Municipality would owe to the Service Provider if not for the Period of Delay. If the Municipality decides to permanently use the substitute service from a third party, the Contract Price will be adjusted accordingly; or
- (b) Recover from the Service Provider Liquidated Damages for the Period of Delay. The Service Provider agrees that such Liquidated Damages represent a fair, reasonable and appropriate estimate of the Municipality's actual damages and that such Liquidated Damages may be assessed and recovered by the Municipality as against the Service Provider without the Municipality being required to present any evidence of the amount or character of actual damages sustained by reason thereof. Such Liquidated Damages are intended to represent estimated actual damages and are not intended as a penalty, and the Service Provider shall pay them to the Municipality without limiting the Municipality's right to terminate this Agreement for default as provided elsewhere herein.

GC 5.02. **Suspension of Services.**

- (a) In any circumstance where the Municipality, acting reasonably, is of the view that the Services as performed by the Service Provider are either not in accordance with the requirements of the Agreement or pose any unacceptable risks to the safety of the Municipality staff or the public, the Municipality may, without incurring any liability to the Service Provider, immediately suspend, in whole or in part, performance of further services on written notice to the Service Provider for such a period of time as the Municipality may determine, in which case the Service Provider agrees it will vacate the subject

Municipality's facilities and sites along with its employees and equipment until such period of time as the Municipality may determine.

- (b) The Municipality may otherwise temporarily suspend the Services by giving the Service Provider 14 days' advance notice in writing of the temporary suspension.
- (c) The Municipality shall not be responsible for any fees incurred by the Service Provider during the period of any suspension unless the Service Provider provides the Municipality with supporting documentation to show that such fees were reasonably necessary.
- (d) The Service Provider shall resume and complete the Services in accordance with the terms of the Agreement upon receiving notice from the Municipality to do so. The Municipality shall make an equitable adjustment to the terms of this Agreement which are affected by the suspension including time requirements and payment.

**GC 5.03. Force Majeure.**

- (a) If the Municipality or the Service Provider fails to perform any term of the Agreement and such failure is due to an Event of Force Majeure, that failure will not be deemed to be a default under the Agreement. The Party affected by an Event of Force Majeure will immediately notify the other Party and will take all reasonable steps to minimize the extent and duration of the Event of Force Majeure and the period of all delays resulting from the Event of Force Majeure will be excluded in computing the time within which anything is required or permitted by such Party to be done under this Agreement, it being understood and agreed that the time within which anything is to be done under this Agreement will be extended by the total period of all such delays. During the Event of Force Majeure requiring suspension or curtailment of a Party's obligation under this Agreement, that Party will suspend or curtail its operations in a safe and orderly manner.
- (b) If an Event of Force Majeure prevents the Service Provider from providing Services at any facility for a period of one or more days, the Municipality may thereafter, at its option, and without incurring any liability to the Service Provider, on notice to the Service Provider, either suspend in whole or in part the performance of further Services on a site by site basis or for all sites or terminate this Agreement with respect to the affected Services, or if all Services are prevented, the entire Agreement. In the event of such suspension, the Service Provider agrees it will vacate the affected site(s) along with all of its employees and equipment until such period of time as the Municipality may determine and the Municipality shall have the right to obtain substitute Services from a third party or through its own forces at its sole discretion for the duration of such period of suspension. In the event of such termination, the Municipality shall be entitled to a refund of all prepaid costs related to the Services prevented by the Event of Force Majeure.

**GC 5.04. Default.**

- (a) If the Service Provider fails to perform a material obligation under this Agreement, the Municipality may consider the Service Provider to be in default and may assert a default claim by giving the Service Provider a written and detailed notice of default. The Service Provider shall have 30 days after receipt of the notice of default to either (i) cure the default or (ii) if the default is not curable within 30 days, to provide a written cure plan. The Service Provider will begin implementing the cure plan immediately after receipt of notice by the Municipality that it approves the cure plan.
- (b) If the Service Provider performs the Services contrary to any applicable laws, by-laws, regulations, codes and orders of any authority having jurisdiction, the Service Provider shall be responsible for and shall correct any violations thereof and shall bear all resulting costs,

expenses, penalties and damages. If the Municipality is required to do anything or take any steps or pay any sums to rectify such non-compliance, the Municipality may subtract the cost of such rectifications from any monies owed to the Service Provider. Such action shall not be deemed a waiver of any action that the Municipality may pursue to collect any monies paid that exceed the monies owed to the Service Provider.

## **GC 6. CONFIDENTIALITY AND PUBLICITY**

- GC 6.01. **Confidential Information.** Information pertaining to the Municipality obtained by the Service Provider from the Municipality or a Municipality Party as a result of this Project is confidential and must not be disclosed without written permission of Municipality.
- GC 6.02. **Limitation.** Notwithstanding the foregoing, data, information and material will not be considered confidential if such data, information and material is obtainable by the Service Provider through other means than the Municipality or if such data, information and material has been published or distributed by the Municipality to the general public.
- GC 6.03. **Advertising.** The Service Provider will not use the name of the Municipality, a Municipality Party or any contents of this Agreement in any advertising or publications without prior written consent from the Municipality.

## **GC 7. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY**

- GC 7.01. **Municipality Obligations.** The Service Provider acknowledges that the Municipality is subject to the requirements of the *Municipal Government Act* (Nova Scotia), in particular, those provisions relating to Freedom of Information and Protection of Privacy. All information and records pertaining to this Agreement will be maintained in confidence or disclosed by the Municipality in accordance with the provisions of the *Municipal Government Act* (Nova Scotia).
- GC 7.02. **Service Provider Obligations.**
- (a) Freedom of Information. The Service Provider acknowledges that it is also subject to the provisions of the *Municipal Government Act* relating to Freedom of Information and Protection of Privacy, including all information or records under its care or control collected or created for the purposes of this Agreement.
  - (b) Personal Information. The Service Provider must not permit the collection, use and/or disclosure of any personal information (as defined by section 461(f) of the *Municipal Government Act* (Nova Scotia)) without the consent of the individual to whom the personal information pertains.
  - (c) Data. In the event that the Service Provider is (i) acquired by a non-Canadian company or (ii) in the event of termination of this Agreement, the Service Provider agrees, at no cost to the Municipality and upon reasonable notification from the Municipality, to provide to the Municipality all of the Municipality's data in electronic format, and to completely purge all of the Municipality's data, including backups, from the Service Provider's possession prior to the completion of the acquisition. A certificate from an independent third party verifying that all data, including backups, has been purged shall be provided to the Municipality (i) prior to such acquisition of the Service Provider by a non-Canadian company or (ii) following termination of this Agreement. Acceptable third parties include professional accountants, certified auditors and IT professionals.

**GC 8. INTELLECTUAL PROPERTY**

**GC 8.01. Intellectual Property Ownership.**

- (a) The Service Provider agrees that the Deliverables shall vest in and become the absolute property of the Municipality, including assignment of all copyright. The Service Provider agrees that this transfer of property and assignment of copyright applies to the Deliverables, notwithstanding that the Deliverables may contain wording to the contrary.
- (b) For greater certainty, Deliverables as defined in Section GC 8.01(a) does not include the Service Provider IP, which remains the Service Provider's intellectual property. Notwithstanding the foregoing, the Service Provider agrees that any of the Service Provider IP used in the performance of the Services or incorporated into the Deliverables may be used by the Municipality for its business purposes and may be shared with the Municipality's other service providers. To the extent that the Service Provider IP is included in the Deliverables, the Municipality shall receive a perpetual, royalty-free, non-transferable, non-exclusive, worldwide license to reproduce, distribute, use and display the Deliverables for the purpose for which they were intended.
- (c) In recognition that the Municipality is to be the sole owner of all rights to the Deliverables, Service Provider shall, and shall cause its subcontractors and employees, as applicable to:
  - (i) forever, unconditionally, and irrevocably sell, assign, convey, and transfer to the Municipality all of Service Provider's, any subcontractors' and employees' rights, title and interest in and to the Deliverables and work product created by the Service Provider under this Agreement, and all worldwide intellectual property rights therein, including, without limitation, the rights in any copyrights, patents and trade secrets; and
  - (ii) waive any moral rights to the Deliverables in favour of the Municipality,to the fullest extent such that, following the assignment, the Municipality shall have all ownership rights that would otherwise be possessed by Service Provider or subcontractor or employee. Without prejudice to any rights which may exist in the Municipality by virtue of any prerogative rights and powers or by virtue of the *Copyright Act*, R.S.C. 1985, c. C-42, the Service Provider agrees that all present and future rights in the copyright in the Deliverables will vest absolutely and immediately in the Municipality. The Service Provider agrees that execution of this Agreement constitutes the written assignment of copyright and waiver of moral rights.
- (d) During the Term and thereafter, the Service Provider will fully cooperate with the Municipality in the procurement, protection and enforcement of any intellectual property rights in the Deliverables under this Agreement. This will include being available for testimony upon proper notice in proceedings and executing, acknowledging, and delivering to the Municipality all documents or papers necessary to perfect the Municipality's ownership of work product and the Deliverables and to enable the Municipality to publish, procure, protect, and register the Municipality's rights in the same. If applicable laws prevent the Service Provider (or subcontractor or employee) from transferring ownership of any Deliverables, the Service Provider (or subcontractor or employee) grants the Municipality a perpetual, irrevocable, exclusive, royalty-free, fully-paid, transferable, worldwide license (with the right to sublicense) to reproduce, prepare derivative works of, distribute, publicly perform, publicly display, and otherwise use such Deliverables make, use, sell, offer for sale, import, export any component of, and otherwise dispose of such Deliverables.

**Schedule 1**  
**General Terms and Conditions**

- (e) Upon completion of the Services or termination of this Agreement, the Service Provider shall deliver all of the Deliverables to the Municipality on demand by the Municipality. The Service Provider may keep copies of the Deliverables. Once the Municipality has possession of the Deliverables, the Municipality is solely responsible for the use that the Municipality makes of the Deliverables in other projects.
- (f) The Municipality agrees to indemnify and hold harmless the Service Provider from any claim, liability or cost (including reasonable legal fees) arising out of any modification of the Deliverables by the Municipality or any person that obtains the Deliverables from or through the Municipality.

**GC 8.02. Infringement and Indemnification.**

- (a) The Service Provider represents and warrants that, to the best of its knowledge, neither it nor the Municipality will infringe any third party's intellectual property rights (including patent, copyright or industrial design) as a result of the performance of the Services or the Municipality's use of the Deliverables.
- (b) The Service Provider shall indemnify and hold harmless the Municipality against any or all lawsuits, claims, demands and/or expenses, patent litigation, intellectual property infringement or any claims by third parties in or in relation to the Deliverables or provision of the Services.
- (c) If anyone makes a claim against the Municipality or the Service Provider concerning intellectual property infringement or royalties related to the Services or the Deliverables, that Party agrees to notify the other Party in writing immediately.
- (d) If anyone brings a claim against the Municipality pursuant to this Section GC 8.02, the Service Provider agrees to participate fully in the defense and any settlement negotiations and to pay all costs, damages and legal costs incurred or payable as a result of the claim, including the amount of any settlement. Both Parties agree not to settle any claim unless the other Party first approves the settlement in writing.
- (e) The Service Provider has no obligation regarding claims that were only made because:
  - (i) the Municipality modified the Deliverables without the Service Provider's consent or used the Deliverables or part of the Deliverables without following a requirement of the Agreement; or
  - (ii) the Municipality used the Deliverables with a product that the Service Provider did not supply under the Agreement (unless that use is described in the Agreement or the manufacturer's specifications).

**GC 9. WARRANTY, LIMITATION OF LIABILITY AND INDEMNIFICATION**

**GC 9.01. Warranty.**

- (a) The Service Provider further warrants the Deliverables, Services and any goods or equipment provided under this Agreement will conform to the specifications described in the Agreement, are free from defects and/or imperfections, are merchantable and fit for the purposes for which they are ordinarily employed, and are available for delivery to the Municipality at the time specified in this Agreement.
- (b) The Service Provider shall be liable for all damages incurred by the Municipality and its officers, officials, employees, agents and volunteers as a result of any defect or breach of

warranty contained in this Agreement. The Service Provider's warranty shall extend for no less than a period of 12 months after the goods, equipment, Deliverables or Services are delivered and accepted by the Municipality and applied to their intended use.

- (c) Any Deliverables or other goods and equipment provided by the Service Provider under this Agreement will remain at the risk of the Service Provider until they are provided with written acceptance by the Municipality. The Service Provider will replace at their expense, all property or work damaged or destroyed by any cause whatsoever.

**GC 9.02. Limitation of Liability.** EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS AGREEMENT, IN NO EVENT WILL THE MUNICIPALITY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, AGGRAVATED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER THE SERVICE PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS AGREEMENT, IN NO EVENT WILL THE AGGREGATE LIABILITY OF THE MUNICIPALITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE AMOUNT PAID BY THE MUNICIPALITY UNDER THIS AGREEMENT.

**GC 9.03. Indemnification.**

- (a) In addition to the indemnities provided for in Section GC 8.02, the Service Provider agrees to indemnify and hold harmless the Municipality, its officers, its agents, its employees and its volunteers from and against any and all losses, claims, demands, payments, suits, judgments, charges, expenses, actions, cause of actions, and costs caused by or arising from:
  - (i) materialman's or labourer's liens;
  - (ii) the willful actions or misconduct of the Service Provider including, but not limited to, trespass or nuisance;
  - (iii) the negligent performance of the Services; or
  - (iv) any negligence or unlawful acts of the Service Provider, its employees, agents, or subcontractors.
- (b) The Municipality may set off any sums owed by the Service Provider to the Municipality pursuant to this indemnity from any sums due to the Service Provider. This right is in addition to any other remedies available to the Municipality under law.
- (c) In the event that any action, suit, claim or demand is brought or made against the Municipality or any of its servants, agents, or employees, as set out in Section GC 9.03(a), the Municipality shall give the Service Provider a written notice and the Service Provider shall have the option of contesting the validity of the action, suit, claim or demand by appropriate legal proceedings. If the Service Provider elects to contest, it shall give written notice to the Municipality within seven days of receipt of the notice from the Municipality. On final determination of such action, suit, claim or demand, the Service Provider shall immediately pay any judgment awarded against the Municipality or any of its servants, agents or employees, together with all proper costs and charges.



- (d) In the event that the Service Provider shall not elect, within the period of seven days to contest any action, suit, claim or demand, the Municipality may commence any such action, suit, claim or demand at the sole discretion of the Municipality. The Service Provider shall immediately pay to the Municipality any sums paid by the Municipality, together with any sum as shall represent the reasonable costs of the Municipality in defending or settling any action, suit, claim or demand.
- (e) Without restricting the generality of the foregoing, for the purposes of Sections GC 9.03(a) and GC 9.03(c), costs shall mean party-party costs, solicitor-client costs, and solicitor and his/her own client costs, whether the Municipality retains internal or external counsel.
- (f) The obligations of the Service Provider under this Section GC 9.03 shall not extend to the liability of the Municipality, its employees, agents, officers or servants where liability arises from the negligent act or omission of the Municipality.

## **GC 10. INSURANCE**

### **GC 10.01. Proof of Insurance.**

- (a) Required insurance shall be in a form and with insurers acceptable to the Municipality, acting reasonably. Certificates of insurance shall be provided to the Municipality by the Service Provider or the Service Provider's broker and evidence of renewal shall be provided to the Municipality not less than 30 days prior to the expiry dates of the policies. Certified copies of policies shall be provided on request by the Municipality.
- (b) If the Service Provider is legally obliged to be covered by workers' compensation and health and safety regulations, the Service Provider shall provide evidence of coverage and evidence that the premiums have been paid and are up-to-date. Service Provider shall also be responsible for obtaining and providing evidence that any subcontractor is also covered as required by law.
- (c) If the Service Provider is not required to obtain mandatory workplace injury insurance, the Municipality may elect to obtain such insurance for the Service Provider or subcontractor for the Term. Any fees paid by the Municipality to obtain such insurance on behalf of the Service Provider or any subcontractor shall be deducted from amounts payable by the Municipality under this Agreement.

**GC 10.02. Cost of Insurance.** The Service Provider shall be responsible for the payment of all premium and deductible amounts relating to the insurance policies, and the Service Provider shall maintain the insurance from the date of this Agreement until the completion of the Project.

**GC 10.03. Coverage.** The insurance coverage requirements as specified in Article 8 and this Section GC 10 shall not be construed as a limit to the Service Provider's liability under this Agreement.

**GC 10.04. Modification to Insurance Policies.** During the term of the Agreement, the Municipality, acting reasonably and at its cost, has the right to have the Service Provider increase or decrease the insurance limits, purchase additional insurance policies and/or change insurance coverages.

## **GC 11. MISCELLANEOUS**

**GC 11.01. Independent Contractor.** The Service Provider is an independent contractor. The Agreement does not create or establish any relationship as partners, joint venturers, employer and employee, master and servant or principal and agent.

**Schedule 1**  
**General Terms and Conditions**

- GC 11.02. **Independent Legal Advice.** The Service Provider acknowledges that it has entered into this Agreement willingly with full knowledge of the obligations imposed by the terms of this Agreement. The Service Provider, by execution hereof, acknowledges that it has been afforded the opportunity to obtain independent legal advice and confirms by the execution hereof that it has either done so or waived its right to do so and agrees that this Agreement constitutes a binding legal obligation and it is estopped from raising any claim on the basis that it has not obtained such advice.
- GC 11.03. **Compliance with Public Health Orders.** Unless agreed to in writing, the Municipality is not responsible for fees and expenses associated with the Service Provider's compliance with federal or provincial public health orders.
- GC 11.04. **Governing Law.** This Agreement is governed exclusively by and construed and enforced in accordance with the laws of Nova Scotia and the laws of Canada applicable therein. Unless stated otherwise herein, the Service Provider attorns to the exclusive jurisdiction of the courts of Nova Scotia to determine any dispute arising out of this Agreement and the NRFP.
- GC 11.05. **Compliance with Laws.** The Service Provider shall comply with all relevant federal, provincial and municipal legislation, codes, by-laws and regulations applicable to the Services, including, without limitation, employee-related laws, ordinances, rules, regulations and orders with respect to occupational health and safety, hazardous materials, workers' compensation and unfair labour practices. This includes any Municipality policies and procedures in force at the time of the performance of the Services. Where there are two or more laws, by-laws, regulations or codes applicable to the Services, the more restrictive shall apply.
- GC 11.06. **Entire Agreement.** This Agreement supersedes all prior agreements, negotiations and discussions, whether oral, written or otherwise, between the Parties with respect to its subject matter. This Agreement contains the final and entire understanding and agreement between the Parties with respect to its subject matter. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns.
- GC 11.07. **Assignment.** The Service Provider will not assign this Agreement or any part thereof for any or all of the Services without the prior written consent of the Municipality.
- GC 11.08. **Survival.** All obligations of the Service Provider which by their terms are intended or are appropriate to survive the termination of the Agreement shall survive the cancellation, termination or expiration of the Agreement, including, but not limited to Sections GC 6, GC 7, GC 8, GC 9.03 and this Section GC 11.08.
- GC 11.09. **Further Assurances.** The Parties shall, with reasonable diligence, hold all meetings, perform all acts, execute and deliver all documents and instruments, do all such things and provide all such reasonable assurances as may be reasonably necessary or desirable to give effect to the provisions of this Agreement.
- GC 11.10. **Amendment.** This Agreement may not be amended except by a written instrument signed by the Parties.
- GC 11.11. **Waiver.** A waiver by the Party of a breach or default of the other Party under the Agreement shall not be deemed a waiver of any subsequent or other breach or default by the breaching Party. The failure of a Party to enforce compliance with any term or condition of the Agreement shall not constitute a waiver of such term or condition. Any such waiver, in order to be binding upon a Party, must be expressed in writing and signed by the Party and then such waiver shall only be effective in the specific instance and for the specific purpose for which it is given.

GC 11.12. **Precedence of Documents.** In the event of any ambiguity, conflict or inconsistency among any of the provisions of the Agreement then the provisions establishing the higher quality or level of goods and services, safety, reliability and durability shall govern.

## SCHEDULE 2

### CONTRACT PRICE AND PAYMENT

#### CONTRACT PRICE

##### **[OPTION 1] Lump Sum / Installments.**

The Contract Price is CAD\$**[insert contract price as set out in the Cost Submission]**, including applicable taxes and payable as set out in this Agreement. This constitutes the maximum amount payable to the Service Provider for its performance of the Services, and unless otherwise agreed by the Parties, the Service Provider shall not be entitled to any additional compensation for its performance as described in this Agreement.

Payment shall be in accordance with the schedule as set out below

- **[insert schedule on which payments will be based: full completion, at periodic dates, completion of milestones, etc.]**

At each payment period, the Service Provider shall submit a completed "Progress Claim" form provided by the Municipality with the Service Provider's invoice attached. Payment requests submitted without this documentation will not be accepted.

The Service Provider shall send invoices, in duplicate and in accordance with any other written direction of the Municipality, to the Municipality representative as set forth in this Agreement.

In addition to any other written instruction provide by the Municipality to the Service Provider, a Service Provider's invoice must show the authorized purchase order number, itemized list of Services being invoiced for and a Service Provider contact name and phone number for invoice problem resolution should the need arise. Agreed charges for freight, postage, insurance, crating or packaging, etc. must be shown as separate line item on the invoice(s). HST must also be shown as separate line items on the invoice. The Municipality will not be considered in default of payment terms if the payment process is delayed due to incorrect pricing or incomplete invoice documentation.

##### **[OPTION 2] Unit Price.**

The Municipality shall purchase the Services from Service Provider at the unit prices set forth below.

- **[insert unit price list and as applicable, any quantities and schedules for delivery.]**

Following delivery of the Services and acceptance by the Municipality, the Service Provider shall submit a completed "Progress Claim" form provided by the Municipality with the Service Provider's invoice attached. Payment requests submitted without this documentation will not be accepted.

The Service Provider shall send invoices, in duplicate and in accordance with any other written direction of the Municipality, to the Municipality representative as set forth in this Agreement.

In addition to any other written instruction provide by the Municipality to the Service Provider, a Service Provider's invoice must show the authorized purchase order number, itemized list of Services being invoiced for and a Service Provider contact name and phone number for invoice problem resolution should the need arise. Agreed charges for freight, postage, insurance, crating or packaging, etc. must be shown

**Schedule 2**  
**Contract Price and Payment Terms**

as separate line item on the invoice(s). HST must also be shown as separate line items on the invoice. The Municipality will not be considered in default of payment terms if the payment process is delayed due to incorrect pricing or incomplete invoice documentation.

If Service Provider reduces its unit prices for the Services, the Services Provider shall reduce the unit prices set forth in this Schedule accordingly.

**[NTD: Municipality to confirm pricing and payment options for use as standard clauses.]**

**SCHEDULE 3**  
**PROJECT DESCRIPTION AND SERVICES**

**[Insert description of the Project and Services, along with any applicable milestone schedules.]**

A. **PROJECT OVERVIEW**

B. **SERVICES**

C. **SCHEDULE**

SCHEDULE 4  
PROPOSAL EXTRACTS

**[Insert entire NRFP response or extracted portions, as applicable.]**