

THIS AGREEMENT is effective <<date>>, 2020 ("Effective Date")

Between

THE MUNICIPALITY OF THE DISTRICT OF EAST HANTS, a body corporate pursuant to the *Municipal Government Act* (SNS 1998, c. 18), having its chief place of business at Elmsdale, in the District of East Hants, Nova Scotia, hereinafter called "East Hants"

-and-

<<LEGAL NAME>>, a body corporate under the laws of <<jurisdiction>> (the "Contractor")

BACKGROUND

East Hants wishes to retain the Contractor to provide <<>> (the "Services"), more fully explained in Section 2, Services Description.

IN CONSIDERATION of mutual obligations and agreements specified herein, the parties agree as follows:

DEFINED TERMS

- 1 **Services** means the services supplied by the Contractor as specified within this agreement.
- 2 **East Hants Representative** means the employee of the Municipality of East Hants, or their designate, assigned by East Hants to be responsible for managing this agreement.
- 3 **Schedule** means the timeline, including deadlines, review dates and any other milestones or dates established by East Hants for the delivery of the Services. The Schedule may only be modified with written permission from East Hants.
- 4 **Contractor and Consultant** mean the same under this agreement.

CONTRACT DOCUMENTS

- 5 This agreement consists of the following documents: (NTD: These are the documents that define the agreement. If accepting a proposal, be sure the proposal is included. If the requirements were modified by addenda, these will be included or the modifications made to the documents will be incorporated.)
 - a. This Agreement;
 - b. Section 2, Services Description;
 - c. <<insert proposals, confidentiality agreements, etc. as applicable>>; and
 - d. <<insert additional documents as applicable>>.

INTENT

- 6 East Hants hereby engages the Contractor to supply the Services described herein and the Contractor agrees to provide these Services.
- 7 East Hants expects that any Contractor capable to perform the Services will perform the Services in a manner consistent with the degree of care, skill, and diligence normally provided by members of the same profession performing the same or comparable services in respect of projects of a similar nature in similar circumstances.
- 8 The Contractor warrants that it has the necessary resources to complete the Services in a safe, competent and professional manner. Such resources shall include, without limitation, qualified, skilled, and sufficient personnel, plant, equipment, materials, adequate financial resources, and any other unique or general resources necessary to complete the Services.

TERM

- 9 This agreement shall commence on the Effective Date and shall end:
- a. <<date>> unless extended for an additional period by East Hants, in writing; or
 - b. In the event of Termination in accordance with the terms of this agreement

REMUNERATION

- 10 East Hants shall remunerate the Contractor <<insert applicable means of remuneration>>.

- 11 In addition:

- a. Remuneration, or part thereof, is only payable when the Contractor, as determined by East Hants, has satisfactorily delivered the Services or part thereof. Payment for any part of the Services shall not be deemed a waiver of East Hants' rights of set-off at law or under contract for costs or expenses arising from default or negligence of the Contractor.
- b. Invoices for Services must be submitted at minimum monthly by the Contractor and must be supported in such detail as East Hants may request. <<NTD: this only applies to fuel surcharge: The Fuel Surcharge may be reconciled on a frequency as specified in the Fuel Surcharge subsection.>>
- c. All invoices submitted by email must be sent to vendors@easthants.ca. Invoices submitted by mail or hand-delivered must be to the attention of the Payables Administrator. When a Purchase Order is specified by East Hants, the invoice must reference this Purchase Order in order to be processed for payment.
- d. East Hants will review each invoice for completeness in a timely manner and, if acceptable, will approve such invoice for payment. Where there is a discrepancy, error, or other anomaly, East Hants may reject an invoice, request clarification or additional information, or otherwise require the invoice to be made acceptable prior to approval.
- e. East Hants may reject an invoice on the basis that the Services it refers to are not in accordance with the requirements of the agreement. In the case where the Services are deemed unsatisfactory, the Contractor will be required to make changes to the Services that are acceptable to East Hants at no additional cost. If the Services cannot be made satisfactory, in East Hants' sole opinion, East Hants may terminate the agreement.
- f. No payments will be made by East Hants to the Contractor unless their invoice is accompanied by a valid Clearance Letter confirming they are in good standing with WCBNS.
- g. Payment will be made on a net thirty (30) days basis from receipt of an acceptable invoice.
- h. No payment made by East Hants under this agreement shall constitute acceptance of work or products that are not in accordance with the requirements of the agreement.
- i. The Contractor shall not be entitled to payment in respect of costs incurred by the Contractor in remedying errors and omissions in the Services that are attributable to the Contractor, the Contractor's employees, or persons for whom the Contractor had assumed responsibility in performing the Services.
- j. In the event the agreement is terminated before the satisfactory completion of the Services, East Hants shall only be liable to pay, and the Contractor shall accept in full settlement, an amount for Services satisfactorily performed up to the date of termination. Upon payment for services completed in accordance with this agreement to the date of termination, the Contractor will have no further claim against East Hants for any damages related to termination of this agreement.
- o. The Contractor shall be solely responsible to pay all costs and expenses arising out of this agreement, whether or not they may qualify for reimbursement.

INDEPENDENT STATUS

- 12 The Contractor will provide the Services to East Hants as an Independent Contractor and not as an employee.

Accordingly:

- a. The parties acknowledge that the Contractor and any subcontractor they may engage, and their respective employees, are not, nor are they deemed to be, employees of East Hants within the meaning set out in any employment legislation that may be applicable, or otherwise.
- b. The Contractor agrees that East Hants shall have no liability or responsibility for the withholding, collection, or payment of any payroll taxes, employment insurance premiums, or Canada Pension Plan contributions, or any other relevant payroll deductions on any amounts paid by East Hants to the Contractor or amounts paid by the Contractor to its employees or contractors.
- c. The Contractor also agrees to indemnify East Hants from any and all claims in respect to East Hants's failure to withhold and/or remit any payroll taxes, employment insurance premiums, Canada Pension Plan contributions, or similar payroll deductions.
- d. Further, the Contractor shall be solely and entirely responsible for all payments under the applicable Workers' Compensation legislation as it relates to their ability to provide service and receive payment.
- e. The Contractor agrees that as an Independent Contractor, the Contractor, and any person for whom it is legally responsible, will not be qualified to participate in or to receive any employee benefits that East Hants may extend to its employees.
- f. The Contractor shall not have any power to accept an obligation, incur any liability, promise any performance, and/or request or obtain any credit on behalf of East Hants.
- g. The Contractor is free to provide services to other clients, so long so long as there is no interference with the Contractor's contractual obligations to East Hants.

PERSONNEL

- 13 The Contractor is advised that East Hants expects personnel having the skills, training and appropriate qualifications to perform the Services indicated. The Contractor must obtain written permission from East Hants before changing the training or qualifications required for the work team. In the case of personnel being changed, the new personnel being assigned must have a similar skills, training and qualifications as the personnel being replaced and they must otherwise be acceptable to East Hants.
- 14 East Hants reserves the right to require the Contractor to remove an employee from the Services if that employee acts contrary to the terms of this agreement. Certain behaviors, including, without limitation, swearing, smoking in areas other than those approved for smoking, inappropriate language, comments or gestures, unsafe work practices, alcohol-related convictions or renovations, or demonstrated incompetence may be cause to have an employee removed.
- 15 <<NTD: where driving forms an integral part of the Services, add: East Hants reserves the right to request drivers' abstracts for any drivers the Contractor may propose to use to provide the Services and to reject drivers who have alcohol-related convictions or revocations in their drivers' abstract within 5 years of the Effective Date. In the event that the Contractor wishes to use a new driver for this work, they must provide the drivers' abstract for the driver to be added. Abstracts must be provided in a reasonable time prior to the driver performing the Services.>>

SUBCONTRACTOR

NTD: Remove subsequent clauses if no subcontractors are proposed and replace with "Subcontractors will not be used to complete the Services. In the event that the Contractor wishes to use subcontractors for some or all

of the Services, they must make such a request in accordance with the CHANGE provisions of the agreement and additional conditions may apply.”

- 16 The Contractor is advised that the subcontractor listed in the Contractor’s proposal and their work scope cannot be changed without the written permission of East Hants. Failure to comply with this provision will be considered a breach of contract and may result in termination of the agreement.
- 17 If the Contractor finds that a subcontractor named in this agreement cannot perform some or all of the Services for which they were named, the Contractor may request permission from East Hants to engage an alternative subcontractor for such Services. In making such a request, the Contractor must:
 - a. Identify the reasons why the named subcontractor cannot complete the Services;
 - b. Provide the name, qualifications and experience of the proposed replacement subcontractor;
 - c. Make such request in writing; and
 - d. Must select a replacement who is in all respects equal to the subcontractor being replaced.
- 18 Permission to replace a subcontractor will not be unreasonable withheld. However, East Hants reserves the right to, in its sole discretion, reject any proposed replacement subcontractor the Contractor may name. The rejection of a replacement subcontractor shall not relieve the Contractor of their obligation to perform the Services under this agreement.

INDEMNIFICATION

- 19 The Contractor shall defend, indemnify and save harmless the Municipality of the District of East Hants, its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the Contractor, its directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the delivery or performance of this agreement. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Contractor in accordance with this agreement, and shall survive this agreement.

INSURANCE

- 20 The Contractor shall, without limiting its obligations or liabilities, maintain Commercial General Liability insurance on an occurrence basis with a minimum limit of \$2,000,000.00 for bodily injury including death, personal injury and property damage including loss of use, and shall include provisions for: Blanket contractual liability; Owners' and contractors' protective liability; Broad form property damage; Hostile fire; Tenant's legal liability; Non-owned automobile liability; Contingent employer's liability; and Products and completed operations liability.
- 21 The Contractor must provide a certificate of insurance from their insurer for this coverage. The Certificate, at a minimum, must:
 - a. List the Municipality of the District of East Hants as an additional insured and contain both cross-liability and severability of interest clauses;
 - b. The Contractor’s insurance must provide for bodily injury or property damage that may result from the Contractor’s performance of the Services; and
 - c. Excess or umbrella insurance may be used to achieve the required insurance limits noted in this section.

- 22 The Contractor must have and must maintain automobile insurance in the amount of \$2,000,000.00 for the duration of the agreement and must provide a certificate of insurance confirming this coverage. This insurance shall not contain any endorsement that excludes the operation of attached machinery;
- 23 The COI for Commercial General Liability insurance must provide for 30 days' and the automobile insurance must provide for 15 days' written notice of cancellation. The Contractor must provide a new certificate of insurance each time the insurance is renewed, for the duration of this contract.
- 24 The Contractor is responsible to have and to maintain insurance on the equipment and materials used to provide the Services for the duration of the agreement. East Hants will not be responsible in any way for lost, damaged or stolen equipment.
- 25 In addition:
- a. The Contractor's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to East Hants.
 - b. In the case where the Contractor will use subcontractors or third-party suppliers, such subcontractors and third-party suppliers must obtain and provide proof of insurance coverage that is equal to that required of the Contractor under this agreement.
 - c. Failure to maintain the required insurance coverage may be grounds for termination of the agreement;
 - d. If a Contractor no longer is in Good Standing with WCBNS, the Contractor must disclose the change in WCB status immediately. Inability to return to Good Standing before the next performance of the Services may result in the termination of the agreement;
 - e. East Hants will not accept any provisions which seek to limit the liability of the Contractor with respect to these insurance requirements;
 - f. Changes to incorporation information must be disclosed within a reasonable time of the change; and
 - g. Changes to insurance coverage must be disclosed to East Hants prior to the next performance of Services after the change and the Contractor must provide a revised certificate. The amended coverage must be in accordance with the requirements of this agreement or otherwise acceptable to East Hants.

ISSUE REPORTING

- 26 The Contractor shall establish methods acceptable to East Hants for communicating issues and concerns to East Hants with respect to the Services.
- 27 The Contractor will report any issues to the East Hants Representative with respect to the performance of the Services, the condition where the Services are performed, or that have been communicated to them by the third parties. The frequency of reporting will be determined by the relative urgency of the issue:
- a. Emergency or condition-related issues affecting the condition of premises, affecting safety or security, or other issue where immediate response is required shall be reported to the East Hants Representative by email or telephone. Where East Hants has in place an agreement with a third party to supply after-hours assistance, the Contractor or their representative shall contact the third-party Service provider in accordance with the terms of that agreement;
 - b. Issues where a response is required within one to three business days shall be communicated to the East Hants Representative by email;
 - c. Issues where the response is not urgent shall be communicated to East Hants at the next possible opportunity; and

- d. The Contractor must be prepared to periodically review and discuss the status of issues.

REGULATIONS

- 28 The Contractor shall comply with all applicable Federal, Provincial and Municipal laws and regulations and the regulations of any other authorities that may have jurisdiction. The Contractor shall also comply with any policies or other requirements related to occupational health and safety or security that may be in place or implemented during the course of the agreement.

TAXES

- 29 The Contractor shall pay all Federal and Provincial Taxes as required by the appropriate enactments.
- 30 The Contractor shall indicate on each application for payment, as a separate amount, the Harmonized Sales Taxes that East Hants is legally obligated to pay. This amount will be included in payments to the Contractor.
- 31 In the event of changes in applicable tax legislation to provide additional tax relief during the course of this agreement, it is the intent of the parties that any benefits therefrom shall accrue to the Municipality who shall deduct any overpayment of taxes from moneys due to the Contractor.
- 32 In the event of additional taxes being imposed during the course of the agreement, it is the intent of the parties that the additional amounts paid by the Contractor will be reimbursed by East Hants in accordance with the requirements of the applicable tax act.

WORKERS' COMPENSATION

- 33 The Contractor must be registered and in good standing with the Workers' Compensation Board of Nova Scotia (WCBNS) regardless of their jurisdiction of incorporation, location of premises, or typical status with WCBNS.

CONFLICT OF INTEREST

- 34 The Contractor must promptly bring to the attention of East Hants, in writing, any possible conflict of interest related to delivering these Services. For greater clarity, any business relationships between East Hants staff and Contractor, either direct or through a third party, which may appear to create an unfair advantage for the Contractor or where it may appear that an employee of East Hants may personally benefit from this agreement, must be identified. East Hants is currently developing a *Code of Business Conduct* which, when implemented, will also become the responsibility of the Contractor to follow, in as much as it affects the delivery of these Services.

PERFORMANCE

- 35 If any part of the Services is found to be deficient or not in accordance with the terms of this agreement, East Hants may, at its sole discretion:
 - a. Require the Contractor to re-perform the Services or make any required corrections to the work, at its own expense, to comply with the terms of the agreement; or
 - b. If the Contractor cannot or will not make such corrections or re-performance, or if the proposed delay in making such corrections or re-performance may compromise health, safety, or the ability of East Hants to perform the business of the Municipality in any way, East Hants may choose either to engage a third party to correct the work or to perform the Services or to perform such corrections or to perform such Services themselves. The cost of such action will be deducted from any monies owing to the Contractor until the entire amount is offset or, where there is not amount to offset, the Contractor must pay any remaining cost back to East Hants in the form of credits of payments already made; or

- c. Where the deficiency is embedded in the work or Services, East Hants may deduct an amount from any monies owing, or the agreement value, that is equivalent to the difference between the value of the defective work and what was specified in the Contract. Such amount shall correspond to the costs that would reasonably be incurred to correct the deficiency; and
 - d. East Hants may terminate the agreement in accordance with the Termination clauses herein.
- 36 East Hants shall be the sole judge of the adequacy of the equipment, methods, and performance of the Contractor in providing the Services. East Hants will document performance and advise the Contractor when such equipment, methods or performance are not adequate and why. The Contractor shall be given adequate time to investigate the determinations made by East Hants and shall have reasonable time to effect corrections. East Hants may, at its discretion:
 - a. Audit or inspect any aspect of the Contractor's performance with respect to the Services, including observing the performance of the Services, requesting reports or information from the Receiving Location or using third party evaluation services;
 - b. Request, and the Contractor may not unreasonably withhold, vehicle inspection records, maintenance logs or other vehicle records in order to verify that the equipment is in good running order and is being properly maintained;
 - c. Request, and the Contractor may not unreasonably withhold, licenses, training records or other employee records related to the employee's eligibility or competence in completing the Services;
 - d. Investigate and document reports, whether solicited or unsolicited, with respect to the driving, conduct or performance of the Contractor's equipment or employees, whether or not that equipment or employee was engaged in performing Services for East Hants;

RESPONSIBILITY FOR DAMAGE

- 37 The Contractor shall repair and restore to its original condition any material or surface damaged by their operations.

MAINTAINING SECURITY

- 38 The Contractor will be provided with keys, access cards and security codes as necessary to perform the Services and which will be unique to the Contractor. The Contractor and their employees must take reasonable safeguards to ensure keys, access cards and security codes are kept safe. In the event the Contractor or an employee loses a key or access card or discloses a security code, the Contractor must immediately inform East Hants so that corrective action may be taken. The Contractor may be held responsible for the consequences of lost or stolen keys, access cards or security codes.
- 39 Without limiting the foregoing, the Contractor will be responsible for any costs associated with lost or stolen keys, access cards and security codes. The cost to replace a key, access card or to reprogram a security code will be billed to the Contractor at a rate of \$100.00 per instance.
- 40 The Contractor must ensure that security alarms, where applicable, are enabled after each instance when the Services are completed. In addition, the Contractor must take reasonable precautions to secure any location when the employee performing the Services must temporarily leave the location unattended, up to and including setting the alarm.
- 41 The Contractor will be responsible to report any false alarms to the appropriate Alarm Reporting Station and East Hants (the following business day). If East Hants is invoiced for a false alarm as a result of the actions, or inaction, of the Contractor or their employee, the Contractor must reimburse East Hants for the related cost.

SAFETY

- 42 Prior to the commencement Services, the Contractor, with the cooperation of East Hants where necessary, must:
- Perform a hazard assessment;
 - Remove or mitigate all known hazards;
 - Post any required warning signs or install any necessary guards or barriers;
 - Identify and, if necessary, mark any municipal or other services such as water, sewer, electrical, communications, etc. that may be affected by the Services as identified in the hazard assessment;
 - Locate and confirm clearances from nearby structures and overhead obstructions such as power lines;
 - Design and provide traffic control, if required; and
 - Identify and remove of any other potential hazards which might result in damage or harm to public property or individuals.
- 43 Failure to consistently use appropriate personal protective equipment (PPE) in the performance of this work may result in Termination of the agreement for these Services.

TERMINATION

- 44 East Hants may terminate this agreement at any time, for any reason, by providing thirty days written notice to the Contractor. This notice period may be increased by written agreement between the parties. Agreement to extend this notice period does not release the Contractor of their duty to remedy and, under no circumstances will East Hants be responsible for interest or other charges or fees related to the process of remedy.
- 45 Notwithstanding the above, East Hants may terminate this agreement without notice if the Contractor makes changes to the approved list of Contractor's personnel tasked to complete the Services or to the subcontractor engaged to complete the Services without first obtaining the written permission of East Hants.
- 46 East Hants may terminate this agreement if the performance of the Services, or portion thereof, is found to be unacceptable. Both East Hants and Contractor agree that each will attempt to remedy the situation and to find a way to make the Services, or portion thereof, acceptable. Under no circumstances may such remedy represent additional cost to East Hants. If no remedy can be found within thirty days of the initial communication to the Contractor by East Hants that the performance of the Services is unacceptable, such notice shall be considered notice to terminate the agreement.
- 47 East Hants reserves the right to terminate this agreement, without penalty of any kind, if the Contractor is judged to be bankrupt or makes general assignment for the benefits of its creditors.
- 48 Termination of the agreement by East Hants shall not relieve that Contractor of any obligations or liability it may have to East Hants except as provided for herein.

RECEIVERSHIP

- 49 In the event that a Receiver is appointed to manage the affairs of the Contractor, East Hants reserves the right to enter into an agreement with another party to perform the Services. Under no circumstances shall East Hants be responsible for any losses suffered by the Contractor.

ASSIGNMENT

- 50 The Contractor may not transfer or assign this agreement without the express prior written permission of East Hants. Assignments or transfers which are attempted to be made to this agreement without such permission will be void.

ENTIRE AGREEMENT

- 51 The agreement, together with the Schedules and Contract Documents, form the complete agreement between the parties and shall supersede any and all previous communications, oral or written, express or implied, between the parties. This agreement may only be amended in writing, with such amendment being signed by authorized representatives for each party and clearly indicating this specific agreement.

INTERPRETATION

- 52 The headings introducing each paragraph or section are for reference only and shall not affect the interpretation of the agreement. Any numbers or changes of gender will be interpreted in context.

NOTIFICATION

- 53 Any notifications of a general nature related to this agreement may be provided by any written means, including email. It remains the responsibility of the sender to ensure the notification has been received and acknowledged by the intended recipient. Material notifications such as relate to clauses covering termination or changes to personnel shall be delivered by registered mail, courier requiring the signature of the person specified in this clause, or in person where the person specified in this clause may confirm acceptance in writing.

GOVERNING LAW

- 54 The laws of Nova Scotia shall govern this agreement. If any dispute should arise under the terms of this agreement, the Courts of Nova Scotia shall have exclusive jurisdiction to such dispute.

ENUREMENT

- 55 This agreement shall ensure to the benefit of and be binding upon the parties and their lawful heirs, executors, administrators, successors and assigns.

SEVERABILITY

- 56 If a provision of this agreement is deemed void or invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

WAIVER

57 The waiver or breach of any provision of this agreement shall not form precedence for future breaches of that provision or any other provision of this agreement.

SIGNED hereunder by representatives of the parties with authority and capacity to do so:

MUNICIPALITY OF THE DISTRICT OF EAST HANTS	<<CONTRACTOR LEGAL NAME>>
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____