

PARKS, RECREATION & CULTURE

REQUEST FOR PROPOSALS

Independent Commissioning Agent
RFP50150

Release date: January 6, 2017

Proposals will be received up to
3:00:00 pm local time on Thursday, January 26, 2017

Contact: Michael Hatfield
Procurement Officer
Municipality of East Hants
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1. INSTRUCTIONS TO PROPONENTS

1.1. Introduction

- 1.1.1. The Municipality of East Hants (East Hants) requires the services of a qualified firm to provide independent, third party commissioning services (Services) as described in Part 2, Services Description. To this end, East Hants is seeking competitive proposals from the marketplace to identify a consultant to provide these Services.

1.2. Definitions

- 1.2.1. **Proponent:** An individual or company who submits a proposal.
- 1.2.2. **Successful Proponent:** the proponent whose proposal is selected for award.
- 1.2.3. **Independent Contractor:** a Proponent, successful or otherwise, is considered to be an Independent Contractor, not an employee of East Hants.
- 1.2.4. **General Contractor:** the entity contracted by East Hants to complete the construction of the Aquatic Centre. This contract has not yet been awarded.
- 1.2.5. **Independent Commissioning Agent:** the successful Proponent will be known as the Independent Commissioning Agent (ICA) should a contract be awarded.

1.3. Proposal Deadline

- 1.3.1. Proposals will be received up to **3:00:00 pm** local Nova Scotia time on January 26, 2017 at the address listed below:

Civic: Municipality of East Hants
Lloyd E. Matheson Centre
15 Commerce Court
Elmsdale, NS B2S 3K5

Mail: Municipality of East Hants
230-15 Commerce Court
Elmsdale, NS B2S 3K5

Attention: Michael Hatfield

- 1.3.2. Proposals must be received at the Reception & Payments counter on the first floor of the Lloyd E. Matheson Centre and must have the time and date indicated on it by East Hants staff to confirm receipt prior to the stated Proposal Deadline. Please allow sufficient time to be served by staff.

1.4. Proposal Submission

- 1.4.1. Proponents are to submit their proposal in two parts, the technical proposal and the cost proposal.
- 1.4.1.1. Each part is to be sealed in its own envelop that is clearly marked as to the content ("RFP50150 - Technical" or "RFP50150 - Cost", for example).
- 1.4.1.2. Proponents shall submit their Technical proposal as four (4) physical copies and one electronic copy in Portable Document Format (PDF), submitted on either a disk or USB key;



1.4.1.3. The cost information must only appear in the Cost proposal submission and must not be included as part of the electronic submission. Only one copy of the Cost proposal is required.

1.4.1.4. East Hants prefers that the proponent place both the Technical and the Cost proposal envelopes into a single, sealed envelope marked, preferably, as below:

“RFP50150 - Independent Commissioning Agent”

1.4.2. East Hants will not accept any responsibility for lost or separated proposals, omissions or errors in a Proponent’s proposal or copy thereof and may reject any proposal where East Hants determines, in their sole opinion, such differences are material to understanding the proposal.

1.4.3. When sending by courier or other means where the label may be obscured, the Proponent must ensure the Competition Number is visible on the outer packaging. Proposals which are not clearly marked may not be considered

1.5. Inquiries

1.5.1. All questions or requests for additional information or clarifications regarding this Request for Proposals shall be in writing, by email only, to the attention of:

Michael Hatfield
Procurement Officer
Municipality of East Hants
Email: mhatfield@easthants.ca

1.5.2. East Hants will provide clarifications and additional information, if required, by way of Addenda.

1.5.3. Inquires will be accepted up until **January 18, 2017 at 3:00 pm local Nova Scotia time.**

1.5.4. Proponents are solely responsible to ensure that any such inquiries are received by East Hants as described above. East Hants will not be responsible if a Proponent acts based on information received in any other way than an approved Addendum or communication, in writing, from the representative named in this section.

1.6. Proposal Acceptance (Privilege Clause)

1.6.1. East Hants reserves the right to accept or reject any or all proposals.

1.6.2. All proposals become the property of East Hants once submitted.

1.6.3. Late proposals will be rejected and will be returned unopened. Faxed proposals will not be accepted. Emailed proposals will not be accepted. Incomplete proposals may be rejected.

1.6.4. Any proposal that does not include all of the information required in this RFP will be considered incomplete and may be rejected. For greater clarity, this may include, without limitation, recommendation letters, references, insurance submissions, financial information requirements, or any information on which East Hants has stated it may evaluate the proposal.

1.6.5. This document and Request for Proposal process does not constitute a call for tenders.

1.6.6. Proponents undertake any expenditure related to the submission of a proposal at their own risk.



- 1.6.7. This Request for Proposals neither expresses nor implies any obligation on the part of East Hants to enter into a contract with any party submitting a response or responses.
- 1.6.8. East Hants may include evaluation criteria within this Request for Proposal document to be used as a guideline for Proponents (see Proposal Evaluation Criteria). East Hants reserves the right to deviate from the evaluation criteria where it is in the best interests of the Municipality. Without limiting the generality of the foregoing, decisions to deviate from the evaluation criteria may be made based on budgetary and/or service delivery considerations having regard to all of the Proposals received and the needs of East Hants.
- 1.6.9. East Hants reserves the right to accept or reject all or any Proposals, and to not accept the lowest Proposal. East Hants may accept any Proposal or any portion of any Proposal that may be considered to be in the best interests of East Hants.
- 1.6.10. East Hants reserves the right to waive formality, informality or technicality in any Proposal. This includes the right to accept a Proposal that is not strictly compliant with the instructions in the Request for Proposals document.
- 1.6.11. East Hants reserves the right to amend this Request for Proposal document at any time before the Request for Proposal's closing date and will issue an addendum in the event of a change.
- 1.6.12. East Hants reserves the right to negotiate, after the Request for Proposal's Proposal Deadline, with any Proponent for services and to finalize service arrangements in the best interests of East Hants.
- 1.6.13. In applying this privilege clause, East Hants shall not be bound by trade or custom in dealing with and/or evaluating the responses to the Request for Proposals.
- 1.6.14. East Hants reserves the right to interpret any and all aspects of this Request for Proposals as may be most favourable to East Hants.
- 1.6.15. In submitting a Proposal, the Proponent has accepted the reservation of rights (privilege clause) as set out herein and agrees to be bound by same.
- 1.6.16. Should a Proponent find any discrepancies, errors, or omissions in this RFP, or if a Proponent is unsure as to the meaning of anything in this RFP, they are to advise East Hants in writing; East Hants may, in its sole discretion, respond to such written inquiry, to all Proponents, in an addendum.
- 1.6.17. The Proponent is responsible for all costs associated with preparing and submitting this Proposal. This includes, without limitation, any and all costs, fees, expenses (travel, accommodations or meals) or other incidentals related to preparing, printing, binding, transporting, presenting, defending, or clarifying the Proposal.
- 1.6.18. It is the responsibility of the Proponent to be sure they understand the requirements prior to submitting a Proposal and before the deadline for questions has passed.
- 1.6.19. East Hants may cancel the RFP process at any time, for any reason, in its sole discretion. In the event that an RFP process is cancelled, East Hants will not be obligated to pay any costs, damages, or claims of any type to any Proponent or potential Vendor or Proponent.
- 1.6.20. In providing a Proposal, the Proponent warrants that their Proposal is in all respects fair and is provided without collusion or fraud. No representative of the company from which a Proposal is to be provided may extend entertainment, gifts, gratuities, discounts, or special services, regardless



of value, to any employee of East Hants. Proponents must also advise East Hants, in writing, of any potential conflict of interest that may affect, or appear to affect, the RFP process, including the influence of award.

- 1.6.21. Proponents shall indemnify and save harmless East Hants, its officers and its employees from and against all claims, demands, losses, damages and costs of any kind based upon injury or death of a person or damage to or loss of property arising from any willful or negligent act, omission or delay on the part of the Proponent or their servants in the preparation of their Proposal and/or in the course of delivering Services.
- 1.6.22. Proponents are advised no commitment to purchase Goods or Services shall exist until the successful Proponent is advised by East Hants, in writing, of an award. If an award is made, the method of procurement may be, at East Hants's discretion, Procurement Card, Purchase Order, or other method of contract East Hants may identify.
- 1.6.23. This process and the procurement of Goods and Services, if any, resulting from this RFP process will be subject to the [Atlantic Provinces Terms and Conditions, Goods and Services](#) and the terms and conditions noted herein. Where there is a conflict between the *Atlantic Provinces Terms and Conditions, Goods and Services* and this document, this document shall prevail.
- 1.6.24. East Hants does not bind itself to accept any Proposal, but may accept any Proposal, in whole or in part, or discuss with any Proponent different or additional terms to those described in this RFP or in such Proponent's Proposal. East Hants may:
 - reject any or all of the Proposals;
 - accept any Proposal;
 - if only one Proposal is received, choose to accept or reject it;
 - not to accept the lowest bid price; or
 - alter the schedule, RFP process, or any other aspect of the RFP, as it may determine in its sole and absolute discretion.
- 1.6.25. Proponents are advised that East Hants is governed by Nova Scotia's *Freedom of Information and Protection of Privacy Act (FOIPOP)* and any information submitted to East Hants in response to this RFP may be subject to disclosure under *FOIPOP*. Proponents may identify any confidential information in their proposals or any accompanying documentation and are advised to consult with their own legal advisors regarding the appropriate way to identify such information. East Hants will make reasonable efforts to safeguard confidential information, subject to its disclosure requirements under *FOIPOP* or any disclosure requirements imposed by law or by order of a court or tribunal. Proponents are advised that their proposals will, as necessary, be disclosed, on a confidential basis, to advisers retained by East Hants to advise or assist with the RFP process, including the evaluation of proposals. Proponents are further advised that East Hants may make public the names of any or all proponents and intends to publish the name of the successful proponent and the total value of any contract entered into with the successful proponent. If a proponent has any questions about the collection and use of information pursuant to this RFP, questions are to be submitted to the RFP Contact.
- 1.6.26. Submitting a Proposal shall be deemed proof that the Proponent was aware of and understood the requirements, the terms and conditions, and all other provisions of the RFP. East Hants will not be liable for claims made by a Proponent that they were uninformed or unaware of the requirements, terms or conditions of this RFP.



1.7. Proposal Openings

- 1.7.1 East Hants will proceed with private openings for this RFP. Proponents will be advised of their status in the RFP once a determination of award has been made.

1.8. Proposal Validity

- 1.8.1. Proposals shall remain valid for acceptance for a period of sixty (60) days from the Proposal Deadline or such additional time as may be mutually agreed upon in writing.

1.9. Fees, Expenses and Disbursements

- 1.9.1. The Proponent is responsible to ensure that their Cost proposal clearly describes the Total Cost to provide the Services, including all fees, expenses, and disbursements for which the Proponent expects to be paid.

- 1.9.1.1. East Hants has indicated the Total Cost is to be comprised of three line items: the Cost to complete the Services during the design phase, the cost to complete the Services during the construction phase and Cost to complete one verification at approximately six months after occupancy and another verification at approximately 12 months after occupancy to ensure the systems are functioning as configured.

- 1.9.1.2. We anticipate that, in addition to all of the commissioning activities normally included such a project, that the ICA will attend certain meetings (approximately 10) during the design phase that might not normally be accounted for in their fee. The Proponent must allow an amount in their fee for these meetings. The proponent should allow for 2 hours of meeting time and for travel to Elmsdale.

- 1.9.2. This work is being conducted with public funds and therefore may be subject to access to information requests. In order to operate in a fair and transparent manner, the name of the Successful Proponent and the lump sum costs provided by the Successful Proponent may be made public after award. However, East Hants believes the disclosure of individual unit costs or rates may be harmful to the competitiveness of Bidders and therefore will not publish or provide unit rates related to this or any competition, nor will they release any Proposal, or part thereof, without consulting the Proponent first, unless required to in law.

1.10. Proposal Requirements

- 1.10.1. Concise submissions are preferred. Proposals will not be rejected solely on the basis of their length.
- 1.10.2. East Hants believes that proper Commissioning is key to ensuring the effective and efficient operation of our new Aquatic Centre. Section 2, Services Description, outlines the Services we expect to form part of the Commissioning process. The Proponent must clearly describe the activities and tasks they will perform during the Commissioning Process.
 - 1.10.2.1. Briefly discuss Safety, including their how safety is administered in their company, any certifications the Proponent may hold and any other comments the proponent may have around safety;
 - 1.10.2.2. Briefly discuss the processes they use to complete the Services and how they ensure the quality of their own work;



- 1.10.2.3. Provide a confirmation of the activities they will perform as part of the Services.
- 1.10.2.3.1. Provide rationale for any activities from our list that they would delete;
- 1.10.2.3.2. Provide rationale for any activities that they would add; and
- 1.10.2.3.3. Provide a description of any enhanced or value-added activities which they will perform as part of their Services.
- 1.10.2.4. Proponents are to provide an overview of how they will interact with the various project team members, including East Hants, East Hants' Project Manager, the Prime Consultant, other third party testing agencies East Hants may hire, and the General Contractor, including:
 - 1.10.2.4.1. Methods of communication;
 - 1.10.2.4.2. How will reports and other documents be presented (file format);
 - 1.10.2.4.3. Integration of information in reports;
 - 1.10.2.4.4. Review, quality control and change management;
 - 1.10.2.4.5. Responsiveness (timely response to questions, concerns);
 - 1.10.2.4.6. Meetings; and
 - 1.10.2.4.7. On-site presence.
- 1.10.2.5. Describe their understanding of and capabilities with respect to the review and comment requirements of Section 2, Services Description.
- 1.10.2.6. Proponents are to describe the tasks they will complete during the check-in at six months and at twelve months of operation after Substantial Performance.
- 1.10.3. Proponents must describe their team.
 - 1.10.3.1. Proponents are to list the staff members who will perform this work, along with their relevant training, qualifications and experience. The team must contain some individuals with a Certified Commissioning Professional (CCP) and/or Commissioning Process Management Professional (CPMP) designation;
 - 1.10.3.2. Describe the role the staff member will play and provide a project organizational chart showing the staff member and their role.
 - 1.10.3.3. Proponents are to describe their technical capabilities with respect to Commissioning and provide an overview of how they will approach this project specifically.
 - 1.10.3.4. The Proponent must describe their capability and qualifications to provide third party review of electrical and mechanical designs.
 - 1.10.3.5. The Proponent must discuss how they approach operational cost analysis, capital cost analysis and the trade-offs between the two.
 - 1.10.3.6. Proponents are to describe their experience in commissioning. Our preference is that the successful Proponent has experience commissioning aquatic centres. However, East Hants will still consider Proponents who can demonstrate an understanding of commissioning pool systems in their proposal, even if they don't have direct experience with pool systems.



- 1.10.3.6.1. Provide examples of similar work, describing the location where the work was performed, current contact information for the client (name, email, phone), and a summary of the services performed.
- 1.10.4. The Proponent must discuss their capacity and their ability to respond to the Project Master Schedule we have provided.
- 1.10.5. Proponents must complete and submit with their proposal Appendix A, the Proposal Form and Appendix B, The Proposal Summary. Please also include in the proposal a list of hourly rates which would apply to any work East Hants may request outside of the Services specified.
- 1.10.6. In addition, the Proponent must complete any table, Schedule or Appendix identified in the RFP. The Proponent may include any tables or attachments it feels will help clarify their proposals above the minimums identified in the RFP document.
- 1.10.7. Proponents must indicate whether they are the sole undertakers of the work or whether sub-consultants will be used. Proposed sub-consultants shall be subject to approval by East Hants.
- 1.10.8. The Proponent must supply the résumés of the Primary Team Members listed in Appendix B of their Proposal.
- 1.10.9. The Proponent must supply a list of all staff they anticipate to assign to the complete the Services, and must include an organizational chart showing the lines of responsibility and reporting structure of these staff.
- 1.10.10. If a sub-consultant is to be used, the Proponent must include a list of the sub-consultant's staff, their organizational chart and the resumes of Primary Team Members listed in Appendix B. The role of any sub-consultant must be clearly defined and outlined in the Proposal.
- 1.10.11. East Hants may, without creating an obligation to any Proponent, request clarifications, additional information, supporting documentation not otherwise supplied, up to including a request for a meeting or presentation, for any proposal or from any Proponent, prior to award.
- 1.10.12. The Proponent is responsible for all costs associated with preparing and submitting this proposal. This includes, without limitation, any and all costs, fees, expenses (travel, accommodations or meals) or other incidentals related to preparing, printing, binding, transporting, presenting, defending, or clarifying the proposal.
- 1.10.13. It is the responsibility of the Proponent to be sure they understand the requirements prior to submitting a Proposal and before the deadline for questions has passed.
- 1.10.14. To qualify for award, a Proponent be registered with the Workers' Compensation Board of Nova Scotia (WCBNS), regardless of the size of the company or its usual status with WCBNS. The Proponent is required to provide a Clearance Letter with their Proposal, except where:
 - 1.10.14.1. a Proponent is not currently registered, but intends to register as a condition to providing the Services; and
 - 1.10.14.2. Where the Proponent confirms in Appendix B that they have inquired with WCBNS and have determined they will be able to obtain such coverage.
- 1.10.15. In addition to the clauses herein, the successful Bidder will also have to comply with the terms and conditions specified in Part 2 and the agreement specified Appendix C. Failure to comply with



these conditions may result in the rejection of the Proponent's proposal or the cancellation of award.

1.11. Proposal Evaluation

1.11.1. East Hants will proceed with a two-step evaluation system, technical review and cost evaluation.

1.11.2. East Hants will evaluate each technical proposal using the criteria specified below. Proponents must achieve a minimum of 55 points in their Technical Score to have their cost envelop opened. Proponents who score less than 55 points on the Technical Score will not be considered for award.

Criteria	Available Points
Technical Score	
Comprehension (<i>demonstrated understanding of the requirements and objectives in performing the Services</i>)	/5
Service Delivery (<i>detailed and reasonable approach to the requirements and objectives, technical capabilities, capacity, communication, cooperation</i>)	/45
Completeness and Value (<i>degree to which proposal addresses submission requirements</i>)	/10
Firm and Staff Rating (<i>relevant experience on similar projects, adequate number and type of resources, qualifications, references, training and experience</i>)	/20
Sub-Total	/80
Cost Rating	/20
Total	/100

1.11.3. When evaluating the proposals, East Hants will assign points for Cost based on the following formula:

(Lowest proposal cost divided by Proponent's proposal cost) multiplied by the Available Points

1.11.4. Award is subject to approval by Council or the CAO.

2. SERVICES DESCRIPTION

2.1. Overview

East Hants plans to construct a new Aquatic Centre and will require the Services of a qualified team of designers and consultants to provide the Services necessary to complete the design, construction, and commissioning of such a complicated facility.

To this end, East Hants has employed an experienced design team in MacLennan Jaunkalns Miller Architects Ltd. & Teal Architects + Planners Inc. (MJMA + Teal) to complete the design work. East Hants anticipates a high quality of design which sets the stage to obtain a building that functions well, is simple and cost effective to operate, and that has a sustainable operational cost. We have also employed a Construction Manager, Tate Engineering, to oversee the design process and to assist during construction.

East Hants have also come to recognize that commissioning, training and operational readiness are critical components to ensuring the new Aquatic Centre performs as designed. To ensure that the designs are implemented as specified, East Hants wishes to hire a third party Independent Commissioning Agent (ICA) to:

- Work closely with the design team to verify that the systems being designed for the new Aquatic Centre meet the objectives as established by East Hants, actively supply any information which may assist the design team in optimizing the design, simplifying the operation, and providing honest feedback to East Hants around the choices being made;
- Where possible and appropriate, provide input to the consideration of systems which affect operations, including assistance in understanding operational cost and pay-back periods with respect to capital cost;
- Develop the commissioning plan, including the systems commissioning services, systems performance testing, and, in conjunction with the Prime Consultant, optimization of systems; and
- Execute the commissioning plan.

East Hants have included Inclusions A and B, documents developed at the inception of the project that describe the general expectations for the finished Aquatic Centre. We provide these documents to give the Proponents a sense of the facilities we expect will form part of the Aquatic Centre and the approximate scale of the work associated with commissioning this facility; this information is provided for reference only. The final size, elevation, equipment list and controls list will be determined through the design process.

2.2. Material Disclosures

The Independent Commissioning Agent's team must contain professionals are either Certified Commissioning Professionals (CCP) associated with Building Commissioning Association and/or Commissioning Process Management Professionals (CPMP) from ASHRAE.

Workers' Compensation Board of Nova Scotia (WCBNS) coverage is required by East Hants for any contractor or consultant it employs, regardless of the company's normal status under the *Workers' Compensation Act (Act)*. In order to qualify for award in any invitational second-stage competitive process, the Respondent will be required to provide either:

- proof that the Respondent is currently registered with the Workers' Compensation Board of Nova Scotia (the Respondent will be required to maintain good standing with WCBNS as specified in any resulting contract); or

- the Respondent must provide a declaration that the Respondent will register with WCBNS if awarded work as the result of the second-stage competitive process and that it will maintain good standing with WCBNS as specified in any resulting contract).

The ICA must be completely independent of the Prime Consultant and may not be owned or operated by any other firm which is currently contracted to this project. The ICA must inform East Hants immediately if it becomes aware of any circumstances which may affect their independent status.

The ICA must be completely independent of the General Contractor and subcontractors completing the work. As the General Contractor and subcontractors are not known at the time this agreement is made, it is the responsibility of the ICA to identify to any companies with which they share ownership, operation or control that they have a requirement to remain independent.

If the ICA becomes aware that the independent nature of the relationship with East Hants may be compromised, they must inform East Hants as soon as reasonably possible after they discover this is the case.

If East Hants becomes aware that the independent nature of the relationship has become compromised, East Hants may, at their sole discretion, take reasonable action to obtain independent commissioning Services, including the termination of the agreement with the ICA.

2.3. Master Schedule

East Hants expects that the ICA will be involved in some capacity for the duration of the project and will provide input throughout each phase of the design. The following phases are planned for the project. If, during the design process, East Hants decides to terminate the process prior to the commencement of any Phase, East Hants will only be responsible to pay the ICA for work completed up to the point of termination.

Phase	Project Phase	ICA Involvement
1	Schematic Design	At Completion (Review & Comment)
2	Design Development	At 33%, 66% & 99% (Review & Comment)
3	Construction Document Development	Commissioning Specification (Review & Comment)
4	Tendering/Bidding	N/A
5	Construction	Commissioning Activities
6	Occupancy and Operations (Warranty)	6 and 12-month Check-In

East Hants has included the current draft of the Project Master Schedule as Inclusion C. The Master Schedule is subject to change when mutually agreed upon by the General Contractor (GC), Prime Consultant (PDC) and East Hants, but is provided as reference to the ICA.

2.4. Scope of Work

The objective of commissioning is to move the facility from the construction phase to the operating phase and is the process of indirectly training operators; specific training of the operators is the responsibility of the General Contractor, and testing and demonstrating that all systems, controls, equipment, components and integrated systems:

- operate as per the design criteria and design intent;
- are fully and correctly documented; and
- are fully understood by the operators, who shall have been fully trained in the operation of the systems.

The Independent Commissioning Agent (ICA) shall manage and administer the project commissioning process from the conceptual design and through each of the specified Phases. The ICA will work with the design team to develop design documents that incorporate the ICA's requirements into the facility design.

The required ICA Services are described in detail in the following sections. There is no LEED certification requirement for the Aquatic Centre.

The ICA shall attend meetings during the design phase (approximately 10) and shall plan for meetings and site visits as required to carry out all commissioning planning plus activities during the construction, occupancy and warranty phases.

The ICA's scope of Services shall include commissioning activities related to pool mechanical and related systems, the entire mechanical system and the entire electrical system, including Security, Information Technology and Communications systems.

The ICA shall:

- review and confirm with East Hants the project requirements, design intent and the basis of design documentation;
- review documents at the end of Design Development and confirm design intent is met;
- provide review of the Construction Documents at 33% and 66%, including Pool Mechanical and Pool, M&E drawings and specifications, specified construction phasing, and specifications related to commissioning and training;
- review General Contractor's submittals related to systems being commissioned;
- review all shop drawings submitted by the General Contractor related to the Pool Mechanical and Pool, Mechanical and Electrical systems and provide comments;
- review functional performance plans submitted by the General Contractor;
- verify installation of pool mechanical, mechanical, electrical and control systems by the General Contractor;
- verify functional performance of pool. mechanical, electrical and control systems;
- oversee and attend training provided by the General Contractor, based on requirements to be specified in commissioning specifications prepared by the ICA;
- review completeness of operation and maintenance documentation, including As Builts and Operation and Maintenance Manuals;
- develop project specific commissioning plan including specifications, forms, etc. forms shall include static verification, start up check lists and functional test forms.
- complete commissioning forms in conjunction with the Prime Consultant team and General Contractor, including the pool and the mechanical and electrical contractor;
- attend commissioning meetings (and chair same if requested by the *Project Manager* or *Prime Consultant*);
- attend meetings to review feasibility of General Contractor proposed sequencing of the *work*;
- Coordinate completion of commissioning forms as some forms are completed by the General Contractor and some by the ICA;
- complete a Commissioning Report for the final stage of the construction plus submission of interim reports for each phase of construction;
 - incorporate third party testing results in final commissioning report;
- complete of final seasonal dependent commissioning activities during the one year general construction warranty period and at the six month duration of the warranty period after the date of Substantial Performance; and
- resolve outstanding commissioning related activities within the one-year warranty period after construction completion from the date of Substantial Performance.



East Hants will engage a third party inspection company to perform building Envelop testing and commissioning. The ICA will be responsible to work with this agent around activities of common interest and will incorporate the result of this testing into their final report.

Document Review and Comment

The selection of systems will be the responsibility of the Prime Consultant. East Hants will rely on the ICA to have a consultative role in evaluating whether the selected systems will meet our objectives and around optimizing these systems once installed. The ICA will work with the Prime Consultant to optimize all systems to maximum operating efficiency.

East Hants want to ensure that the new Aquatic Centre is safe, efficient, and economical to run. The ICA is to review documents and provide comments to them, the Prime Consultant and General Contractor, as appropriate, during the design and construction activities. This feedback is very important in helping East Hants to specify the correct equipment for the new facility. The objectives which guide decision-making also include:

- Safety cannot be compromised
- East Hants expects the facility to be designed, constructed and operated such that spaces enable a positive, safe and fun experience; and
- East Hants considers the total cost of ownership to be of importance.

It's also important to understand that certain basic functions within the Aquatic Centre will be performed by pool staff who are young, often inexperienced and who will have limited formal training. It is critical that the systems be easy to operate and appropriate to the task and that any training that is specified by the Prime Consultant or the General Contractor be accurate, relevant, effective and provided at an appropriate time. We expect the ICA to participate in these discussions and assist East Hants in understanding the options being presented and the practical considerations of implementing them.

East Hants wishes for Operation Manuals provided by General Contractor to be complete, accurate and easy for East Hants' staff to use and understand. The ICA will assist East Hants, where possible, to enhance or improve such documents to ensure they are user friendly.

East Hants has committed to provide timely responses for requests to review documents during this project, in particular during the design process. The ICA would be expected to review the documentation and provide comment within 3 business days of receiving the information when East Hants' commitment is to respond in 5 business days and within 7 business days when East Hants commitment is within 10 business days. East Hants will verify the expectation for response when submitting the information to be reviewed.

Commissioning

The commissioning process shall include:

- preparation of forms for functional performance verification;
- pre-start-up inspection;
- start-up;
- testing, adjusting and balancing;
- verification of system, equipment functional performance including waste systems and camera inspection of these;
- training of Operational and Maintenance personnel, including detailed written instructions of operations, testing, maintenance schedules, etc.;
- submission and approval of commissioning reports;



- verification of reported results;
- repairs, re-testing, re-commissioning, and re-verification, as required, until the building is fully operational;
- seasonal Commissioning;
- 6-month post-occupancy verification; and
- 12-month post-occupancy verification.

Quality Assurance

Equipment, systems starting, balancing, testing and performance verification procedures shall be in accordance with:

- the Contract Documents;
- requirements of authorities having jurisdiction;
- manufacturers' instructions and recommendations; and
- applicable portions of relevant standards such as, but not limited to: NBCC, AABC, ASHRAE, ASME, ASPE, ASTM, CSA, EEMAC, IEEE, IPCEA, NEMA, NFPA, SMACNA.

ICA

The ICA shall coordinate, on behalf of the East Hants, all activities related to commissioning.

The Prime Consultant shall ensure that all tests performed by sub-trades, suppliers, and equipment manufacturers are conducted and documented. The ICA will witness these tests. If the ICA is not available, alternate arrangements, approved by East Hants, will be considered.

The General Contactor shall prepare a commissioning schedule, consistent with the Master Project Schedule that shall include adequate time for the commissioning activities listed. The ICA shall review, with the Prime Consultant, the proposed schedule for logic and feasibility and time allowed for thorough commissioning.

Seasonal Commissioning

The seasonal variations in temperature, humidity, etc., have a significant influence on the operation of some equipment and systems. Therefore, commissioning of such equipment and systems may need to be performed after completion of the construction, when the weather conditions are suitable.

The ICA shall prepare a timetable and a list of seasonal commissioning tasks to be performed during the first year of operation.

Functional Performance Verification Forms and Test Sheets

The ICA shall prepare functional performance verification forms or test sheets for each piece of equipment and system specified in the mechanical, controls for mechanical, electrical, controls for electrical, if applicable and pool equipment specification sections.

The General Contractor is required to conduct all required tests and fill in the appropriate performance verification forms and test sheets, including camera inspections of waste systems (sanitary and storm) (To be discussed with owner if required).

The ICA shall witness these tests. If the ICA is not available, alternate arrangements, approved by East Hants, will be considered.

The ICA, along with the Prime Consultant's engineer, shall review all submissions of shop drawings, procedures, etc. which involve commissioning, and ensure that they are reviewed.

The ICA shall provide the performance verification forms that are used for mechanical equipment and systems. The forms typically contain three sections: prestart-up inspection, start-up, and post start-up section.



The ICA shall provide test sheets used for electrical equipment and systems. They shall be structured to record all the information required.

Official test forms required by the authorities having jurisdiction or equipment start-up forms issued by manufacturers for warranty purposes shall supplement the performance verification forms prepared by the ICA.

Commissioning Records and Documentation

The ICA shall maintain accurate, detailed records of commissioning activities, including names of technicians, supervisors, dates of commissioning activities. The records shall form part of the Commissioning Report to be prepared by the ICA.

The results of tests shall be recorded on Performance Verification Forms. Each completed section of a Performance Verification Form shall be signed by the General Contractor and reviewed by the ICA.

Signed Performance Verification Forms shall be assembled by the General Contractor into the Commissioning Report and submitted to the ICA at the completion of construction.

Additional commissioning reports shall be assembled by the General Contractor during the first year of operation and submitted to the Independent Commissioning Authority. These reports shall record the results of seasonal commissioning activities.

All submissions of Commissioning Reports shall be reviewed by the appropriate Prime Consultant's engineer.

Functional Performance Verification

Prior to conducting tests, the ICA shall instruct the General Contractor to:

- Verify that all related equipment and systems are complete, clean and operating in normal and safe manner;
- verify that start-up tests have been completed; and
- isolate equipment or other parts, which are not to withstand test voltage, test pressure, and/or test medium.

The ICA shall witness point-to-point testing of controls, which are to be performed by the General Contractor.

The Prime Consultant will instruct the General Contractor to conduct equipment system performance testing under design load and/or occupancy conditions. Where applicable, this testing shall be conducted as part of seasonal commissioning.

The ICA shall ensure that the East Hants or a designated representative of the East Hants witnesses the testing if and when required by East Hants.

When tests are performed, the Prime Consultant's engineer and/or the ICA may require that equipment, outlets, devices, etc., be opened and/or removed from their housing and/or outlet boxes in order that the interior of the equipment and wiring termination and connections may be examined. The ICA shall ensure that the General Contractor provides labour and tools for this purpose and restores the equipment to its original condition following testing.

The ICA shall instruct the General Contractor to insulate and conceal equipment and systems only after inspection and testing is complete and approved by the Prime Consultant's engineer and the ICA.

Conflicts

If the General Contractor reports, or if the ICA finds, that there is a conflict between the requirements of the various sections of the commissioning procedures, the Prime Consultant's engineer and/or the ICA shall ensure that clarification is provided to the General Contractor before any affected equipment is allowed to be started-up.



The ICA shall notify the General Contractor that failure to report any such conflict and obtain clarification will result in the application of the more stringent requirements being applied to the General Contractor's commissioning procedure.

Completion of Commissioning

Upon completion of commissioning, the ICA shall ensure the General Contractor leaves all systems in normal operating mode.

Except for identified seasonal commissioning activities to be conducted during the first year of operation, all commissioning shall be complete prior to Substantial Performance of the Work.

Commissioning shall be considered complete only when the final Commissioning Report has been received and approved by the East Hants.

Deficiencies

If any of the commissioning procedures produce unacceptable results, the procedures shall be repeated under the supervision of the Independent Commissioning Authority until acceptable results are achieved. The General Contractor shall provide materials and bear cost for repeating the procedures.

The ICA shall report faults, defects affecting commissioning to the *Prime Consultant's* engineer and to the East Hants.

Verification of Commissioning

If inconsistencies are found in the reported results, the General Contractor shall perform additional tests until the results are acceptable to the ICA.

Activities during Warranty Period

The ICA shall update the Commissioning Report as additional tests are performed to verify performance under different seasonal conditions or as required due to equipment malfunction, repair or replacement during the warranty period.

Mechanical and Control Systems

The testing of all pool, mechanical, electrical and control systems is the responsibility of the General Contractor. Spot verification shall be the responsibility of the ICA, which shall perform individual tests, and witness and verify functional performance of the systems.

Testing, Adjusting and Balancing (TAB)

The ICA shall verify that TAB activities for air and water and the hydronic (if applicable) system has been completed.

The ICA shall witness, spot check and independently verify that TAB activities are being properly performed and completed.

Functional Performance Verification (FPV) Process - General

Pre-Requisites:

Prior to Functional Performance Verification testing of each system, the General Contractor and ICA shall verify that the physical installation of components and systems being tested is substantially performed in accordance with



the contractual documents and manufacturers' recommendations. The pre-requisites include but are not limited to:

- pressure and leakage testing;
- flushing and cleaning;
- start-up or activation of all system components;
- completion of testing, adjusting and balancing; and
- calibration and testing of automatic controls.
- as required by the manufacturer's representative

Acceptable Performance:

If test results are not acceptable to the Prime Consultant's engineer and/or the ICA, corrective measure shall be carried out. Every test, for which acceptable performance is not achieved, shall be repeated after the corrective measures have been completed. This process shall be repeated until acceptable performance is achieved.

The ICA shall witness the Functional Performance Verification (FPV) process.

HVAC Systems

The ICA shall ensure the following:

- To the extent possible through simulation, at the end of the simulation process (i.e. seasonal, occupied/unoccupied, warm-up, etc.), all HVAC systems, equipment, components, including every interlock, control logic and all sequences shall have been proven operational under normal operating modes, including part load and full load, and under abnormal or emergency conditions.
 - If any test cannot be accomplished for seasonal reasons, lack of occupancy, or other reasons, this shall be noted along with an indication when the test will be scheduled.
 - Temporary upset of the system, such as distribution fault, loss of control, set-point change and component failure shall be imposed at different operating loads to determine system safety, stability and recovery time.
- Specified room pressure differentials shall be verified.
- Performance of HVAC systems including energy efficiency, heat recovery, temperatures and flows shall be verified.
- As each individual test is accomplished, ensure that the actual physical responses of the system are observed and compared to the specified requirements. Reliance on control signals or other indirect indicators is not acceptable.
- Verify that TAB report is an integral part of FPV.

When all individual HVAC system functional performances have been proven, check the interface on coordinated responses between these systems. The systems involved may be within the overall HVAC work, or they may involve other systems such as emergency systems or life safety systems.

Plumbing Systems

Verify that signed test forms for storm and sanitary drainage and water services have been submitted.

Verify that tests, inspections, and adjustments to suit the site conditions, have been completed and proven operational for plumbing system components as follows:

- adjust setting on all flush valves, including but not limited to floor drains used to manage waste;
- adjust setting on domestic hot water temperature control devices to achieve specified water temperature;



- clean aerator screens and strainers;
- clean out and prime floor drains and prove the action of trap seal primers or other means acceptable to East Hants;
- clean out roof drains;
- prove freedom of movement of cleanouts and access to their service;
- clean out sumps and pits;
- conduct a motor and cable insulation test for moisture content and insulation defect;
- prior to submergence, run dry pump to establish correct rotation and mechanical integrity;
- run pump for at least 15 minutes submerged;
- test each pump and controls using potable water supply; and
- verify pump alarms.

Control Systems

The ICA shall verify:

- that computer program of Building Automated System (BAS) includes computer screen graphics in accordance with appropriate standards;
- integration of BAS controls and controls of interfacing equipment;
- that alarms have been calibrated; and
- that metering has been calibrated.

The ICA shall verify the following items associated with the pool but not limited to:

- verify all pool drainage piping has been installed correctly and hydrostatically tested
- verify all pool water supply & return and vacuum piping has been installed correctly, properly supported and hydrostatically tested
- clean all sumps and drains, including pool overflow drains, deck drains in the water feature area and main drains
- test each pump, controls and alarms if applicable, using water supply
- verify operation of all valves
- verify variable speed drives
- verify water heating system is operational and function per manufactures requirements
- adjust setting on water temperature control devices to achieve specified water temperature
- verify that all automatic chemical dispensing systems are operational and functioning per manufactures requirements
- that metering of chemical dispensing equipment has been calibrated
- test and verify operation of water purification system per manufactures requirements
- verify operation of all water features
- verify operation of surge tanks
- verify all electrical components are operational as per manufactures requirements

Functional Performance Verification Forms

The ICA shall prepare Functional Performance Verification forms that may include but are not limited to the following:

- Variable speed drives.
- Condensing boiler system.
- Hybrid heat pump system.
- Pressurization controllers.
- Heat recovery system (i.e. glycol/heat wheel).



- Condenser water system.
- VAV terminal units.
- Fan coil units.
- Exhaust systems.
- Air handling units.
- Dehumidification unit(s)
- DHW heater.
- Plumbing fixtures.
- Perimeter heating system (i.e. radiant/reheat).
- Heat rejection systems.
- Solar wall and solar hot water systems. (Check with Owner if solar wall or solar hot water systems are to be considered.)
- Pool equipment and fixtures

The General Contractor shall perform all tests indicated on these forms and fill out the forms to the satisfaction of the Prime Consultant's engineer and the ICA.

The ICA shall witness all tests.

Air Flow Verification

After all work affecting air-tightness of various functional spaces has been completed, exhaust systems installed, HVAC systems balanced, and control systems have been installed and verified, smoke pattern testing shall be performed for designated spaces (the smoke generator shall be provided by the General Contractor). The testing shall be witnessed by the ICA, the air balancing subcontractor and representative from the mechanical subcontractor. The General Contractor shall ensure that adjustments are made to diffusers based on the results of the smoke testing and as directed by the ICA. Effectiveness of adjustments shall be verified by smoke testing. The ICA shall witness and verify that this work is complete.

Responsibility

The General Contractor shall perform all electrical testing. Spot verification shall be the responsibility of the ICA, which shall perform individual tests, and witness and verify functional performance of the systems.

The ICA shall verify that fire alarm tests have been completed as dictated by CAN/4LC S537 by a certified fire alarm manufactures representatives. The ICA will complete an independent test of a random number of fire alarm devices to confirm that the fire alarm system is operational.

Electrical System Test Reports

The ICA shall ensure that:

- Inspection and tests are recorded on test sheets (the sheets are not to replace Local Regulations and their testing requirements);
- typically, the contents of the test reports will be useable for maintenance records; and
- the validity of the inspection and test program can depend on all information contained on the Testing Sheets being accurate and, if in doubt, questionable information is removed pending reliable verification of correct data

Completion of Test Sheets

The ICA shall incorporate any modifications into the Test Sheets, which rise from the Prime Consultant's engineer's approval of the test program.



The General Contractor shall sign, and the ICA shall verify, that the contents of the Test Sheets are accurate. The Prime Consultant's engineer shall sign the sheets to confirm that the installation is acceptable and that the Test Sheets are an accurate record.

Test Sheets

The ICA shall prepare Test Sheets that may include but are not limited to the following:

- Underground services.
- Load break switches.
- Circuit breakers: trip setting.
- Short circuit study
- Transformers (supply and distribution).
- Secondary switchgear.
- Switches.
- Moulded case circuit breakers.
- Distribution panel board.
- Receptacle and lighting panel boards.
- Wiring devices.
- Motor control centre and starters.
- Lighting system (interior and exterior).
- Exit lighting.
- Emergency lighting control.
- Light switching including sensors.
- Fire alarm system.
- Public Address system
- CCTV system
- Transient voltage surge suppression system.
- Heating cable.
- Telecommunication (data/telephone).
- Security I Intrusion Alarm and Controlled Access system

The General Contractor shall perform all tests indicated on these forms and fill out the forms to the satisfaction of the Prime Consultant's engineer and the ICA. A Test Sheet sample shall be submitted by the ICA to the Prime Consultant's for review and approval.

2.5. East Hants Representative

The East Hants Representative for these Services is Kate Friars, Director of Parks, Recreation and Culture. East Hants may, through the Representative or their designate, supply either verbal or written instructions to a General Contractor with respect to the Services to be completed.



Appendix A - Pricing Form

Proposal submitted by: _____

The Proponent must complete the following table to be submitted with their proposal.

Cost Element	Cost
Services during Design (Phase 1-3)	
Commissioning Services (Remainder of Phases)	
Verification at 6-months and 12-months	
Total Cost less HST	

All costs shown will be exclusive of Harmonized Sales Tax (HST).

The Proponent hereby agrees that the work proposed in the table will be completed for the Total Cost indicated in the table above, inclusive of, without limitation, all fees, expenses or costs for which the Proponent may wish to be reimbursed, except HST.

Name of Firm submitting Proposal: _____

Signature of Witness

Authorized Signature

Name (Printed)

Title (Printed)

Date



Appendix B - Summary of Proposal

1. Contact information for Proponent:

Name of Primary Proponent Firm	
Address	
Phone Number (office)	
Primary Project Contact Name	
Email Address for Primary Contact	
Cell Phone Number for Primary Contact	

2. Sub-consultant List (if any):

Name of Sub-consultant Firm	
Address	
Phone Number (office)	
Project Contact Name	
Name of Sub-consultant Firm	
Address	
Phone Number (office)	
Project Contact Name	
Name of Sub-consultant Firm	
Address	
Phone Number (office)	
Project Contact Name	



3. Primary Proponent Team Members:

- a. Proponents must attach resumes of primary team members to Appendix B when submitting their proposal.

Primary Proponent Team Member Name	Function/Job Description

4. Sub-consultant Key Team Members (if any)

Sub-consultant Firm Name	Sub-consultant Team Member Name	Function/Job Description



5. Experience/ References:

a. Provide three references for similar work completed by your firm in the format illustrated below.

Location Work Performed	Date Project Completed	Services Provided	Contact name	Contact Phone Number	Contact Email

6. Insurance (attach Certificate or declare intention to obtain coverage):

7. Workers' Compensation (attach Clearance Letter or declare intention to obtain coverage):

8. Receipt of the following addenda is hereby acknowledged:

Addendum:	_____	dated:	_____
	_____		_____
	_____		_____
	_____		_____
	_____		_____

Please review this RFP document to confirm you have met all of the requirements for the submission, including, without limitation, the correct number of copies and the labeling requirements. Please verify that all of the schedules, sections and signatures have been completed before sealing the envelope.



Appendix C – Sample Agreement

THIS AGREEMENT is effective <<date>>, 2016 (“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 “Independent Commissioning Agent” or “ICA”)

BACKGROUND

East Hants wishes to retain the ICA to provide the Commissioning Services, more fully explained in the 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 ICA 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.

CONTRACT DOCUMENTS

- 4 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, remember to include these.)
 - a. This agreement;
 - b. Services Description;
 - c. <<insert proposals, confidentiality agreements, etc. as applicable>>; and
 - d. <<insert additional documents as applicable>>.

INTENT

- 6 East Hants hereby engages the ICA to supply the Services described herein and the ICA agrees to provide these Services.
- 7 The ICA warrants that it has the necessary resources to complete the Services in a competent and professional manner. Such resources shall include, without limitation, qualified, skilled, and sufficient personnel, adequate financial resources, and any other unique or general resources necessary to complete the Services.

TERM

- 8 This agreement shall commence on the Effective Date and shall end on the earlier of the following:
 - a. Full completion of the Services to the satisfaction of East Hants; or
 - b. Termination in accordance with the terms of this agreement (see TERMINATION).
- 9 Unless amended by the parties in writing, the ICA agrees to complete Services to the satisfaction of East Hants on or before **February 28, 2019**.

REMUNERATION

- 10 East Hants shall remunerate the ICA as follows:
 - a. The maximum amount payable under this agreement, including fees, expenses and disbursements, shall not exceed the aggregate sum specified below, exclusive of Harmonized Sales Tax (HST).

Total Cost: _____
 - b. The following are included in the Total Cost and are deemed to be included in the Services. The ICA is responsible to complete the Services for the stated Total Cost.

[Insert table from proposal where fees, expenses, and disbursements are itemised, if applicable]
 - c. The following rates will apply should East Hants wish the ICA to provide any additional Services using such personnel as described in the table:

[Insert table from proposal showing personnel and associated rates per hours, if applicable]
 - d. Such fees, or part thereof, are only payable when the ICA, 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 ICA.
 - e. Invoices must be submitted monthly by the ICA and must be supported in such detail as East Hants may request.



- f. 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.
- 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 Contract shall constitute acceptance of work or products that are not in accordance with the requirements of the agreement.
- i. East Hants may reject an invoice on the basis that the Services are, in its sole opinion, incomplete or unsatisfactory. In the case where the Services are deemed unsatisfactory, the ICA 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 the East Hants's sole opinion, East Hants may terminate the agreement.
- j. The ICA shall not be entitled to payment in respect of costs incurred by the ICA in remedying errors and omissions in the Services that are attributable to the ICA, the ICA's employees, or persons for whom the ICA had assumed responsibility in performing the Services.
- k. If, and to the extent that, the time for completion of the Services is exceeded or extended through no fault of the ICA, payment for the Services required for such extended period of this agreement shall be subject to review and equitable adjustment.
- l. In the event the agreement is terminated before the satisfactory completion of the Services, East Hants shall only be liable to pay, and the ICA shall accept in full settlement, an amount for Services satisfactorily performed up to the date of termination.
- m. Disbursements and expenses incurred by the ICA in performing the Services, and not included as part thereof, shall be reimbursed to the ICA at actual cost with no mark-up unless otherwise agreed in writing. All expenses and disbursements are considered to be included in the Total Cost unless authorized, in writing, by East Hants to be reimbursed separately.
- o. The ICA shall be solely responsible to pay all costs and expenses arising out of this agreement, whether or not East Hants intends to reimburse the client for them.
- p. The ICA is responsible to maintain a thorough cumulative record of all fees, expenses and disbursements over the term of the Contract. The ICA must provide East Hants with an electronic copy of such record upon request.



INDEPENDENT STATUS

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

Accordingly:

- a. The parties acknowledge that the ICA 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 ICA 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 ICA or amounts paid by the ICA to its employees or contractors.
- c. The ICA 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 ICA 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 ICA agrees that as an Independent ICA, the ICA, 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 ICA 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 ICA is free to provide services to other clients, so long so long as there is no interference with the ICA's contractual obligations to East Hants.

SCHEDULE AND DELAY

- 12 The ICA shall contact the East Hants Representative weekly, or on such other frequency acceptable to East Hants, to provide an update on the progress of the Services. An updated Schedule indicating progress of the Services shall be provided to East Hants monthly, or more frequently if so requested.
- 13 Any circumstances that will result in changes to the agreed Schedule or delay in performance of the Services must be brought to attention of the East Hants Representative by the ICA within 24 hours of the change or delay being identified. Changes to the Schedule must be approved by East Hants in writing.
- 14 In identifying a period of delay, the ICA must make reasonable effort to quantify the expected period of delay and to minimize such delay.
- 15 Where the ICA fails to perform the Services, in whole or in part, in a timely manner or on a continuous basis, in accordance with the established Schedule, East Hants may:
- a. Terminate this agreement; and
 - b. Engage another ICA to perform the Services immediately; and
 - c. Recover, from the ICA, and ICA shall be liable to East Hants for, any and all costs and damages that East Hants incurs as a result of such delay.
- 16 Provided that the ICA complies with subsections 12 and 13 of the SCHEDULE AND DELAY section above, the ICA shall be excused of any delay ("excusable delay") that:



- a. Is beyond the reasonable control of the ICA;
 - b. Is not avoidable by the exercise of reasonable foresight; and
 - c. Occurred without the fault or neglect of the ICA.
- 17 For greater clarity, any delay caused by the lack of financial resources, labour disputes/strikes, insolvency, any event that is a ground for termination provided for in this agreement, or any delay in the ICA fulfilling an obligation to deliver a bond, guarantee, letter of credit, insurance, WCB certificate or other security relating to the performance or the payment of money, shall not qualify as an excusable delay.
- 18 In the event of an excusable delay, any delivery date, schedule, or other date that is directly affected by the delay shall be postponed for a reasonable time not to exceed the duration of the excusable delay.
- 19 Where an excusable delay continues for 30 days or more, East Hants may, in East Hants's absolute discretion, choose to terminate this agreement. In such a case, the parties agree that neither party will make any claim against the other for damages, costs, expected profits or any other loss arising as a result of the termination or the event that gave rise to the excusable delay.
- 20 Except to the extent that East Hants is responsible for the delay for reasons of failure to meet an obligation under the agreement, East Hants shall not be liable for any costs or charges of any nature incurred by the ICA or any of its sub-contractors as a result of an excusable delay.

PERSONNEL

- 21 The ICA is advised that East Hants expects the personnel listed in the ICA's duly signed proposal to perform the Services indicated. The ICA must obtain written permission from East Hants before changing any member of the work team. In the case of personnel being changed, the new personnel being assigned must have a similar length and breadth of experience relevant to this project as the personnel being replaced and they must otherwise be acceptable to East Hants.

SUBCONTRACTOR

- 22 The ICA is advised that the subcontractor listed in the ICA'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.
- 23 If the ICA finds that a subcontractor named in this agreement cannot perform some or all of the Services for which they were named, the ICA may request permission from East Hants to engage an alternative subcontractor for such Services. In making such a request, the ICA 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.
- 24 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 ICA may name. The rejection of a replacement subcontractor shall not relieve the ICA of their obligation to perform the Services under this agreement.

CONFIDENTIALITY

- 24 In the course of discharging its duties under this agreement, the ICA, its agents and/or employees will hear, see and/or otherwise come to know, possess or have access to confidential information about and/or belonging to East Hants, its clients and/or third parties interacting with East Hants or the ICA, including but not limited to contact lists, personal information about identifiable individuals, security

information, and information about East Hants' clients, methods and processes (the "Confidential Information").

- 25 The ICA agrees not use, disclose, reproduce or otherwise make available, Confidential Information to any person, firm or enterprise (other than to the ICA's employees or agents who have a need to know such information for the purposes of this agreement) unless specifically authorized in writing to do so by East Hants. The ICA agrees that if an employee or agent will receive Confidential Information as contemplated in this section, it will obtain a confidentiality agreement from such employee or agent which provides equal or greater protection to the Confidential Information than set out in this section.
- 26 The ICA agrees to exercise all due care and diligence and take all reasonable precautions to prevent any unauthorized collection, use, disclosure, retention, destruction or disposal of Confidential Information.
- 27 Upon termination of the agreement for any reason, the ICA will return to the East Hants any and all documents in its possession, electronic or otherwise, containing Confidential Information.
- 28 The ICA recognizes that if any of the provisions of this section are violated, East Hants is entitled to an injunction to prevent it from disclosing Confidential Information and/or using Confidential Information for any purpose. The ICA further recognizes that East Hants would be entitled to other legal remedies, including legal fees and costs in the event of such a violation.

INFORMATION COLLECTED

- 30 All information and material produced by the ICA in the course of the Services, including, but not limited to, calculations, design notes, criteria, graphs, figures, maps, reports, drawings, analysis, profiles, and plans, will become the property of East Hants and an electronic copy of such information must be turned over to East Hants upon completion or termination of the Services.
 - a. The ICA understands that East Hants intends to use such collected information to perform the business of the Municipality of East Hants; to that end, the ICA agrees that East Hants may, without limitation, use, distribute, reproduce, and/or publish such information without penalty or exclusion; and
 - b. East Hants reserves the right to amend such collected information whenever and for whatever purposes it chooses to do so.

INDEMNIFICATION

- 31 The ICA shall indemnify and hold harmless the Municipality of East Hants, its officers, members of municipal council, employees and volunteers from and against any liabilities, claims, expenses, demands, loss, cost, damages, actions, suits or other proceedings made, sustained, brought, prosecuted or threatened to brought or prosecuted that are based upon, occasioned by or attributed to any bodily injury to or death of a person or damage to or loss of property caused by any acts or omissions on the part of the ICA, its officers, employees, students, agents, volunteers or those for whom you are responsible arising out of this agreement.

CHANGES TO REQUIREMENTS

- 32 If the instructions provided by East Hants are interpreted by the ICA as increasing or decreasing the scope of the Services, they must inform East Hants of the impact of such instructions prior to acting on them. At minimum, any change in scope that affects the Lump Sum Maximum Fee must be approved by East Hants in writing and the ICA must provide, at minimum:
 - a. A description of the change in Services as a result of the instructions;



- b. The amount, exclusive of HST, by which the Lump Sum Maximum Fee will either be increased or decreased accordingly; and
- c. A summary of the fees, expenses and disbursements which make up the amount of increase or decrease.

INSURANCE

- 33 The ICA shall, without limiting its obligations or liabilities, maintain Commercial General Liability insurance on an occurrence basis with a minimum limit of \$2,000,000 for bodily injury including death, personal injury and property damage including loss of use, and shall include provisions for: Blanket contractual liability; Owners' and Contractor's protective liability; Broad form property damage; Tenant's legal liability; Non-owned automobile liability; Contingent employer's liability; and Products and completed operations liability.
- 34 This insurance shall include the Municipality of the District of East Hants as an additional insured and contain both cross-liability and severability of interest clauses. Excess or umbrella insurance may be used to achieve the required insured limits.
- 35 The ICA shall maintain automobile insurance with limits of not less than \$2,000,000 per claim.
- 36 The ICA shall provide evidence by way of a certificate of insurance acceptable to East Hants evidencing insurance as required under this agreement. Evidence of the Commercial General Liability, Professional Liability and Automobile Liability insurance shall provide a 30 day notice of termination or material change.
- 37 The ICA shall provide proof of Professional Liability insurance. The Certificate must reference the scope of work being performed.

REGULATIONS

- 38 The ICA shall comply with all existing Federal, Provincial and Municipal laws and regulations and the regulations of any other authorities that may have jurisdiction. The ICA 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

- 39 The ICA shall pay all Federal and Provincial Taxes as required by the appropriate enactments.
- 40 The ICA 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 ICA.
- 41 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 ICA.
- 42 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 ICA will be reimbursed by East Hants in accordance with the requirements of the applicable tax act.

WORKERS' COMPENSATION

- 43 The ICA 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.
- 44 No payments will be made by East Hants to the ICA unless their invoice is accompanied by a valid Clearance Letter confirming they are in good standing with WCBNS.



CONFLICT OF INTEREST

- 45 The ICA 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 ICA, either direct or through a third party, which may appear to create an unfair advantage for the ICA 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 ICA to follow, in as much as it affects the delivery of these Services.

PERFORMANCE

- 46 If any part of the Services is found to be deficient or not in accordance with the terms of this Contract or standards specified herein, East Hants may, at its sole discretion:
- a. Require the ICA to re-perform the Services or make any required corrections to the work, at its own expense, to comply with the terms of the Contract; or
 - b. If the ICA 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 ICA until the entire amount is offset or, where there is not amount to offset, the ICA 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 Contract 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 Contract in accordance with the Termination clauses herein.

TERMINATION

- 47 East Hants may terminate this agreement at any time, for any reason, by providing thirty days written notice to the ICA. This notice period may be increased by written agreement between the parties. Agreement to extend this notice period does not release the ICA 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.
- 48 Notwithstanding the above, East Hants may terminate this agreement without notice if the ICA makes changes to the approved list of ICA'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.
- 49 East Hants may terminate this agreement if the performance of the Services, or portion thereof, is found to be unacceptable. Both East Hants and ICA 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 ICA by East Hants that the performance of the Services is unacceptable, such notice shall be considered notice to terminate the agreement.
- 50 East Hants reserves the right to terminate this agreement, without penalty of any kind, if the ICA is judged to be bankrupt or makes general assignment for the benefits of its creditors.
- 51 Termination of the agreement by East Hants shall not relieve that ICA of any obligations or liability it may have to East Hants except as provided for herein.

RECEIVERSHIP

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

ASSIGNMENT

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

ENTIRE AGREEMENT

- 54 The agreement, together with the Schedules, 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

- 55 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

- 56 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.

- 57 The Notifications shall be addressed as follows:

c. By mail to East Hants:

Municipality of East Hants
<<Project Number - Project Name>>
230-15 Commerce Court
Elmsdale, NS B2S 3K5

Attention: Procurement Officer

d. By email to East Hants:

Primary: procurement@easthants.ca
Cc: mhatfield@easthants.ca; email address of Project Manager

e. By courier or in person to East Hants:

Municipality of East Hants
<<Project Number - Project Name>>
15 Commerce Court
Elmsdale, NS B2S 3K5



Attention: Procurement Officer

Proceed to the Reception & Payments counter on the first floor of the Lloyd E. Matheson Centre

f. By mail to the ICA:

<<Company Name>>
<<Project Number - Project Name>>
<<Address>>

Attention: <<Name>>

g. By email to ICA:

Primary: <<email address>>
Cc: <<as requested by ICA>>

GOVERNING LAW

- 58 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

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

SEVERABILITY

- 60 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.

DISPUTE RESOLUTION

- 61 In the event of a disagreement regarding any aspect of the Services or any instructions given by East Hants to the ICA under this agreement:
- a. The ICA must promptly deliver written notice of disagreement to East Hants. Such notice must contain the particulars of the disagreement, any changes in time or amounts claimed, and reference to the applicable provisions of this agreement;
 - b. The ICA shall continue to deliver the Services in accordance with East Hants' instructions; and
 - c. The ICA and East Hants shall attempt to resolve the disagreement by negotiation conducted in good faith. The parties shall negotiate firstly at the level of the ICA's project representative for each party. If such negotiations are unsuccessful, the parties may escalate the negotiations to the level of a principal of the ICA firm and a Director at East Hants;
 - d. If both parties agree that East Hants gave instructions in error or contrary to this agreement, East Hants shall compensate the ICA a reasonable fee for any extra work completed due to such instruction, together with those reasonable disbursements arising from the extra work.
 - e. The parties shall calculate those fees in accordance with this agreement;
 - f. If the parties cannot settle the disagreement, the ICA may ask East Hants for a written decision regarding their dispute and, within 14 days of receiving that request, East Hants must deliver such decision to the ICA, in which they shall set out the particulars of their response and any applicable clauses of this agreement upon which they base this decision;



- g. If the ICA rejects the decision, the parties may refer the matter to arbitration in accordance with *The Commercial Arbitration Act of Nova Scotia*.
- h. Negotiations conducted under the dispute resolution provisions of this agreement are without prejudice to either party's other rights under this agreement or at law.

WAIVER

58 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	<<ICA LEGAL NAME>>
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

