Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act, 2015 [Our File #: MAE/18/2017]

On May 1, 2017, the Department of Municipal Affairs and Environment received your request for access to the following records/information:

"ATIPP Request – May, 1, 2017
ATIPP MA/29/2017 referenced item from PCSP Council Minutes of March 21, 2017: Discussion Items: 1(a) MYCY project UPdates were provided and notably the approval to enter into a Project Consultant Management Agreement for the Water Metering Project.

The response from MA included the following letter:

Approval to Award Consulting Services (Project Management)

November, 15, 2016
Mayor Moses Tucker
Town of Portugal Cove-St. Philip's
1119 Thorburn Road
Portugal Cove- St. Philip's, NL A 1M IT6

Re: Clean Water and Wastewater Fund
Household Water Meter Installation, Project No. 17-CWWF-17-00034

This will advise that your request dated November 9, 2016 to engage Vigilant Management Inc. to provide Project Management Consulting services for the above referenced project is hereby approved.
Please instruct this consultant to prepare a draft Project Management Consultant Agreement for submission to the Department's Eastern Regional Office for review and recommendation on signature before any work is commenced on the project.
Sincerely,
Sandy Hounsell,

P.O. Box 8700, St. John's, NL, Canada A1B 4J6    709 729 5677    709 729 0943    www.gov.nl.ca
Eastern Regional Director

cc: cc: cc: cc: cc: cc: cc: cc: cc: cc: cc:
Mr. David Brazil, MHA
Ms. Heather Tizzard, ADM
Mr. Ian Duffett, P. Eng.
Ms. Jacqueline Vickers, Tendering & Contracts, TW
Mr. Stephen Slaney, Tendering & Contracts, TW
Mr. Inayat Rahman, P. Eng.
Mr. Denis Hickey
Mr. John O’Leary
Mr. Grant Horwood, P. Eng., Vigilant Management
Ms. Jill Yetman, B. Tech.

********

1. Request confirmation that the letter of November 15, 2016 is the update (to March 21, 2017) for approval to enter into a Project Consultant Management Agreement for the Water Metering Project for the Town of PCSP.

2. Request all information (contract/agreement between Provincial Government/PCSP, purpose, content, conditions, rationale, cost, benefactors, etc.) of Watering Metering Project as currently understood (May 1, 2017) or approved by the Provincial Government.”

I am pleased to inform you that a decision has been made by the Deputy Minister to provide access to the requested information.

I can confirm for part 1 of your request, the letter dated November 15, 2016 is the approval to enter into a Project Consultant Agreement referenced in the minutes.

In accordance with your request for a copy of the records in part 2 of your request, the appropriate copies have been enclosed namely:

a. From ATIPP response MA/53/2016, pages 9 to 20, the business case for the water metering project (http://atipp-search.gov.nl.ca/public/atipp/requestdownload?id=2582);
b. Clean Water and Wastewater Fund Agreement with the Town; and
c. The Project Management Consulting Agreement.

Please be advised that you may ask the Information and Privacy Commissioner to review the processing of your access request, as set out in section 42 of the Access to Information and Protection of Privacy Act (the Act). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner.
The address and contact information of the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner  
2 Canada Drive  
P. O. Box 13004, Stn. A  
St. John’s, NL. A1B 3V8  

Telephone: (709) 729-6309  
Toll-Free: 1-877-729-6309  
Facsimile: (709) 729-6500  

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the Act.  

Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Completed Access to Information Requests website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.  

If you have any further questions, please feel free to contact me by telephone at 709-729-5846 or by e-mail at aliaaskary@gov.nl.ca.  

Sincerely,  

ALI ASKARY  
Manager, Information Services / ATIPP Coordinator  
Policy and Strategic Planning  

Enclosures
Town of Portugal Cove – St. Phillip’s Water Metering Project

Clean Water and Wastewater Consideration Proposal
Project Description

1. Background

The Town of Portugal Cove – St. Phillip's (PCSP) seeks to install water meters to all their existing residential properties that are connected to the Town's water supply, as well as all new residential developments. The rationale being:

- Water metering is statistically proven to encourage water conservation.
- The cost of treated water is increasing.
- Metering can allow home owners the ability to gain control over their bills.
- Through conservation of treated water, the municipality will be able to reduce the total cost of providing water to residents.

Currently, the equal water tax system is not equitable for all residents because all homes pay the same amount regardless of actual usage, which differs depending on many factors. Metering household water usage the same way as electricity is an established global practice. Water is becoming a scarcer resource and sustainable ways of usage must be practiced. Metering allows for better use and better management of treated water. Leaks can be detected and addressed, trends in water use can be identified and anticipating needs for growth becomes possible and easier to plan. These savings by the Town will be transferred on to the residents.

2. Goals

- Implement water metering in all residential properties currently connected to the Town’s water supply by 2017
- Create legislative and operational frameworks to support the use of water meters.
- Develop complimentary water regulations and a supporting water meter method of service delivery
- Develop a full spectrum fee structure to address all expected situations that will generate full cost recovery for service delivery
- Develop waste water rate models that are water usage based to better inform council for future considerations
- Analyze and verify the impact that the water meters have had on consumption and financial aspects of service delivery. Publish results after a year and make recommendations for next operational stage.

3. Scope and Work Plan

There are four phases through which the project will be achieved, as shown below:
Phase 1 – Feasibility –From January 2016 to June 2016

- Research water metering projects in other municipalities
- Develop cost estimate for project and available types of meters
- First public consultation meeting
- Council motion to award work to consultant for definition of water and wastewater rate
- Develop a scoring mechanism for evaluation of advantages for water metering (i.e. environmental, sustainability, energy conservation, distribution costs, supply costs) to aid in the decision making process for all other stages
- Develop high level schedule for implementation
- Present results in public consultation meeting
- **Go/No Go Decision 1**: Decision to proceed to Planning and Design Stage based on Feasibility Stage deliverables

Phase 2 – Planning and Design: From June 2016 to October 2016

- RFP for meter installation service based feasibility findings
- Review RFP
- Decision to award contract based on proposals
- Meter contractor design and implementation plan
- Review of contractor plan
- Decision to proceed with construction

Phase 3 – Construction: From October 2016 to June 2017

- **PM Overview:**
  - installation of meters
  - resident communication
  - meter testing and commissioning
- Implementation of hardware/software, legislation and regulations
- Hiring of town staff

Phase 4 –Completion: From June 2017 to December 2017

- Town staff coordination with metering firm to ensure data collection and invoice generation
- Warranty review
- Training of staff
4. Key Stakeholders

<table>
<thead>
<tr>
<th>Client</th>
<th>Town of Portugal Cove – St. Phillips</th>
</tr>
</thead>
<tbody>
<tr>
<td>Town Staff</td>
<td>Chris Milley, Town Manager</td>
</tr>
<tr>
<td></td>
<td>Jeff Lawlor, Director of Economic Development, Marketing and Communications</td>
</tr>
<tr>
<td>Project Management Consultant</td>
<td>Vigilant Management Inc.</td>
</tr>
<tr>
<td></td>
<td>Grant Horwood, Director of Projects</td>
</tr>
<tr>
<td></td>
<td>John Oliveira, Jr. Project Manager</td>
</tr>
</tbody>
</table>

5. Project Milestones

<table>
<thead>
<tr>
<th>Phase</th>
<th>Milestone</th>
<th>Description</th>
<th>Responsibility</th>
<th>Date</th>
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<tbody>
<tr>
<td>Phase 1</td>
<td>M1</td>
<td>Public Consultation Meeting #1</td>
<td>Town Staff</td>
<td>January 2016</td>
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<tr>
<td></td>
<td>M2a</td>
<td>Approve Project Charter</td>
<td>Staff/Council</td>
<td>April 2016</td>
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<td></td>
<td>M2b</td>
<td>Motion of Council to award work to consultant for definition of water and wastewater rate</td>
<td>Town Council</td>
<td>May 2016</td>
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<td></td>
<td>M3</td>
<td>Public Consultation Meeting #2</td>
<td>Town Staff</td>
<td>July 2016</td>
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<td></td>
<td>M4</td>
<td>Go/No Go Decision to proceed to Planning and Design Stage based on Feasibility Stage deliverables</td>
<td>Town Council</td>
<td>July 2016</td>
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<tr>
<td>Phase 2</td>
<td>M5</td>
<td>Develop and issue RFP for selection of manufacturer for turn-key solution</td>
<td>Vigilant</td>
<td>July – Oct 2016</td>
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<tr>
<td></td>
<td>M6</td>
<td>Go/No Go Decision to award contract based on proposals</td>
<td>Town Council</td>
<td>October 2016</td>
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<tr>
<td></td>
<td>M7</td>
<td>Go/No Go Decision to proceed to Construction Stage</td>
<td>Town Council</td>
<td>October 2016</td>
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<tr>
<td>Phase 3</td>
<td>M8</td>
<td>Implementation Start</td>
<td>Manufacturer</td>
<td>November 2016</td>
</tr>
<tr>
<td></td>
<td>M9</td>
<td>Start Meter Installation</td>
<td>Manufacturer</td>
<td>December 2016</td>
</tr>
<tr>
<td></td>
<td>M10</td>
<td>Start data collection</td>
<td>Manufacturer</td>
<td>January 2017</td>
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<tr>
<td></td>
<td>M11</td>
<td>Implementation Complete</td>
<td>Manufacturer</td>
<td>August 2017</td>
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<td>Phase 4</td>
<td>M12</td>
<td>Data collection and analysis</td>
<td>Town Staff</td>
<td>Jan-Dec 2017</td>
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<td></td>
<td>M13</td>
<td>Final adjustments based on project results</td>
<td>Town Staff</td>
<td>December 2017</td>
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<td></td>
<td>M14</td>
<td>First Billing Cycle</td>
<td>Town Staff</td>
<td>January 2018</td>
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<td></td>
<td>M15</td>
<td>1st Year Review and Report</td>
<td>Town Staff</td>
<td>August 2018</td>
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</table>
6. **Budget**

As per research done throughout 2015 and 2016, the project budget is estimated at $1.5 Million.

7. **Constraints, Assumptions, Risks and Dependencies**

<table>
<thead>
<tr>
<th>Constraints</th>
<th>Initial negative feedback from residents</th>
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<tbody>
<tr>
<td></td>
<td>Budgetary limits</td>
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<tr>
<td></td>
<td>Necessity of a long data collection period before billing can begin</td>
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<tr>
<td>Assumptions</td>
<td>Estimates and proposals will stay within budget</td>
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<td></td>
<td>Proposal will conform to established timeline</td>
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<tr>
<td>Risks and Dependencies</td>
<td>Political change could lead to cancellation of project</td>
</tr>
<tr>
<td></td>
<td>Higher than expected resistance to installation from residents</td>
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<td></td>
<td>High average rates in comparison to current flat rate</td>
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<tr>
<td></td>
<td>The expected savings in water consumption may not be enough to offset the cost of installing and running a meter program</td>
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</table>
Cost Estimates

8. Monthly Cost Report

Below is the cost report for the project divided into phases including cost for project management. This report is HST excluded.

<table>
<thead>
<tr>
<th>Tasks</th>
<th>Level 01</th>
<th>Level 02</th>
<th>Budget</th>
<th>Actual Cost</th>
<th>Cost Variance</th>
<th>Cost Forecast</th>
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<tr>
<td>Water Metering Project</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
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<tr>
<td>Project Management</td>
<td>Project Initiation &amp; Planning</td>
<td>$ 5,175.00</td>
<td>$ 7,052.00</td>
<td>$ 1,877</td>
<td>$ 7,052</td>
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<tr>
<td>RFP for Rate Study and Award, Estimates, PM Plan</td>
<td>$ 1,050.00</td>
<td>$ 7,052.00</td>
<td>$ 6,002</td>
<td>$ 7,052</td>
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<tr>
<td>Support for Feasibility Consultant</td>
<td>$ 2,825.00</td>
<td>$ 3,270</td>
<td>$ 615</td>
<td>$ 6,195</td>
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<td>Support for Water Rate Consultant</td>
<td>$ 6,000.00</td>
<td>$ 4,600</td>
<td>$ 4,600</td>
<td>$ 6,000</td>
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<tr>
<td>Develop RFP for Turf Key Implementation</td>
<td>$ 6,000.00</td>
<td>$ 6,000</td>
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<td></td>
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<tr>
<td>Project Controls and Reporting</td>
<td>$ 8,500.00</td>
<td>$ (3,629)</td>
<td>$ 4,571</td>
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<td>Manage Installation Process &amp; Communications</td>
<td>$ 14,750.00</td>
<td>$ (2,250)</td>
<td>$ 12,500</td>
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<td>Project Closeout &amp; Resident feedback</td>
<td>$ 6,000.00</td>
<td>$ (2,000)</td>
<td>$ 4,000</td>
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<td>Total Project Management</td>
<td>$ 44,100</td>
<td>$ 14,104</td>
<td>$ 7,876</td>
<td>$ 51,876</td>
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<tr>
<td>Phase 1 - Feasibility</td>
<td>Feasibility Study - IFR</td>
<td>$ 16,500.00</td>
<td>$ 16,500</td>
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<td>Public Meeting to present final report</td>
<td>$ 3,000.00</td>
<td>$ 3,000</td>
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<tr>
<td>Total Phase 1 - Feasibility</td>
<td>$ 20,100</td>
<td>$ -</td>
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<td>$ 20,100</td>
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<td>Phase 2 - Planning and Design</td>
<td>Water Rate Study</td>
<td>$ 10,500.00</td>
<td>$ 10,500</td>
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<tr>
<td>Develop Regulations</td>
<td>$ 4,000.00</td>
<td>$ 4,000</td>
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<tr>
<td>Total Phase 2 - Planning and Design</td>
<td>$ 14,500</td>
<td>$ -</td>
<td>$ -</td>
<td>$ 14,500</td>
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<tr>
<td>Phase 3 - Construction</td>
<td>Retirement of Scope of Work with Preferred Proposant</td>
<td>$ -</td>
<td>$ -</td>
<td>$ 2,650</td>
<td>$ 2,650</td>
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<tr>
<td>Create Contract for Turf Key Services</td>
<td>$ -</td>
<td>$ 1,300</td>
<td>$ 1,300</td>
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<td>Install metering Systems</td>
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<td>$ 45,000</td>
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<td>Selection of Installation Contractor</td>
<td>$ 7,500.00</td>
<td>$ 7,500</td>
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<td>Review of Meter installation Plan</td>
<td>$ 7,500.00</td>
<td>$ 7,500</td>
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<td>Review Contractor's Safety Documents</td>
<td>$ -</td>
<td>$ 1,160</td>
<td>$ 1,160</td>
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<td>Meter Installation</td>
<td>$ 893,750.00</td>
<td>$ 893,750</td>
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<td>Installation Oversight</td>
<td>$ 21,500.00</td>
<td>$ 21,500</td>
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<tr>
<td>Resident Communication Oversight</td>
<td>$ 3,600.00</td>
<td>$ 3,600</td>
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<tr>
<td>Total Phase 3 - Construction</td>
<td>$ 978,650</td>
<td>$ -</td>
<td>$ 5,150</td>
<td>$ 983,800</td>
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<td>Phase 4 - Completion</td>
<td>Data Collection</td>
<td>$ 156,000.00</td>
<td>$ 156,000</td>
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<tr>
<td>Data Analysis</td>
<td>$ 50,000.00</td>
<td>$ 50,000</td>
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<tr>
<td>Staff Training</td>
<td>$ 10,000.00</td>
<td>$ 10,000</td>
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<tr>
<td>Total Phase 4 - Completion</td>
<td>$ 216,000</td>
<td>$ -</td>
<td>$ -</td>
<td>$ 216,000</td>
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<tr>
<td>Total Water Metering</td>
<td>$ 1,273,550</td>
<td>$ -</td>
<td>$ 13,050</td>
<td>$ 1,286,610</td>
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<tr>
<td>Grand Total</td>
<td>$ 1,273,550</td>
<td>$ 14,104</td>
<td>$ 13,050</td>
<td>$ 1,286,610</td>
<td></td>
<td></td>
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</tbody>
</table>
9. Monthly Cost Curve

The cumulative cost as the project progresses is graphed below. Cost will begin to accumulate steadily beginning the month of December 2016.
Schedule to Complete

As seen in the table below, the 1st phase has already begun. The entire project is scheduled to be complete in December of 2017.

<table>
<thead>
<tr>
<th>WBS</th>
<th>TASK NAME</th>
<th>DURATION</th>
<th>START</th>
<th>FINISH</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Phase 1 – Feasibility</td>
<td>36 days</td>
<td>18 May '16</td>
<td>06 Jul '16</td>
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<tr>
<td>1.1</td>
<td>Feasibility Study – IFR</td>
<td>30 Days</td>
<td>18 May '16</td>
<td>28 Jun '16</td>
</tr>
<tr>
<td>1.2</td>
<td>Issue Final Feasibility Study</td>
<td>5 Days</td>
<td>29 Jun '16</td>
<td>05 Jul '16</td>
</tr>
<tr>
<td>1.3</td>
<td>Public Meeting to present final report</td>
<td>1 Day</td>
<td>06 Jul '16</td>
<td>06 Jul '16</td>
</tr>
<tr>
<td>2</td>
<td>Phase 2 – Planning and Design</td>
<td>70 Days</td>
<td>06 Jul '16</td>
<td>11 Oct '16</td>
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<td>2.1</td>
<td>Water Rate Study</td>
<td>30 Days</td>
<td>06 Jul '16</td>
<td>16 Aug '16</td>
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<tr>
<td>2.2</td>
<td>Review of RFP Text</td>
<td>10 Days</td>
<td>24 Aug '16</td>
<td>06 Sep '16</td>
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<tr>
<td>2.3</td>
<td>Develop Regulations</td>
<td>30 Days</td>
<td>17 Aug '16</td>
<td>27 Sep '16</td>
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<tr>
<td>2.4</td>
<td>Proposals Evaluation &amp; Recommendation of Award</td>
<td>10 Days</td>
<td>28 Sep '16</td>
<td>11 Oct '16</td>
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<tr>
<td>2.5</td>
<td>Feedback Action on Public Consultation #2</td>
<td>10 Days</td>
<td>27 Jul '16</td>
<td>09 Aug '16</td>
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<td>3</td>
<td>Phase 3 – Construction</td>
<td>216 Days</td>
<td>12 Oct '16</td>
<td>09 Aug '17</td>
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<td>3.1</td>
<td>Refinement of Scope of Work with Preferred Proponent</td>
<td>10 Days</td>
<td>12 Oct '16</td>
<td>25 Oct '16</td>
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<tr>
<td>3.2</td>
<td>Create Contract for Turn-Key Services</td>
<td>12 Days</td>
<td>12 Oct '16</td>
<td>27 Oct '16</td>
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<td>3.3</td>
<td>Award Implementation Contract</td>
<td>5 Days</td>
<td>02 Nov '16</td>
<td>08 Nov '16</td>
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<tr>
<td>3.4</td>
<td>Kick-Off Meeting with Turn-Key Provider</td>
<td>1 Day</td>
<td>09 Nov '16</td>
<td>09 Nov '16</td>
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<td>3.5</td>
<td>Install Reading Systems</td>
<td>10 Days</td>
<td>10 Nov '16</td>
<td>23 Nov '16</td>
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<td>3.6</td>
<td>Selection of Installation Contractor</td>
<td>10 Days</td>
<td>10 Nov '16</td>
<td>23 Nov '16</td>
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<td>3.7</td>
<td>Review of Meter Installation Plan</td>
<td>2 Days</td>
<td>24 Nov '16</td>
<td>25 Nov '16</td>
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<td>3.8</td>
<td>Develop and Submit Contractor's Safety Documents</td>
<td>5 Days</td>
<td>24 Nov '16</td>
<td>30 Nov '16</td>
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<td>3.9</td>
<td>Meter Installation</td>
<td>180 Days</td>
<td>01 Dec '16</td>
<td>09 Aug '17</td>
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<td>3.10</td>
<td>Installation Oversight</td>
<td>180 Days</td>
<td>01 Dec '16</td>
<td>09 Aug '17</td>
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<td>3.11</td>
<td>Resident Communication Oversight</td>
<td>135 Days</td>
<td>01 Dec '16</td>
<td>07 Jun '17</td>
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<td>4</td>
<td>Phase 4 – Completion</td>
<td>235 Days</td>
<td>26 Jan '17</td>
<td>20 Dec '17</td>
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<td>4.1</td>
<td>Data Collection</td>
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Project Initialization & Planning

- RFP for Rate Study and Award, Estimates, PM Plan
- Support for Feasibility Consultant
- Support for Water Rate Consultant
- Review of Water Rate Study
- Develop RFP for Turn-Key Implementation
- Issue RFP for Turn-key Implementation
- Answers to Proponents & Issuing Addenda (If any)
- Proposals Evaluation & Recommendation of Award

Manage Install:

- Review

Approval to Award Feasibility and Rate Study

- 26-07
- Approve Feasibility Study
- Approve Water Rate Study
- 11-10
- Approval to Award Supply and Installation Contract

Feasibility Study - IFR

- Issue Final Feasibility Study
- Public Meeting to present final report

Water Rate Study

- Review of RFP Text
- Develop Regulations
- Proposals Evaluation & Recommendation of Award
- Feedback Action on Public Consultation #2

Refinement of Scope of Work with Preferred Proponent

- Create Contract for Turn-Key Services
- Award Implementation Contract
- Kick-Off Meeting with Turn-Key Provider
- Install Reading Systems
- Selection of Installation Contractor
- Review of Meter Installation Plan
- Develop and Submit Contractor's Safety Documents

Delivery Action on Public Consultation #2

Meter Installatio

- Installation Over:
- Resident Communication O.
Location of Project
CLEAN WATER AND WASTEWATER FUND (CWWF)
ULTIMATE RECIPIENT AGREEMENT

This Agreement made this 23 day of Aug, 2016

BETWEEN HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND AND LABRADOR, as represented by the Minister of Municipal Affairs (hereinafter referred to as the “Minister”)

OF THE FIRST PART,

AND THE TOWN OF PORTUGAL COVE-ST. PHILIPS
(herinafter referred to as the “Ultimate Recipient”)

OF THE SECOND PART

WHEREAS The Minister and the Ultimate Recipient have agreed to enter into a municipal infrastructure agreement for the financing of Household Water Meter Installation, Project No. 17-CWWF-17-00034, hereinafter referred to as the “works”, and have agreed to cost not in excess of $1,500,000 which amounts to $1,360,252 after the GST/PST rebate calculation;

AND WHEREAS the Minister of Municipal Affairs has been authorized to negotiate an Agreement on behalf of the Province of Newfoundland and Labrador;

AND WHEREAS the Mayor and Clerk of the Town Council of Portugal Cove-St. Philips have been authorized by a Resolution in the Minutes of Council dated the 9 day of Aug, A.D., 2016 (copy of which is attached hereto as Appendix “A” and forms part of this Agreement) to enter into this Agreement on behalf of the Ultimate Recipient;

THIS AGREEMENT WITNESSETH that for and in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, and the sum of One Dollar ($1.00) now paid by each party hereto, one to the other, (the receipt and sufficiency of which are hereby acknowledged by the parties hereto), the Minister and the Ultimate Recipient hereby agree as follows:
OBLIGATIONS OF THE MINISTER:

1. To make payment to the Ultimate Recipient $272,050 representing the Provincial share and $680,126 representing the Federal share, of the eligible costs of the project as these costs are incurred and upon receipt of the required documentation.

OBLIGATIONS OF THE ULTIMATE RECIPIENT:

1. To arrange for the financing of the Ultimate Recipient’s share of $408,076.

2. To ensure that the project does not exceed the authorized funding of $1,500,000. The Ultimate Recipient will ensure that only eligible expenditures are claimed in a diligent and timely manner and the Ultimate Recipient is responsible for any unapproved expenditures and cost overruns. The costs to be covered by this funding, includes but is not limited to capital, HST and engineering.

3. To have the work completed in accordance with the Municipalities Act, 1999, c.M24, as amended, or any successor legislation, and the Public Tender Act, 1990 c.P45, as amended, or any successor legislation.

4. To indemnify and save harmless the Minister from and against all claims, demands, losses, damages, costs of any kind based upon any 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 Ultimate Recipient or its servants or agents in carrying out the project.

5. To have all work on the project concluded and final invoices submitted to the Department, not later than March 31, 2018.

6. To provide proof that the project would not have been undertaken in 2016/17 or 2017/18 without federal funding (Project Incrementality).

THE PARTIES FURTHER AGREE:

1. The Ultimate Recipient will consent to a public announcement of the project by the Provincial/Federal Governments. After official announcement of the project or 14 days after the Agreement has been signed by both parties, whichever is earlier, the project will be considered to be in the public domain. See attached Appendix C, which outlines the Communications Protocol for Clean Water and Wastewater Fund Projects.

2. Time shall be of the essence with respect to all matters in this Agreement.

3. This Agreement is executed in duplicate originals and each duplicate shall be deemed an original copy.
for all purposes.

4. The validity, interpretation and performance of this Agreement shall be governed by the laws in force in the Province of Newfoundland and Labrador.

5. This Agreement shall ensure to the benefit of and be binding upon the parties and their respective successors and assigns.

6. Any provision of this Agreement which is prohibited or unenforceable will be effective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

7. This Agreement together with the letter of approval, and the Clean Water and Wastewater Fund Project Guidelines "Appendix B" constitutes the entire Agreement between the parties with respect to the matters dealt with herein. This Agreement may not be amended or modified in any respect except by written instrument signed by the parties hereto.

8. Neither this Agreement nor any of the rights, benefits, duties and liabilities contained herein may be assigned by either party without the prior written consent of the other party.
This Agreement has been executed on behalf of the Province by the Minister responsible for the Department of Municipal Affairs and by the Mayor and Clerk of the Town of Portugal Cove-St. Philips, the day and year first before written.

**SIGNED AND SEALED** by the Minister of Municipal Affairs and the Seal of the Department was hereunto affixed in the presence of:

**WITNESS**

**MINISTER OF MUNICIPAL AFFAIRS**

**SIGNED AND SEALED** by the Mayor and Clerk of the Town of Portugal Cove-St. Philips and the Seal of the Town of Portugal Cove-St. Philips was hereunto affixed in the presence of:

**WITNESS**

**HEATHER J. COUGHLAN**
A Commissioner for Oaths in and for the Province of Newfoundland and Labrador.
My commission expires on December 31, 2021

**WITNESS**

**HEATHER J. COUGHLAN**
A Commissioner for Oaths in and for the Province of Newfoundland and Labrador.
My commission expires on December 31, 2021

**MAYOR**

**CLERK**
From the Council Minutes of August 9, 2016:

2. Clean Water and Waste Water Funding

Motion: Will/Butler 2016-268 Resolved that Council approve the Mayor and Town Clerk entering into the municipal infrastructure agreements for both the Household Water Meter installation, Project No. 17- CCWF-17-00034 in the amount of $1,500,000 and the Wastewater Treatment Plant Upgrades – Portable Sludge Drying Units, project No. 17-CWWF-00033 in the amount of $182,726.

Carried For: Bartlett/Butler/Collins/Facey/Tucker/Will
Against: Hanlon

TOWN OF PORTUGAL COVE - ST. PHILIPS
CERTIFIED TRUE COPY

SUBJECT: Infrastructure agreements 3rd Qtr
DATE: Aug. 18, 2016
TOWN CLERK: Judy [Signature]
APPENDIX "B"

DEPARTMENT OF MUNICIPAL AND AFFAIRS
CLEAN WATER AND WASTEWATER FUND
PROJECT GUIDELINES

It is essential for the Ultimate Recipient and also the municipal engineer or prime consultant to comply with the following guidelines in order for the project to be efficiently implemented, and to ensure that satisfactory cost controls are maintained.

FINANCIAL

1.1. New Project delivery timelines have been established for each stage of the capital works notification and implementation process (see table below). If a timeline target is expected to exceed this policy, Ultimate Recipient must immediately notify the Director of Municipal Infrastructure and Waste Management. Projects will be cancelled if timeline targets are exceeded – unless prior approval to extend timelines has been provided by the Director of Municipal Infrastructure and Waste Management. The Director may provide an amended timeline based on the following considerations:

1.1.1. Scope and complexity of project
1.1.2. Unanticipated environmental considerations
1.1.3. Extenuating circumstances that preclude the availability of key resources

To provide strong incentive to Ultimate Recipient’s to actively deliver projects in the shortest time possible, the Department has established timelines for project delivery associated with its infrastructure programs.

<table>
<thead>
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<th>Project Delivery Timelines</th>
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<td>Date of Ultimate Recipient notification to Date signed Agreement received at Headquarters</td>
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<tr>
<td>60 days</td>
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<tr>
<td>Date of Ultimate Recipient Notification to project completion – Project must be completed by March 31, 2018.</td>
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</table>

1.2. Funding will be provided based on Ultimate Recipient’s assurance to this Department of its ability to meet its share of the cost. The Ultimate Recipient must meet its share of principal and interest charges, and this Department will not, under any circumstances contribute by way of special grants or otherwise, any amount in excess of the approved project costs. If Ultimate Recipient’s financial position has changed so that it cannot meet its share, then Ultimate Recipient should immediately notify the Minister and this project will be required to be cancelled.

1.3. Eligible / Ineligible project costs are outlined in Appendix “D”

1.4. The Provincial payment may be advanced based on projected cash flows when project costs are
committed through a contract award. Final project payment will be based on the costs indicated in the status report and job control sheet.

1.5. Project funding has been reduced by the amount of GST/PST rebate due to the Ultimate Recipient if the full project costs are expended. The Ultimate Recipient is required to apply for the appropriate rebates. The GST/PST rebate is to be used by the Ultimate Recipient as part of the project funding. **Interim financing of the GST/PST rebate will be the responsibility of the Ultimate Recipient.**

1.6. The Ultimate Recipient may not charge more than a nominal fee sufficient to cover royalties and reasonable equipment rental rates if Ultimate Recipient equipment is used for loading material supplied from a Ultimate Recipient owned borrow pit for use on the project. This applies regardless of whether the material is supplied directly to the project or to the contractor for incorporation in the project. Approval of the Regional Engineer is required before any costs can be charged relating to this clause.

1.7. A separate capital chequing account (using pre-numbered cheque book) must be established by Ultimate Recipient at its bank to be used solely for this project.

1.8. If requested by the Department, Ultimate Recipient must submit an itemized list of all cheques issued including cheque number, date, payee and amount, together with a copy of the cancelled cheques.

**ENGINEERING & CONSTRUCTION**

2.1 Minister’s approval is required before Ultimate Recipient can engage or change a consulting engineering / architectural firm in relation to this project.

2.2 The Department will require a Request for Proposals (RFP) for professional services for municipal infrastructure projects that have a high potential of increasing the value of public funds. The Department will determine at its sole discretion whether or not a professional service RFP will be required. **When the Department has determined that a professional service RFP is required, the project funding approval will be conditional upon the Ultimate Recipient issuing an RFP for professional services.** This requirement will be identified in the funding approval letter and in the funding agreement. A public RFP will introduce a process whereby the consultant is selected by a Ultimate Recipient based on the best fit from a technical and cost perspective. Selection considerations which use cost as an evaluation factor will assist in obtaining the most cost effective service. An RFP will also aid in ensuring that appropriate expertise is employed, past performance is recognized and a competitive process is obtained.

2.3 No engineering / architectural work is to be undertaken until the Prime Consultant Agreement has been approved by the Regional Office and signed by the Ultimate Recipient and prime consultant. This agreement must indicate the services to be provided, the rates to be charged and a completion schedule. Rates charged are to be in line with the service rendered not necessarily the seniority of the engineering staff involved.
2.4 To obtain approval, the consultant must forward a copy of the proposed Prime Consultant Agreement to the appropriate Regional Engineer. After signing, the consultant must forward copies of the signed Prime Consultant Agreement to the Ultimate Recipient and the Regional Engineer. Ultimate Recipients are not to pay any engineering fees unless a signed Prime Consultant Agreement is in place. In this regard the Department will not advance any funds until they have a copy of this agreement. Engineering fees in excess of the amount approved in the Prime Consultant Agreement will not be eligible for funding unless agreed to and requested by the Ultimate Recipient and approved by the Regional Engineer.

2.5 The municipal engineer or prime consultant must liaise with the Regional Office on all aspects of the project.

2.6 The municipal engineer or prime consultant must complete the special form which the Department of Environment & Conservation requires when applying for a Permit. The Regional Engineer requires a copy of this form at the time of submission of plans and specifications for approval to tender. The municipal engineer or prime consultant’s attention is drawn to the Department of Environment & Conservation’s requirement for pre-registration of certain categories of projects.

2.7 Before construction can commence or tenders can be called; plans, specifications and a current detailed cost estimate must be submitted to the appropriate Regional Engineer. In accordance with the Municipalities Act, 1999 tenders cannot be called or contracts be awarded for any or all of this project without the approval of the Minister. The municipal engineer or prime consultant must also submit, prior to tender calls, a copy of the plans and specifications to the Ultimate Recipient and all Government departments and agencies such as, Department of Environment & Conservation, Fire Commissioner's Office, Department of Transportation & Works, and other agencies that might have jurisdiction for approval.

2.8 A copy of the signed contract documents for the construction of the project must be forwarded within one week of signing to the appropriate Regional Engineer. Contracts should be signed at the earliest opportunity. The prime consultant must notify the Regional Office of the time and location of pre-design, design, preconstruction and construction meetings in a timely manner to allow a representative of the Regional Office an opportunity to attend.

2.9 It is the responsibility of the Ultimate Recipient and its prime consultants to ensure that all easements and rights-of-way are acquired before the contract is awarded. Rights-of-way and easements, as they apply to Ultimate Recipients, are covered under Sections 167 inclusively in the Municipalities Act, 1999 and amendments.

2.10 Authority and process for the issuance of change orders are as follows; All Change orders are required to be pre-approved by the Regional Office. The Ultimate Recipient should specifically note that all costs in excess of the approved amount indicated on the “Approval to Award” letter will be 100% responsibility of the Ultimate Recipient unless written approval of the Regional Engineer is obtained prior to the expenditure of the funds.

2.11 The municipal engineer or prime consultant must submit copies of the as-built drawings within two months of substantial completion of the project, the preparation of which is to be included as one of
the engineering services in the engineering contract. Copies must be submitted to the Ultimate Recipient, the Regional Engineer and the Manager, Municipal Infrastructure and Engineering. As-built drawings and related Municipal Information System (MIMS) data must be submitted on CD in AutoCad format (Version 2000 or newer) and comply with the current version of the Department's MIMS data standards document. The Ultimate Recipient shall not delete the requirement for as-built drawings. Funds must be allocated for this vital engineering service. Tenders will not be authorized until the as-buits for the previous phase have been submitted.

2.12 Where applicable, the prime consultant must produce a system operation and maintenance manual and submit it to the Ultimate Recipient.

GENERAL ADMINISTRATION

3.1 Any extensions to a construction contract, if necessary, require the written approval of the Minister. Unless exceptional circumstances apply, extensions will not normally be approved. In the event a project is completed below the estimated amount, the savings may not be available to the Ultimate Recipient to be used otherwise. The Clean Water and Wastewater Fund Oversight Committee will deal with reallocations on a province-wide basis.

3.2 The Ultimate Recipient will be responsible for all overruns or funding commitments that exceed the approved project funding.

3.3 Utilizing the Department's online Municipal Information Management System (MSIS), the municipal engineer or prime consultant must submit status reports within 10 days of the end of each month to the Department's Regional Engineer and the Ultimate Recipient. These reports must span from the date of appointment of the consultant to the date of final completion of the project. The final status report must be marked as such. Copies of all engineering invoices, change orders, substantial performance certificates and contractor's progress payments associated with the project must also be submitted with the monthly status report. The Ultimate Recipient shall not pay engineering invoices unless the status report and has been received and also shall not pay the final engineering invoice until the as-builts are received.

3.4 Project signs must be prominently displayed near the works within the Ultimate Recipient. The signs must conform to the approved design for Clean Water and Wastewater Fund projects. Signage requirements are outlined in Section C.7 of the Communications Protocol (See Appendix C).

3.5 Projects will normally be undertaken through a public tender and contract award basis, and not on a “Project Management” basis. “Project Management” is defined as construction with Ultimate Recipient forces for the purposes of these guidelines. Only in exceptional cases will projects be authorized to proceed on a “Project Management” basis.

3.6 Those projects that have been selected to proceed through a Request for Proposal process which incorporates life cycle analysis as criteria for infrastructure selection will be required to follow
specific guidelines prepared by the Department relating to the implementation process for the particular type of infrastructure that is to be constructed.

3.7 For any new building construction that is within the limits of the project and is started after the contract has been awarded, the installation of the service laterals from the main to the building will be the responsibility of the owner. The exception is where a permit has been given and the foundation of the new building has been installed, before the water and/or sewer mains have been installed in front of the building lot, the service lateral may be installed under the contract.

3.8 All work constructed under this program must conform to the Limit of Servicing Agreement.

3.9 Please use the Department's project number on all correspondence, status reports, etc., relating to this project.
APPENDIX C – COMMUNICATIONS PROTOCOL

C.1 Purpose

a) This Communications Protocol outlines the roles and responsibilities of each of the Parties
to this Agreement, as well as those of the Ultimate Recipient, with respect to Communications
Activities related to Projects.
b) This Communications Protocol will guide all Communications Activity planning,
development and implementation with a view to ensuring efficient, structured, continuous,
consistent and coordinated communications to the Canadian public.
c) The provisions of this Communications Protocol apply to all Communications Activities
related to this Agreement and any Projects funded under this Agreement.

C.2 Guiding Principles

a) Communications Activities undertaken through this Communications Protocol should
ensure that Canadians are informed of infrastructure investments made to help improve their
quality of life and that they receive consistent information about funded Projects and their
benefits.
b) The Communications Activities undertaken to recognize federal funding will take into
account the financial value and duration of the Project(s) and the feasibility of mounting joint
Communications Activities.
c) Newfoundland and Labrador is responsible for communicating the requirements and
responsibilities outlined in this Communications Protocol to Ultimate Recipients and for
ensuring their compliance.
d) Newfoundland and Labrador will communicate to Ultimate Recipients any deficiencies
and/or corrective actions identified by Canada or by the Oversight Committee.

C.3 Joint Communications

a) Canada, Newfoundland and Labrador and the Ultimate Recipient will have Joint
Communications about the funding and status of the Project(s).
b) Joint Communications related to Projects funded under this Agreement should not occur
without the prior knowledge and agreement of all Parties and the Ultimate Recipient.
c) All Joint Communications material will be approved by Canada and will recognize
Canada’s contribution under Schedule A (Program Details) and/or the Total Financial
Assistance received for the Project(s).
d) Each of the Parties or the Ultimate Recipient may request Joint Communications. The
requestor will provide at least 15 business days’ notice to the other Parties or the Ultimate
Recipient. If the Communications Activity is an event, it will take place at a mutually agreed
date and location.
e) The requestor of the Joint Communications will provide the opportunity for the other
Parties or the Ultimate Recipient to choose to participate and choose their own designated
representative (in the case of an event).
f) Canada has an obligation to communicate in English and French. Communications products related to events must be bilingual and include the Canada word mark and other Parties’ logos. In such cases, Canada will provide the translation services and final approval on products.

g) The conduct of all Joint Communications will follow the Table of Precedence for Canada as applicable.

C.4 Individual Communications

a) Notwithstanding Section C.3 of this Communications Protocol (Joint Communications), Canada retains the right to meet its obligations to communicate information to Canadians about the Agreement and the use of funds through its own Communications Activities.

b) Each Party may include general Program messaging and Project examples in their own Communications Activities. Canada, Newfoundland and Labrador and the Ultimate Recipient will not unreasonably restrict the use of, for their own purposes, Communications Activities related to Projects funded through the Agreement and if web- or social-media based, from linking to it.

C.5 Operational Communications

Newfoundland and Labrador and the Ultimate Recipient are solely responsible for operational communications with respect to Projects, including but not limited to: calls for tender, contract awards, and construction and public safety notices. Operational communications as described above are not subject to the Official Languages Act of Canada.

C.6 Media Relations

Canada and Newfoundland and Labrador will share information promptly with the other Party should significant media inquiries be received or emerging media or stakeholder issues arise to a Project or the overall fund.

C.7 Signage

a) Canada, Newfoundland and Labrador and the Ultimate Recipient may each have signage recognizing their funding contribution to the Projects.

b) Unless otherwise agreed by Canada, Newfoundland and Labrador or the Ultimate Recipient will produce and install a sign to recognize federal funding at each Project site in accordance with current federal signage guidelines. The federal sign design, content, and installation guidelines will be provided by Canada.

c) Where the Ultimate Recipient decides to install a permanent plaque or other suitable marker with respect to the Projects, it will recognize the federal contribution and be approved by Canada.

d) Newfoundland and Labrador agrees to inform Canada of sign installations.

e) If erected, signage recognizing the federal contribution will be installed at the Project site(s) thirty (30) days prior to the start of construction, be visible for the duration of the Municipal Capital Works Agreement Page 11 of 14
Project, and remain in place until thirty (30) days after construction is completed and the infrastructure is fully operational or opened for public use.

f) If erected, signage recognizing the federal contribution will be at least equivalent in size and prominence to Project signage for contributions by other orders of government and be installed in a prominent and visible location that takes into consideration pedestrian and traffic safety and visibility.

g) The Ultimate Recipient is responsible for the production and installation of Project signage, or as otherwise agreed upon.

h) In the case of Projects where the deliverable is a document, such as but not limited to plans, reports, studies, strategies, training material, webinars, and workshops, it will clearly recognize Canada’s contribution under Schedule A (Terms and Conditions) and/or the Total Financial Assistance received for the Project(s).

C.8 Communicating With Ultimate Recipients

Newfoundland and Labrador agrees to facilitate, as required, communications between Canada and the Ultimate Recipient for Communications Activities.

C.9 Advertising Campaigns

Recognizing that advertising can be an effective means of communicating with the public, Canada and Newfoundland and Labrador may, at their own cost, organize an advertising or public information campaign related to this Agreement or eligible Projects. However, such a campaign will respect the provisions of this Agreement. In the event of such a campaign, the sponsoring Party or Ultimate Recipient will inform the other Parties or Ultimate Recipient of its intention no less than twenty-one (21) working days prior to the campaign launch.
APPENDIX “D”

Clean Water and Wastewater Fund (CWWF)

a) Objective:

The CWWF will help accelerate short term municipal investments, while supporting the rehabilitation of water, wastewater and stormwater infrastructure, and the planning and design of future facilities and upgrades to existing systems.

b) Ultimate Recipient

The following are eligible as Ultimate Recipients for funding:

i. Provinces and territories;
ii. Organizations designated by a province or territory and agreed to by Canada;
iii. Municipal or regional governments established by or under a provincial or territorial statute;
iv. Other entities providing water or wastewater services to communities as designated by Newfoundland and Labrador.

c) Stacking & Cost Sharing

The maximum federal funding to a Project, from all federal sources, will not exceed one half (50%) of the total Eligible Expenditures for that Project. If the federal Crown's total contribution towards a Project exceeds fifty percent (50%) of that Project's total Eligible Expenditures or if the Total Financial Assistance received or due in respect of the total Project costs exceeds one hundred per cent (100%) thereof, Canada may recover the excess from NEWFOUNDLAND AND LABRADOR or reduce its contribution by an amount equal to the excess.

d) Eligible Project Funding Categories

i. Water
ii. Wastewater
iii. Stormwater

e) Eligible Investments Categories

The following are eligible investments:

i. Capital projects for the rehabilitation of water treatment and distribution systems, and wastewater and storm water collection, conveyance and treatment systems;

ii. Separation of existing combined sewers and/or combined sewer overflow control;
iii. Initiatives that support system optimization and improved asset management including studies and pilot projects related to innovative and transformative technologies;

iv. Design and planning for upgrades to wastewater treatment infrastructure to meet federal regulatory requirements; and

v. New construction projects, including the construction of naturalized systems for management and treatment of wastewater and storm water, if the projects will be completed within the program timeframe.

f) Eligible Expenditures

Eligible Expenditures will include the following:

i. All costs considered by Canada to be direct and necessary for the successful implementation of an eligible Project, excluding those identified under Schedule B.1 g) (Ineligible Costs);

ii. Costs of Aboriginal consultation, and where appropriate, accommodation; and

iii. Cost incurred between April 1, 2016 and March 31, 2018.

g) Ineligible Costs

Ineligible costs include the following:

i. Costs incurred prior to April 1, 2016 and costs incurred after March 31, 2018;

ii. Costs incurred for cancelled projects;

iii. Land acquisition; leasing land, buildings and other facilities; leasing equipment other than equipment directly related to the construction of the project; real estate fees and related costs;

iv. Financing charges, legal fees and loan interest payments (including those related to easements (e.g. surveys));

v. Any goods and services costs which are received through donations or in kind;

vi. Provincial sales tax and Goods and Services Tax/Harmonized Sales Tax, for which the Ultimate Recipient is eligible for a rebate, and any other costs eligible for rebates; and

vii. Costs associated with operating expenses and regularly scheduled maintenance work.
STANDARD FORM OF AGREEMENT
BETWEEN CLIENT AND PROJECT MANAGEMENT CONSULTANT

THE TOWN OF PORTUGAL COVE – ST. PHILIP’S
PROJECT MANAGEMENT CONSULTING SERVICES RELATED TO THE WATER METERING PROJECT

Vigilant Management Inc.

Project No.: 1516
DMA Project No.: 17-CWWF-17-00034
Funding Program: Clean Water and Wastewater Fund
Approved Funding: $1,500,000
AGREEMENT

THIS AGREEMENT made at the Town of Portugal Cove – St. Philip’s, in the Province of Newfoundland and Labrador, on this 1st day of March, 2017.

BETWEEN TOWN OF PORTUGAL COVE – ST. PHILIPS (“The Client”)

AND VIGILANT MANAGEMENT INC. (“The Project Management Consultant”)

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants expressed, and as amended, the Parties agree as follows:

I. Definitions

In addition to the terms defined in the Special Terms and Conditions attached as Schedule “B”, (if any), and the General Terms and Conditions attached as Schedule “C”, the following words and phrases shall have the following meanings:

a. “Contract Documents” shall mean and include:
   i. This head agreement (the “Head Agreement”);
   ii. The Scope of Work attached as Schedule “A”;
   iii. The Special Terms and Conditions attached as Schedule “B”;
   iv. The General Terms and Conditions attached as Schedule “C”; and

b. “Representatives” mean directors, officers, employees, consultants, sub-consultants agents, advisors or partners.

II. The Project Management Consultant’s Work

The Project Management Consultant shall do all things necessary to fulfill and carry out all of the obligations of the Project Management Consultant as set out in the Contract Documents (the “Work”).
III. **Entire Agreement**

It is hereby agreed that the Contract Documents constitute the entire agreement between the parties (the "Agreement"). There are no understandings, representations or warranties of any kind except as expressly set forth herein. No changes, alterations or modifications or amendments of this Agreement shall be effective unless made in writing and signed by those persons designated for such purpose. This Agreement may be amended or otherwise modified by e-mail.

IV. **Representations and Warranties**

The Project Management Consultant hereby represents and warrants that every fact stated or represented by the Project Management Consultant or its Representatives to the Client in connection with any proposal made by the Project Management Consultant in respect of the Work is true and agrees that the Client shall be conclusively deemed to have relied on each such representation or statement in entering into this Agreement.

V. **Conflict Between Provisions**

In the event of any conflict or inconsistency between provisions in the Contract Documents, the Contract Documents shall have precedence as follows: first the Head Agreement, second the Special Terms and Conditions, third the General Terms and Conditions, fourth the Protocols for Security of Government Information on Information Technology assets of Contractors, fifth the Scope of Work, and last, any documents incorporated by reference in any of the foregoing.

VI. **Start and Completion Date**

The Project Management Consultant shall commence activities in relation to the Work with the start and completion dates mutually agreed upon as follows:

- **Start Date**: March 1, 2017
- **Completion Date**: March 31, 2018

VII. **Effective Date**

The effective date of this Agreement shall be the earlier of the start date referred to in Clause VI or the date on the first page of this Head Agreement.

VIII. **Paragraph Numbering**

In the event that the General Terms and Conditions are modified by the Special Terms and Conditions, the numbering references in the General Terms and Conditions shall remain unchanged.
IX. **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be considered an original of this Agreement, and which together will constitute one and the same instrument. No Party will be bound to this Agreement unless and until all Parties have executed a counterpart. A facsimile signature or an otherwise electronically reproduced signature of either Party shall be deemed to be an original.

**Town of Portugal Cove – St. Philip's**

[Signature]

Signing Officer

March 14, 2017

Date

[Signature]

Witness or Signing Officer

March 14, 2017

Date

**Vigilant Management Inc.**

[Signature]

Signing Officer

March 7, 2017

Date

[Signature]

Witness or Signing Officer

7- Mar-2017

Date
SCHEDULE "A"

SCOPE OF WORK
BETWEEN PROJECT MANAGEMENT CONSULTANT AND CLIENT INDEX

PART 1  DEFINITIONS........................................................................................................ 6
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Schedule I  Project Description
Schedule II  Basic and Other Additional Services Fees
Schedule III  Additional Reimbursement Expenses
Schedule IV  Project Schedule
Schedule V  Other General Requirements

Revision Date: July 14, 2016  Page 5 of 30  DMA PMCA
## PART 1

### DEFINITIONS

1.1 Additional Services: means Consulting Services provided that are additional to the Basic Services as set out in Schedules I and II.

1.2 Authorities Having Jurisdiction (AHJ): means a person or persons representing these agencies that have authority to provide plan approvals and permits for the purpose of constructing the project.

1.3 Basic Services: means Consulting Services as outlined in the scope of work defined in Schedules I and II.

1.4 Construction Budget Forecast: means the Client's estimated Construction Cost including contingencies for cost increases and taxes (HST).

1.5 Construction Cost: means the contract price(s) of all elements of the project designed or specified by or on behalf of the Project Management Consultant including, all applicable taxes. Where there is no contract price for all or part of the project, the Construction Cost shall be the elemental cost analysis using market rates at the estimated time of construction as determined by the Project Management Consultant and agreed by the Client. The Construction Cost does not include professional fees, or land acquisition costs.

1.6 Contract: means an agreement between the Client and the Contractor for the provision of labour, materials and equipment for the construction of the project or part of the project by a Contractor.

1.7 Turnkey Contractor: means a person, firm, or corporation contracting with the Client to provide labour, materials, training, communication with residents and equipment for the construction of the Project or part of the Project.

1.8 Cost Control Services: means a service to advise and monitor on Project Budget and Construction Budget Forecasts.

1.9 Master Specification: means Municipal Water, Sewer and Road Specification (a manual developed by the Department of Municipal Affairs) or Master Specification Guide for Publicly Funded Buildings (a specification developed by the Department of Transportation and Works and prepared for the purpose of presenting standards, guidelines, instructions and specifications to use in the delivery of publicly funded projects). Unless otherwise agreed between the parties, the version published on the date of the contract shall be the version applicable to the contract.

1.10 Partial Services: means Reduced Basic Services as negotiated by the Client with the Project Management Consultant.

1.11 Program Advisory Services: means Consulting Services provided by the Project Management Consultant prior to start of Basic Services.

1.12 Project Budget Forecast: means the Client's estimated total expenditure for the project. It includes the construction budget forecast and all other costs to the Client for the project such as, but not limited to, professional fees, taxes (HST) and acquisition costs.

1.13 Sub-Consultant: means Registered Professional Engineer, Architect or other specialist engaged by the Project Management Consultant or the Prime Consultant in connection with the project.

1.14 Prime Consultant: means the Consulting Firm engaged to conduct the Design Services necessary for completion of the project. This Consultant will be managed by the Project Management Consultant but will retain all technical responsibility for the project.
1.15 Project Management Consultant: means the Consulting Firm designated by the Client to work as the Owner's agent in all matters related to the project. This project may or may not avail of a Prime Consultant.

1.16 Water Rate and Feasibility Consultant: means the Consulting Firm designated by the Client to assess the project feasibility and advise on matters pertaining to the water metering system administration, like water rates and billing models.

PART 2 RESPONSIBILITIES

2.1 PROJECT MANAGEMENT CONSULTANT

.1 The Project Management Consultant's services consist of Basic Services and Additional Services which may be required to perform the Work as outlined in Schedules I, II and III.

.2 The Project Management Consultant's services as provided for under and pursuant to this Agreement at and during all phases of the work shall include the supervision of the Water Rate and Feasibility Consultant during the Feasibility and Initiation Phase and Turnkey Contractor during the Construction Phase of the Project. This includes facilitating and managing Quality Control and Inspections (carrying out Quality Control and Inspection is part of the Turnkey Contractor's scope). The Project Management Consultant shall prepare and submit contract documents in accordance with the Client's requirements, as outlined in Schedules I and IV.

.3 During the tendering and contract award phase, the Project Management Consultant may advise and assist the Client in obtaining bids and awarding construction contracts. The Department of Municipal Affairs' tendering and contract procedures and administrative practices will be followed in the performance of this phase.

.4 The Client may require the Project Management Consultant to provide construction administration services. When required the Project Management Consultant's service shall be based upon the scope of work as outlined in Schedule I of this agreement, as agreed between the Client and the Project Management Consultant.

.5 The project completion phase represents the portion of the Basic Services to be provided at the commencement of substantial completion until expiry of the one year Project warranty period. This service includes advice concerning issues arising during this period.

.6 Cost Control Services are included under the scope of Basic Services to be provided by the Project Management Consultant.

.7 The Project Management Consultant should be aware of its responsibilities under the Occupational Health and Safety Act & Regulations. Notwithstanding any obligation imposed by the Occupational Health and Safety Act & Regulations, the Project Management Consultant shall:

   a) Verify, prior to issuing approval to proceed with the work, that a contractor(s) has a safe work policy and that a site specific health and safety plan and risk assessment is in place for the project.

   b) Ensure that key onsite personnel under the employment of the Project Management Consultant have a reasonable understanding of industry accepted construction practices, including the Occupational Health and Safety Act & Regulations pertaining to the type of work being undertaken.
2.2

CLIENT'S RESPONSIBILITIES

.1 The Client shall give due consideration to documentation submitted by the Project Management Consultant and, whenever action is necessary, the Client shall inform the Project Management Consultant of the Client's decisions, in a reasonable and timely manner.

.2 The Client shall authorize persons to act on behalf of the Client with respect to delivery and administration of the project.

.3 If the Client observes or otherwise becomes aware of any fault or defect in the project or any nonconformity with the requirements of the Contract, the Project Management Consultant shall be so notified in writing.

.4 The Client may provide information regarding the project including: a program, which shall set forth the Client's spatial and functional requirements and relationships. The Project Management Consultant is responsible for facilitating information requests from the Prime Consultant that are required to prepare the design and contract documents.

.5 The Client engaged in a project shall ensure, where it is reasonably practicable for him or her to do so, that employers, workers and self-employed persons performing work in respect of that project comply with the Occupational Health and Safety Act RSNL 1990 c O-3 and regulations.

.6 The Client will provide the Project Management Consultant with a Project Budget Forecast.

.7 When the Client supplies the Project Management Consultant with information contained within reports or equipment data sheets, the Project Management Consultant will not be required to exhaustively check information supplied by the Client to verify the same unless it is requested to do so by the Client. However, if the Project Management Consultant observes, or otherwise becomes aware, of any fault or defect in the information supplied to it by the Client, the Project Management Consultant shall cause the Client to be notified in writing of any such fault or defect forthwith.

.8 Where the Project Management Consultant has been authorized by the Client to
procure or obtain information, the Project Management Consultant shall be responsible in seeing that the information provided meets the needs of the Prime Consultant performing the work.

.9 The Client will reimburse the Project Management Consultant for other specialist consultants that may be required to carry out quality control services during the project, subject to prior approval of scope of the work and an agreement on the fee or fees payable for the same by the Client.

PART 3  
GENERAL REQUIREMENTS

3.1 STAFF

.1 The Project Management Consultant will provide the Client with a list of its employees and those of its Sub-Consultants who will be assigned to the project. The list will include the classification of each employee and the hourly rate to be charged for additional services rendered. The Project Management Consultant will obtain written prior approval of Client for any replacement of key employees, changes in the numbers of key employees or changes to rates of key employees assigned to the project.

3.2 SCHEDULE

.1 The Project Management Consultant has developed and submitted a time schedule for the performance of consultant services on the project (which Schedule has been approved by the Client and is appended as Schedule IV hereto.) The Project Management Consultant will review and track the project schedule for the performance of all Consultants and Contractors engaged by the Client to be involved in the project.

.2 Unless otherwise agreed to between the parties, the failure by a party to comply with the approved schedule for those aspects of the Work that a party is responsible for may be sufficient cause for the other party to terminate this Agreement, if that failure is not rectified within seven (7) days after the defaulting party is given notice of its default.

.3 If either party believes that a change in the approved schedule is necessary the party requesting that change shall promptly give notice of that fact to the other party in writing, provide the other party with a revised schedule and the reason(s) why the change is requested for its consideration and request its written approval of the same. Should that approval be forthcoming the revised schedule will become the approved schedule for the project.

3.3 COST CONTROL

.1 The Project Management Consultant shall provide Cost Control and Reporting Services to the Client in accordance with the requirements of the Department of Municipal Affairs for project milestones and monthly project status reports.

.2 If at any time the Project Management Consultant considers its estimates indicate costs which exceed the Project or Construction Budget Forecast, the Project Management Consultant will immediately advise the Client. If the excess is due to, discretionary elements under the control of or reasonably foreseeable by the Project Management Consultant, or the negligence or default of the Project Management Consultant in the performance of this Agreement, the Client may require the Project Management Consultant to develop and execute a mitigation strategy for the project at the Project
Management Consultant's expense to bring the cost estimate within the approved Project Budget Forecast.

3.4 **CHANGES AND ADJUSTMENT**

.1 Changes and adjustment to the fees payable under this Agreement will be only considered if there is a material change in the level of services agreed to be provided or in the scope of the Project, or there is a material delay in the performance of the work required under the Contract.

.2 The amounts due to the Project Management Consultant arising from a material change to the Agreement will be determined by a negotiated fixed amount, or failing such negotiation, the actual cost as determined by level of effort incurred times the agreed hourly rate, plus receipted expenses.

.3 Any increases in the fees payable caused by a material change or other changes shall be communicated by the Project Management Consultant in writing to the Client prior to incurring such costs to permit the Client to mitigate the amount of increased costs.

3.5 **ERRORS AND OMISSIONS**

.1 The Project Management Consultant shall obtain and maintain at its sole expense all insurance required by law and as may be required by Article 6.2 of this Contract. The insurance required hereunder shall be provided at the sole expense of the Project Management Consultant or its Sub-consultant, as the case may be, and shall be in full force and effect for the full term of this Contract between the Owner and the Project Management Consultant or for such longer period as otherwise required under this Contract.

.2 The Project Management Consultant shall require by contractual obligation, and shall ensure by the exercise of due diligence, that any Consultants and Sub-consultant hired in connection with the services to be provided under this Contract, has the appropriate and adequate policies of insurance in place to cover design errors, incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work done by any such Sub-Consultant.

.3 The Project Management Consultant shall employ at all times professional and support personnel with requisite expertise and adequate numbers to assure the complete, timely and high quality performance of the obligations of the Project Management Consultant.

.4 The Project Management Consultant shall be and shall remain liable to the Owner for damages incurred by the Owner as a result of the failure of the Project Management Consultant to perform in conformance with the terms and conditions of this Contract.

3.6 **PROJECT MANAGEMENT CONSULTANT ACTIONS AND DECISIONS**

.1 The Project Management Consultant acknowledges that adequate discussion has taken place regarding the Work with the Client and that the Project Management Consultant has access to sufficient information to undertake the services contracted for within the Project Budget.

.2 The Project Management Consultant and the Client agrees to act promptly and diligently on all matters within their respective direction and control requiring an action or decision impacting the project management of the project.
If the Project Management Consultant does not promptly and diligently comply with or fails to meet the requirements of the Client, the Client may without prejudice to any other right or remedy the Client may have by giving the Project Management Consultant written notice, and without prejudice to the Client's rights at law or elsewhere in this Agreement, take all such action deemed necessary for the prompt and economical completion of the project, and/or terminate the contract.

If the Project Management Consultant does not promptly and diligently comply with or fails to meet the requirements of the Client, the Client may without prejudice to any other right or remedy the Client may have by giving the Project Management Consultant written notice, and without prejudice to the Client's rights at law or elsewhere in this Agreement, take all such action deemed necessary for the prompt and economical completion of the project, and/or terminate the contract.

3.6 INSURANCE COVERAGE

.1 The Project Management Consultant shall supply written proof of:

.1 Professional liability insurance coverage equal or greater than $250,000 per claim, $500,000 in aggregate for projects under $2 million construction value or $500,000 per claim, $1,000,000 aggregate for projects over $2 million. The Project Management Consultant shall be fully responsible for all amounts deducted from this value by the Project Management Consultant’s Insurer. This Insurance shall remain in effect until the expiry of the general contractor’s one year warranty on the project.

.2 Commercial liability insurance acceptable to the Client with a minimum limit of $1,000,000.

.2 The Insurer shall be an insurance company licensed to do business in the Province of Newfoundland & Labrador.

PART 4 BASIS OF PAYMENT SCHEDULE

4.1 The Client will pay for Program Advisory Services on the basis of an agreed fixed fee or at agreed per diem rates on the basis of approved level of effort.

4.2 The Client will pay for all other services at an agreed fixed fee on the basis of approved level of effort. The Client’s Project Budget Forecast will be made available to the Project Management Consultant to assist in the evaluation of the level of effort required.

4.3 The fee for Basic Services and Additional Services will be apportioned to the phases of service as outlined in Schedule II - “Basic Services and Other Additional Services’ Fees”.

4.4 The fee for Basic Services will also include the management and co-ordination by the Project Management Consultant and specialist consulting services as may be requested by the Client. Compensation for specialist or other consulting services will be on the basis of an agreed fixed fee for the level of effort required.

4.5 The Client will pay for inspection services during construction, as required, based on level of effort required and shall not exceed values as outlined in Schedule II. The fee amount is to include all payroll costs.

4.6 The Client will pay for construction management services, when requested, on the basis
of the level of effort required during Construction Execution based on level of effort required and shall not exceed values outlined in Schedule II.

4.7 The Client will pay for the reimbursement of the Project Management Consultant's expenses associated with the project at cost as per Schedule "C". Meals, private vehicle usage, private lodgings and other incidental expenses are included in the hourly rates.

4.8 The Client will pay for Additional Reimbursable Allowances as provided for in Schedule III - "Additional Reimbursable Allowances". These allowances require supporting documents to be provided for payment.
PROJECT DESCRIPTION

PROVIDE DESCRIPTION OF PROJECT INCLUDING:

1.0 SUMMARY:

1. Vigilant Management Inc. will act as Project Managers on behalf of the Town of Portugal Cove – St. Philip's for the Town's Water Metering Project.

2.0 GOAL:

1. To plan, execute, control, and close the project in accordance with the Project Charter, Budget and Schedule.

3.0 SCOPE OF WORK:

1. The Project Management Consultant shall complete the work and/or perform the following services:
   1. Drafting of the Project Management Consultant Agreement.
      - Coordination with DMA for refining and approval of Agreement.
   2. Create Project Charter, Milestone Schedule and budgetary estimate.
   3. Engage and Coordinate the Water Rate and Feasibility Consultant to provide the following reports:
      - Water and Wastewater Metering Feasibility Study (to include recommendations on financial and fee structure, and ownership and service regimes)
      - Water Rate Study (to include recommendations on appropriate water rates)
   4. Finalize project strategy.
   5. Review Resident Communication Plan provided by the Turnkey Contractor.
   6. Prepare RFP for meter provision and installation services. Facilitate RFP submission evaluation, provide recommendation to Client for successful respondent.
   7. Assistance to Town for design and installation of project signage.
   8. Monthly status reports through MSIS system.
      - Weekly meetings with Turnkey Contractor.
      - Weekly updates to Town.
      - Facilitation of public information and progress sessions.
      - Confirmation of Turnkey Contractor Quality Control processes and inspections.
   10. Project close out and follow up.

4.0 DELIVERABLES:

1. The Project Management Consultant shall complete the work and/or perform the following services:
   1. Project Management and Consultant Agreement.
   2. Project Charter
   3. Milestone Schedule
   4. Resident Communication Plan
   5. RFP for meter provision and installation services
   6. Weekly updates to Town
   7. Monthly status reports through MSIS system
SCHEDULE II
(Town of Portugal Cove – St. Philip’s Water Metering Project)

BASIC AND OTHER ADDITIONAL SERVICES FEES

1.1 Basic Services

.1 Project initiation and planning
   a. Engage stakeholders to define project scope
   b. Conduct research on metering technologies and methodologies
   c. Project Class D estimate
   d. Creation of Project Charter
   e. Creation of Project Plan
   f. Assistance to the Town with Community Engagement
   5,175.00

.2 Project management and procurement
   a. Management of Feasibility Stage
      i. Procurement of Water Rate and Feasibility Consultant
      ii. Refine project estimates
      iii. Assistance to Town on managing resident feedback
   b. RFP Management
      i. Creation and issuing of RFP document
      ii. Managing approvals with DMA
      iii. Evaluation of proposals received
      iv. Recommendation of Award
   7,050.00

.3 Support for Water Rate and Feasibility Consultant
   a. Gathering of information needed by the consultant in both phases of their scope of work
   b. Attending and facilitating meetings with Town Staff, Town Council and Public Information Meeting
   c. Detailed review of deliverables produced by consultant
   10,825.00

.4 Contract administration
   a. Review of progress claims
   b. Review of contracts created under the project
   c. Cost Control reporting including monthly status reports
   2,270.00

.5 Project reporting
   a. Status Reports to DMA
   b. Status Reports to Town
   c. Weekly site reports as installation progresses
   8,545.00

.6 Design and coordination of project sign
   a. Create and coordinate installation of project signage at the Town Hall
   1,035.00

.7 Manage meter installation and resident communication
   a. Oversee installation and implementation
   b. Oversee Turnkey Contractor’s Safety practices
   c. Oversee Turnkey Contractor’s Quality Control
   d. Record installations progress
   e. Support the Town with residents’ feedback
   f. Facilitate progress meetings
   g. Attend Public Information meetings
   14,750.00

.8 Project closeout & resident feedback
   a. Coordinate information exchange between all stakeholders
   b. Create project closeout report including warranty
   6,000.00
SCHEDULE IV
PROJECT SCHEDULE

Enter Time/Milestone Schedule for Project including Consultant Services

<table>
<thead>
<tr>
<th>MILESTONE</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feasibility Study Complete</td>
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</tr>
<tr>
<td>Public Consultation Meeting #2</td>
<td>07-Sep-16</td>
</tr>
<tr>
<td>Cabinet Approval to Issue RFP</td>
<td>31-Mar-17</td>
</tr>
<tr>
<td>Issue Turn-Key Contractor RFP</td>
<td>1-May-17</td>
</tr>
<tr>
<td>RFP Closing Date</td>
<td>19-May-17</td>
</tr>
<tr>
<td>Water Rate Study Complete</td>
<td>17-July-17</td>
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<tr>
<td>Implementation Start</td>
<td>06-June-17</td>
</tr>
<tr>
<td>Reading Systems Installation Complete</td>
<td>18-July-17</td>
</tr>
<tr>
<td>Start Installing Meters</td>
<td>26-July-17</td>
</tr>
<tr>
<td>Start Data Collection</td>
<td>20-Sept-17</td>
</tr>
<tr>
<td>Implementation Complete</td>
<td>31-March-18</td>
</tr>
</tbody>
</table>
1.1 **Attach the following:** Organizational Chart

![Organizational Chart]

- DMA (Funding Partner)
- Town of Portugal Cove-St. Philip’s (Client)
- Project Management Consultant
  - Grant Horwood, P.Eng., Project Director
  - John Olivera Jr., Project Manager
- G. A. Isenor (Water Rate and Feasibility Consultant)
- Prime Consultant (if any – to be determined)
- Turnkey Contractor (to be determined)
SCHEDULE “B”
SPECIAL TERMS AND CONDITIONS (as necessary)

All Special Terms and Conditions must be reviewed by both the Department of Municipal Affairs and Department of Justice, Government of Newfoundland and Labrador.

Enter Special Terms and Conditions

1. No Special Terms and Conditions
SCHEDULE “C”

GENERAL TERMS AND CONDITIONS

Article - 1.  PAYMENT

1.1 Consideration

It is agreed and understood that payments made for the satisfactory performance of the Work pursuant to this Agreement shall be made in accordance with either Option 1, 2 or 3 below.

Payment Option #1  □  Selected Option

Subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Project Management Consultant, for the satisfactory performance of the Work, Insert text dollar value ($   ) (plus HST) in accordance with the following payment schedule:

(i)  Schedule II

Payment Option #2  ☒  Selected Option

Subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Project Management Consultant, for the satisfactory performance of the Work, the following time rate schedule for activities actually expended in performance of the Work (plus HST):

(i)  Sr. Project Manager/Project Director –$145/hour
(ii) Project Manager – $125/hour
(iii) Junior Project Manager –$100/hour
(iv) Project Coordinator/Quality Inspector - $100/hour

Payment Option #3  □  Select Option

Subject to Article 1.3, upon the satisfactory completion of the Work and the presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Project Management Consultant, Insert text dollar value ($   ) (plus HST), the absolute limit on Cost of Services (plus HST).

1.1 Reimbursement of Expenses

It is agreed and understood that reimbursements for the Project Management Consultant's expenses pursuant to this Agreement shall be made in accordance with either Option A and/or B or C below.
Reimbursement Option A  □ Select Option

The Client shall only be responsible for the following mutually agreed expenses to be incurred by the Project Management Consultant; such as travel, meals, accommodations, printing and duplicating, courier, long distance telephone, cell phones, facsimile charges, etc. at the agreed fixed fee in the amount of $ . This amount must be included in Schedule II on the line entitled "Project Management Consultant Project Expenses for Above Services".

(i) Enter Specific Reimbursable Items

Reimbursement Option B  ☑ Selected Option

The Client shall only be responsible for the following reimbursable expenses, payable at cost, provided the Project Management Consultant can demonstrate to the Client that such expenses were incurred in relation to the Work, and that documentation, satisfactory to the Client, is provided in support of the reimbursable expense claimed and is attached to the applicable invoice, including for example, originals of supporting receipts, invoices or statements issued by non-parties to this Agreement. This amount is estimated at $ 1,000.00 and must be included in Schedule II on the line entitled "Project Management Consultant Project Expenses for Above Services".

i) Out of Town Travel, including mileage, meals, accommodations, etc.
ii) Courier for transmittals outside regular Scope of Work
iii) Expenses out of the Scope of Work previously agreed to between the Project Management Consultant and the Client

Reimbursement Option C  □ Selected Option

The Client shall not be responsible for any expenses incurred by the Project Management Consultant, including, without limitation, out of pocket expenses such as travel, meals, accommodations, legal advice, support staff, printing and duplicating, courier, long distance telephone and/or facsimile charges, without the prior written approval of the Client.

All claims submitted for reimbursable expenses in accordance with this Article 1.2 shall be reimbursed at rates not to exceed those established by Treasury Board pursuant to the guidelines and policies of the Client even if such rates are lower than the actual costs incurred by the Project Management Consultant.

1.2 Payment General

(a) Regardless of the payment option selected in Article 1.1 and/or 1.2, the Parties agree and confirm that total amounts payable for the Work shall not exceed a monetary ceiling of sixty-five thousand one hundred and forty-seven dollars and fifty cents ($65,147.50)
(b) The Project Management Consultant shall remain obligated to complete the Work notwithstanding that the actual costs of the Project Management Consultant, whether in respect of professional services or in respect of costs or expenses incurred, may exceed the total aggregate sum set out in Article 1.3(a).

(c) The Parties agree and confirm that as set out in section 25(6) of the Financial Administration Act, RSNL 1990 cF-8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.

(d) Payment will be made within 60 calendar days of receipt of a properly documented invoice. The Client shall within thirty (30) days of the execution of this Agreement should the Project Management Consultant request the same provide direction to the Project Management Consultant as to what constitutes a properly documented invoice.

(e) All invoices shall clearly show the amount of HST billed by the Project Management Consultant as a separate item.

(f) The Project Management Consultant shall conform to any request that may be made by the Client to alter the form of invoice customarily used by the Project Management Consultant as may be reasonably required for the purposes of the Client's internal accounting systems. The Project Management Consultant agrees that each invoice shall clearly show and identify the work or service which is being charged under that invoice to the Client. The invoice shall have appended thereto any documentation required by the Client.

(g) The Client shall not be responsible to pay any amounts invoiced by the Project Management Consultant which may arise from work, services or expenses incurred to remedy errors or omissions in the Work for which the Project Management Consultant is responsible.

(h) The Project Management Consultant shall submit invoices to the Client:

Chris Milley, Town Manager
Town of Portugal Cove – St. Philip’s
1119 Thorburn Road
Portugal Cove – St. Philip’s, NL
A1M 1T6

Article - 2. INFORMATION SUPPLIED BY THE CLIENT

2.1 The Client will furnish to the Project Management Consultant all available information necessary for the performance of the Work. The Client makes no guarantee either expressed or implied as to the accuracy of the information supplied. The Project Management Consultant shall review the information for accuracy and applicability.

2.2 Where discrepancies, omissions or obscurities in the information are evident, the Project Management Consultant shall bring them to the attention of the Client and secure written instructions from the Client before proceeding with any work.

Article - 3. CONFIDENTIALITY, MATERIALS AND COPYRIGHT

3.1 For the purposes of this Article “Confidential Information” means:

(a) all communications and instructions from the Client respecting the Services, including the fact of this Agreement;

(b) all information acquired by the Project Management Consultant, the Project Management Consultant’s employees, servants and/or agents respecting policy
consideration and development, business decisions, internal deliberations, discussions and considerations and any other aspect of the decision-making process of the Client;

(c) all oral, written, electronic, and machine readable information and data and any accompanying supporting materials and documentation, including without limitation, materials, documents, reports, databases, information and data of whatever nature and kind concerning the affairs of the Client, disclosed directly or indirectly to the Project Management Consultant, the Project Management Consultant's employees, servants and/or agents during the performance of the services or in any way related thereto;

(d) all personal information, as defined from time to time under the Access to Information and Protection of Privacy Act, SNL 2002 cA-1.1, to mean recorded information about an identifiable individual, including,

(i) the individual's name, address or telephone number,
(ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,
(iii) the individual's age, sex, sexual orientation, marital status or family status,
(iv) an identifying number, symbol or other particular assigned to the individual,
(v) the individual's fingerprints, blood type or inheritable characteristics,
(vi) information about the individual's health care status or history, including a physical or mental disability,
(vii) information about the individual's educational, financial, criminal or employment status or history,
(viii) the opinions of a person about the individual, and
(ix) the individual's personal views or opinions

for any individual, which is, directly or indirectly, disclosed to or collected by the Project Management Consultant, the Project Management Consultant's employees, servants and/or agents during the performance of the Services or in any way related thereto;

(e) all information that is developed based upon Confidential Information including the work product of the Project Management Consultant, the Project Management Consultant's employees, servants and/or agents;

(f) Confidential Information shall not include any information which:

(i) at the time such information was provided to the Project Management Consultant was or thereafter became part of the public domain through no act or omission of the Project Management Consultant or the Project Management Consultant's Representatives; or

(ii) is information which the Project Management Consultant can show possession of prior to the date of this Agreement and which was received or developed by the Project Management Consultant free of obligations of confidentiality to the Client.

3.2 The Project Management Consultant shall treat all Confidential Information acquired by the Project Management Consultant in the performance of the Services as privileged and confidential and shall not divulge the same to any person or persons at any time without the express written approval of the Client, unless required to do so by law, which may include any subpoena or other similar process or in connection with litigation, arbitration or other proceeding or by virtue of an act or regulations. In the event that such disclosure is required,
the Project Management Consultant shall give the Client prompt notice of the requirement upon becoming aware that such disclosure is required. Where circumstances do not permit the Project Management Consultant to provide such notice prior to disclosure, the Project Management Consultant shall provide such notice to the Client immediately after the required disclosure.

3.3 The Project Management Consultant shall only use the Confidential Information acquired in the performance of the Services for the purposes specified in the Scope of Work and this Agreement, and shall not permit the use of the Confidential Information for any other purposes.

3.4 All materials, data, designs, plans, drawings, specifications, research, reports, notes, estimates, summaries, calculations, surveys, papers, completed work, and work in progress and such other information and materials or parts thereof as are compiled, drawn and produced by the Project Management Consultant in performing the Services, including without limitation computer printouts and computer models and all copyrights thereto and all patents, trademarks and industrial designs arising therefrom are the sole and exclusive property of the Client and the contents thereof are privileged and confidential. Nothing in this Agreement shall give the Project Management Consultant a right, however arising, to assert any lien, claim, demand, property right, remedy or security right of any kind over the information provided to the Project Management Consultant pursuant to the terms of this Agreement. The Project Management Consultant acknowledges that the Client's right to this information shall at all times be paramount to any rights of the Project Management Consultant, at law or in equity, and that the Project Management Consultant's remedies against the Client for the Client's breaches under this Agreement do not include the right to deprive the Client of access to the Client's information in the Project Management Consultant's possession.

3.5 The Project Management Consultant shall provide to the Client and solely to the Client upon completion of the Services or upon earlier termination of this Agreement all Confidential Information acquired during the performance of the Services, or shall, at the request of the Client, destroy any and all copies and versions of the Confidential Information in the possession of the Project Management Consultant, the Project Management Consultant's employees, servants and/or agents, and shall certify the destruction of same to the Client. However, nothing in this Agreement shall preclude the Project Management Consultant's privilege to retain copies of documents provided to it or prepared by it in connection with the Work, provided such documents are kept in a secure manner, are used by the Project Management Consultant solely for the purposes of defending itself against claims arising from the Work of the Contract, and that the aforesaid documentation is destroyed or returned to the Client at the end of all limitation periods for commencing any action in connection with the Work or upon the conclusion or settlement with finality of any claim or action with respect to the Work.

3.6 The Project Management Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Project Management Consultant, the Project Management Consultant's employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the Access to Information and Protection of Privacy Act, the Management of Information Act, SNL 2005, cM-1.01, and the Privacy Act, RSNL1990 cP-22, as well as other legislation which may apply in the jurisdiction of the Project Management Consultant's operation. The Project Management Consultant is responsible to ensure the compliance with and satisfaction of the legislative requirements of all such information relating to the treatment of Confidential Information by the Project Management Consultant, and the Project Management Consultant's employees, servants and/or agents.

3.7 The Project Management Consultant shall ensure that it, and the Project Management Consultant's employees, servants and/or agents have in place and follow the appropriate
systems, processes, protocols and policies to maintain the physical and electronic security of all Confidential Information, including but not restricted to the following:

(a) at a minimum, using the same level of physical and electronic security as the Project Management Consultant employs to avoid disclosure or dissemination of the Project Management Consultant's own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of the Project Management Consultant's employees, servants or agents other than those who are required to have access to the same to properly perform the services under this Agreement;

(b) establish and maintain security policies, standards and safeguards to prevent unauthorized access, collection, use, disclosure or disposal of the Confidential Information;

(c) ensure all employees, servants and/or agents of the Project Management Consultant comply with all policies, standards and safeguards established under this Article;

(d) advise the Client of any changes in the Project Management Consultant's security systems, procedures, standards and practices that may affect the Confidential Information and seek the Client's consent prior to such changes; and

(e) satisfaction of the foregoing commitments includes, but is not restricted to, compliance with the requirements set out in Schedule "D", unless otherwise advised by the Client, and this includes:
   (i) complying with all alterations or updates of Schedule "D" as may be provided to the Project Management Consultant from time to time; and
   (ii) adhering to any additional instructions (including oral instructions) from the Client as they relate to the subject matter contained in Schedule "D" and this Article.

3.8 The Project Management Consultant shall only disclose Confidential Information to persons other than the Project Management Consultant's employees, servants and/or agents with the prior written consent of the Client, and then only to those persons who need to know the information in order to carry out the duties associated with this Agreement and only after confirming that such persons agree to comply with the provisions of this Article including the requirements set out in Schedule “D”.

3.9 The Project Management Consultant shall:

(a) notify the Client promptly of any unauthorized possession, use or knowledge, or attempt thereof, of the Client's information in the possession of the Project Management Consultant, including but not limited to data processing files, transmission messages or other confidential information by any person or entity which may become known to the Project Management Consultant; promptly furnish to the Client full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Client in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information;

(b) use reasonable efforts to cooperate with the Client in any litigation and investigation against third parties deemed necessary by the Client to protect its proprietary rights;

(c) promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information; and

(d) refer to and follow the privacy breach protocol of the Government of Newfoundland and Labrador as it exists at the time of the breach and located on the Department of Justice website at: [http://www.justice.gov.nl.ca/just/info/privacybreach.html](http://www.justice.gov.nl.ca/just/info/privacybreach.html)
Article - 4. EMPLOYEES OF THE PROJECT MANAGEMENT CONSULTANT

4.1 The Project Management Consultant shall provide employees who are competent in their field of specialization. The Client will have the right to have the Project Management Consultant remove from the Work any person, who by misconduct or by failure to properly perform his/her duties is considered by the Client to be unfit for employment on the Work. If the Project Management Consultant fails to remove any unfit person from the Work as requested by the Client, then the Client may void this Agreement or refuse to accept subsequent Work in which the person concerned was involved and may refuse to approve payment for such Work.

4.2 The Project Management Consultant shall not alter, remove or replace the employees or Representatives indicated in the Scope of Work without prior written approval by the Client.

Article - 5. ACCESS TO FACILITIES

5.1 The Client agrees to provide, access to the project site for the Project Management Consultant to perform the Work during Client office hours.

5.2 When using or accessing the premises of the Client, the Project Management Consultant and all officers, employees and agents of the Project Management Consultant shall comply with all security regulations and workplace policies and procedures in effect from time to time at the Client's facilities.

Article - 6. RECORDS AND AUDIT

6.1 The Project Management Consultant shall keep records, books of account and supporting documents in accordance with accepted accounting procedures and practices. The records shall be made available to the Client or its authorized representative for observation or audit at mutually convenient times and up to one year after discharge of this Agreement.

6.2 The Project Management Consultant shall furnish reports as required by the Client for the purpose of monitoring the progress of the Work.

Article - 7. TERMINATION

7.1 This Agreement is deemed to be concluded once the Work has been completed to the satisfaction of the Client and the payment(s), as stipulated in the Agreement, has been issued to the Project Management Consultant.

7.2 Notwithstanding the provisions of this Agreement, either of the Parties may at any time by way of fourteen (14) days written notice to the other, terminate this Agreement.

7.3 Where this Agreement is terminated prior to the mutually agreed upon completion date, the Project Management Consultant shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Work completed up to the date of termination, provided however, that the Project Management Consultant shall not be entitled to any other payment in respect of such termination, including, without prejudice to the generality of the foregoing, any payment for any consequential loss or damage or loss of profits arising from termination of this Agreement or in any other way related thereto.

The Client shall retain the right of set off with respect to any earned but unpaid proceeds then owing pursuant to this Agreement.
Article - 8. NOTICES

8.1 All notices, claims, payments, reports and other communications required under this Agreement shall be in writing. The addresses for service are as follows:

For the Client:
Chris Milley, Town Manager
Town of Portugal Cove – St. Philip's
1119 Thorburn Road.
Portugal Cove – St. Philip's, NL
A1M 1T6
Phone: (709) 895-8000
Fax: (709) 895-3780
Email: chris.milley@pcsp.ca

For the Project Management Consultant:
Grant Horwood, Vice-President
P.O. Box 50064
Paradise, NL
A1L 0J2
Phone: (709) 782-5950
Fax: (709) 782-5951
Email: grant@vigilantmanagement.ca

Notices, requests or documents shall be deemed to have been received by the addressee as follows:
(a) As of the date on which they are delivered where delivery is by a party or by messenger or special courier service;
(b) As of the date on which they are sent where delivery is by telex or other means of electronic communication; and
(c) Six (6) days after delivery to Canada Post Corporation where the postal service is used.

Article - 9. LIABILITY

9.1 The Project Management Consultant agrees that in performance of the Work neither the Project Management Consultant nor any Project Management Consultant's Representative shall be or be deemed to be an officer, servant, agent or partner of the Client.

9.2 The Client shall not be liable for, and the Project Management Consultant shall indemnify and save harmless the Client and the Client's Representatives against all losses, costs, charges, or expenses incurred by the Client and its agents as a result of actions, claims or awards for compensation at law, equity or under any applicable legislation, made or brought by, against, suffered by or imposed upon the Client, or its Representatives by a third party, as a result of or related to the negligence or default of the Project Management Consultant under this Agreement, including the negligence or default of any Sub-Consultant chosen by the Project Management Consultant. Except to the extent that such losses, costs, charges or expenses as are referenced in this clause are caused by the negligence or default of the Client under this Agreement, the Project Management Consultant shall defend any and all such actions and pay all legal charges, costs and other expenses arising therefrom. Where the Project Management Consultant fails to defend such an action, the Client may at its own discretion retain its own solicitors to defend its interests in any such suit or claim, and the legal costs of that defense shall be paid by the Project Management Consultant.
Article - 10. COMPLIANCE WITH LAW

10.1 In respect of any work within the Province of Newfoundland and Labrador connected with or arising from this Agreement, the Project Management Consultant shall provide (where requested by the Client) evidence of compliance with all requirements of the Province of Newfoundland and Labrador with respect to Worker's Compensation and or Occupational Health and Safety, including without limitation, any payments or compliance orders due or issued thereunder.

10.2 The Project Management Consultant shall ensure that the Project Management Consultant and its Representatives comply with all requirements of any governing federal, provincial or municipal legislation, by-laws or regulations applicable to the Project Management Consultant or the Project Management Consultant's Representatives in the performance of the Work.

Article - 11. ARBITRATION

11.1 In the case of a dispute arising between the Client and the Project Management Consultant as to their respective rights and obligations under this Agreement, the parties shall first attempt to resolve all matters through friendly negotiation by a meeting between their representatives upon notice per Article 8. A resolution reached in this way must be reached within 10 days of both parties having knowledge and notice of the dispute and be reduced to writing.

11.2 In the case of a dispute arising between the Client and the Project Management Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Article 11.1), either party may give the other notice of such dispute and request third party mediation thereof.

11.3 Should the parties not agree to third party mediation or the matter in dispute between the parties not be resolved by mediation, then in the case of a dispute arising between the Client and the Project Management Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Articles 11.1 and 11.2), either party may give the other notice of such dispute and request arbitration thereof. If both parties agree, the parties shall, with respect to the particular matters then in dispute, submit the same to arbitration in accordance with the provisions of the Arbitration Act, RSNL 1990 cA-14, including such provisions for the appointment of arbitrators.

Article - 12. LAWS GOVERNING

12.1 This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Newfoundland and Labrador and all actions, suits or proceedings arising out of this Agreement shall be determined in a court of competent jurisdiction in Newfoundland and Labrador subject to any right of appeal.

Article - 13. USE OF WORK

13.1 The Client shall have the right to use the Work or variations thereof in other operations of the Client.

13.2 With respect to 13.1 the Project Management Consultant's liability to the Client for and in respect of the Work is solely limited to the project described in this Agreement.
Article - 14. CONFLICT OF INTEREST

14.1 No member of the House of Assembly of the Province of Newfoundland and Labrador shall be admitted to any part or share of the payments made pursuant to this Agreement or to any benefits arising therefrom.

14.2 The Project Management Consultant and the Project Management Consultant's Representatives:
   (a) shall conduct all duties related to this Agreement with impartiality;
   (b) shall not influence, seek to influence, or otherwise take part in a decision of the Client, knowing that the decision might further their private interests;
   (c) shall not accept any commission, discount, allowance, payment, gift, or other benefit that is connected, directly or indirectly, with the performance of any duties related to this Agreement, that causes, or would appear to cause, a conflict of interest; and
   (d) shall have no financial interest in the business of a third party that causes, or would appear to cause, a conflict of interest in connection with the performance of any duties related to this Agreement.

Article - 15. SUB-CONTRACTORS

15.1 The Project Management Consultant shall not sub-contract all or a portion of the Work without the prior written approval of the Client which consent will not be unreasonably withheld.

15.2 The entry into any sub-contract shall not relieve the Project Management Consultant of any of its obligations under the terms of this Agreement.

Article - 16. GENERAL

16.1 Articles 3 and 9 of this Agreement shall survive the termination or expiration of this Agreement.

16.2 Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations is delayed, hindered, or prevented by force majeure. Force majeure shall be any cause beyond the control of the parties hereto which they could not reasonably have foreseen and guarded against.

16.3 Time shall be of the essence of this Agreement.

16.4 The failure of the Client to insist upon or enforce in any instance strict performance by the Project Management Consultant of any of the terms of this Agreement or to exercise any rights herein conferred shall not be construed as a waiver or a relinquishment to any extent of the Client's right to assert or rely upon any such terms or rights on any future occasion.

16.5 If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, such invalidity or unenforceability shall attach only to such provision, and all other provisions hereof shall continue in full force and effect.

16.6 The division of this Agreement into Articles and Clauses and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.

16.7 This Agreement shall ensure to the benefit of and be binding upon the Parties hereto, their respective heirs, legal representatives, successors and assigns.

16.8 The Project Management Consultant shall not assign this Agreement in whole or in part to
any third party without the prior written approval of the Client.
SCHEDULE D
Protocols for Security of Government Information on Information Technology Assets of Contractors

The Project Management Consultant should confirm with the Client and Department of Municipal Affairs whether the Project Management Consultant will be required to use information technology resources, including computers, of the Client or Government of Newfoundland and Labrador in the conduct of the work under the Contract. The following requirements apply where the Project Management Consultant will not be using such assets, but will instead have access to confidential information (including personal information) ("Confidential Information") received from the Client or Government of Newfoundland and Labrador ("Government") and will be storing, manipulating or accessing that Confidential Information on the Project Management Consultant's own information technology resources.

- All portable storage devices or media (e.g., flash drives, memory sticks, portable hard drives, writeable compact discs or digital video discs, etc.) may only be used to transport and/or store Confidential Information where either the Confidential Information or the device or media is encrypted.
- Unless specifically authorized by the Project Management Consultant’s Contract or otherwise, the Project Management Consultant is not permitted to attach non-government computers or other information technology systems to any Client or Government network.
- The Project Management Consultant is expected to implement and maintain up to date versions of all ordinary business software for the reasonable protection of information on computers attached to the Internet which will have access to or store Confidential Information, including security firewall and anti-viral software.
- The Project Management Consultant is not permitted to use any Peer to Peer file sharing program (e.g., Limewire, etc) or chat program (e.g., MSN, Skype) on any information technology asset which will contain Confidential Information, or which will be connected via a network to any computer which will contain Confidential Information.
- Email should not be used as a method to transmit Confidential Information across public networks such as the Internet unless the e-mail and/or its attachments are encrypted or zipped in a secure manner.
- Where a Project Management Consultant will be granted access to the Client or Government computer network during the course of the work, in addition to the requirements noted above, the Project Management Consultant shall not:
  - Share personal computer drives or folders on a computer accessing the network; or
  - Access the network remotely, either through wired or wireless connections, except through the use of secure ID and virtual private network systems.
- These requirements apply to the Project Management Consultant and all employees, servants and/or agents or permitted Sub-Consultants of the Project Management Consultant, and it is the responsibility of the Project Management Consultant to ensure that all such employees, servants and/or agents or permitted Sub-Consultants are aware of these restrictions and are in compliance herewith.
- For the purposes of Schedule D, routine exchanges of design and construction information between the Client, the Project Management Consultant and the Project Management Consultant’s Sub-Consultants that is of a non-confidential nature need not be encrypted.