March 21, 2019

Dear [Redacted]

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act, 2015 [Our File #: MAE/052/2019]

On March 8, 2019, the Department of Municipal Affairs and Environment received your request for access to the following records/information:

"Prime Consultant Agreement between Harris & Associates and the Town of Heart’s Content for upgrades to the water intake."

I am pleased to inform you that a decision has been made by the Deputy Minister for the Department of Municipal Affairs and Environment to provide access to some of the requested information.

However, certain text contained within the records has been refused in accordance with the following exceptions to disclosure, as specified in the Access to Information and Protection of Privacy Act, 2015 (the Act):

"35. (1) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose

(d) information, the disclosure of which could reasonably be expected to result

in the premature disclosure of a proposal or project or in significant loss or gain to a third party;

"39. (1) The head of a public body shall refuse to disclose to an applicant information

(a) that would reveal

(ii) commercial, financial, labour relations, scientific or technical information

of a third party;

(b) that is supplied, implicitly or explicitly, in confidence; and

(c) the disclosure of which could reasonably be expected to

(iii) result in undue financial loss or gain to any person

"40. (1) The head of a public body shall refuse to disclose personal information to an

applicant where the disclosure would be an unreasonable invasion of a third

party’s personal privacy."
As required by 8(2) of the Act, we have severed information that is unable to be disclosed and have provided you with as much information as possible. In accordance with your request for a copy of the records, the appropriate copies have been enclosed.

The Access to Information and Protection of Privacy Act requires us to provide an advisory response within 10 days of receiving the request. As this request has been completed prior to day 10, this letter also serves as our Advisory Response.

Please be advised that you may appeal this decision and ask the Information and Privacy Commissioner to review the decision to provide partial access to the requested information, as set out in section 42 of the Act (a copy of this section of the Act has been enclosed for your reference). 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. Your appeal should identify your concerns with the request and why you are submitting the appeal.

The appeal may be addressed to 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 (a copy of this section of the Act has been enclosed for your reference).

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 709-729-7183 or by e-mail at rycollins@gov.nl.ca.

Sincerely,

Ryan Collins
ATIPP Coordinator
Municipal Affairs and Environment

Enclosures
Access or correction complaint

42. (1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52(1) or 53(1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to

(a) a request that is disregarded under section 21;

(b) a decision respecting an extension of time under section 23;

(c) a variation of a procedure under section 24; or

(d) an estimate of costs or a decision not to waive a cost under section 26.

(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.
Direct appeal to Trial Division by an applicant

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner’s refusal under subsection 45(2).
TOWN OF HEART'S CONTENT
WATER SUPPLY INTAKE UPGRADING & REPLACEMENT
PN 17-103 (MA 17-SCF-19-00110)
PRIME CONSULTANT AGREEMENT

Harris & Associates Ltd.
Consulting Engineers • Project Managers
STANDARD FORM OF AGREEMENT
BETWEEN CLIENT AND PRIME CONSULTANT

TOWN OF HEART'S CONTENT
WATER SUPPLY INTAKE UPGRADING
& REPLACEMENT

Harris & Associates Limited

Project No.: 17-103
DMA Project No.: 17-SCF-19-00110
Funding Program: Small Communities Fund
Effect with Lloyd's Underwriters (hereinafter called "The Insurer") through Lloyd's Approved Coverholder (hereinafter called "The Coverholder"):  
Linx Underwriting Solutions Inc., 600 Alden Road, Markham, Ontario L3R 0E7  
Insurance Broker: Aon Reed Stenhouse Inc. 125 Kelsey Drive, Suite 100, St. John's, NL A1B 0L2  
Telephone: 709.739.1000

**Declarations**

In consideration of the premium stated, the Insurer(s) will indemnify the Insured in accordance with the terms and conditions of this Policy and attached forms and endorsements. Insurance is provided for only those coverages for which forms and endorsements are attached and specific amounts of insurance are stated.

**Insured and Policy Information**

<table>
<thead>
<tr>
<th>Named Insured</th>
<th>Harris &amp; Associates Limited</th>
</tr>
</thead>
</table>
| Mailing Address           | 48 Crowdy Street, P. O. Box 699  
                           | Carbonear, NL  
                           | A1Y 1C2 |
| Policy Status             | Renewal                     |
| Policy Period             | April 21, 2018 – April 21, 2019 |
|                           | both days at 12:01 a.m. Standard Time at the address of the Named Insured as stated herein |
| Premium                   | $15,230.00                  |
| Minimum Retained Premium  | Nil                         |

**Professional Services and Activities**

Civil Engineering Services and as more fully described in the application and attachments.

**PLEASE READ ALL DOCUMENTS**

This Policy is issued and accepted subject to the following provisions, stipulations and conditions which form part of this Policy, together with other provisions, agreements, or conditions which may be endorsed or added.

---

Linx Underwriting Solutions Inc.

April 26, 2018

Date

Issued at Markham, Ontario

For Aon's Privacy Policy, please refer to: http://www.aon.com/about-aon/attachments/canada_privacy_en.pdf

THE POLICY CONTAINS A CLAUSE(S) THAT MAY LIMIT THE AMOUNT PAYABLE
Insurer
Lloyd's Underwriters

Interest
100%

Premium
$15,230.00

s.39(1)(a)(ii), s.39(1)(b), s.39(1)(c)(iii) and s.35(1)(d)

TO REPORT A CLAIM, CONTACT:

Inside Claims Specialty Lines
Crawford & Company (Canada) Inc.
300 - 123 Front Street West
Toronto ON M5J 2M2

Email: newcrawfordclaims@crawco.ca
Phone: 1-800-522-1380 or 416-364-6341

PLEASE REFER TO THE POLICY WORDING FOR COMPLETE DETAILS OF THE COVERAGE. THESE DECLARATIONS ARE SUBJECT TO TERMS AND CONDITIONS OF THE POLICY.
Professional Liability

Limits of Liability
(a) Each claim 500,000
(b) Aggregate (Policy Period) 1,000,000
(c) USA Aggregate 500,000

Retention
Each Claim 50,000

Professional Services
Civil Engineering Services and as more fully described in the application and attachments

Retroactive Date
N/A

Special Endorsements and Exclusions Forming Part of this Policy at Inception
Endorsement 1: 30 Day Notice of Cancellation
Endorsement 2: D&O/EPL Extension
AGREEMENT

THIS AGREEMENT made at Town of Heart’s Content in the Province of Newfoundland and Labrador, on this day of Jul 30, 2018

BETWEEN:

TOWN OF HEART’S CONTENT
(“The Client”)

AND:

HARRIS & ASSOCIATES LIMITED
(“The Prime 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 Prime Consultant’s Work

The Prime Consultant shall do all things necessary to fulfill and carry out all of the obligations of the Prime 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 Prime Consultant hereby represents and warrants that every fact stated or represented by the Prime Consultant or its Representatives to the Client in connection with any proposal made by the Prime 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 Prime Consultant shall commence activities in relation to the Work with the start and completion dates mutually agreed upon as follows:

- **Start Date:** Jul 11, 2018
- **Completion Date:** Nov 30, 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 Heart's Content

[Redacted]

Signing Officer

Aug 21, 2018

Date

[Redacted]

Witness or Signing Officer

Aug 21, 2018

Date

Harris & Associates Limited

[Redacted]

Signing Officer

18 08 14

Date

[Redacted]

Witness or Signing Officer

2018-08-14

Date
SCHEDULE "A"

SCOPE OF WORK
BETWEEN PRIME CONSULTANT AND CLIENT

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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
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 Prime 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 Prime 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 Contractor: means a person, firm, or corporation contracting with the Client to provide labour, materials 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 Prime Consultant.

1.11 Program Advisory Services: means Consulting Services provided by the Prime 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 Prime Consultant in connection with the project.

PART 2 RESPONSIBILITIES

2.1 PRIME CONSULTANT

.1 The Prime 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 Prime Consultant’s services as provided for under and pursuant to this Agreement at and during all phases of the Work shall encompass coordination of all disciplines, quality assurance and documentation control to integrate all services and Sub-Consultant’s work. The Prime 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 Prime 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 Prime Consultant to provide construction administration services. When required the Prime 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 Prime 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 the provision of record drawings and advice concerning issues arising during this period.

.6 The Prime 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 Prime 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 risk assessment & management plan is in place for the project.

b) Ensure that key onsite personnel under the employ of the prime 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.

c) Through regular project progress meetings obtain copies of contractor documented safety plan activities at the site, including but not necessarily limited to reporting of events/incidents, minutes of toolbox meetings, and any required actions to be taken as a result of these activities.
d) Identify unsafe work conditions to the contractor that on site personnel may become aware of, and if necessary report same to the Occupational Health & Safety regulators.

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

The following schedules apply:

Schedule I - Project Description
Schedule II - Basic and Other Additional Services Fees
Schedule III - Additional Reimbursable Allowances
Schedule IV - Project Schedule
Schedule V - Other General Requirements

2.2 CLIENT’S RESPONSIBILITIES

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

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

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 Prime Consultant shall be so notified in writing.

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 Prime Consultant is responsible for requesting or providing information that is required to prepare the design and contract documents.

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

The Client shall reimburse the Prime Consultant for procuring information which the Prime Consultant requires for the provision of services necessary to carry out the preparation of design and/or contract documentation when the information is not available upon request from the Client such as site surveys, and hazardous material surveys.

When the Client supplies the Prime Consultant with information contained within reports or equipment data sheets, the Prime 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 Prime Consultant observes, or otherwise becomes aware, of any fault or defect in the information supplied to it by the Client, the Prime Consultant shall cause the Client to be notified in writing of any such fault or defect forthwith.
Where the Prime Consultant has been authorized by the Client to procure or obtain information, the Prime Consultant shall be responsible in seeing that the information provided meets the needs of the Sub-Consultant(s) performing the work under the direction of the Prime Consultant.

The Client will reimburse the Prime 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**

The Prime 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 Prime 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**

The Prime 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.)

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.

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**

The Prime 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.

If at any time the Prime Consultant considers its estimates indicate costs which exceed the Project or Construction Budget Forecast, the Prime Consultant will immediately advise the Client. If the excess is due to, discretionary design elements under the control of or reasonably foreseeable by the Prime Consultant, or the negligence or default of the Prime Consultant in the performance of this Agreement, the Client may require the Prime Consultant to redesign the project at the Prime Consultant's expense to bring the cost estimate within the approved Project Budget Forecast.
If the preferred bidder’s tender for the project for which the Prime Consultant has prepared and provided the design(s) and provided cost pricing and control services exceeds the Construction Budget Forecast as a result of the negligence or default of the Prime Consultant under this Agreement or is for reasons related to discretionary design elements which are under the Prime Consultant's control or which the Prime Consultant should have reasonably foreseen and could have guarded against, then the Prime Consultant, at no additional cost to the Client, shall redesign to bring the cost within the Construction Budget Forecast and retender.

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 Prime 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 Prime 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 Any costs resulting from design errors on the part of the Prime Consultant, Sub-Consultants chosen by the Prime Consultant, or agents, or employees of the Prime Consultant or of any Sub-Consultant chosen by the Prime Consultant will be the responsibility of the Prime Consultant to remedy. However, where the Client and not the Prime Consultant chooses a Sub-Consultant to do hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work, the Prime Consultant shall not be held responsible for design errors attributed to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, or construction testing services, done by Sub-Consultants chosen by the Client, unless those design errors are directly caused by the Prime Consultant. In the case of Sub-Consultants chosen by the Client, the Client and not the Prime Consultant shall be responsible to take such steps as the Client deems to be appropriate, to ensure that any Sub-Consultant chosen by the Client has appropriate and adequate policies of insurance that are acceptable to the Client in place to cover design errors attributable to 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.

.2 Any costs resulting from errors in design or omissions may be paid by the Client providing the cost of such design omissions does not entail removing material or equipment that has already been constructed in accordance with the plans and specifications. The cost of the original material and equipment, as indicated on the plans and specifications, and the labour to remove such will be the responsibility of the Prime Consultant.
3.6 PRIME CONSULTANT ACTIONS AND DECISIONS

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

.2 The Prime Consultant and the Client agrees to act promptly and diligently on all matters within their respective direction and control requiring an action or decision affecting the design, construction or administration of the project.

.3 Only express approval by the Client shall be deemed to relieve the Prime Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant. No acceptance or approval by the Client that is implied shall be deemed to relieve the Prime Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant.

.4 If the Prime 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 Prime 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.

3.7 INSURANCE COVERAGE

.1 The Prime 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 Prime Consultant shall be fully responsible for all amounts deducted from this value by the Prime 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 Prime 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 Prime 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 resident services during construction, when requested, based on an agreed fixed fee amount. 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 project implementation based on an agreed fixed fee.

4.7 The Client will pay for commissioning services on the basis of an agreed fixed fee. The fee amount shall include level of effort; associated with the preparation of documents and site visits to carry out commissioning activities, as outlined in Schedule I and detailed in the project specification and contract documents.

4.8 The Client will pay for the reimbursement of the Prime Consultant's expenses associated with the project at cost as per Schedule "C". Meals, private vehicle usage, private lodgings and other incidental expenses are to be paid on the basis of Government Basic Rates. These rates are HST inclusive and are determined as of the date the expenses are incurred.

4.9 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.
SCHEDULE I
PROJECT DESCRIPTION

Provide description of project including:

Summary: The existing water intake is a seriously deteriorated cast iron pipe, installed approx. 100 yrs. ago in shallow water with no primary screening, the existing screen chamber was recently upgraded with a new building to house secondary screens.

Goal: To locate & connect to existing intake pipe at the new screen house location, install a new 300 mm HDPE intake pipe and a new primary intake screen & support structure, purchased during a recent infrastructure upgrading project. All work to be performed in accordance with the Department of Municipal Affairs & Environment guidelines in a cost efficient & timely manner.

Scope of Work: To include: preliminary site visit to collect field info, detailed topo survey, prepare schedule of quantities, pre-tender estimate, tender documents & drawings to DMA for review/approval, permits from regulatory bodies, (DOEC) tender call, including, review tender results & make recommendation of contract award, review required documentation from contractor, (bonding, insurance, certificates, etc.), prepare & issue construction documents, review shop drawings, coordinate project with contractor & owner, monthly status reports & contract payment certificates, change orders as required, site inspection, sub-consultant materials testing, final inspection, deficiency list & correction/completion, as-built drawings, certificates of substantial & total performance.

Deliverables: To include: signed PCA, contract documents & drawings for approval, pre-tender estimate, permits from regulatory bodies, contract documents & drawings for tender, recommendation of letter of award, letter of approval to contractor re: bonding, insurance, certificates, etc, contract documents & drawings for construction, contract documents for execution/signing, review contractor's safety plan, monthly status reports & contract payment certificates, change orders, deficiency list, hard & digital copy of as-buils stamped by P. Eng, certificates of substantial & total performance, inspection reports c/w photos.
SCHEDULE II
(Water, Sewer, and Municipal Roads)
BASIC AND OTHER ADDITIONAL SERVICES FEES

- Basic Services
  - Preliminary Engineering $ 5,035
  - Design and Contract Documents $ 5,647
  - Tendering and Contracts Award $ 1,030
  - Contract Administration $ 3,078

- Project Completion Phase and Project Record Drawings $ 1,640

- Other Additional Services:
  - Resident Services during Construction
    - Enter Description $
    - Enter Description $

- Prime Consultant Project Expenses for Above Services $ 2,706

TOTAL BASIC AND OTHER SERVICE FEES $ 40,021

TOTAL ADDITIONAL REIMBURSABLE ALLOWANCE
(From Schedule III) $

TOTAL SERVICE FEE (Less HST) $ 40,021
(Total Schedules II + III)

HST $ 6,003

TOTAL SERVICE FEE (Including HST) $ 46,024
SCHEDULE III
(Water, Sewer, and Municipal Roads)
ADDITIONAL REIMBURSABLE ALLOWANCES

List below allowances for specific project expenses not included in Schedule II.

- Site Surveys
  
- Geotechnical Investigations
  
- Materials Testing
  - Asphalt Extractions
  - Concrete Testing
  - Compaction Testing
  - Enter Description
  - Enter Description

- Water Main Leakage Detection
  
- Sewer Main Infiltration Detection
  
- Enter Description
  
- Enter Description

TOTAL ADDITIONAL REIMBURSABLE ALLOWANCES

$
SCHEDULE II
(Buildings & Treatment Facilities)

BASIC AND OTHER ADDITIONAL SERVICES FEES

- Programming Advisory Services $ \\
- Basic Services
  - Concept Design $ \\
  - Design Development $ \\
  - Contract Documents $ \\
  - Proposal/Tendering & Contract Award $ \\
  - Contract Administration $ \\
- Project Completion Phase and Project Record Drawings $ \\
- Other Additional Services:
  - Commissioning $ \\
    - Enter Description $ \\
    - Enter Description $ \\
  - Resident Services during Construction $ \\
    - Enter Description $ \\
    - Enter Description $ \\
- Design Services - Segregated Construction Contracts $ \\
- Construction Management - Multiple Contracts $ \\
- Prime Consultant Project Expenses for Above Services $ \\

TOTAL BASIC AND OTHER SERVICE FEES $ \\

TOTAL ADDITIONAL REIMBURSABLE ALLOWANCE (From Schedule III) $ \\

TOTAL SERVICE FEE (Less HST) $ \\
(Total Schedules II + III)

HST $ \\

TOTAL SERVICE FEE (Including HST) $
SCHEDULE III
(Buildings & Treatment Facilities)
ADDITIONAL REIMBURSABLE ALLOWANCES

List below allowances for specific project expenses not included in Schedule II.

- Site Surveys $
- Geotechnical Investigations $
- Materials Testing $
- Water Main Leakage Detection $
- Sewer Main Infiltration Detection $
- Treatment Process Piloting $
- Enter Description $
- Enter Description $

TOTAL ADDITIONAL REIMBURSABLE ALLOWANCES $
SCHEDULE IV
PROJECT SCHEDULE

Enter Time/Milestone Schedule for Project including Consultant Services

Predesign - July 11, 2018 - July 16, 2018
Design - July 23, 2018 - July 30, 2018
Tender Call - August 22, 2018
Pre-Construction Meeting - September 21, 2018
Construction - September 24, 2018 - October 26, 2018
Substantial Completion - October 26, 2018
Project Completion - November 30, 2018
Warranty Expiration - October 26, 2019
SCHEDULE V
OTHER GENERAL REQUIREMENTS

Attach the following:

- List of proposed Sub-Consultants
- Organization Chart
- List of Key Staff and per diem rates
- List of assigned staff and per diem rates
- Identification of number of person site visits and costs per site visit.
- Enter Description
- Enter Description
ORGANIZATIONAL CHART

Department of Municipal Affairs & Environment

Town of Heart's Content

T. Harris, P'Eng.
Harris & Associates Limited Project Manager

D. Peddle, C.Tech.
Harris & Associates Ltd.

C. Roberts, C.Tech.
Harris & Associates Ltd.

J. Butt, E.I.T.
Harris & Associates Ltd.

TECHNICAL SUPPORT
<table>
<thead>
<tr>
<th>Name</th>
<th>Classification</th>
<th>Hourly Rate</th>
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<tbody>
<tr>
<td>1</td>
<td>Senior Engineer</td>
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</tr>
<tr>
<td>2</td>
<td>Civil Engineer</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Technician II</td>
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<tr>
<td>4</td>
<td>Technician II</td>
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</tr>
<tr>
<td>5</td>
<td>Inspector/Technician I</td>
<td></td>
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<tr>
<td>6</td>
<td>Inspector/Technician I</td>
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<tr>
<td>7</td>
<td>Secretarial</td>
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<td>8</td>
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<td>Name</td>
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</tr>
<tr>
<td>1.</td>
<td>Senior Civil Engineer</td>
<td></td>
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<tr>
<td>2.</td>
<td>Civil Technician II</td>
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<td>3.</td>
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<td>Inspector</td>
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<tr>
<td>6.</td>
<td>Secretarial</td>
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</tbody>
</table>
SITE VISITS

Predesign/Design
- Sr. Technician 1 trip @ hrs. @ $ = $ 250.00 $ 250.00

Contract Administration
- Sr. Tech. 3 trips @ hrs. @ $ = $ 750.00 $ 750.00

Residential Supervision
- Sr. Engineer 1 trip @ hrs. @ $ = $ 380.00
- Sr. Tech. 2 trips @ hrs. @ $ = $ 500.00 $ 880.00

Project Completion

Final Inspection
- Sr. Tech. 1 trip @ hrs. @ $ = $ 250.00 $ 250.00

Warranty Inspection
- Sr. Tech. 1 trip @ hrs. @ $ = $ 250.00 $ 250.00
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

OR

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 Prime Consultant, for the satisfactory performance of the Work, Forty thousand and twenty-one dollars.

($) 40,021  (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 Prime 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)  Person / Professional Designation - Hourly Rate

Payment Option #3  ☐ Selected 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 Prime Consultant, $ , the absolute limit on Cost of Services (plus HST).

1.2  Reimbursement of Expenses

It is agreed and understood that reimbursements for the Prime 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  ☒ Selected Option

The Client shall only be responsible for the following mutually agreed expenses to be incurred by the Prime 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 $2,706. This amount must be included in Schedule II on the line entitled “Prime Consultant Project Expenses for Above Services”.

(i) Enter Specific Reimbursable Items

- GPS Survey Equipment/Data Collector Rental
- Postage
- Printing/Photocopying
- Mileage/Meals
- Environment Application Fee
- Mechanics Lien Search

Reimbursement Option B [ ] Selected Option

The Client shall only be responsible for the following reimbursable expenses, payable at cost, provided the Prime 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 $ and must be included in Schedule II on the line entitled “Prime Consultant Project Expenses for Above Services”.
(i) Enter Specific Reimbursable Items

Reimbursement Option C □ Selected Option

The Client shall not be responsible for any expenses incurred by the Prime 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 Prime Consultant.

1.3 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 Forty-six thousand and twenty-four dollars.

($) 46,024.

(b) The Prime Consultant shall remain obligated to complete the Work notwithstanding that the actual costs of the Prime 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 Prime Consultant request the same provide direction to the Prime Consultant as to what constitutes a properly documented invoice.

(e) All invoices shall clearly show the amount of HST billed by the Prime Consultant as a separate item.
(f) The Prime Consultant shall conform to any request that may be made by the Client to alter the form of invoice customarily used by the Prime Consultant as may be reasonably required for the purposes of the Client’s internal accounting systems. The Prime 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 Prime Consultant which may arise from work, services or expenses incurred to remedy errors or omissions in the Work for which the Prime Consultant is responsible.

(h) The Prime Consultant shall submit invoices to the Client:
   Town of Heart’s Content
   P. O. Box 31
   Heart’s Content, NL A0B 1Z0

Article - 2. INFORMATION SUPPLIED BY THE CLIENT

2.1 The Client will furnish to the Prime 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 Prime Consultant shall review the information for accuracy and applicability.

2.2 Where discrepancies, omissions or obscurities in the information are evident, the Prime 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 Prime Consultant, the Prime 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 Prime Consultant, the Prime 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 Prime Consultant, the Prime 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 Prime Consultant, the Prime Consultant's employees, servants and/or agents; and

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

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

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

3.2 The Prime Consultant shall treat all Confidential Information acquired by the Prime 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 Prime Consultant shall give the Client prompt notice of the requirement.
upon becoming aware that such disclosure is required. Where circumstances do not permit the Prime Consultant to provide such notice prior to disclosure, the Prime Consultant shall provide such notice to the Client immediately after the required disclosure.

3.3 The Prime 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 Prime 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 Prime 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 Prime Consultant pursuant to the terms of this Agreement. The Prime Consultant acknowledges that the Client's right to this information shall at all times be paramount to any rights of the Prime Consultant, at law or in equity, and that the Prime 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 Prime Consultant's possession.

3.5 The Prime 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 Prime Consultant, the Prime 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 Prime 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 Prime 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 Prime Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Prime Consultant, the Prime 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, RSNL 1990 cP-22, as well as other legislation which may apply in the jurisdiction of the Prime Consultant's operation. The Prime 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 Prime Consultant, and the Prime Consultant's employees, servants and/or agents.
3.7 The Prime Consultant shall ensure that it, and the Prime 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 Prime Consultant employs to avoid disclosure or dissemination of the Prime Consultant's own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of the Prime 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 Prime Consultant comply with all policies, standards and safeguards established under this Article;

(d) advise the Client of any changes in the Prime 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 Prime 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 Prime Consultant shall only disclose Confidential Information to persons other than the Prime 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 Prime 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 Prime 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 Prime 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;

(c) 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;

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

(e) 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

Article - 4. EMPLOYEES OF THE PRIME CONSULTANT

4.1 The Prime Consultant shall provide employees who are competent in their field of specialization. The Client will have the right to have the Prime 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 Prime 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 Prime 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 Prime Consultant to perform the Work during Client office hours.

5.2 When using or accessing the premises of the Client, the Prime Consultant and all officers, employees and agents of the Prime 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 Prime 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 Prime 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 Prime 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 Prime 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 Prime 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:
Ms. Alice Cumby, Town Clerk
Town of Heart's Content
P. O. Box 31
Heart's Content, NL A0B 1Z0

Phone: (709) 583 - 2491
Fax: (709) 583 - 2226
Email: heartscontent@persona.ca

For the Prime Consultant:
Tom Harris, P.Eng.
Harris & Associates Limited
P. O. Box 699
Carbonear, NL A1Y 1C2

Phone: (709) 596 - 5391
Fax: (709) 596 - 3329
Email: tom.harris@nf.aibn.com
8.1 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 telecopier 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 Prime Consultant agrees that in performance of the Work neither the Prime Consultant nor any Prime 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 Prime 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 Prime Consultant under this Agreement, including the negligence or default of any Sub-Consultant chosen by the Prime 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 Prime Consultant shall defend any and all such actions and pay all legal charges, costs and other expenses arising therefrom. Where the Prime 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 Prime 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 Prime 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 Prime Consultant shall ensure that the Prime Consultant and its Representatives comply with all requirements of any governing federal, provincial or municipal legislation, by-laws or regulations applicable to the Prime Consultant or the Prime 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 Prime 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 Prime 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 Prime 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 Prime 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 Prime Consultant and the Prime Consultant's Representatives:

(a) shall conduct all duties related to this Agreement with impartiality;
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 Prime 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 Prime 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 Prime 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 Prime 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 Prime Consultant should confirm with the Client and Department of Municipal Affairs whether the Prime Consultant will be required to use information technology resources, including computers, of the Client or the Government of Newfoundland and Labrador in the conduct of the work under the Contract. The following requirements apply where the Prime 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 Prime 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 Prime Consultant’s Contract or otherwise, the Prime Consultant is not permitted to attach non-government computers or other information technology systems to any Client or Government network.

- The Prime 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 Prime 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 Prime 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 Prime 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 Prime Consultant and all employees, servants and/or agents or permitted Sub-Consultants of the Prime Consultant, and it is the responsibility of the Prime 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 Prime Consultant and the Prime Consultant’s Sub-Consultants that is of a non confidential nature need not be encrypted.