



MUNICIPALITY *of the*
COUNTY *of* KINGS

Request for Proposals 23-16

Consultant Services
Recreation Review

Issued: May 8, 2023
Closing: June 2, 2023

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Introduction

The Municipality of the County of Kings (the Municipality) is seeking proposals from experienced and qualified consultants (Consultants) to conduct a Recreation Review of all services, program delivery methods, and staff structure.

The specific services to be provided are described in this RFP.

****Please note****

This RFP and any subsequent written addenda shall be posted on the Municipality's website (<http://www.countyofkings.ca/business/tenders.aspx>). The Municipality will not maintain a "plan takers" list. Prospective The Successful Proponent shall be responsible to review the website for any addenda that have been issued.

1 Instructions to Bidders

1.1 Proposal Submission

The total proposal submittal shall be submitted received before 2:00pm local time June 2, 2023 in order to be considered.

Refer to Section 5 for a detailed breakdown of the proposal submission requirements.

1.2 Consultant Conduct Statement

The Municipality expects employees and contractors in its employ to conduct themselves appropriately, particularly with regards to Human Rights, Health and Safety, and Environmental Stewardship. A number of the Municipality's policies and operating procedures incorporate these expectations.

Please note that conduct detrimental to the Municipality by a Consultant or any of its employees, agents, contractors, or representatives may lead to disqualification or dismissal.

1.3 Notices

- a. The Municipality reserves the right to modify the terms of this RFP at any time at its sole discretion.
- b. The information contained in this RFP is supplied solely as a guideline for consultants. While every reasonable attempt has been made to ensure its accuracy, the Municipality does not guarantee or warrant its accuracy, nor is it necessarily comprehensive.
- c. By submitting a response to the RFP, the Consultant represents and warrants that such bid is genuine and not false or collusive or made in the interest or on behalf of any person not therein named, and that the Consultant has not, directly or indirectly, induced or solicited any other Consultant to put in a false bid, or any other person, firm or corporation to refrain from bidding, and that the Consultant has not in any manner sought by collusion to secure to the Consultant an advantage over any other Consultant.
- d. If at any time it shall be found that the person, firm or corporation to whom a contract has been awarded has in presenting any bid or bids, colluded with any other party or parties, then the contract so awarded shall be liable to the Municipality for all loss or damage which the Municipality may suffer thereby; and the Municipality may advertise for a new contract and for said labour, supplies, materials, equipment or service.
- e. The submission of a proposal shall be considered an agreement to all the terms and conditions provided herein. Any proposal containing exceptions to the terms and conditions of the RFP, or the resulting contract may be rejected by the Municipality for non-compliance. Any request for changes to the terms and conditions of the RFP or resulting contract must be made in writing prior to the date of closing. Only if the Municipality issues a formal addendum to the RFP will any changes to the RFP or resulting contract be effective.
- f. The Consultant, by submitting a bid, shall represent and warrant that they have sufficiently informed themselves in all matters affecting the performance of the work or the furnishing of the labour, supplies, materials, equipment, or service called for in the quotation documents; that they have checked their bid for errors and omissions; that the amounts stated in their bid are correct; that they are familiar with and will abide by all Federal and Provincial laws and regulations and all

bylaws and policies of the Municipality that may affect the performance of the Service or persons engaged or employed in the performance of the Services

- g. If a written contract including the terms and conditions set out in Appendix C cannot be negotiated within 15 business days of notification to the consultant initially selected, the Municipality may, at its discretion, terminate negotiations with that consultant and either negotiate a contract with the next highest qualified consultant or cancel the RFP process and not enter into a contract with anyone regarding the RFP.
- h. In cases of dispute as to whether or not an item or service proposed meets the RFP requirements, the decision of the Municipality shall be final and binding.
- i. Proposals must be received before 2:00 pm local time June 2, 2023 in order to be considered.
- j. Prior to award of the contract the successful Consultant is required to be registered to conduct business in the Province of Nova Scotia. The successful Consultant shall remain so registered for the duration of the Contract.

1.4 Award of Contract

- a. The Municipality reserves the right to suspend or cancel any RFP at any time for any reason without penalty.
- b. The Municipality reserves the right to reject any and all bids or accept any bid or part thereof and may award all or a portion of the work to one or more Consultants.
- c. The Municipality reserves the right to accept other than the highest scoring proposal or any proposal. The Municipality reserves the right to reject any or all proposals and to award the contract in its entirety, or in part, whichever, in its opinion, best serves the interests of the Municipality.
- d. The Municipality reserves the right to award a contract on the basis of the initial offers received, without discussions or requests for best or final offers.
- e. The Municipality reserves the right to waive any informalities, formalities, technicalities or to reject any or all RFPs based on incomplete bids, the Consultant's lack of proven experience, performance on similar projects or the suitability of proceeding with the execution of the work.
- f. In the event that a number of consultants submits bids in substantially the same amount or score, the Municipality may, at its discretion, call upon those Consultants to submit further bids.
- g. The Municipality reserves the right to reject the bid of any Consultant if after an investigation of the information submitted by the Consultant fails to satisfy the Municipality that the Consultant is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein.
- h. No term or condition shall be implied, based upon any industry or trade practice or custom, any practice or policy of the Municipality or otherwise, which are inconsistent with the provisions contained herein.

1.5 RFP Timeline

The Municipality expects the following timeline for the RFP process. All dates are subject to change and project dates may be adjusted in consultation with a selected vendor.

Milestone	Anticipated Completion Date
RFP Issued	May 8, 2023
Closing Date for Technical Proposal Submissions	June 2, 2023
Award Contract	June 9, 2023
Project Start-up Meeting	Week of June 16, 2023
Community Consultation & Jurisdictional Review Completed	September 15, 2023
Draft Plan and Policy to Staff	October 6, 2023
Final Plan and Policy for Staff/Council Adoption	November 3, 2023
Committee of the Whole Presentation	November 21, 2023
Council Adoption	December 2024

1.6 RFP Administration

- a. All questions concerning this RFP shall be directed to:

Primary Contact	Alternate Contact
Brittany Traynor Manager of Community Development Ph: 902-690-2409 E-mail: btraynor@countyofkings.ca	Shawn Fevens Coordinator, Recreation Services Ph: 902-599-1556 E-mail: sfevens@countyofkings.ca

- b. All requests for clarification must be received in writing at least four (4) working days prior to the closing date to allow written clarification to be issued to all respondents. Verbal responses are only binding when confirmed by written addenda.

Refer to Part 5 for a complete breakdown of the proposal submission requirements.

1.7 Disqualification for Inappropriate Contact

Any attempt by the Consultant or any of its employees, agents, contractors, or representatives to contact members of Municipal Council, Municipal staff, or members of the *Review Panel* not identified in this RFP with respect to this RFP or the Services prior to Council awarding the contract for this RFP may lead to disqualification.

1.8 Addenda

- a. Written addenda will be posted on the Municipality's procurement website — <http://www.countyofkings.ca/business/tenders.aspx> — no later than 48 hours before RFP Closing. A notice of any addendum will be posted on the Nova Scotia procurement website - <https://procurement.novascotia.ca/ns-tenders.aspx>. **The Municipality will not maintain a plan takers' list; prospective The Successful Proponent shall be responsible to review the website for any addenda that has been issued.**
- b. The submission of a proposal shall be deemed to indicate that the proponent has read, understood and considered all addenda issued prior to the closing date and time.

1.9 Confidentiality

All documents provided during the RFP process may not be used for any purpose other than the submission of a proposal. Consultants shall not use information obtained through the RFP process without written permission from the Municipality.

1.10 Freedom of Information and Protection of Privacy

Consultants agree to public disclosure of the contents of its submission in response to the RFP subject to the provisions of the *Municipal Government Act* relating to Freedom of Information and Protection of Privacy. Anything in the submission that the Consultant considers to be “personal information” or “confidential information” of a proprietary nature should be marked confidential and will be subject to appropriate consideration of the *Municipal Government Act* as noted above. The work described in this RFP is being conducted with public funds, and the fees and expenses proposed in the Consultant’s submission will be made public.

1.11 Level of Effort and Municipal Support

Consultants are advised that Municipal staff will try to be available for interviews throughout the proposal call as schedules permit. The proposal should be all-inclusive, and Consultants should not rely on Municipal staff for any purpose other than reporting and direction.

1.12 Conflict of Interest

Consultants and its employees shall take all reasonable steps to ensure avoidance of all direct or indirect conflicts of interest between any of their individual interests and those of the Municipality. If the Contractor or any one of its personnel becomes aware of any reasonable possibility of any such conflicts, then the Contractor shall promptly disclose to the Municipality the facts and circumstances pertaining to same.

2 Project Overview

2.1 Overview

The Municipality of the County of Kings is inviting proposals from experienced consulting firms to perform a Recreation Service and Delivery Review to answer the following question- if you had a fresh start to design and implement a best-in-class provider of recreation, what would it look like? The review will assist in the development of a strong vision for recreation in the Municipality for the next 5 to 10 years. Keeping in mind the Municipality’s desire to be innovative, the final report will inform decisions related to future service delivery, budgeting considerations, examine current practices and procedures and provide recommendations for improvement, provide input on future modernization strategies, and to guide future relationships with other municipal recreation departments in the County of Kings. The review should also provide a municipal comparison that includes at a minimum three similar sized/resourced/structured municipalities (example: the Municipality of the District of Lunenburg, Municipality of Pictou County, and the Municipality of the County of Colchester).

The Municipality’s vision is to be a community of communities where all people belong. As an organization, the Municipality’s mission is to enhance the quality of life for all through the provision of municipal services in an inclusive, effective, and collaborative manner. As such, the Municipality desires to support recreation in a manner that provides diverse recreation opportunities for all persons in a barrier free, inclusive environment.

The Municipality has allocated \$50,000 (incl. HST), in the FY 2023-2024 budget for the development of a Review of Recreation Services, including the items outlined in this RFP.

The Objectives of the Recreation Review include:

- a. Provide vision and direction on the future of recreation service delivery. Do not hesitate to be radical and innovative in proposed ideas;
- b. Review current recreation service delivery methods, models, and provisions to identify future opportunities for improvement to processes and procedures;
- c. Evaluate the current and future support the Municipality provides to villages/towns within the County and identify new and alternate models of improved service delivery;
- d. Provide recommendations based on the review findings related to current staff structure, changes that could improve future efficiency, and enhance service delivery throughout the County;
- e. Evaluate options from the perspective of budgetary impact, customer service capability, community impact, and maximizing service delivery quality, efficiency, and effectiveness and make recommendations;
- f. Provide information that will guide the Municipality's Council and staff on future decisions relating to recreation service delivery and budget;
- g. Identify modernization opportunities within administrative processes; and
- h. Utilize an equity (race, ethnicity, socioeconomics, gender, age, etc.) lens throughout.

There are several documents used by the Municipality within the realm of Recreation Planning. The following resources are available for use:

- [Strategic Plan](#)
- [Towards Equity & Diversity: A Strategy for Belonging in the Municipality of the County of Kings](#)
- [Regional Recreation Needs Assessment](#)
- [Regional Recreation Feasibility Facility Study](#)
- [Active Living Strategy](#)
- [Vision and Strategic Plan for Trails](#)
- [Active Transportation Plan](#)
- [Trails Map;](#)
- [Municipal By-Laws, Policies and Additional Documents](#)

2.2 Project Requirements

The following sections outline the baseline requirements of the Recreation Review. In all instances, consideration of equity, diversity, inclusion, justice, and belonging is imperative.

2.2.1 Service Delivery Models, Methods, Options, Processes

The Review should answer the following questions in relation to service delivery with an emphasis on future planning:

- Is the Municipality of Kings currently offering programming and services that best meet the needs of an ever-changing resident base and what could future programming look like? Are there gaps in offerings that need to be addressed as future planning is created;
- Are programming options utilizing current infrastructure and built environments such as parks, trails, and open spaces appropriately and if a new recreation facility was built that included a gymnasium, pool, and multi-use space what future considerations could be options;
- Are current policies and procedures for program delivery utilizing staff and financial resources in the most effective manner and should future ideas be considered; and
- Is there an opportunity to enhance municipal service and program delivery in partnership with other recreation service providers in the County of Kings. What future partners could provide additional opportunities.

2.2.2 Municipal Relationships to Towns and Villages

The Recreation Review shall include recommendations, based on the review's findings, on the level of support provided by the Municipality to the Towns and Villages located within the County of Kings. As such, the plan will inform the Municipality of:

- Is the current financial and staff support model in place for village/town recreation provision the most appropriate model to meet the Municipality's organizational goals and what other models could be implemented to improve future provisions;
- Is the existing staff funding structure appropriate to meet future opportunities as well as to enhance services, reduce administrative burden, etc.; and
- What opportunities for cooperative efforts exist but are not being utilized.

2.2.3 Staff Structure

Based on overall recommendations, the review should provide future direction on staff structure within the Municipality of Kings Recreation Division:

- In consideration of the organization's goals and objectives for recreation, what department and staff structure would be most appropriate?

2.2.4 Financial Impact

Based on recommendations from the review, the Review will examine current financial perspectives:

- Are financial resources appropriately allocated;
- How should funds be used to maximize service delivery;
- How can the Municipality achieve the most community impact;
- What is an appropriate fee for service structure for recreation programs and services; and
- Is funding provided by the Municipality to the Towns/Villages appropriate?

2.2.5 Modernization

Based on the Review's findings, identify opportunities to modernize operations and maximize opportunities for the provision of recreation services:

- How should the public register and/or book Municipality's programming, services, and/or assets;
- What promotional and advertising practices should be utilized to best inform the public of recreation opportunities in the region;
- Beyond connectivity, identify barriers for the public in accessing online content; and
- Provide recommendations based on the review for improving program and service delivery with a focus on modernization.

2.2.6 Equity Considerations

Based on recommendations of the Review, identify areas for improvement in relation to equity and current/future barriers experienced by County residents:

- Identify the current and future barriers faced for County residence in relation to participating in recreation activities;
- Does the recreation division provide adequate and appropriate opportunities for persons from historically excluded communities, in particular the Mi'kmaq and persons of African descent, those from all socio-economic backgrounds, women, persons with disabilities etc. to participate, and what future opportunities should be offered;
- Does the Municipality currently offer balanced programming across all age and gender demographics and what future recommendations should be considered;
- Is a focused diversity lens being applied when planning all programs and services and what future considerations should be examined; and
- Identify opportunities where the Municipality can make marked improvements in equity in the future.

2.2.7 Decision-Making Framework

Based on the review's findings, the final report will include a decision-making framework and recommendations that can be used by Municipal Council and staff to improve future recreation programming and service delivery. The report should include applicable best practices and suggestions to guide future staff structure, funding support methods, and recommendations to improve overall efficiency.

2.2.8 Cost Analysis

The Review will include a cost analysis (cost versus impact) of the current direct funding model utilized by the Municipality to fund recreation delivered by municipal staff as well as funding provided to support villages/towns in the provision of recreation services and future recommendations based on the Review's findings.

2.2.9 Municipal Comparison

The Review will provide a comparison of similar Municipalities in relation to staffing, budgeting, programming, facilities, and infrastructure. The Municipalities included in the comparison will

include, at a minimum, The Municipality of the District of Lunenburg, West Hants Regional Municipality, and The Municipality of the County of Colchester.

3 Scope of Work

The Successful Proponent shall be responsible for research, community engagement, and development of the Recreation Review Report. The services to be provided are summarized in the following subsections.

3.1 Kickoff Meeting

The selected Consultant shall attend a project kick-off meeting with the Municipality within 15 business days of the contract being awarded by Municipal Council to confirm: Scope of Work, Project Schedule and Milestones, Project Team, and other existing information.

Research Services

The selected Consultant shall provide the following services: background information, infrastructure inventory, deliverables, and meetings.

3.1.1 Background Information

After the project kick-off meeting, the selected Consultant shall review the information and resources provided to them from the Municipality (as noted above). Additionally, the Consultant shall do a review of best practices to support Recreation Services and Program Delivery.

3.1.2 Deliverables

The selected Consultant shall submit the following documents:

- Electronic copy (PDF format) of the overall Recreation Review Document based on the project requirements. (See above)
- Electronic copy (PDF format) of information gathered through all consultation methods.
- Electronic copy (PDF format) of a weekly progress report.

3.1.3 Meetings

The successful Proponent shall allow for, at minimum, the following meetings at the Municipality for Research Services:

- One (1) half-day stakeholder workshop to gather input and clarification on background information;
- The equivalent of two (2) days for identified stakeholder consultation/engagement (in-person/virtual);
- Monthly meetings with Kings staff (in-person/or virtual);
- Potential presentation at Committee of the Whole and/or Council; and
- Additional meetings as required.

3.2 Community Engagement

In conjunction and collaboration with Municipal staff where appropriate, the Successful Proponent shall provide the following services:

- Direct stakeholder engagement with Council, Municipality of Kings Staff, Towns and Villages;
- Community Engagement sessions throughout the County of Kings;
- Provide opportunities for public participation and feedback; and
- Provide an opportunity for engagement once the first draft of the review is complete.

3.2.1 Engagement Deliverables

The selected Consultant shall conduct the following:

- At least three (3) community-based engagement sessions;
- At least one (1) engagement session of the first draft; and
- Summary of stakeholder consultations provided in preferred (PDF) format.

3.2.2 Engagement Meetings

The Successful Proponent shall allow for three (3) meetings with the Municipality:

- Review the community engagement plan;
- Review the findings from engagement sessions; and
- Review draft report before submitting to Council for consideration/adoption.

Note: Alternative community engagement plans different from what is outlined above are welcomed for consideration during the review process.

3.3 Development of Review Report

The selected Consultant shall provide the following services: development and meetings.

3.3.1 Development

- Developing the Recreation Review Report that includes project deliverables and findings of community engagement.
- Producing a draft report of the Review, in colour and suitable for sharing with the public (both print and digital forms) consistent with the Municipality's branding.
- Once adopted by Municipal Council, producing a final report, in colour and suitable for sharing with the public (both print and digital forms) consistent with the Municipality's branding.

3.3.2 Meetings

The Successful Proponent shall allow for a kick-off meeting with the Contractor and weekly or bi-weekly meetings during development of the recreation review.

4 Provisional Services

Consultants are encouraged to provide additional services that could be provided beyond the Scope of Work in Section 3, that may be beneficial to the project based on previous experience. Provisional Services would be beyond the \$50,000 budget (HST inclusive) and would only be considered by the Municipality if additional funds become available. The cost for the provisional services should be separated from the

main services in the financial proposal, described in Section 5. The scoring of the RFP will be based on the main scope of work, not the provisional services.

5 Proposal Submission Requirements

5.1 Proposal Submission

Proposals shall be submitted through the Tender/ RFP Portal at <https://www.countyofkings.ca/business/tenders.aspx> as a PDF document marked as follows:

RFP Response (Name of Consultant/ Firm)

Submissions containing all technical and financial aspects of the proposed work must be received before 2:00 p.m. local time on June 2, 2023.

- Proposals must be signed by an authorized signatory of the Consultant.
- Late proposals will not be accepted.
- All proposals shall be and remain irrevocable unless withdrawn prior to the designated closing time.

5.2 Consultant Responsibilities

- a) The proposal must be signed by the person(s) authorized to sign on behalf of the Consultant or company and binds the Consultant to the statements made in the proposal.
- b) Proposed sub consultants must be listed with attached resumes. A joint proposal submission must indicate which consultant has overall responsibility for the proposal jointly and severally liable for. If a consultant wishes to submit alternative options, each option is to be submitted as a separate proposal.
- c) The Consultant is entitled to amend or withdraw its proposal at any time before the closing date. After the closing date, the Consultant will not change the wording or content of its proposal and no words will be added to or deleted from the proposal, including changing the intent or content of the presentation of the proposal, unless requested by the Municipality.
- d) The Consultant and sub consultants (as applicable) shall not assign responsibility to meet any part of the obligations of the contract to a third party without the written consent of the Municipality.
- e) Consultants are solely responsible for their own expenses in preparing the proposal, presentation of the proposal, and any travel costs incurred in presentation and/or interviews and negotiating a contract.
- f) It is the Consultant's responsibility to ensure that their submission is complete and is delivered to the Municipality by the date and time indicated. Proposals submitted after the above noted time shall be deleted.

5.3 Amendment or Withdrawal of Proposals

- a. Proposals may only be amended or withdrawn by using the same method as proposal submission prior to the time of RFP Closing. Amendments or withdrawals submitted by fax shall not be accepted.
- b. Head amendment or withdrawal as follows: "(Amendment)/ (Withdrawal) of Proposal for Consultant Services Recreation Services Review." Sign as required for Proposal and submit at

address given for receipt of Proposals prior to time of RFP Closing. All submissions must be received prior to RFP Closing.

5.4 Technical Proposal Content

Proposals should be detailed enough to demonstrate how the Consultant's expertise, staff, and resources best meets the needs of the Municipality as described in this RFP. The proposal shall, at a minimum, include the following information:

- Statement of work (include additional services as separate section);
- Proposed project method and timeline;
- Corporate background;
- Corporate procedures;
- Current total staffing and clients;
- Corporate Organizational Chart;
- Related municipal experience (including specific projects with consulting fee value, construction value if applicable and references);
- CV of all principal staff; and
- CV of staff and resources that are proposed to have direct responsibility to principal staff (maximum one page per person).

All CVs shall, at a minimum, contain the following information:

- Name and Credentials;
- Training and Experience;
- Position in Firm;
- Proposed Relationship with Client;
- Anticipated General Field of Activity with the Municipality;
- Area of Practice in the Firm;
- Back up Personnel to Support Principal Staff during Absence or Staff Turnover.

The proposal should demonstrate their ability to provide the services requested. However, Consultants are encouraged to prepare a proposal that will provide the best possible product given the range of services. Service(s) that do not directly meet the specific services requested, but which the Consultant feels will benefit the Municipality's strategic or operational objectives should be submitted under "Provisional Services."

5.5 Price Quote Proposal Content

Consultants shall present their cost proposals in tabular form so that their level of effort can be reviewed. The Consultant shall provide a fixed cost amount.

6 Proposal Evaluation

6.1 Evaluation Process

All submissions received prior to closing will be evaluated by a *Review Panel* consisting of:

- Manager of Community Development, Coordinator, Recreation Services- Operational Team Lead, and Deputy Chief Administrative Officer;
- Municipal Staff outside of the working group; and

- Subject matter experts and stakeholders may be selected at the Chief Administrative Officer's discretion.

The *Review Panel* reserves the right to perform any of the following and to take the information obtained into account in evaluating a Proposal including the right to:

- Seek clarification or verify information provided by a consultant with respect to this RFP;
- Contact any or all references supplied by a consultant to verify any information or data submitted by the Consultant and to obtain information about past performance;
- Interview either via teleconference or at the Municipality's offices any or all the *Key Personnel* proposed by a consultant; and
- Request additional detail(s) on any element(s) of any submission(s).

6.2 Evaluation Criteria

The evaluation of proposals using the following methodology:

Technical Proposal Scoring

The Technical Score is worth 100 points maximum.

The evaluation of the Technical Proposals shall be based on the following:

- i. Methodology – 25 Points
 - Does Consultant understand project objectives?
 - All components addressed?
 - Enough detail to ensure methodology is well thought out?
 - Innovative approaches?
- ii. Technical Ability – 30 points
 - Experience with similar projects
 - Proven ability with similar projects
 - Description of similar projects and references
- iii. Engagement Plan – 10 Points
- iv. Quality of Proposal – 10 points
 - Level of effort
 - Presentation
 - Thoroughness
- v. Value Added/Innovation – 10 points
- vi. Equity Lens Approaches- 15 Points
 - What steps were taken to ensure the full range of lived experience present in the Municipality is included?
 - Were appropriate measures taken to include first voice information representative of the full range of lived experience present within the Municipality persons with

disabilities, historically excluded communities, First Nation Communities, and all gender identities?

Fee Proposal Review

Points will not be awarded based on fee proposals. However, bidders who exceed the disclosed project budget of \$50,000.00 (incl. HST) will be disqualified.

Award Recommendation

The *Review Panel* shall recommend to the applicable Purchasing Authority that the contract be awarded to the Consultant whose proposal receives the highest score of all the compliant proposals.



APPENDIX A

There are several documents used by the Municipality within the realm of Recreation Planning. The following resources are available for use:

- [Strategic Plan](#)
- [Towards Equity & Diversity: A Strategy for Belonging in the Municipality of the County of Kings](#)
- [Regional Recreation Needs Assessment](#)
- [Regional Recreation Feasibility Facility Study](#)
- [Active Living Strategy](#)
- [Vision and Strategic Plan for Trails](#)
- [Active Transportation Plan](#)
- [Trails Map;](#)
- [Municipal By-Laws, Policies and Additional Documents](#)



This Agreement made on the ____ day of _____ in the year 2023.

BY AND BETWEEN

MUNICIPALITY OF THE COUNTY OF KINGS a body corporate under the Municipal Government Act (Nova Scotia) and having an office at 181 Coldbrook Village Park Dr., Coldbrook NS B

(hereinafter called the "Municipality")

And

(hereinafter called the "Consultant")

Whereas the Municipality issued a Request for Proposals (Project #20-16) for the design services required for an active transportation plan (Project);

AND Whereas the Consultant was the successful bidder under the RFP;

AND whereas the Municipality wishes to engage the Consultant for the provisions of the services as more particularly described in the RFP for the Project;

NOW THIS AGREEMENT, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the Parties hereby agree as follows:

1. Definitions

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

- 1.1.1. "Agreement" means this agreement in writing between the parties hereto, including the recitals, the Contract Documents and any schedules attached hereto and hereby made a part hereof, as it may be amended or supplemented from time to time; and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this agreement and unless otherwise indicated, references to section are to sections in this Agreement;
- 1.1.2. "Consultant's Cost Submission" means the Cost Submission submitted by the Consultant in connection with the RFP and attached as Schedule 'C';
- 1.1.3. "Consultant's proposal" means, together, the Consultant's Technical Submission and Consultant's Cost Submission;
- 1.1.4. "Consultant's Technical Submission" means the Technical Submission submitted by the Consultant in connection with the RFP and attached as Schedule 'B';
- 1.1.5. "Contract Documents" means this Agreement including the RFP and the Consultant's proposal;
- 1.1.6. "General Terms and Conditions" means the Agreement's General Terms and Conditions as set out in Appendix C of the RFP;



1.1.7. "Project" means Municipal Project #20-16 for the construction of an active transportation plan as described in the RFP;

1.1.8. "RFP" means the Request for Proposals dated issued May 6, 2023 by the Municipality in connection with Project #23-16 for the Consulting Services for Review of Recreation Services including:

i. <Addendum>

Together attached as Schedule 'A' hereto; and

1.1.9. "Services" mean the Services identified Part 4 – Scope of Work of the RFP and to be provided by the Consultant in accordance with the General Terms and Conditions.

2. Engagement by the Municipality

The Municipality hereby engages the Consultant for the Term to render the Services as described in the RFP in connection with the Project.

3. Acceptance of Engagement by the Municipality

The Consultant hereby accepts the engagement and covenants to render the Services in accordance with the General Terms and Conditions and in a timely manner and at such times as are agreed upon by the Consultant and the Municipality. In the performance by the Consultant of the Services, the Consultant shall act honestly and in good faith with a view to the best interests of the Municipality.

4. Term

This Agreement shall commence as of the Effective Date and shall continue for the duration of the Term as defined in the General Terms and Conditions, unless earlier terminated by either party in accordance with the provisions of the Agreement.

5. Compensation

5.1. The estimated Contract Price is \$ 50,000 (Canadian Funds) including HST, as set out in the Consultant's Cost Submissions for the Services and payable in installments based on progress of the work performed to date. This constitutes the maximum amounts payable to the Consultant for its performance of the work, and the Consultant shall not be entitled to any additional compensation for its performance as described in this Agreement.

5.2. Without limiting the generality of Clause 5.1, the Contract Price may be modified if both parties agree in writing to amend the work outlined in the Contract Documents, including the Consultant performing additional services at the request of the Municipality.

6. The Consultant is an independent consultant and not an employee, partner or agent of the Client.

7. Notice

Notices in writing between the parties shall be considered to have been received by the addressee on the date of delivery of delivered to the individual, or a member of the firm, or to an officer of the corporation for whom they are intended by hand, or by registered post; or if sent by regular post, to have been delivered within five (5) working days of the date of the mailing when addressed as follows:



The Client at:	The Consultant at:
The Municipality of the County of Kings 181 Coldbrook Village Park Drive, Coldbrook NS, B4P 1B9 Fax: 902-679-0911 Email: btraynor@countyofkings.ca	

8. Entire Contract

The Contract Documents are to be read into and form part of the Agreement and the whole shall constitute the Contract between the parties and subject to law and the provisions of the Contract Documents shall endure to the benefit of and binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns.

9. No action or failure to act by the Municipality or Consultant shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

10. Time

Time shall be construed as being of the essence in this Contract.

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

SIGNED, SEALED, AND DELIVERED

In the Presence of:

CLIENT

Municipality of the County of Kings

Name of Client

Witness

Signature

Peter Muttart, Mayor

Name and Title of Person Signing

Witness

Signature

Scott Conrod, CAO

Name and Title of Person Signing

CONSULTANT

Name of Consultant

Witness

Signature

Name and Title of Person Signing

Witness

Signature

Name and Title of Person Signing

NB: Where legal jurisdiction, local practice or Owner or Consultant requirements calls for (a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or (b) the affixing of a corporate seal, this Agreement should be properly sealed.



The following Terms and Conditions shall apply to any contract resulting from this RFP.

1) Headings

The division of this Contract into articles and sections and the insertion of the recitals and headings are for convenience and reference only and shall not affect the construction or interpretation of the Contract.

2) Currency

All transactions referred to in this Contract will be made in Canadian Dollars.

3) Singular, Plural, Gender and Person

Wherever in this Contract the context so requires, the singular number shall include the plural number and vice versa and any gender used shall be deemed to include the feminine, masculine or neuter gender and "person" shall mean an individual, partnership, consortium, corporation, joint venture or other entity or government or any agency, department or instrumentality thereof and vice versa.

4) Time

Time is of the essence of the Contract.

5) Expiry of Time Period

In the event that any date on which any action is required to be taken under this Contract is not a business day, such action shall be required to be taken on the next succeeding day which is a business day unless otherwise provided in this Contract.

6) Accounting Terms

All accounting terms not specifically defined shall be construed in accordance with Canadian Generally Accepted Accounting Principles.

7) Precedence of Documents

In the event of any ambiguity, conflict or inconsistency among any of the provisions of the Contract then the provisions establishing the higher quality or level of goods and services, safety, reliability and durability shall govern.

8) Advertisement

The Consultant will not use the name of the Municipality or any contents of this document in any advertising or publications without prior written consent from the Municipality.

9) Adverse Material Changes

In the event of an adverse material change in the Municipality's Capital or Operating budgets, the Municipality reserves the right to cancel or reduce its contractual obligations without penalty.

10) Amendment, Waiver, or Modification

This Contract may not be amended except by a Change Order or by a written instrument signed by the Municipality. No indulgence or forbearance by the Municipality shall be deemed to constitute a waiver of its rights to insist on performance in full and in a timely manner of all covenants of the Consultant, and any such waiver, in order to be binding upon the Municipality, must be expressed in writing and signed



by the Municipality and then such waiver shall only be effective in the specific instance and for the specific purpose for which it is given.

11) Authority

The Consultant warrants it has full power and authority to enter into and perform its obligations under this Contract and the person signing this Contract on behalf of the Consultant has been properly authorized and empowered to enter into such Contract. The Consultant further acknowledges that it has read all of the terms, conditions and provisions of this Contract and understands all provisions thereof and agrees to be bound thereby.

12) Clear Title

The Consultant warrants clear title to materials and equipment supplied by them and will indemnify and hold the Municipality harmless against any or all lawsuits, claims, demands and/or expenses, patent litigation, intellectual property infringement, materialmen or labourer's liens, or any claims by third parties in or to the goods and services mentioned and supplied by the Consultant.

13) Conflict of Interest

The Consultant and its employees shall take all reasonable steps to ensure avoidance of all direct or indirect conflicts of interest between any of their individual interests and those of the Municipality. If the Consultant or any one of its personnel becomes aware of any reasonable possibility of any such conflicts, then the Consultant shall promptly disclose to the Municipality the facts and circumstances pertaining to same.

14) Consultant's Personnel

The Consultant is solely responsible for all aspects of employment and labour relations in connection with its workforce. The Consultant is the employer of its workforce, and such employees are not employees or agents of the Municipality. All such employees shall be under the direct management and sole supervision of the Consultant. No employment relationship is created between the Consultant or any of the employees and the Municipality. The Consultant shall be responsible for all payroll functions and shall pay in a timely manner all salaries and benefits, taxes, employment insurance premiums, Canada Pension Plan premiums or contributions, *Workers Compensation Act* assessments and any other assessments or contributions of any kind or nature whatsoever that are payable to any governmental authority in respect of the Consultant's employees. It is the express mutual understanding and intention of the Consultant and the Municipality that the Consultant is not a successor to, or common employer with the Municipality and nothing in the Contract shall be construed, interpreted, understood or implied contrary to that mutual intention and understanding.

15) Consultant's Taxes

The Consultant shall pay when due all taxes, rates, duties, assessments and license fees that may be payable by the Consultant under applicable law or levied, rated, charged or assessed by any governmental authority in respect of the provisions of the Services to the Municipality.

16) Costs

The Consultant shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Contract.



17) Criminal Records Check

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

18) Employee Qualifications

The Consultant shall ensure its employees are competent to perform the Services and are properly qualified, trained and supervised in keeping with the qualification, training and supervision provided by a reasonably prudent Consultant of similar services in a public environment.

19) Employee Conduct

The Consultant shall require all of its employees performing Services to adhere to all existing and future the Municipality's policies with regard to harassment, workplace conduct and other policies of a like nature. The Consultant shall ensure its employees do not have any contact with staff other than in the normal course of providing Services and at no time shall such contact be inappropriate. The Consultant shall ensure that any employees who do not meet the standards required by this Contract do not provide Services at any facilities and are promptly removed from the work site. Failure to comply with these provisions constitutes a material breach of the Contract entitling the Municipality to immediately terminate the Contract as per Section 31.

20) Entire Contract

These terms and conditions, together with the RFP, the Consultant's proposal and subsequent purchase orders constitutes the entire Contract between the parties and supersedes all prior negotiations and discussions. The parties confirm and acknowledge that there are no collateral Contracts, representations or terms affecting or forming part of this Contract other than as set forth herein. Any additions or modifications to the Contract may only be made in writing, executed by both parties.

21) Exchanges

No exchanges will be made without authority from the Municipality.

22) Extension of Services

The Municipality may, at their option, upon not less than thirty-days (30-days calendar) written notice to the Consultant, extend the scope of the Contract to any other agency, board or commission governed by or affiliated with the Municipality on the same terms contained in the Contract.

23) Firm Pricing

Pricing shall be fixed for the duration of the Contract and shall not be subject to adjustment unless expressly provided for in the Contract.



24) Term of Contract

The Contract commences on the date that it is awarded to the Consultant and continues in force until the Services are acceptably completed (as determined by the Municipality, acting reasonably) or until the earlier termination of the Contract in accordance with these Terms and Conditions.

25) Continuous Services

The Consultant shall provide continuous and uninterrupted Services to the highest standard of care, skill and diligence maintained by persons providing similar services. Should any work or materials be required for the proper performance of the Contract which are not expressly or completely described in the Contract and are reasonably associated with or necessary for the proper and timely performance and provision of the Services, then such work or materials shall be deemed to be implied and required by the Contract and the Consultant shall furnish them as if they were specifically described in the Contract as part of the Services.

26) Changes to Scope of Service

The Municipality shall have the right to change the scope of Services provided by the Consultant by Change Order including changes in Service standards, increasing or reducing the frequency, level or quality of Services, adding, reducing or deleting Services at any facility and adding, deleting or changing facilities, sites or locations of Services provided. The Contract Price will be adjusted to reflect any change in the scope of Services. The amount of any reduction or increase in the Contract Price shall be determined by the Municipality and the Consultant by taking into account any reduction or increase in capital or labour costs based on the pricing methodology, rates, and costs for the Services set forth in the Consultant's proposal. If the Municipality and the Consultant are unable to agree on the appropriate reduction or increase in the Contract Price, the matter shall be referred for resolution pursuant to binding arbitration in accordance with the *Commercial Arbitration Act*. The Municipality shall not be liable to the Consultant for any loss (including loss of anticipated profit) or damage of any nature arising out of any reduction or deletion in Services. The Consultant shall not be entitled to be paid for any Services not expressly provided for within the scope of the Services or not covered by a duly authorized Change Order.

27) Delays, Substitute Services, and Liquidated Damages

Except when due to an Event of Force Majeure, if the Consultant fails to complete the Services or any part of the Services by any date or deadline specified in the Contract or approved change orders (the "Period of Delay"), the Municipality may elect to:

- a) Obtain substitute services from a third party, in which case the Consultant must reimburse the Municipality for the difference, if any, between the charges incurred by the Municipality for the substitute services and the charges specified in the Contract that the Municipality would owe to the Consultant if not for the Period of Delay. If the Municipality decides to permanently use the substitute service from a third party the Contract Price will be adjusted accordingly.
- b) Recover from the Consultant any damages or losses suffered by the Owner as result of a Period of Delay ("Actual Damages").
- c) Recover from the Consultant \$500 per day for each day that the Period of Delay continues ("Liquidated Damages"). The Consultant agrees that such Liquidated Damages represent a fair, reasonable and appropriate estimate of the Municipality's Actual Damages and that such Liquidated Damages may be assessed and recovered by the Municipality as against the Consultant without the Municipality being required to present any evidence of the amount or character of Actual Damages sustained by reason thereof. Such Liquidated Damages are intended to represent



estimated Actual Damages and are not intended as a penalty, and the Consultant shall pay them to the Municipality without limiting the Municipality's right to terminate this Contract for default as provided elsewhere herein.

28) Suspension of Services

- a) In any circumstance where the Municipality is of the view that the Services as performed by the Consultant are either not in accordance with the requirements of the Contract or pose any unacceptable risks to the safety of the Municipality staff or the public, the Municipality may without incurring any liability to the Consultant immediately suspend, in whole or in part, performance of further services on written notice to the Consultant for such a period of time as the Municipality may determine, in which case the Consultant agrees it will vacate the subject Municipal facilities and sites along with its employees and equipment until such period of time as the Municipality may determine.
- b) The Municipality may otherwise temporarily suspend the Services by giving the Consultant fourteen (14) days advance notice in writing of the temporary suspension.
- c) The Municipality shall not be responsible for any fees incurred by the Consultant during the period of any suspension unless the Consultant provides the Municipality with supporting documentation to show that such fees were reasonably necessary.
- d) The Consultant shall resume and complete the Services in accordance with the terms of the Contract upon receiving notice from the Municipality to do so. The Municipality shall make an equitable adjustment to the terms of this Contract which are affected by the suspension including time requirements and payment.

29) Force Majeure

"Event of Force Majeure" means any cause beyond the control of the Municipality or the Consultant which prevents the performance by either party of any of its duties, liabilities and obligations under this Contract not caused by its default or act of commission or omission and not avoidable by the exercise of reasonable effort or foresight by that party including explosion, fire, casualty or accidents, epidemics, cyclones, earthquakes, floods, droughts, war, civil commotion, acts of Queen's enemies, blockade or embargo, and acts of God but excluding lack of or insufficient financial resources to discharge and pay any monetary obligations and excluding increases in commodity prices, inability to obtain labour, equipment or materials, strikes, lockouts or other labour disputes.

If the Municipality or the Consultant fails to perform any term of the Contract and such failure is due to an Event of Force Majeure, that failure will not be deemed to be a default under the Contract. The party affected by an Event of Force Majeure will immediately notify the other party and will take all reasonable steps to minimize the extent and duration of the Event of Force Majeure and the period of all delays resulting from the Event of Force Majeure will be excluded in computing the time within which anything is required or permitted by such party to be done under this Contract, it being understood and agreed that the time within which anything is to be done under this Contract will be extended by the total period of all such delays. During the Event of Force Majeure requiring suspension or curtailment of a party's obligation under this Contract, that party will suspend or curtail its operations in a safe and orderly manner.



30) Limit of Force Majeure

If an Event of Force Majeure prevents the Consultant from providing Services at any facility for a period of one or more days, the Municipality may thereafter, at its option, and without incurring any liability to the Consultant, on notice to the Consultant, either suspend in whole or in part the performance of further Services on a site by site basis or for all sites or terminate this Contract with respect to the affected Services, or if all Services are prevented, the entire Contract. In the event of such suspension, the Consultant agrees it will vacate the affected site(s) along with all of its employees and equipment until such period of time as the Municipality may determine and the Municipality shall have the right to obtain substitute Services from a third party or through its own forces at its sole discretion for the duration of such period of suspension. In the event of such termination, the Municipality shall be entitled to a refund of all prepaid costs related to the Services prevented by the Event of Force Majeure.

31) Termination of Contract

- a) The Municipality may terminate the Contract immediately by giving the Consultant notice in writing, if the Consultant:
 - i) In the opinion of the Municipality, fails to perform the Services or any portion thereof within the time stated in the Contract for such completion,
 - ii) Becomes insolvent,
 - iii) Commits an act of bankruptcy,
 - iv) Abandons the project,
 - v) Assigns the Contract without the required written consent,
 - vi) Conduct detrimental to the Municipality,
 - vii) Fails to observe or perform any of the provisions of the Contract,
 - viii) Has any conflict of interest which may, in the opinion of the Municipality, have an adverse effect on the project, or
 - ix) Fails to cure the default of a material obligation in accordance with Section 36.
- b) The Municipality may terminate the Contract by giving the Consultant thirty (30) days advance notice in writing of the date on which the Contract is terminated.
- c) If the Contract is terminated for any of the reasons set out in Article 31.1, the Consultant shall pay the Municipality upon demand an amount equal to all loss or damage suffered, both directly and indirectly by the Municipality as a result of the non-completion of the Services by the Consultant. If the Consultant fails to pay the Municipality for any such loss or damage on demand, the Municipality shall be entitled to deduct the same from any payments due and payable to the Consultant as well as exercise any other remedies available to the Municipality.
- d) Subject to Article 31(c), the Municipality shall, in the event of termination of the Contract, pay to the Consultant all reasonable fees and distributions incurred by the Consultant in accordance with the Contract up to the date of termination. The Municipality shall have no further liability whatsoever to the Consultant for any loss of profit or any losses suffered either directly or indirectly, by the Consultant as a result of the termination of this Contract. Notwithstanding the foregoing, the Municipality's maximum liability to the Consultant shall not in any circumstances or for any purpose exceed the Contract Price.
- e) The Consultant agrees that termination or suspension of the Contract or a change to the Services to be provided under this Contract does not operate so as to relieve or discharge the Consultant from any obligation under this Contract or imposed upon the Consultant by law in respect to the Services or any portion of the Services that the Consultant has completed.



32) Further Assurances

The parties shall, with reasonable diligence, hold all meetings, perform all acts, execute and deliver all documents and instruments, do all such things and provide all such reasonable assurances as may be reasonably necessary or desirable to give effect to the provisions of this Contract.

33) Improvements and Efficiencies

The Consultant shall at its cost continuously develop and implement improvements and efficiencies in the performance of its Services through improved familiarity with the environment, redeployment of resources, workload balancing, lowering unit costs through utilization of shared equipment, simplified and streamlined processes, lower carrying and delivering charges and other strategies. The Consultant will identify all potential performance improvements and efficiencies to the Municipality and shall at the same time provide the Municipality with a calculation of the corresponding savings to the Consultant and the costs of providing such Services. The Municipality will assess whether the proposed performance improvements and efficiencies may be carried out without compromising the service standards and if the Municipality approves same, the Consultant will implement such improvements and efficiencies for the benefit of the Municipality.

34) Independent Contractor

The parties are independent contractors. The Contract does not create or establish any relationship as partners, joint venturers, employer and employee, or principal and agent.

35) Independent Legal Counsel

The Consultant confirms it has obtained independent legal advice in entering into this Contract.

36) Default

If the Consultant fails to perform a material obligation under this Contract, the Municipality may consider the Consultant to be in default and may assert a default claim by giving the Consultant a written and detailed notice of default. The Consultant shall have thirty (30) days after receipt of the notice of default to either (i) cure the default or (ii) if the default is not curable within thirty (30) days, to provide a written cure plan. The Consultant will begin implementing the cure plan immediately after receipt of notice by the Municipality that it approves the plan.

37) Liability and Indemnity

- a) The Consultant agrees to indemnify and hold harmless the Municipality, its officers, its agents, its employees and its volunteers from and against any and all losses, claims, demands, payments, suits, judgments, charges, expenses, actions, cause of actions, and costs caused by or arising from:
- b) The willful actions or misconduct of the Consultant including, but not limited to, trespass or nuisance, or
- c) The negligent performance of the Services.
- d) The Municipality may set off any sums owed by the Consultant to the Municipality pursuant to this indemnity from any sums due to the Consultant. This right is in addition to any other remedies available to the Municipality under law.
- e) In the event that any action, suit, claim or demand is brought or made against the Municipality or any of its servants, agents, or employees, as set out in Article 37(a), the Municipality shall give the Consultant a written notice and the Consultant shall have the option of contesting the validity of the action, suit, claim or demand by appropriate legal proceedings. If the Consultant elects to



contest, it shall give written notice to the Municipality within seven (7) days of receipt of the notice from the Municipality. On final determination of such action, suit, claim or demand, the Consultant shall immediately pay any judgment awarded against the Municipality or any of its servants, agents or employees, together with all proper costs and charges.

- f) In the event that the Consultant shall not elect, within the period of seven (7) days to contest any action, suit, claim or demand, the Municipality may commence any such action, suit, claim or demand at the sole discretion of the Municipality. The Consultant shall immediately pay to the Municipality any sums paid by the Municipality, together with any sum as shall represent the reasonable costs of the Municipality in defending or settling any action, suit, claim or demand.
- g) Without restricting the generality of the foregoing, for the purposes of Articles 37(b) and 37(c), costs shall mean party-party costs, solicitor-client costs, and solicitor and his/her own client costs, whether the Municipality retains internal or external counsel.
- h) Any property or work to be provided by the Consultant under this Contract will remain at their risk until they are provided with written acceptance by the Municipality. The Consultant will replace at their expense, all property or work damaged or destroyed by any cause whatsoever.
- i) The obligations of the Consultant under the articles of this Section 38 shall not extend to the liability of the Municipality, its employees, agents, officers or servants where liability arises from the negligent act or omission of the Municipality.
- j) This Section 37 survives the expiry, suspension, or termination of this Contract.

38) Insurance

- a) During the term of this Contract, the Consultant shall carry the following:
 - i) General Liability Insurance covering the services and operations of the Consultant for bodily injury and/or property damage with policy limits of not less than Five Million Dollars (\$5,000,000.00) per occurrence. Such policy shall include the following:
 - ii) Contractual Liability;
 - iii) Non-Owned Automobiles;
 - iv) Cross Liability;
 - v) Pollution Liability, if required;
 - vi) Employers' Liability (if applicable); and
 - vii) Municipality as additional insured.
 - viii) Professional Liability Insurance covering the services provided by the Consultant with policy limits of not less than Five Million Dollars (\$5,000,000.00) per claim and in the aggregate. The Consultant shall obtain such insurance when the Consultant subcontracts for any work from such a design professional, and prior to the submittal of construction documents. Any design professional required to obtain professional liability insurance must maintain proof of insurance for the term of the Contract.
- b) The insurance shall be in a form and with insurers acceptable to the Municipality, acting reasonably. Certificates of insurance shall be provided to the Municipality by the Consultant or the Consultant's broker and evidence of renewal shall be provided to the Municipality not less than thirty (30) days prior to the expiry dates of the policies. Certified copies of policies shall be provided on request by the Municipality.
- c) The Consultant shall be responsible for the payment of all premium and deductible amounts relating to the insurance policies, and the Consultant shall maintain the insurance from the date of this Contract until the completion of the Project.



- d) The insurance coverage requirements as specified in this insurance provision shall not be construed as a limit to the Consultant's liability under this Contract.
- e) During the term of the Contract, the Municipality, acting reasonably and at its cost, has the right to have the Consultant increase or decrease the insurance limits, purchase additional insurance policies and/or change insurance coverages.
- f) If the Consultant is legally obliged to be covered by Workers' Compensation and Health and Safety regulations, the Consultant shall provide evidence of coverage and evidence that the premiums have been paid and are up to date. The Consultant shall also be responsible for obtaining and providing evidence that any subcontractor is also covered as required by law.
- g) Successful Consultants will be required to enter into a Consultant/Client agreement as required on a project specific basis. The intention of the agreement will be to hold the consultant responsible for any damages incurred as the result of their errors or omissions or negligence.
- h) Each agreement shall contain a comprehensive hold harmless/indemnification clause in favor of the Municipality for all claims arising out of the negligence and/or act or omission of the engineering firm.

39) Subcontractor

- a) The Consultant may, upon first obtaining the written approval of the Municipality, retain the services of a subcontractor as may be required to perform the Services.
- b) The Consultant shall be responsible for the performance of the Services under this Contract even if the subcontractors retained are approved by the Municipality pursuant to Article 39.
- c) For subcontractors retained by the Consultant and approved by the Municipality, the Consultant shall bind the subcontractors to a contract containing:
 - i) a provision indicating the laws of Nova Scotia govern the Contract between the Consultant and the subcontractor; and
 - ii) terms and conditions which are consistent with the terms of this Contract.
- d) Nothing contained in this Contract creates any contractual relationship between any of the Consultant's subcontractors and the Municipality.

40) Project Human Resources Changes

- a) The Consultant shall use all reasonable efforts to minimize the possibilities of changes in its human resources assigned to perform the Consultant's obligations under this Contract. If a change is necessary, the Consultant is required to promptly notify the Municipality. Notification shall include:
 - i) the reason for the proposed change;
 - ii) a comprehensive description of the proposed change; and
 - iii) detailed resumes for each new proposed resource documents the resource's specific relevant experience and expertise related to the Services, credentials, accreditations, awards and background.
- b) The Consultant shall use all reasonable efforts to promptly replace such resource with another that is of at least equal competence.
- c) All resource replacements contemplated in Article 40(a) are subject to the Municipality's written approval.
- d) The Consultant shall bear all additional costs incurred as a consequence of any replacements.



41) Confidentiality

- a) The Consultant will be permitted access to files and reports that relate to the Services. Information pertaining to the Municipality obtained by the Consultant as a result of this project is confidential and must not be disclosed without written permission of the Municipality.
- b) Notwithstanding the foregoing, data, information and material will not be considered confidential if such data, information and material is obtainable by the Consultant through other means than the Municipality or on behalf of the Municipality or if such data, information and material has been published or distributed by the Municipality to the general public.
- c) This Section 41 survives the expiry, suspension, or termination of this Contract.

42) Freedom of information and protection of protection of privacy

- a) The Consultant acknowledges that the Municipality is subject to the requirements of the *Municipal Government Act* relating to Freedom of Information and Protection of Privacy at Part XX. All information and records pertaining to this Contract will be maintained in confidence or disclosed by the Municipality in accordance with the provisions of the *Municipal Government Act* relating to Freedom of Information and Protection of Privacy
- b) The selected Consultant agrees that it is subject to the provisions of the *Municipal Government Act* relating to Freedom of Information and Protection of Privacy.
- c) The selected Consultant agrees that all information or records under its care and control that is collected or created for purposes of this Contract are subject to the provisions of the *Municipal Government Act* relating to Freedom of Information and Protection of Privacy.
- d) The Consultant must not permit the collection, use and/or disclosure of any personal information (as defined by section 461(f) of the *Municipal Government Act*) without the consent of the individual.
- e) In the event that the Consultant is acquired by a non-Canadian company, the Consultant agrees, at no cost to the Municipality and upon reasonable notification from the Municipality, to provide to the Municipality all of the Municipality's data in electronic format, and to completely purge all of the Municipality's data, including backups, from the Consultant's possession prior to the completion of the acquisition. A certificate from an independent third party verifying that all data, including backups, has been purged shall be provided to the Municipality prior to the acquisition of the Consultant by a non-Canadian company. Acceptable third parties include professional accountants, certified auditors and IT professionals.
- f) Section 42 survives the expiry, suspension, or termination of this Contract.

43) Law

- a) This Contract is and will be deemed to be made in Nova Scotia and for all purposes will be governed exclusively by and construed and enforced in accordance with the laws prevailing in Nova Scotia and the laws of Canada applicable therein. Unless stated otherwise herein, the Consultant attorns to the exclusive jurisdiction of the courts of Nova Scotia to determine any dispute arising out of this Contract and the RFP.
- b) The Consultant shall obtain and pay for all necessary permits or licenses required for the execution of the Services.
- c) The Consultant shall comply with all relevant federal, provincial and municipal legislation, codes, bylaws and regulations applicable to the Services. This includes any Municipality policies and procedures in force at the time of the performance of the Services. Where there are two or more laws, bylaws, regulations or codes applicable to the Services, the more restrictive shall apply.



- d) If the Consultant performs the Services contrary to any applicable laws, bylaws, regulations, codes and orders of any authority having jurisdiction, the Consultant shall be responsible for and shall correct any violations thereof and shall bear all resulting costs, expenses, penalties and damages. If the Municipality is required to do anything or take any steps or pay any sums to rectify such non-compliance, the Municipality may subtract the cost of such rectifications from any monies owed to the Consultant. Such action shall not be deemed a waiver of any action that the Municipality may pursue to collect any monies paid that exceed the monies owed to the Consultant.
- e) The Consultant shall indemnify the Municipality, its officers and employees against any damage caused to the Municipality as a result of any negligence or unlawful acts of the Consultant, its employees, agents, or subcontractors. Similarly, the Consultant shall agree to indemnify the Municipality, its officers and employees against any claims or costs initiated by third parties as a result of any negligence or wrongful acts of the Consultant, its employees, agents, or subcontractors.

44) Payment

- a) Reimbursement will be on a lump sum basis that may be invoiced on a percentage basis throughout the project.
- b) The Consultant is to submit a completed "Progress Claim" form provided by the Municipality with the Consultant's invoice attached. Payment requests submitted without this documentation will not be accepted.
- c) Invoices shall match the Purchase Order sequence of items listed. Consultants are to send invoices in duplicate, at the following address:
Municipality of the County of Kings
181 Coldbrook Village Park Dr.
Coldbrook, NS B4N 3W3
Attn: Manager of Engineering Services
- d) The invoice must show the authorized purchase order number, itemized list of services being invoiced for and a Consultant contact name and phone number for invoice problem resolution should the need arise. Agreed charges for freight, postage, insurance, crating or packaging, etc. must be shown as separate line item on the invoice(s). HST must also be shown as separate line items on the invoice. The Municipality will not be considered in default of payment terms if the payment process is delayed due to incorrect pricing. The Municipality is interested in taking advantage of any discounts allowed for prompt payment of invoices.

45) Intellectual Property Rights

- a) The Consultant agrees that all base materials, research results, computer programs, drawings, documents and notes or materials of any type whatsoever developed or prepared by the Consultant (the "Documents") in performance of the Consultant's Services shall vest in and become the absolute property of the Municipality, including assignment of all copyright. The Consultant agrees that this transfer of property and assignment of copyright applies to the Documents notwithstanding that the Documents may contain wording to the contrary.
- b) For greater certainty, Documents as defined in Section 45(a) does not include the Consultant's pre-existing intellectual property or derivatives thereto, owned by the Consultant and used in the performance of the Services (the "Materials"), which remains the Consultant's intellectual



property. Notwithstanding the foregoing, the Consultant agrees that any of the Materials used in the performance of the Services or incorporated into the Documents may be used by the Municipality for its business purposes and may be shared with the Municipality's other Consultants. To the extent that the Materials are included in the deliverables to the Municipality, the Municipality shall receive a perpetual, royalty-free, non-transferable, non-exclusive license to use the deliverables for the purpose for which they were intended.

- c) Upon completion of the Services or termination of this Contract, the Consultant shall deliver all of the Documents to the Municipality on demand by the Municipality. The Consultant may keep copies of the Documents. Once the Municipality has possession of the Documents, the Municipality is solely responsible for the use that the Municipality makes of the Documents in other projects.
- d) Without prejudice to any rights which may exist in the Municipality by virtue of any prerogative rights and powers or by virtue of the *Copyright Act*, R.S.C. 1985, c. C-42, the Consultant agrees that all present and future rights in the copyright in the Documents will vest absolutely and immediately in the Municipality.
- e) The Consultant warrants that the Consultant is the only person who has or will have moral rights in the Documents and the Consultant waives in favor of the Municipality, all of the Consultant's moral rights, as provided for in the law of copyright, in the Documents.
- f) The Consultant agrees that execution of this Contract constitutes the written assignment of copyright and waiver of moral rights pursuant to Articles 46(d) and 46(e).
- g) The Municipality agrees to indemnify and hold the Consultant harmless from any claim, liability or cost (including reasonable legal fees) arising out of any modification of the Documents by the Municipality or any person that obtains the Documents from or through the Municipality.

46) Intellectual Property Infringement and Royalties

- a) The Consultant represents and warrants that, to the best of its knowledge, neither it nor the Municipality will infringe any third party's intellectual property rights (including patent, copyright or industrial design) as a result of the performance of the Services or through the use of any work delivered by the Consultant in connection with the Services (the "Work"), and the Consultant shall, at its own expense, defend any suit that may arise in respect thereto and hold harmless and indemnify the Municipality against all claims, demands, costs, charges and expenses arising from or incurred by any such infringement.
- b) If anyone makes a claim against the Municipality or the Consultant concerning intellectual property infringement or royalties related to the Work, that Party agrees to notify the other Party in writing immediately. If anyone brings a claim against the Municipality, the Consultant agrees to participate fully in the defense and any settlement negotiations and to pay all costs, damages and legal costs incurred or payable as a result of the claim, including the amount of any settlement. Both Parties agree not to settle any claim unless the other Party first approves the settlement in writing.
- c) The Consultant has no obligation regarding claims that were only made because:
 - i) the Municipality modified the Work or part of the Work without the Consultant's consent or used the Work or part of the Work without following a requirement of the Contract; or
 - ii) the Municipality used the Work or part of the Work with a product that the Consultant did not supply under the Contract (unless that use is described in the Contract or the manufacturer's specifications); or



- iii) the Consultant used equipment, drawings, specifications or other information supplied to the Consultant by the Municipality (or by someone authorized by the Municipality).

47) Notices

All notices, consents or other communications other than day-to-day communications, provided for under this Contract shall be in writing and shall be deemed to have been duly given and to be effective, (i) if mailed, three (3) business days after being deposited in the post as registered, postage prepaid, return receipt requested, and (ii) if delivered or sent by facsimile communication, on the date of delivery, to the parties at the respective addresses specified in the RFP and proposal or at such other address as the party to whom the notice is sent shall have designated in accordance with the provisions of this Section.

48) Security Requirements

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

49) Set-Off

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

50) Subcontracting and Assigning

The Consultant will not assign this Contract or any part thereof or enter into any subcontract for any or all of the Services without the prior written consent of the Municipality, which consent may be arbitrarily and unreasonably withheld. The Consultant is required to provide to the Municipality the names of any proposed subcontractors and activities to be performed by them. Approval by the Municipality of a subcontractor shall not relieve the Consultant of its obligations under the Contract except to the extent those obligations are in fact properly performed. In the event the Municipality approves a subcontractor the Consultant shall secure compliance and enforce at its own expense for the benefit of the Municipality, each of the Consultant's contracts with subcontractors. Nothing contained in this Contract shall create any contractual relationship between any subcontractor and the Municipality. The Consultant agrees to bind every subcontractor to the terms and conditions of the Contract which are appropriate and applicable to the work to be performed by the subcontractor and the Consultant shall be fully responsible to the Municipality for the acts and omissions and errors of all subcontractors and of persons directly or indirectly employed or contracted by them and for coordinating activities of the approved subcontractors. The Municipality, acting reasonably shall be entitled to impose any term or condition in connection with any approval of any proposed assignment or subcontract in order to ensure the continued and effective provision of goods or services to the Municipality. Subcontracting or assigning the Contract to any firm or



individual whose current or past or other interests may, in the Municipality's opinion, give rise to a conflict of interest in connection with the Contract will not be permitted.

51) Supplies, Materials and Equipment

The Consultant shall at its expense provide all materials, supplies and equipment for the performance of the Services. No substitute or alternate products or equipment will be used unless agreed to by the Municipality. All equipment, supplies and materials used by the Consultant shall be in good working order and free from defects. All machinery and electrical devices used shall conform to CSA standards and bear CSA approval labels. All costs of approval to obtain the required certification will be the sole responsibility of the Consultant.

52) Survival

All obligations of the Consultant which by their terms are intended or are appropriate to survive the termination of the Contract shall survive the cancellation, termination or expiration of the Contract.

53) Taxes

The Municipality will pay any HST payable in respect of the various goods and services provided by the Consultant in accordance with the requirements under the *Excise Tax Act* (Canada). The Consultant is and shall remain an HST registrant under the Act throughout the Standing Offer Period.

54) Ownership of Deliverables

All deliverables, reports and supporting documents furnished by the Consultant in its performance of the Services will become the exclusive property of the Municipality.

55) Value Added Services

The Consultant shall provide the Municipality with any value-added services described in its proposal. Such value-added services shall be provided to the Municipality at no charge.

56) Waiver

A waiver by the Municipality of a breach or default of the Consultant under the Contract shall not be deemed a waiver of any subsequent or other breach or default by the Consultant. The failure of the Municipality to enforce compliance with any term or condition of the Contract shall not constitute a waiver of such term or condition.

57) Warranties

The Consultant warrants that all Services will be performed with reasonable care, diligence and skill and at least in accordance with the standards of care generally practiced by competing Consultants of similar services. The Consultant further warrants the goods or equipment supplied and work and/or services performed under this Contract will conform to the specifications herein, are free from defects and/or imperfections, are merchantable and fit for the purposes for which they are ordinarily employed, and are available for delivery to the Municipality at the time of submission of the Consultant's proposal or at the time specified by the Municipality in the RFP. The Consultant shall be liable for all damages incurred by the Municipality and its officers, officials, employees, agents and volunteers as a result of any defect or breach of warranty contained in this Contract. The Consultant's warranty shall extend for no less than a period of twelve (12) months after the goods, equipment, or Services are delivered and accepted by the Municipality and applied to their intended use.