



Municipality of the County of Richmond
2357 Hwy 206, Arichat, NS B0E 1A0
Telephone: (902) 226-2400

REQUEST FOR PROPOSAL (RFP)

Water System Assessment Reports

RFP #MOCR202210

The Municipality of the County of Richmond is issuing this Request for Proposals (RFP) seeking the services of a qualified firm to prepare system assessment reports for the Municipality's two waster systems.

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Important Notes for Bidding:

- The complete tender document is comprised of this RFP specifications document (28 pages). Please contact the procuring entity if any pages are missing.

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1.0 Introduction

The Municipality of the County of Richmond is a rural area of Cape Breton with a population of approximately 8,964 people and roughly 5,122 households. The Municipality covers 1,244 square kilometres. The Municipality owns, operates and maintains two (2) municipal water systems serving the communities of Arichat, Petit de Grat, Louisdale, Evanston and Whiteside, representing approximately 1,200 households.

1.1 RFP Objectives

The Municipality of the County of Richmond is issuing this Request for Proposals (RFP) seeking the services of a qualified firm to conduct system assessment reports (SARs) for the two water systems comprising the Richmond Water Utility, namely:

- Arichat / Petit de Grat Water System
- Louisdale / Evanston / Whiteside Water System

SARs must follow the *Terms of Reference for System Assessment Reports for Municipal Drinking Water Systems* as issued by Nova Scotia Environment and amended June 15, 2022. The Operating Approvals for the two water systems require that the Municipality hire a qualified consultant to complete System Assessment Reports on the operation of the facilities by April 1, 2023.

1.2 Project Schedule, Contract Period and Primary Work Location

Below is the approximate **schedule** that is expected to be followed for this RFP. However, this may be subject to change and is therefore presented primarily for guidance:

- RFP Open: July 20, 2022
- Deadline for Questions/Amendments: August 2, 2022
- RFP Closes: Thursday, August 11, 2022 at 2:00 PM AST
- RFP Award: August 18, 2022

1.3 RFP Contacts

Questions about this RFP should be directed to the individuals listed below, or their designate(s). Information that is obtained from any other source is not official and may be inaccurate.

| Procuring Entity Contact |
|--|
| Chris Boudreau, P.Eng. Director of Public Works |
| Municipality of the County of Richmond 2357 Highway 206 P.O. Box 120 Arichat, Nova Scotia B0E 1A0 |
| Email: caboudreau@richmondcounty.ca Phone: (902) 226-3988 |

1.3.1 Asking Questions

The proponent is responsible for obtaining any needed clarification of the RFP requirements, while the RFP is open. Questions should be directed **in writing** to the RFP Contacts identified. **Email is the preferred method of contact.** Only written responses from the RFP contacts will be considered an official response.

Responses to questions that are deemed by the procuring entity, in its sole discretion to be material to all prospective proponents **will** be made available as an addendum while the RFP is open, for download from the tender's web site at: <http://www.gov.ns.ca/tenders>.

2.0 Service Requirements

2.1 Work/ Project Description

The Municipality of the County of Richmond is issuing this Request for Proposals (RFP) seeking the services of a qualified firm to conduct system assessment reports (SARs) for the two water systems comprising the Richmond Water Utility, namely:

- Arichat / Petit de Grat Water System
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The following supporting documents are available upon via the following link <https://drive.google.com/drive/folders/1gYzcWWD9wXuGHvcUeb8WZQpG-E7B5CI?usp=sharing>

Operating Approval - Arichat WTP 2008-065642-03

Operating Approval - Louisdale WTP 2019-2554410-02

Water Utility System Assessment Report – Arichat – CBCL – March 28, 2013

Water Utility System Assessment Report – Louisdale – CBCL – March 31, 2013

2.2 Deliverables / Milestones

The requirements in this section will prevail as enduring requirements for service delivery throughout the effective period of any contract(s) resulting from this RFP.

- A draft copy of the system assessment reports shall be made available to Municipal Staff for comments by **January 31, 2023**.
- A final copy shall be provided to the Municipality by **March 1, 2023**.

In the event that the proponent is unable to meet the aforementioned deliverables they should provide their own timeline on when the works can be completed. The Municipality will be the sole judge as to the acceptability of the proposed dates when evaluating the proposals.

Any requirements by the proponents, such as type of information required from the Municipality and dates, should be noted in their proposals.

2.3 Resources Supplied by Municipality

Upon request the following resources may be supplied by the Municipality to assist the successful Consultant with this assignment.

- Assistance by Public Works Systems Operator as schedule permits;
- Access to available record drawings and O&M manuals;
- Copies of available water treatment plant records;
- Access to water testing records via WaterTrax data management software.

3.0 Administrative and Legal Requirements

3.1 Business Registration

Proponents are required to be registered to carry on business in accordance with applicable laws.

The status of a proponent's business registration does not preclude the **submission** of a proposal in response to this RFP. A proposal can be accepted for evaluation, regardless of (i) whether the company is registered, or (ii) whether its business registration is in good standing. However, a contract cannot be awarded unless the successful proponent is registered and in good standing, in accordance with applicable laws. .

For information on the business registration requirements of the Nova Scotia Registry of Joint Stock Companies, please consult, <http://www.gov.ns.ca/snsmr/access/business/registry-joint-stock-companies>.

If the proponent's business is not required to register in Nova Scotia, the proponent will be required to submit registration from your applicable Provincial jurisdiction.

3.2 Contract

After the evaluation, the successful proponent(s) will be required to sign the contract that will constitute the legal agreement with the procuring entity for this project and govern all aspects of the services/goods to be delivered. It will incorporate the relevant terms of this RFP and the provisions of the successful proposal as determined by the procuring entity, and any other terms as the procuring entity may require.

3.2.1 Contract Terms

The standard services contract is included as Appendix B.

3.2.2 Declaration of Contract Intentions

As outlined in Appendix A, the proponent should prepare a declaration of its intentions regarding the contract. The declaration **should be included with your proposal** as a separate document. Failure to include a completed declaration may be grounds for disqualification.

If the proponent wishes to request alterations to the standard services contract, **these should be identified in the declaration**. The extent of the deviations from the contract provided will be taken into account when evaluating proposals. The proponent who requests changes to the contract risks having its score significantly reduced. Therefore, requested alterations should reflect only those changes that the proponent considers to be vital.

3.3 Other Important Provisions

3.3.1 Addenda and Addenda Acknowledgement

Proponents are responsible to ensure that they are aware of and have complied with any addenda issued in respect of this RFP, by visiting the Provincial Procurement Services Web portal site at <https://procurement.novascotia.ca/>.

Responding to this RFP **may** require the acknowledgement of a specific addendum or multiple addenda as part of the submission. Acknowledgement requirements, whether optional or mandatory, will be specified in the applicable addendum. The proponent must monitor the Procurement Services website for any addenda that may be issued during the open period of the RFP.

3.3.2 Constraints

The parties acknowledge and agree that all materials and information provided to the procuring entity shall be kept confidential, subject to the provisions of the Nova Scotia Freedom of Information and Protection of Privacy Act (FOI/PPA; S.N.S. 1993, c. 5) and the laws of Nova Scotia and Canada generally. Information about the Act is available online at:

<http://nslegislature.ca/legc/statutes/persinfo.htm>

3.3.3 Conflict of Interest

The procuring entity reserves the right to disqualify any proponent that in the procuring entity's sole opinion has an actual or potential conflict of interest or an unfair advantage in respect of this RFP, whether existing now or is likely to arise in the future, or may permit any such proponent to continue and impose such terms and conditions on that proponent, as the procuring entity in its sole discretion may require.

Proponents are required to disclose, to the [RFP Contacts](#), any potential or perceived conflict of interest issues immediately upon becoming aware of any such conflict.

Information about the Nova Scotia *Conflict of Interest Act* (S.N.S. 2010, c. 35) can be found at:

<http://nslegislature.ca/legc/statutes/conflict.htm>

3.3.4 Right to Reject; Financial Stability; Non-Compliance

3.3.4.1 Failure to comply with any of the mandatory terms or conditions contained or referenced in the Solicitation documents shall result in the rejection of the Bid.

3.3.4.2 All of the terms, conditions and/or specifications stated or referenced in the Solicitation are assumed to be accepted by the Bidder and incorporated in the Bid.

3.3.4.3 Bidders may be required to demonstrate financial stability, authorization to provide the goods/services being acquired, and/or regulatory agency approval, licensing or registration as needed, or otherwise clarify Bidder's capability to satisfy the Solicitation requirements. The Procuring Entity reserves the right to reject Bids from any Bidder that it believes is incapable of

providing the necessary labour, materials, equipment, financing or management resources to perform the work or supply the goods in a satisfactory and timely manner.

- 3.3.4.4 The Procuring Entity reserves the right to waive minor non-compliance where such non-compliance is not of a material nature in its sole and absolute discretion, or to accept or reject in whole or in part any or all Bids, with or without giving notice. Such minor non-compliance will be deemed substantial compliance and capable of acceptance. The Procuring Entity will be the sole judge of whether a Bid is accepted or rejected.
- 3.3.4.5 The Procuring Entity reserves the right to split an award amongst Bidders as deemed in the best interests of the Procuring Entity.

3.4 Proposal Format

To help ensure consistency in proponent responses and facilitate the evaluation process, the proposal should be prepared and packaged, as outlined in the sections that follow. Please print double-sided whenever possible and limit promotional and/or marketing materials to the information specifically requested in this RFP.

3.4.1 RFP Proposal Package

A complete proposal package is comprised of the elements below, presented in the order listed:

- One (1) x Business Registration Profiles**
- One (1) x Declaration of Contract Intentions**
- One (1) x Letters of Introduction** – This should identify the proponent and be signed by a signing officer for the proponent in order to bind the proponent to the statements made in the proposal.
- One (1) Technical Response (Section 4) which includes:**
 - Table of Contents
 - Body of Proposal
 - Appendices
- One (1) Pricing Response:**
- One (1) Original Proposal Package** – The title page should be marked with the text ‘**ORIGINAL**’ at the top. The Original should be left **unbound**. * A paper submission is not required if an electronic submission is provided.

OR

- One (1) Electronic Copy** – Prepare an electronic copy of your proposal as a Portable Document Format (PDF) file and send directly to the contact person via email (please confirm receipt). The file name should include an abbreviated form of the proponent’s name and RFP # MOCR202210. Copies must be virus-free.

3.4.2 External Packaging (if applicable)

Ensure the external packaging reflects the information listed below:

- Proponent's name
- RFP # MOCR202210

4.0 Proposal Requirements

This section describes the **proposal requirements** to be included, which will be evaluated as per section 5.

4.1 Mandatory Criteria

Proponents must demonstrate that they meet all mandatory criteria as described in section 5.3.

4.2 Technical Response

4.2.1 Proposed Approach/Process and Project Plan

Describe the **approach and/or process** proposed to address the service requirements. Include any notable methodologies, innovative solutions, tools and techniques, and their respective suitability to this project.

Also provide a **project plan** that reflects your proposed approach/process and demonstrates your ability to meet the schedule requirements for this project, including any applicable milestones.

4.2.2 Demonstrated Expertise

Outline your experience with comparable projects. Knowledge of the Richmond municipal wastewater infrastructure will be considered an asset.

4.2.3 Proponent References

Provide **three references** for any work done by your firm in the past three years that is similar in nature, complexity and size to the requirements specified in this RFP. Provide the name of each project reference, along with his/her phone number, fax number and email address. The project reference information provided should identify the size of the projects conducted, as well as demonstrate the extent of your previous experience, the clients' overall satisfaction with your services and the results achieved, including your adherence to interim and final deadlines.

4.2.4 Proposed Resources, Resumes and References

The proponent should be able to demonstrate that its **proposed team as a whole** has the experience/skills to perform the services in accordance with the requirements. Prepare the table below to identify **all** personnel who will be assigned to the project and contribute to (i) the **routine management** and/or (ii) the **performance** of the required services. As shown, provide each person's name, title, role on this project, experience in this role and his/her respective employment status.

| Name | Title | Project Role | Role Experience (# months) | Employment Status (E = employee, C = contractor, P = partner) |
|------|-------|--------------|----------------------------|---|
| | | | | |

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|--|--|--|--|--|
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| | | | | |

If contractors or partners are to be used for this project, they must be identified in your table. If so, describe the general range of services that the respective contractors (companies or individuals) will provide.

Submit the individual **resumes** for each proposed resource. The resumes should be structured to emphasize their relevant qualifications and experience in successfully completed projects of a similar size and scope to that required by this RFP.

Each resume should include **at least two project references** where the proposed individual served in a similar role, including:

- Name of client Procuring Entity
- Name, title, telephone number and email of a client contact
- Brief description of the scope, complexity, dates and duration of the project
- Role the proposed individual played in the referenced project

4.2.5 Resource Management

If at time of award the resources that have been proposed by a proponent are not available, and no replacements acceptable to the client procuring entity can be identified, the procuring entity reserves the right, in its sole discretion to refuse to proceed with award to that proponent.

4.3 Pricing Response

Pricing response should be broken down to include the estimated level of effort for major work tasks (breakdown consulting fees and expenses separately). All fees should exclude HST.

5.0 Proposal Evaluation

5.1 General Information

The Evaluation Team will consist of representatives of the procuring entity, and may include other representatives as deemed appropriate by the procuring entity. It is understood and accepted by the proponent that all decisions about the degree to which a proposal meets the requirements of this RFP are in the sole determination of this Evaluation Team.

To assist in the evaluation of proposals, the Evaluation Team may, but is not required to:

- Conduct reference checks relevant to the proposal with any or all of the references cited in a proposal to verify information regarding a proponent and rely on and consider any relevant information from such cited references in the evaluation of a proposal.

Conduct any background investigations that it considers necessary and consider any relevant information resulting there from.

- Seek clarification from a proponent with respect to their proposal. Such clarification **will not** offer the proponent the opportunity to change or provide new information. To the extent possible, requests made by the Evaluation Team will be sent from the email addresses of the RFP Contacts.

A proposal will be examined in accordance with the evaluation process and criteria outlined in the sections below.

5.2 Evaluation Process

The proposal will be evaluated using the following process:

- Stage 1: Proposal will be reviewed to determine compliance with all mandatory criteria identified in section 5.3
- Stage 2: Proposals that meet all mandatory criteria will be evaluated and scored using the evaluation criteria and assigned weights set out in the table in section 5.4. Proposals that do not meet the qualifying score for subtotal A set out in section 5.4 will be given no further consideration.

The compliant proposal that scores the highest number of rated points will be recommended for award of a contract.

5.3 Stage 1 – Mandatory Criteria

A proposal must meet **all** of the following mandatory criteria and clearly demonstrate that these are met. If a proposal fails to meet **any one** of these criteria, it will be deemed non-compliant and will be rejected.

1. All proposals must be submitted in Canadian dollars (CDN) exclusive of all taxes.
2. Proponents must have demonstrated experience performing System Assessment Reports for treatment plants in Nova Scotia.

5.4 Stage 2 – Evaluation Criteria

If a proposal meets the Mandatory Criteria it will be evaluated using the Evaluation Criteria set out in the table below. Scores will be recorded for each criterion and a total score will be determined.

Prepare the table below, inserting references to the appropriate sections within your proposal that deal with each criterion under evaluation.

| Criterion | Weight | Minimum Score Required (% or points) | Proponent's Reference/Page Number |
|--|------------|---|-----------------------------------|
| Technical Response: | | | |
| Proposed Approach/Process & Project Plan | 20 | | |
| Demonstrated Expertise | 30 | | |
| Proposed Resources, Resumes & References | 20 | | |
| Subtotal A – Qualifying Score | 70 | 50 | |
| Pricing Response | 30 | | |
| Maximum Score Possible | 100 | | |

Notes:

1. A minimum Qualifying Score of 50 points is required at Subtotal A for the proposal to be given further consideration.
- If the proposal's score meets or exceeds the minimum qualifying score at subtotal A, the Pricing Response will then be evaluated using the formula below:

$$\text{Score} = \text{weight} \times (\text{low} / \text{bid})$$

Appendix B – Standard Services Contract

THIS AGREEMENT made this ___th day of ___,2022.

(Ref: **REQUEST FOR PROPOSALS MOCR20222** for the Municipality of the County of Richmond)

BETWEEN:

**THE MUNICIPALITY OF THE COUNTY OF RICHMOND,
(the "Municipality")**

OF THE FIRST PART

- and -

**NAME OF SUPPLIER
(the "Supplier")**

OF THE SECOND PART

WHEREAS the Municipality issued the above referenced Request for Proposals dated July 20, 2022, (the "RFP"), inviting submission of proposals to provide the Services, as hereinafter defined;

AND WHEREAS the Supplier submitted a proposal to the Municipality dated **mmm dd**, 2022, (the "Proposal") in response to the RFP;

AND WHEREAS the Municipality has agreed to retain the Supplier to provide the Services, subject to the parties entering into an agreement with respect thereto;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements set out herein, the Supplier and the Municipality covenant and agree as follows:

1.0 SERVICES AND TERM

- 1.1 The Supplier agrees to provide and deliver the services and/or products and perform the work (collectively the "Services") described in Schedule A hereto, in accordance with the terms and conditions of this Agreement, during the period commencing on the **nnth** day of **mmm**, **yyyy**, and expiring on the **nnth** day of **mmm**, **yyyy** (the "Term").
- 1.2 The Supplier shall provide the Services and discharge its duties to the Municipality hereunder in a competent, professional and timely manner, and shall assign only duly qualified, competent and skilled personnel to carry out its obligations to the Municipality under this Agreement.
- 1.3 The Services shall be delivered on time and in accordance with the delivery schedule agreed to by the Municipality and conform in all respects with the Municipality's requirements. The Services shall not be deemed to be completed to the satisfaction of the Municipality or accepted by the Municipality until all requirements have been met by the Supplier in accordance with the terms and conditions hereof.
- 1.4 Deleted

2.0 PRICE AND PAYMENT

- 2.1 The total amount payable to the Supplier under this Agreement, including out of pocket expenses, shall not exceed **AMOUNT** dollars (\$**nnnn.00**) (exclusive of applicable taxes) without the prior written authorization of the Municipality. The Supplier shall not be entitled to receive payment for any Services it provides hereunder that exceed this amount ("Excess Services") unless the Municipality has given prior written authorization to the Supplier to undertake the performance of any Excess Services.
- 2.2 The Municipality shall, subject to the terms and conditions of this Agreement, pay the Supplier for the Services in accordance with Schedule B.
- 2.3 Each invoice submitted by the Supplier for payment shall contain a detailed description of the Services in respect of which it is being remitted, and all such other information as specified by the Municipality from time to time for inclusion therein. Subject to verification by the Municipality, invoices will be paid thirty (30) days following receipt.
- 2.4 If Schedule B provides that the Municipality will retain a holdback on payments to the Supplier, payment of such holdback shall be made by the Municipality in accordance with and subject to the terms and conditions set out in Schedule B.
- 2.5 No payment by the Municipality to the Supplier hereunder shall be or construed to be an acceptance or approval by the Municipality of incomplete, defective or improper performance by the Supplier of any of its obligations under this Agreement, or operate to relieve the Supplier from the performance of any of its obligations hereunder that have not been performed in accordance with the requirements set out herein.
- 2.6 If the Supplier is not a resident of Canada, the Supplier acknowledges and agrees that the Municipality shall be authorized, if required by law, to withhold income tax from any amounts payable to the Supplier hereunder and to remit that tax to the Receiver General for Canada on the Supplier's behalf.

3.0 TERMINATION OF AGREEMENT

- 3.1 The Municipality shall be entitled to immediately terminate this Agreement for cause, upon the occurrence of any of the following events, each of which shall constitute an "Event of Default".
 - a) The Supplier breaches or fails to comply with any of the terms and conditions of this Agreement, and such breach or failure is not remedied by the Supplier to the reasonable satisfaction of the Municipality within five (5) days after written notice from the Municipality to remedy the breach or failure;
 - B) The Supplier becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors, or otherwise acknowledges its insolvency, or a receiver or receiver manager is appointed for any property of the Supplier; or
 - c) Any statement, representation or warranty made by the Supplier in its Proposal or in this Agreement is untrue or incorrect at the time it was made.
- 3.2 If this Agreement is terminated for cause pursuant to Article 3.1 as a result of an Event of Default, the Supplier shall be responsible for and shall reimburse the Municipality for all loss, costs and damages incurred by the Municipality as a result of or arising from the Event of Default, including any costs incurred by the Municipality to correct any defects or deficiencies in any of the Services, and any costs incurred by the Municipality to

procure the Services or any part thereof from another provider.

- 3.3 The Municipality may, at its sole discretion, terminate this Agreement without cause at any time prior to the expiration of the Term, upon giving thirty (30) days prior written notice of termination to the Supplier. In such event, the Supplier shall be entitled to receive payment for the Services it has satisfactorily performed up to the date of termination, and where applicable, to the payment of any holdback which the Municipality is then holding at such time. Payments to the Supplier of the foregoing amounts shall constitute full and final satisfaction of the Municipality's obligations to the Supplier under this Agreement. In the event this Agreement is terminated by the Municipality pursuant to this Article 3.3, the Supplier shall not be reimbursed for any profits that may have been anticipated but not earned up to the termination date, and the Supplier shall not have any claim or entitlement to any additional compensation or damages arising from such termination.
- 3.4 Neither the expiration nor the earlier termination of this Agreement shall relieve, or be deemed to relieve, the Supplier from any duties, obligations or liabilities hereunder that accrued prior to such expiration or termination, or which by their nature are intended to survive the expiration or earlier termination of this Agreement, including but not limited to all warranties given by the Supplier in respect of the Services, and those duties and obligations of the Supplier set out in Article 4 (Confidentiality), Article 5 (Material Rights), Article 8 (Liability and Indemnity) and Article 15. (Accounts and Audit).

4.0 CONFIDENTIALITY

- 4.1 The Supplier acknowledges and confirms that all information provided to it by the Municipality hereunder, or to which the Supplier has access as a result of providing the Services to the Municipality is confidential information ("Confidential Information"). Unless required by law or an order of a court of competent jurisdiction, such Confidential Information shall not, either during the Term or at any time thereafter, be disclosed by the Supplier, without the prior written consent of the Municipality, to any third party or to any employees of the Supplier, other than its employees who are directly involved in providing the Services.
- 4.2 The Supplier shall implement and maintain security standards and procedures for the safeguarding of the Municipality's Confidential Information to prevent unauthorized access thereto and to ensure compliance with applicable legislation. The Supplier agrees to promptly notify the Municipality in writing upon becoming aware of a breach of either the Supplier's security standards and procedures or the Municipality's security policies, or any unauthorized disclosure of information that the Supplier is required to keep confidential under applicable law. The Supplier shall take immediate steps to mitigate any breach or unauthorized disclosure described in this Article 4.
- 4.3 The Supplier acknowledges and agrees that the Municipality may disclose this Agreement or portions thereof as may be required pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act (Nova Scotia)*.
- 4.4 If the Supplier is a "service provider" as defined in the *Personal Information International Disclosure Act, (Nova Scotia)* ("PIIDPA") as a result of the type of Services that it is providing to the Municipality under this Agreement, the Supplier represents, warrants and undertakes to the Municipality that it shall comply with its obligations under PIIDPA and the terms and conditions contained in the PIIDPA Schedule, attached as Schedule C to this Agreement.

5.0 MATERIAL RIGHTS

- 5.1 All findings, data, surveys, research, working papers, drawings, spreadsheets, evaluations, databases and documents, regardless of storage format or whether in draft or final form that are collected, created or produced by the Supplier in the performance of this Agreement (collectively the “Materials”) are the exclusive property of the Municipality. All intellectual property rights, including patents, copyrights, trademark and industrial design in the Materials, with the exception of any pre-existing intellectual property rights of the Supplier therein, are the sole property of the Municipality, are hereby irrevocably assigned by the Supplier to the Municipality and the Supplier herewith waives all moral rights in those Materials.
- 5.2 All research reports, surveys, findings, data and other information comprising the Materials are Confidential Information of the Municipality and are subject to the provisions of Article 4 of this Agreement.
- 5.3 The Municipality reserves the right, in its sole discretion, to publish or release, in whole or in part, or to refrain from publishing or releasing, any research, reports, information, audio visual materials, information or data produced by the Supplier in the performance of the Services under this Agreement.
- 5.4 The Supplier shall ensure that the Municipality has all licences that are needed for any software that the Municipality will require to lawfully continue using all deliverables that the Supplier has agreed to provide as part of the Services.
- 5.5 The Supplier hereby grants to the Municipality a perpetual non-exclusive licence to use any computer software or designs of a generic nature to which the Supplier holds copyright, and that may be included in any work product comprising any part of the Services delivered to the Municipality under this Agreement.

6.0 INDEPENDENT CONTRACTOR

- 6.1 This Agreement is a contract for the performance of the Services. The Supplier is engaged by the Municipality hereunder as an independent contractor and shall not at any time hold itself out as an employee, servant or agent of the Municipality. No partnership, joint venture, agency or other legal relationship is created or deemed to be created by this Agreement or any actions of the parties hereunder. The Supplier shall not have authority under this Agreement to bind the Municipality, or to commit the Municipality to the payment of money to any third party

7.0 COMPLIANCE WITH LAWS

- 7.1 The Supplier shall comply with all applicable laws governing the conduct of its business and the provision of the Services to the Municipality. The Supplier agrees to maintain in good standing all licences, permits, registrations or authorizations it is required to obtain in order to lawfully provide the Services in Nova Scotia. Without limiting the foregoing, professional personnel performing any part of the Services on behalf of the Supplier shall be required to comply with all applicable professional registration or licensing requirements in effect in Nova Scotia at the time such Services are being performed.
- 7.2 Neither the acceptance of the Supplier’s Proposal, nor the execution of this Agreement by the Municipality, shall be or deemed to be approval or authorization by the Municipality to anything related to the business or operations of the Supplier or the provision of the Services that requires any permit or licence or approval pursuant to federal, provincial or municipal legislation, regulations or bylaws.

- 7.3 The Supplier shall promptly provide to the Municipality, upon request, copies of all permits, licences, authorizations and registrations that it is required to obtain in order to provide the Services, as well as evidence of the Supplier's compliance with laws applicable to the performance of the Services, including without limitation, the *Workers' Compensation Act (Nova Scotia)* and the *Occupational Health and Safety Act (Nova Scotia)*

8.0 LIABILITY AND INDEMNITY

- 8.1 The Supplier shall indemnify and hold harmless the Municipality, its Municipality's, employees, servants and agents from and against all damages, costs, loss, expenses (including legal fees), claims, actions, suits or other proceedings of any kind or nature, which they, or any of them, may at any time incur or sustain as a result of or arising out of an Event of Default, or any act, omission or negligence of the Supplier, or any of its employees, servants, agents, or subcontractors, in the performance of this Agreement, including without limitation, any injury or death to persons, or loss of or damage to property. Notwithstanding the foregoing, the Supplier shall not be liable for any indirect or consequential damages sustained by the Municipality unless such damages result from the negligence or wilful default of the Supplier, its servants, agents or subcontractors.
- 8.2 The Municipality shall not be liable for any damages or injury (including death) to any person or to any property of the Supplier as a result of or arising out of this Agreement or the provision of the Services by the Supplier under this Agreement, unless such damages are direct damages and are caused solely and directly by or as a result of the negligence of the Municipality. In no event shall the Municipality be liable for any indirect or consequential damages that are sustained by the Supplier, howsoever caused, as a result of or arising out of this Agreement or the provision by the Supplier of any Services hereunder.

9.0 RESOURCES

- 9.1 In the event that the Supplier requires access to equipment or office space of the Municipality in order to carry out any part of the Services, the Supplier shall comply with all applicable safety and security legislation and all policies and directives of the Municipality relating to any buildings, premises, equipment or software to which the Supplier is given access.
- 9.2 The Supplier shall assign a sufficient number of qualified, competent and skilled personnel to carry out its obligations under this Agreement. In the event that the Supplier's Proposal included the names or titles of specific personnel or any proposed subcontractor to provide the Services, or any part thereof, the Supplier's personnel and any subcontractors so indicated in the Proposal shall be required to provide the Services and no substitutions shall be permitted without the prior written consent of the Municipality. If the Municipality, in its sole discretion, considers a proposed substitute to be acceptable, the Municipality may consent to the substitution, provided however that such consent may be subject to such terms and conditions as the Municipality designates in writing to the Supplier. Notwithstanding the foregoing, the Municipality shall have the right at any time, in its sole discretion, to require that the Supplier replace, at no cost or expense to the Municipality, any Supplier personnel or subcontractor involved in providing the Services whom the Municipality determines to be unsuitable, and in such event, the Supplier shall immediately appoint a duly qualified, competent and skilled replacement to fill the position vacated

10.0 TITLE AND ACCEPTANCE

- 10.1 Unless otherwise expressly provided in this Agreement, title to all deliverables, or any part thereof, comprising the Services to be provided by the Supplier shall vest in the Municipality on delivery and acceptance by the Municipality. Upon payment being made by the Municipality on account of materials, parts, work in process, or finished work, title therein shall vest in and remain with the Municipality, provided however that the risk of any loss or damage thereto shall remain with the Supplier until their acceptance by the Municipality. Vesting of title in the Municipality as a result of payments made by the Municipality to the Supplier shall not constitute acceptance, or be deemed to constitute acceptance, by the Municipality of any such materials, parts, work in progress or finished work, and shall not relieve the Supplier of its obligations to perform the Services in accordance with the requirements of this Agreement.
- 10.2 The Supplier shall promptly pay for all labour, services and materials that it requires to provide the Services. The Supplier agrees that it shall not do or permit anything to be done that would result in any liens, charges or encumbrances being placed on or attaching to any materials, parts, work in process, finished work or deliverables comprising the Services to be provided to the Municipality under this Agreement.

11.0 FORCE MAJEURE

- 11.1 The Supplier shall not be liable for a failure or delay in performing any of its obligations hereunder that occurs without the fault or negligence of the Supplier and is attributable solely to a cause beyond its reasonable control ("Force Majeure Event"). For the purposes of this Agreement, the following shall be considered to be a Force Majeure Event: floods, fire, explosion, power failure, acts of God, war, civil commotion, the enactment of any law, order, regulation or bylaw, labour strikes, slowdowns, picketing and boycotts
- 11.2 Where the Supplier claims that a Force Majeure Event has occurred, the Supplier shall be required to give immediate written notice thereof to the Municipality, which notice shall describe the Force Majeure Event, its cause, the probable duration of the delay resulting therefrom, and the steps being taken by the Supplier to mitigate the impact of the Force Majeure Event on the performance of the Supplier's obligations hereunder.
- 11.3 Notwithstanding the foregoing provisions of this Section 11, if a delay or failure arising from a Force Majeure Event continues for ten (10) consecutive, the Municipality may, in its sole discretion, terminate this Agreement upon three (3) days prior written notice to the Supplier. In the case of termination by the Municipality pursuant to this Article 11.3, the Supplier shall be entitled to receive payment only for the Services provided prior to the termination date which have met the requirements of this Agreement, and such payment shall constitute full and final satisfaction of the Municipality's obligations to the Supplier hereunder.

12.0 REPRESENTATIONS AND WARRANTIES

- 12.1 The Supplier represents and warrants to the Municipality, with the intention and knowledge that the Municipality is relying on each such representation and warranty in entering into this Agreement, that:
- a) All statements contained in the Supplier's Proposal, and any certificate or other document delivered to the Municipality under this Agreement or in connection with the Services to be provided hereunder are true and correct;
 - b) The Supplier has no knowledge of any fact that may materially adversely affect the Supplier's business or operations or its financial condition, or its ability to fulfill its obligations to the Municipality under this Agreement;
 - c) The Supplier has the personnel, experience, qualifications and other resources to provide the Services in accordance with the requirements of this Agreement;
 - d) The Supplier has the corporate power and legal capacity to enter into, fully perform, and meet all of its obligations under this Agreement on the terms and conditions set out herein;
 - e) This Agreement has been duly authorized, executed and delivered by the Supplier and constitutes a valid and binding obligation of the Supplier; and
 - f) The Supplier can perform the Services, and the Municipality shall be entitled to utilize the Services, in accordance with the requirements of this Agreement without infringing any trade secret, patent, copyright, industrial design or other intellectual property right enforceable in Canada, and the Supplier has obtained, and will maintain, at its own expense, all requisite and appropriate authorizations and permissions, including those concerning any licenses, assignments, copyrights, patents and other intellectual property rights that are required by the Supplier to meet its obligations to the Municipality hereunder.

13.0 CONFLICT OF INTEREST

- 13.1 The Supplier shall not permit an actual or potential conflict of interest to arise between its obligations to the Municipality under this Agreement and its obligations to any third party. The Supplier shall immediately notify the Municipality in writing if any such potential or actual conflict of interest should arise at any time during the Term.

14.0 ASSIGNMENT AND SUBCONTRACTING

- 14.1 The Supplier shall not assign this Agreement or any of its rights or obligations hereunder, or subcontract the performance of any of the Services without the prior written consent of the Municipality, which consent may be withheld by the Municipality in its sole discretion. Any purported assignment or subcontracting by the Supplier without such consent shall be of no force or effect.
- 14.2 The Municipality's consent to an assignment of this Agreement, or the subcontracting of the performance of any of the Services to be provided by the Supplier hereunder, shall not relieve the Supplier from any of its obligations under this Agreement and the Supplier shall, notwithstanding any such consent by the Municipality, remain responsible for the performance of the Services and all other obligations of the Supplier set out herein.

15.0 ACCOUNTS AND AUDIT

15.1 The Supplier shall keep proper and accurate books and records, including all invoices, receipts and vouchers, relating to the Services and all expenditures and commitments made in connection therewith. The Supplier shall make such books and records available to the Municipality for review or audit within ten (10) days following receipt of a request from the Municipality to do so. The Supplier agrees that it shall retain all such books and records and make them available for review or audit by the Municipality for a period of three (3) years after the date of final payment by the Municipality hereunder. Any review or audit by the Municipality pursuant to this Article 15.1 shall be carried out by the Municipality at the Municipality's expense.

16.0 NOTICES

16.1 Any notice to be given under this Agreement by the Municipality or the Supplier shall be in writing and delivered by hand, by facsimile transmission or by registered mail, to the other party at the address and to the attention of the contact individual indicated below:

To The Municipality:
c/o Chris Boudreau
Director of Public Works
Municipality of the County of Richmond
2357 Highway 206, P.O. Box 120
Arichat, Nova Scotia B0E 1A0

To the Supplier:

A notice shall be deemed to be duly given and received upon delivery, if delivered by hand; upon receipt of the facsimile transmission, if the transmission is received by the intended recipient prior to the recipient's close of business (and otherwise on the next business day of the recipient); or three (3) business days after posting, if sent by registered mail with a return receipt. Either party may change its address or contact for receipt of notices, provided that such party gives notice thereof in accordance with this Article 16.1 and confirms the effective date of the change in such notice.

17.0 AGREEMENT AND AMENDMENTS

17.1 This Agreement constitutes the entire agreement and understanding between the Supplier and the Municipality with respect to the Services, and supersedes all prior negotiations, communications and other agreements, whether written or oral, relating to the subject matter hereof. Any amendment or modification to this Agreement shall have no force or effect unless it is in writing and signed by duly authorized representatives of each of the Municipality and the Supplier.

17.2 The following documents form part of this Agreement:

- a) These Articles of Agreement; and
- b) The Schedules;

In the event of any conflict or inconsistency between or among any of the foregoing, the documents comprising this Agreement shall be given precedence in the following order:

- a) These Articles of Agreement; and amendments hereto;
- b) Schedule A.1;
- c) Schedule A.2;
- d) Schedule B; and
- e) Schedule C (if applicable)

18.0 WAIVER

- 18.1 No term or provision of this Agreement, and no breach of this Agreement by the Supplier, shall be deemed to be waived or excused by the Municipality unless such waiver is in writing and signed by the Municipality. The waiver by the Municipality of any breach of a term or provision of this Agreement shall not be or be deemed to be a waiver of any continuing or subsequent breach by the Supplier of the same or any other term or provision of this Agreement.

19.0 REMEDIES CUMULATIVE

- 19.1 The rights and remedies of the Municipality set out in this Agreement are cumulative, and are in addition to and not in substitution for any other rights or remedies available to the Municipality at law or in equity.

20.0 DISPUTES

- 20.1 If a dispute arises between the Municipality and the Supplier arising out of or relating to this Agreement, or the subject matter hereof, the Municipality and the Supplier agree that they shall each make all reasonable efforts to resolve any such dispute on a timely basis through amicable negotiations. Disputes shall promptly be referred by each party to their respective senior management representatives who have the authority to resolve and settle any such disputes on their behalf. In the event that such representatives cannot resolve the dispute within ten (10) days, or such longer period as the parties may agree in writing, either party may elect, upon giving prior written notice to the other party, to resolve the matter through litigation proceedings. Notwithstanding the foregoing, nothing in this Article 20.1 shall prevent the Municipality from exercising its rights of termination set out in Article 3.1 or Article 11.3 hereof, in the circumstances described therein

21.0 ENUREMENT

- 21.1 This Agreement shall ensure to the benefit of and be binding on the Municipality and on the successors and permitted assigns of the Supplier.

22.0 GENERAL

- 22.1 **Municipality's Representative** All references in this Agreement to the Municipality, include any person duly authorized to act on behalf of the Municipality hereunder
- 22.2 **Headings and Interpretation** The division of this Agreement into Articles and the insertion of headings are for convenience of reference only and do not affect its interpretation. Except where the context requires otherwise, references to the terms "herein," "hereof," "hereunder" and similar expressions refer to this Agreement as a whole, and not to any specific Article or Schedule
- 22.3 **Time of the Essence** Time shall be of the essence in this Agreement.
- 22.4 **Currency:** All dollar amounts referred to in this Agreement are Canadian dollars, unless expressly provided.
- 22.5 **Offers of Employment:** Each of the parties agrees that it shall not, without the prior written consent of the other party, at any time prior to the expiration or earlier termination of this Agreement, or within a period of six (6) months thereafter, solicit personnel then in the employ of the other party, who either are, or were, directly

involved in the performance or administration of this Agreement, to terminate their employment with that other party.

- 22.6 **Partial Invalidity:** If any term or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, it shall be deemed to be severed from this Agreement, and the remaining terms and conditions shall nevertheless remain in full force and effect.
- 22.7 **Counterparts:** This Agreement may be signed by the Municipality and the Supplier in separate counterparts, each of which when signed and delivered, shall constitute an original and binding agreement for all purposes. Counterparts may be executed in original, faxed form, or portable document format (PDF), provided that the party which submitted its signature in faxed form or in PDF shall promptly forward the originally signed copy of this Agreement to the other party.
- 22.8 **Further Assurances:** The Supplier and the Municipality agree to execute and deliver all such further documents and instruments, and do or cause to be done all such acts and things, as either party may reasonably consider necessary to evidence the intent and meaning of this Agreement.
- 22.9 **RFP References:** All references in this Agreement to “RFP” mean and include any amendments that were made thereto by the Municipality.
- 22.10 **Words in the Singular:** Where the context so requires in this Agreement, words in the singular include the plural and vice versa.

23.0 GOVERNING LAW

- 23.1 This Agreement shall be governed by and interpreted in accordance with the laws of Nova Scotia and the laws of Canada applicable therein.

IN WITNESS WHEREOF the Municipality and the Supplier have caused this Agreement to be signed by their duly authorized representatives on the dates set forth below.

WITNESSED BY:

DATED AT City, Municipality
nth day of mmm, yyyy

NAME OF SUPPLIER

Witness Signature

For the Supplier

WITNESSED BY:

DATED AT City, Municipality
nth day of mmm, yyyy

Municipality of the County of Richmond

Witness Signature

For the Municipality

SCHEDULE A

This Schedule A incorporates by reference the documents referred to under each of Schedule A.1 and Schedule A.2.; below:

Schedule A.1 Request for Proposals

RFP #MOCR202210 issued by the Municipality, which describes the Services to be delivered by the Supplier to the Municipality

Schedule A.2 Supplier's Proposal

The Supplier's Proposal dated **mmm dd**, 2022

Supplier's Initials:_____

MOCR Initials:_____

SCHEDULE B

This Schedule describes the payment terms for the Services:

Schedule B.1 Payment

The total amount payable under the Agreement is set out in Article 2.1, and shall be invoiced by the Supplier as follows:

A single invoice to be submitted upon completion of this Agreement or monthly progress payments based on percentage of work completed.

Payment of Supplier invoices will be made by the Municipality in accordance with the terms of Article 2 of the Agreement and this Schedule B.

Supplier's Initials: _____

MOCR Initials: _____

SCHEDULE C
PERSONAL INFORMATION INTERNATIONAL DISCLOSURE PROTECTION ACT

The Supplier acknowledges and confirms that it is a "service provider" as defined in the *Personal Information International Disclosure Protection Act*, SNS 2006 c. 3 ("PIIDPA"), that it has read and understands its obligations as a service provider thereunder and that as a service provider it is legally bound by the obligations imposed on it by PIIDPA. It is a condition precedent to the Municipality entering into the Agreement with the Supplier that the Supplier irrevocably undertakes, covenants and agrees to be bound by and comply with the obligations imposed on it as a service provider under PIIDPA.

The Supplier further covenants, warrants and represents to the Municipality that it will not at any time provide or allow the release of personal information to which it has access in its capacity as a service provider to the Municipality in response to any "foreign demand for disclosure" or permit or allow the "unauthorized disclosure of personal information" as each of those terms are defined in PIIDPA.

The Supplier shall implement and strictly enforce security arrangements that will ensure that all personal information that it collects or uses on behalf of the Municipality is protected at all times from unauthorized access or disclosure and shall confirm in writing to the Municipality, upon request, the details of such security arrangements. The Supplier also agrees to implement and enforce any additional security procedures as may be required by the Municipality from time to time to protect the personal information that the Supplier collects or uses on behalf of the Municipality. The Municipality shall be authorized, upon giving prior written notice to the Supplier, to enter the premises of the Supplier during normal business hours for the purpose of conducting an audit of the security arrangements referenced herein.

All personal information that the Supplier obtains or becomes aware of while providing services to the Municipality is not and shall not be or be deemed to be the property of the Supplier. The Supplier acknowledges and agrees that it will not, either directly or indirectly, acquire any rights to use or own any such personal information other than the right to use it for the sole purpose of fulfilling its obligations to the Municipality under the Agreement.

The Supplier expressly confirms that the laws of the Province of Nova Scotia shall apply to its obligations as a service provider to the Municipality, notwithstanding the laws or the order of any court outside Canada.

Supplier's Initials: _____

MOCR Initials: _____