

THE TOWN OF  
**ANTIGONISH**

**REQUEST FOR PROPOSAL**

Diversity, Equity and Inclusion Plan

**Issued by:** The Town of Antigonish

**Contact Name:** Lise Roy

**Email:** [lise.roy@townofantigonish.ca](mailto:lise.roy@townofantigonish.ca)

**RFP Issued:** April 17th, 2023

**Responses Due:** May 15<sup>th</sup>, 2023, before 2:00pm Atlantic



# 1. OVERVIEW

## 1.1. About the Town of Antigonish

The Town of Antigonish (TOA) is in the northeastern corner of Nova Scotia (pop 4,656) and is an economic hub and service center for the rural communities surrounding it. With a diverse and growing population, TOA is a family-friendly town with lots of opportunity, access to quality education at all levels, recreation, sports, and cultural activities. Incorporated in 1889, the Town of Antigonish prides itself on being able to offer a good standard of living and a unique quality of life to its citizens.

Home to St. Francis Xavier University since 1855, the campus boasts a “premier undergraduate experience” in Canada and has recently gone through an extensive revitalization program. The sisters of St. Martha’s established St. Martha’s Hospital in 1906 and in 1986 a new regional hospital was built. As the two largest employers, the relationships these institutions have interwoven with the town make it the unique place it has become. While filling essential needs of health, education and economic activity, cultural and social assets are strong and growing.

Antigonish is vibrant community filled with rich cultural heritage and second-to-none hospitality. Antigonish has built upon the sporting tradition of the Highland Games to establish a proud hosting history that has brought several major national and international events to our community. Other cultural assets include Festival Antigonish - the longest running summer theatre in Canada. The town has many not-for-profit organizations working on different initiatives that encompass the four pillars of sustainability. Antigonish is known for its deep-rooted history in community development and known internationally for the Antigonish Movement and the COADY International Institute.

## 1.2. Document Purpose

This Request for Proposal (RFP) is seeking a qualified consultant to create a comprehensive Diversity, Equity, and Inclusion Plan (Plan) to support our Human Resource Manual.

Interested entities (“Respondents”) are requested to provide detailed information on how they propose to engage with the Town on the Plan. This includes, but is not limited to: delivery method, minimum Respondent qualifications and experience, budgeting, performance expectations, etc.

## 1.3. Background

TOA is a signatory on the leadership accord for diversity, equity and inclusion (DE&I) through Electricity HR Canada (EHRC). EHRC’s leadership accord on DE&I is a public commitment by Canadian employers, educators, unions, associations, and governments to advance, integrate and prioritize diversity, equity and inclusion in their organization’s policies, processes, culture, and workplace environment to proactively create a diverse, inclusive, and equitable workplace.

TOA has completed a Progress Benchmark and Review Assessment which highlighted areas for improvement and target actions in Governance Practices and Organizational Policies, Education and Workplace Readiness, and Recruitment and Retention Practices. The results of the assessment will be shared with Respondents upon registration and completion of the attached Non-Disclosure Agreement in Appendix A. (Please refer to Section 2.2)

## 1.4. Timeline

Below is a list of major milestone dates for the RFP. TOA maintains the right to adjust the schedule at its discretion.

Event	Target Dates
RFP Issued	April 17th, 2023
RFP Questions Due No Later Than	May 8th, 2023
RFP Responses Due	May 15th, 2023, before 2:00pm Atlantic

**2. RESPONDING TO THIS RFP**

Interested Respondents are encouraged to answer this RFP with the requested information and documentation by the stated deadline.

Prior to providing their RFP response, Respondents can submit questions to TOA via **email only**. TOA will release all questions and answers to all interested Respondents via public procurement websites. Questions about this RFP shall be submitted to [lise.roy@townofantigonish.ca](mailto:lise.roy@townofantigonish.ca) with a subject line that reads: “Diversity, Equity, and Inclusion Plan.” All questions must be received by May 8<sup>th</sup>, 2023 .

**Verbal discussion between TOA and a Respondent shall not become a part of the RFP unless confirmed by a written Addendum. The TOA shall not be held responsible for any misunderstanding by a Respondent.**

After collecting responses to this RFP, the project team will review the responses as described below.

**2.1. Proposal Submittal Date, Format, and Method**

Responses to this RFP must be received no later than **May 15<sup>th</sup>, 2023, 2:00pm Atlantic.**

All responses must be submitted electronically in PDF format as an attachment to an email and sent to [lise.roy@townofantigonish.ca](mailto:lise.roy@townofantigonish.ca). The subject line of the email should be: “**Diversity, Equity, and Inclusion Plan.**”

Confirmation of receipt will be provided within one (1) business day. If this receipt is NOT received, please send a separate email to request confirmation or address issues with file delivery.

All official notifications and communications will be posted on public procurement websites and or made via **email only**.

All costs associated with responding to this RFP will be borne by the Respondent.

**2.2. Registration and Confidentiality**

TOA has compiled information from EHRC’s Assessment Tool and Implementation Guide. Respondents will only be given a copy of this information after they have completed, and returned to TOA, the registration form and non-disclosure agreement (NDA) attached in Appendix A.

**2.3. Evaluation of Responses**

Review and evaluation of responses submitted to this RFP will be managed by the Plan team. Responses will be reviewed based on a variety of factors, including, but not limited to:

- **Organizational Capabilities:** TOA is interested in proven, financially stable Respondents that have a strong track record of successfully developing similar Plans and an experienced team to provide innovative solutions and new ideas to the process.
- **Plan Development Approach:** TOA is looking for a strategic, hands-on approach to the plan development. Respondents should demonstrate their experience driving results quickly within a phased work plan. The overall quality, reasonableness, and development of the plan is important to the TOA.
- **Schedule:** Respondents should demonstrate that they understand the major activities, milestones, and tasks associated with this project. Respondents should present these activities, milestones, and tasks in a clear study schedule with a risk mitigation plan to achieve the proposed schedule.
- **Community Benefits:** TOA will consider community benefits, including but not limited to workforce development programs and skills training as an optional enhancement to a Respondent's proposal. Respondents may submit proposals with additional community benefit elements as appropriate.
- **Commercial Terms:** Respondents should clearly articulate their proposed commercial terms as part of their response. TOA is interested in clear, favorable and standardized contract terms with a preference for any payments made upon completion. Respondents should detail their proposed approach and methodology for risk mitigation, conflict resolution, and potential cost overruns.

At the discretion of the evaluation team, respondents may be invited to provide additional information and/or make a presentation to the evaluation committee.

## 2.4. Terms and Conditions

**This RFP is not a contract offer and should not be construed as intent, commitment, or promise to acquire products or services presented by any Respondent.**

The Town will not pay for any information herein requested, nor be liable for any costs incurred by Respondents. Based on Respondent submissions, meetings may be scheduled between Respondents and the Town in person and/or remotely to expedite the review, evaluation, and potential discussions about the Plan delivery method.

The Town reserves the right to conduct exclusive or concurrent discussions or negotiations with responsible and professionally qualified Respondents.

### 2.4.1. Respondent Qualifications:

By submitting a proposal for this plan, the Respondent represents that it has the competence, qualifications, and relevant experience to carry out the work and will employ the same experienced staff to perform the plan's requirements efficiently and safely. Proof of qualification will be required from the successful proponent which should have the following minimum qualifications:

- a. Letter of good standing with Workers Compensation Board of Nova Scotia.
- b. Proof of Commercial General Liability Insurance coverage.
- c. Proof of Professional Errors and Omissions Insurance coverage.
- d. Proof of Firm's safety record and WCB coverage and WCB rate

#### 2.4.2. Non-Discrimination:

The Respondent, and any sub-contractors, shall comply with all applicable federal, provincial, and local laws, rules and regulations and best practices concerning non-discrimination in employment because of race, color, ancestry, national origin, religion, gender, sexual orientation, marital status, age, medical conditions, disability, or any other reason.

#### 2.4.3. Limitation of Liability:

No representation, warranty or undertaking, expressed or implied, in fact or in law, is or will be made by, and no responsibility is or will be accepted by TOA in relation to this RFP. No guarantee, representation or warranty, express or implied, is made and no responsibility of any kind is accepted by TOA for the completeness or accuracy of any information presented in the RFP.

#### 2.4.4. Agreement with Terms

By submitting a proposal, the consultant agrees to comply with all the terms and conditions of this RFP and this document or any portion thereof, may not be used for any purpose other than the submission of proposals. Exceptions or deviations to this proposal shall be on the consultant's letterhead and accompany the consultant's submission.

#### 2.4.5. Laws of Nova Scotia

Any Contract resulting from this RFP will be governed by and will be construed and interpreted in accordance with the laws of the Province of Nova Scotia and the Town of Antigonish. The successful Respondent shall abide by all relevant provisions of the Nova Scotia Labour Code. Further, the successful Respondent shall secure all necessary licenses and permits in connection with the proposal.

#### 2.4.6. Liability for Errors

While the town has used considerable efforts to ensure an accurate representation of information in this RFP, the information contained in this RFP is supplied solely as a guideline for consultants. The information is not guaranteed or warranted to be accurate by the town, nor is it necessarily comprehensive or exhaustive. Nothing in this RFP is intended to relieve consultants from forming their own opinions and conclusions with respect to the matters addressed in this RFP.

### **2.5. Insurance**

2.5.1. Upon award and prior to signing of any Contract documents (including the issuance of a purchase order), the successful Respondent shall obtain and maintain at its own expense, including the cost of any applicable deductible, the following policies of insurance:

i. Commercial General Liability Insurance, policy satisfactory to the Town and in an amount of not less than Two Million Dollars (\$2,000,000.00) per occurrence. Insurers licensed to conduct business in the Province of Nova Scotia shall underwrite such policy. The policy shall include but not be limited to provisions for:

- a) Contractual Liability;
- b) Cross Liability and Severability of Interest; and
- c) The Town of Antigonish being added as an additional insured with respect to the operations of the named insured.

ii. Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Nova Scotia, having an inclusive limit of not less than

\$2,000,000 per occurrence; for third party liability, in respect of the use or operation of vehicles owned, operated or leased by the successful bidder for the provision of services.

iii. Non-Owned Automobile Liability Insurance in standard form having an inclusive limit of not less than \$2,000,000 per occurrence in respect of vehicles not owned by the bidder, that are used or operated on its behalf for the provision of services under the Contract.

iv. Professional Liability Insurance insuring liability for errors and omissions in the performance or due to failure to perform the services contemplated in the contract, for not less than Two Million Dollars (\$2,000,000) per claim and in the annual aggregate.

2.5.2. The successful Respondent is required to maintain insurance at these levels at least one (1) year after completion of the project. Depending on the complexity of the project, the successful Consultant may be required to provide valid coverage for a longer period within reason, to allow TOA to become aware of any negligence on the part of the consulting firm.

## **2.6. Indemnification**

2.6.1 The successful Respondent, its agents, all workmen and persons employed by it, or under its control, will use due care that no person or persons are injured and that no property is damaged in the prosecution of the work and the successful consultant will be solely responsible for all damages to person or property, including theft, whether the property is owned by the town or any of its employees.

2.6.2 Each Respondent and the successful Respondent shall defend, indemnify and save harmless the town, its officers, agents and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including Workers' Compensation claims, in any way resulting from or arising out of this agreement; provided, however, that the consultant need not indemnify or save harmless the town, its officers, agents and employees from damages resulting from the sole negligence of the town's officers, agents and employees.

## **2.7. Best and Final Offer**

At its sole discretion, or if two or more Respondent have close total weighted bids, TOA may invite Respondent to provide a Best and Final Offer (BAFO).

BAFOs may be useful, for example, when no single response addresses all the project requirements, when shortlisted Respondent are over budget, when two or more Respondent are virtually tied after the evaluation process, or when Respondent submitted responses are unclear or deficient in one or more areas.

TOA may, at its sole discretion, restrict the number of Respondent invited to submit a BAFO or may offer the option to all Respondent. In either case, TOA will provide the same information and the same submission requirements to all Respondent chosen to submit a BAFO. Respondent may be asked to review their offers or provide additional clarification to specific sections of their proposal.

If a BAFO is requested, submitting a BAFO response is optional. Respondent choosing not to submit a BAFO should submit a written response notifying TOA that their response and pricing remains as originally submitted.

A BAFO may be submitted only once, and the terms of the BAFO will not identify either the current rank of any of the Respondent selected for a BAFO or the offers currently proposed.

## **2.8. Right to Accept or Reject any Submission**

TOA reserves the right to waive any informalities or to reject any or all quotes based on: changes to the approach to the work, required bid submissions, organizational and perceived liability considerations, the financial suitability of proceeding with the execution of the work, individual tenderer's level of experience, available personnel and equipment, the Owner's perception of the impact of performance on similar projects, or potential performance problems in keeping schedule targets. The Town reserves the right to omit portions of the work should it be deemed necessary for overall financial reasons.

TOA will not necessarily accept the lowest price or any proposal. The successful proponent will be selected based upon evaluation criteria developed by TOA which in its sole discretion will determine the way each response to the RFP meets the evaluation criteria.

## **2.9. Ownership of Data and Information**

All data, other information and all resulting reports and materials prepared by the successful Proponent shall be the exclusive property of TOA who reserves ownership rights to all ideas, plans and concepts.

# **3. SCOPE OF WORK & DELIVERABLES**

The following scopes are considered preliminary and subject to change. The following section is based on initial scoping of the Plan objectives, are not intended to be all inclusive or prescriptive and should be used as a guide to the basics of the Plan and the desired deliverables.

The Town welcomes suggestions, recommendations, technologies, methods, approaches, appropriate or applicable design standards, industry best practices and further details from Respondents on the work and deliverables to be performed as part of their response.

## **3.1. Diversity, Equity, and Inclusion Plan**

### **3.1.1 Plan Objectives**

Objectives of the Plan are to identify and provide guidance for best practices including but not limited to:

- **Increased Workforce Representation** - Implementing or updating a hiring policy to equitably increase representation of racialized communities, diverse genders, Indigenous peoples, and persons with disabilities in the workforce
- **Increased Management Representation** - Creating policies, practices, and strategies to increase management representation by hiring diverse genders, racialized people, Indigenous people, and persons with disabilities
- **Education/Training of the Workforce** - Adopting more inclusive training processes & policies to support DE&I in the workplace
- **Utilizing DE&I Requirements for Supplier Selection Methods** - Committing to working with a (or multiple) company(s) who are committed to DE&I through their policies and practices.
- **Ensuring Advancement and Retention of a Diverse Workforce** - Committing to retention and advancement of diverse genders, racialized people, Indigenous people, and/or persons with disabilities within the organization

- **Reporting and Communication** - Measuring and reporting on key DE&I performance indicators, communicating with internal and/or external stakeholders in the organization and sharing results of data collection and lessons learned
- **Establish a Workplace DE&I Committee** - Facilitating a workplace committee around DE&I, consisting of a diverse group of individuals, who focus on inclusion, discrimination, and human rights concerns within the workplace

### 3.2. Plan Schedule

Event	Target Dates
Kick off Meeting	May 29 <sup>th</sup> , 2023
Establish Benchmarks, Target & Commitments	June 19 <sup>th</sup> , 2023
Examine Processes and Procedures	July 5 <sup>th</sup> , 2023
Senior Management Training Strategy	July 19 <sup>th</sup> , 2023
Communication & Training Program Delivery	August 2 <sup>nd</sup> , 2023
Final Report	August 23 <sup>rd</sup> , 2023

The project schedule is intended as a guide only with suggested dates to be confirmed at the kick-off meeting.

### 3.3. Background Material

The following list of material will be available to respondents upon registration as outlined in Section 2.2

- EHRC’s Progress Benchmark and Review Tool Results
- EHRC’s Implementation Guideline
- EHRC’s Accord Signatory Certificate

### 3.4. Deliverables

Working under the direction of TOA’s Plan Team, the Consultant shall be required to provide the services listed below. Note that all services and deliverables listed are to be included in the Lump Sum Fee provided in response to the RFP. All proposal must contain the following minimum information:

- Baseline summary of current TOA workforce data, organizational culture, and progress on DE&I.
- Establish measurable target benchmarks, assess TOA’s performance against standards available and prioritize targets and commitments.
- Detailed Plan description including metrics, benchmarks, and milestones to create standards and practices that align with TOA’s organizational goals and ensure success.
- Examine processes and procedures including invisible factors such as psychological safety to create an inclusive environment.
- Consider business advantages created utilizing a diverse, inclusive workforce leading to creative solutions for improved services to a diverse community.

- f. Training Sessions for senior management with annual review session established with goals and progress matrix and reporting strategy.
- g. Communication tools and guidelines for marketing materials, internal and external communications.
- h. Training and DE&I education programming delivery, evaluation, and reporting for staff including implementation of processes for establishing meaningful and sustainable recognition of attitudes, behaviors, and performance.
- i. Proposed Budget

### **3.5. Innovative Methods and Value-Added Services**

The Respondent may have additional product or service offerings that will ensure the overall long-term success of this study. Respondents may, and are encouraged to, include value-added ideas beyond the scope of the RFP that provide added benefits or cost savings to the Town.

Innovative technologies, methodologies or approaches could result in omittance of certain scope items and potentially a reduction in overall project capital cost and or lifecycle cost. Respondents should describe their approach to the work to realize any available efficiencies, and the potential impact on cost and schedule alongside the description of the alternative approach (ex. this alternative approach could result in an approximate X% reduction in overall project cost and reduce the project timeline by Y weeks.)

Unless otherwise stated in the Respondent's submission, it is understood that there will be no extra costs for these services; however, if the Respondent identifies any additional costs pertaining to the proposed products or services, a summary and explanation of the value-added costs should be included and identified.

## **4. INFORMATION TO SUBMIT**

Respondents should provide clearly written submissions that are well laid out with straightforward technical and commercial information. The submissions shall describe the products and/or services being offered by the Respondent to meet study goals stated in this RFP. Each Respondent must clearly demonstrate how its products and/or services meet the study objectives and relevant industry standards and requirements.

All Respondent information will only be shared with the evaluation committee and NOT shared publicly or with other Respondents.

The Town recommends that Respondents organize their submission in the format, and order of information, described below.

### **COVER PAGE**

Each proposal must include a cover page that includes "Diversity, Equity and Inclusion Plan", business name, primary address, contact person, and contact information.

### **SECTION I: Company Background and Qualifications**

Respondents should provide a summary of no more than ten (10) pages of background information about its company in this section. Responses shall include:

- Company history and description of Respondent's capabilities in providing the proposed products and services.

- Annual revenue and total employees in for the last three (3) years.
- Organizational background and relevant experience in:
  - Other experience relevant to the project scope
- Brief bios of the key team members who would work on the projects. Respondents should highlight their team members' education, qualifications, certificates, and professional work experience that is relevant to the proposed project.
- Three (3) reference projects where the Respondent provided similar products or services to those being offered by the Respondent to the Town in response to the RFP. Reference projects should be in North America or western Europe with contact details for the appropriate project personnel.
- List, and brief description, of potential subcontractors and/or partners, along with description of how the Respondent has worked with these parties in the past.
- Brief description of any bankruptcies or legal proceedings against the Respondent, or its planned sub-contractors or partners, within the past five (5) years.
- Status and financial limits with bonding and / or surety firms.

## **SECTION II: Engagement Approach**

Respondents should describe their overall strategy and approach to being a proactive partner to support development and deployment of this Plan.

Respondents should describe the ongoing support, management, and resources that would be provided to TOA, including any unique value-add products or services that they wish to highlight.

Respondents are free to suggest new and innovative ways to engage with TOA on this study as part of their RFP submission.

## **SECTION III: Bid Price**

Pricing entered shall be on the following basis:

- a. All prices are in Canadian dollars (CAD) and inclusive of all applicable duties and taxes except HST, which shall be itemized separately where indicated.
- b. The successful Respondent shall provide and be responsible for all costs associated with the professional services, equipment, labour, materials, supplies, delivery, insurance, taxes (except applicable HST, which shall be itemized separately), site visits, travel, ancillary expenses, disbursements, overhead, and all other costs and fees necessary to deliver the Services within the proposed timeline and in accordance with Section 3. Scope of Work and Deliverables

Respondent should provide lump sum pricing for both the Base Bid and any Optional Value-Added items identified in their Proposal, including all expected project components. The Base Bid items should be priced in accordance with the assumptions outlined in Section 3 Scope of Work and Deliverables.

Scope Category	Services Proposed	Price
Describe:	Describe:	\$
	Describe:	\$
	Describe:	\$
	Describe:	\$
	Describe:	\$
	Describe:	\$
	<b>TOTAL BASE BID PRICE:</b>	<b>\$</b>
	HST:	\$
Optional Value-Added	Describe:	\$
	Describe:	\$
	Describe:	\$
	<b>TOTAL OF OPTIONAL VALUE-ADDED ITEMS:</b>	<b>\$</b>
	HST:	\$

Respondents should clearly articulate their commercial terms, including but not limited to warranties for equipment, performance, labour and workmanship in this section of the response. TOA's preference is that payments are made upon completion of the study.

All assumptions must be clearly documented and explained.

Bid Price Scope of Work information will only be shared with the evaluation committee and NOT shared publicly or with other Respondents.

## APPENDIX A

**REQUEST FOR INFORMATION REGISTRATION FORM**

**TOWN OF ANTIGONISH  
DIVERSITY, EQUITY, AND INCLUSION PLAN**

Respondents must complete the following Registration Form and non-disclosure agreement and submit them to the TOA contact below. Electronic completion of the Registration Form is highly preferred. If Registration Forms are handwritten, please ensure they are printed, not cursive, clear and legible.

<b>RESPONDENT INFORMATION</b>	
<b>Name</b>	
<b>Address</b>	
<b>Website</b>	
<b>Contact Person</b>	
<b>Contact Title</b>	
<b>Contact Email</b>	
<b>Contact Phone Number</b>	

**Issued by:** The Town of Antigonish

**Contact Name:** Lise Roy

**Email:** lise.roy@townofantigonish.ca

**RFI Issued:** April 17<sup>th</sup>, 2023

**Responses Due:** May 15<sup>th</sup>, 2023, before 2:00pm Atlantic

## NON-DISCLOSURE AGREEMENT

This Agreement made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**BETWEEN:** **THE TOWN OF ANTIGONISH**, a municipality pursuant to the Nova Scotia Municipal Government Act  
(hereinafter referred to as "TOWN")

**AND:**  
  
(hereinafter referred to as "\_\_\_\_\_"),  
(Hereinafter referred to individually as a "Party" and collectively as the "Parties")

**WHEREAS** the Parties are desirous of exchanging information generally for the purpose of TOWN developing an Diversity, Equity, and Inclusion Plan (hereinafter referred to as the "Authorized Purpose");

**AND WHEREAS** each Party desires to protect the confidentiality of the information that may be included in such exchange;

**AND WHEREAS** the Parties may exchange and/or disclose information in various forms and formats relating to the Authorized Purpose and that certain information may be non-public, confidential or proprietary in nature and the confidentiality of which the Parties desire to protect;

**NOW THEREFORE THIS INDENTURE WITNESSETH THAT** for and in consideration of the premises and mutual obligations contained herein and for other good and valuable consideration (the receipt, adequacy and sufficiency of which are hereby acknowledged), the Parties intending to be legally bound hereby agree as follows:

### 1. DEFINITIONS

For the purposes of this Agreement:

- (a) "Affiliate" means any Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by, or is under common Control with, a Party.
- (b) "Agreement" means this Agreement as amended and supplemented from time to time.
- (c) "Confidential Information" means any and all oral, written, electronic, magnetic or optical data and machine-readable information and data and any accompanying support materials and documentation disclosed directly or indirectly by one Party to another or to any Affiliate in relation to the Authorized Purpose. Such confidential information may include but not be limited to any technical and geographical data, maps, drawings, data, surveys, memoranda, notes, reports, files, copies, extracts, inventions, discoveries, improvements, financial and market information, limitation research, developmental, engineering, manufacturing, sales, operating, performance, cost, business and process information or data, computer programming and other software and software techniques, environmental reports, evaluations, legal opinions, names of shareholders, partners or joint venture partners, business arrangements together with all associated analyses, compilations, studies or other documents prepared by a Receiving Party or its Representatives with respect to confidential information provided by the Disclosing Party or its Representatives. Ownership and title of Confidential Information of the

Disclosing Party shall at all times remain exclusively vested in the Disclosing Party. Information disclosed, in relation to the Authorized Purpose, by the Town to either Party shall also be considered confidential and be governed by the terms and conditions of this agreement.

- (d) "Control" means, in the context of a relationship between two (2) or more Persons, control in any manner that results in control in fact, whether through direct or indirect ownership or control of fifty percent (50%) or more of voting shares, interests or trusts, representation on the board of directors or other governing body, or otherwise.
- (e) "Disclosing Party" means a Party that discloses Confidential Information to the other Party.
- (f) "Receiving Party" means a Party that receives Confidential Information from the other Party.
- (g) "Person" is to be interpreted broadly and includes, without limitation (i) any individual or group, and any firm, corporation, company, association, partnership, joint venture, trust, unincorporated organization, a state or political subdivision thereof, a government and every agency or instrumentality thereof or any other legal entity, and (ii) the media.
- (h) "Representatives" of a Party means shareholders, partners, directors, officers and employees of a Party or its Affiliate, as well as representatives, consultants, agents and financial, tax, legal and other advisors, engaged or retained by or assisting such Party in any way in connection with the Authorized Purpose.

## **2. CONFIDENTIALITY AND RESTRICTED USE**

- 2.1 Disclosing Party agrees, subject to the terms and conditions of this Agreement, to disclose to a Receiving Party certain Confidential Information. The Disclosing Party shall have full discretion in determining what Confidential Information may be disclosed to a Receiving Party hereunder.
- 2.2 Subject to the terms and conditions of this Agreement, the Receiving Party shall not use the Confidential Information furnished to it by the Disclosing Party or its Representatives for any purpose other than for the Authorized Purpose and shall exercise due care and attention to maintain the confidentiality and secrecy of the Confidential Information.
- 2.3 The Receiving Party shall ensure that only those Representatives who need to have access to the Confidential Information shall have access to such Confidential Information and in such cases the Confidential Information shall only be used for the Authorized Purpose.
- 2.4 The Receiving Party shall not disclose the Confidential Information to any third party, directly or indirectly, without the prior written consent of the Disclosing Party, except as provided in Clause 2.5 and Article 3 hereof.
- 2.5 Receiving Party may disclose Confidential Information to its Representatives who need to know such Confidential Information for the Authorized Purpose, subject to the foregoing requirements. Prior to such disclosure, each such Representative shall (a) be informed by the Receiving Party of the confidential nature of such Confidential Information, and (b) be requested or directed by the Receiving Party and such Representative shall agree, before receipt of such Confidential Information, to treat such Confidential Information in accordance with the terms and conditions of this Agreement as if it is a party hereto.
- 2.6 Receiving Party shall return and deliver, or cause to be returned and delivered, to the Disclosing Party, or destroy and certify such destruction of Confidential Information, including copies and abstracts thereof, and all documentation prepared by or in the possession of the Receiving Party

or its Representatives relating to the Confidential Information of the Disclosing Party within thirty (30) days of a written request by the Disclosing Party. The foregoing notwithstanding, Receiving Party may retain one copy of such Information for archival purposes only and subject to compliance with the terms of this Agreement.

- 2.7 Either Party may terminate the Agreement upon providing the other Party with fifteen (15) days prior written notice, in accordance with the provisions of Article 5 and subject to Clauses 3.3 and 3.4.

### **3. USE OF AND AUTHORIZED DISCLOSURE OF INFORMATION**

- 3.1 Each Party as a Receiving Party acknowledges and agrees with the other Party as a Disclosing Party that:

- (a) The Confidential Information is provided to the Receiving Party for the purpose of acquainting the Receiving Party with the Disclosing Party, its data and the business and operations of the Disclosing Party.
- (b) The Disclosing Party and its Representatives do not make any representation or warranty, express or implies, as to the accuracy or completeness of the Confidential Information and that the Receiving Party is and shall rely upon its own investigations, due diligence and analyses in evaluating and satisfying itself as to all matters relating to the Confidential Information and the Disclosing Party and their business, affairs and assets or otherwise in any way related to the Authorized Purpose.
- (c) The Disclosing Party and its Representatives and their respective directors, officers, employees or agents shall not have any liability to the Receiving Party or its Representatives resulting from any use or reliance upon the Confidential Information by the Receiving Party or its Representatives.
- (d) No license to Recipient, under any trademark, patent, or other intellectual property right, is either granted or implied by the conveying of Information to the Receiving Party.
- (e) Nothing contained herein shall bind, require, or otherwise commit a Party or any Affiliate to proceed with any sale, acquisition, project, or other transaction of or with the other Party or any other entity.

- 3.2 Notwithstanding the foregoing, the obligations of restricted use and strict confidentiality set forth in this Agreement shall not extend to any information which:

- (a) Receiving Party can clearly establish was known by Receiving Party or its Representatives prior to the disclosure thereof pursuant to this Agreement;
- (b) is independently acquired or developed by the Receiving Party or its Representatives without reference to the Confidential Information and without violating any obligations hereunder;
- (c) is legally in possession of Receiving Party or its Representative prior to receipt thereof from Disclosing Party pursuant to this Agreement;
- (d) enters the public domain through no fault of the Receiving Party or its Representatives;
- (e) is disclosed to the Receiving Party or its Representatives, without restriction and without breach of this Agreement or any other obligation of confidentiality, by a third party who has the legal right to make such disclosure;

- (f) is approved in writing for release by the Disclosing Party; or
- (g) Receiving Party or any of its Representatives is legally required by law or by a governmental or court decree, order, regulation or rule or by any legal process to disclose whereby the Receiving Party will immediately provide notice to the Disclosing Party of such a requirement and reasonably assist the Disclosing Party, if required, in defending against disclosure of the Confidential Information.
- (h) any disclosure of Confidential Information pursuant to a legal obligation to make such disclosure shall not be a breach of this Agreement.
- (i) The TOWN is at all times subject to the provisions of Nova Scotia legislation as such legislation may be amended or varied, including, but not limited to, the *Freedom of Information and Protection of Privacy Act, 1993*, c. 5, s. 1., as amended (“FOIPOP”). The Parties acknowledge that TOWN may incur disclosure obligations pursuant to the provisions of FOIPOP or other provincial legislation, and disclosure pursuant to such an obligation shall not be a breach of this Agreement. TOWN shall, to the extent permitted under FOIPOP, give the other Party prompt written notice of such requirement prior to releasing such information so that the Disclosing Party may seek a protective order or other appropriate remedy. To the extent the Confidential Information meets the disclosure harmful to business interests of a third party test as set out in FOIPOP, FOIPOP will require that disclosure of such information be refused if requested by a third party. Where there is a challenge to such refusal, a review by the Access to Information and Privacy Commissioner, and/or ultimately the Supreme Court of Nova Scotia Trial Division may occur. Disclosing Party will be entitled to be represented and make arguments in support of non-disclosure at each step in this process. TOWN shall cooperate with the Disclosing Party to obtain a protective order.

3.3 The Parties confirm and agree that the provisions of this Agreement shall remain in full force and effect for a period of five (5) years from the Effective Date of this Agreement with respect to any Confidential Information notwithstanding that this Agreement may be terminated or that the Confidential Information disclosed by the Receiving Party may have been returned or copies thereof destroyed prior to the expiration of the aforesaid time period.

3.4 Each Party hereto as a Receiving Party agrees that the other Party hereto as a Disclosing Party will be irreparably damaged if any provision of this Agreement is not performed by the Receiving Party or its Representatives in accordance with its terms and that monetary damages may not be sufficient to remedy any breach by the Receiving Party or its Representatives of any term or provision of this Agreement and each Receiving Party further agrees that the Disclosing Party shall be entitled to equitable relief, including injunctive and specific performance, in the event of any breach hereof and in addition to any other remedy available at law or in equity.

#### **4. PRESS RELEASES**

4.1 Except as permitted by this Agreement or required by applicable legislation, each Party shall not make any public announcement or disclosure in connection with the Authorized Purpose when the public announcement or disclosure specifically mentions both Parties and/or the Authorized Purpose, without the prior written consent of the other Party. Furthermore, if such press releases are approved by a Party, each Party shall consult with the other Party prior to issuing or making, and allow the other Party a reasonable opportunity to comment on the content of, any approved press releases or other public statements or disclosures with respect to the subject matter of this Agreement pertaining to the Authorized Purpose.

**5. NOTICES**

5.1 All notices, requests, demands, consents, waivers and other communications given hereunder shall be in writing, marked "Private and Confidential", and shall be deemed to have been duly given if delivered by hand or by sending same by facsimile communication or other similar form of communication to the following addresses:

If to TOWN, to:

Town of Antigonish

274 Main Street

Antigonish NS B2G 2C4

Attention: Meaghan Barkhouse

[mbarkhouse@townofantigonish.ca](mailto:mbarkhouse@townofantigonish.ca)

Tel: 902-870-6205

Fax: 902-863-0460

If to \_\_\_\_\_, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any such notice, request, consent, demand, waiver or other communication shall: (i) if delivered, be deemed to have been given or made at the time of delivery; and (ii) if sent by fax or other similar form of written communication, be deemed to have been given or made at the time in which it was successfully transmitted as evidenced by automatic confirmation of receipt.

**6. ENTIRE AGREEMENT**

6.1 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and any and all previous representations with respect to such subject matter, either oral or written, are hereby annulled and superseded.

**7. SEVERABILITY**

7.1 The Parties acknowledge and agree that the restrictions contained in this Agreement are both reasonable and necessary to protect the commercial interests of the Parties and their Affiliates. Accordingly, if any provision of this Agreement is held to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect, and the Parties shall use their reasonable, good faith efforts to achieve the purpose of the invalid or unenforceable provision or part thereof by a new valid and enforceable stipulation.

**8. WAIVER AND AMENDMENTS**

- 8.1 It is understood and agreed that a failure or delay by any Party in exercising any right, power or privilege hereunder will not operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder; and
- 8.2 This Agreement may be amended or modified only by an instrument in writing signed by authorized representatives of both Parties to this Agreement.

**9. ASSIGNMENT**

- 9.1 It is agreed that neither this Agreement nor any of the rights or obligations of the Parties under this Agreement may be assigned, in whole or in part, by any Party without the prior written consent of the other Party.

**10. GOVERNING LAW**

- 10.1 This Agreement shall be governed by and interpreted according to the laws of the Province of Nova Scotia and all actions, suits, and proceedings arising out of this Agreement shall be determined in a court of competent jurisdiction in the Province of Nova Scotia.

**11. COUNTERPARTS**

- 11.1 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**12. GENERAL**

- 12.1 The Parties acknowledge to one another that each respectively intends to perform its obligations as specified in this Agreement in good faith.
- 12.2 In this Agreement the use of the singular number includes the plural and vice versa.
- 12.3 Captions or descriptive words at the commencement of the various sections are inserted only for convenience and are in no way to be construed as a part of this Agreement or as a limitation upon the scope of the particular section to which they refer.

**13. LANGUAGE OF AGREEMENT**

- 13.1 Documentation, required submittals and all other communications, whether verbal or written, shall be in English

**IN WITNESS WHEREOF**, each Party has executed this Agreement by its duly authorized representatives.

**The Town of Antigonish**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_