

AGREEMENT BETWEEN THE PROVINCE OF NOVA SCOTIA AND THE PROJECT
MANAGER

THIS AGREEMENT

Made as of the 19 day of OCTOBER in the year Two Thousand and Nine.

Between Her Majesty the Queen in right of Nova Scotia as represented by the Minister of
Tourism, Culture and Heritage (hereinafter called the "Minister").

and MHPM Project Managers Inc.

(hereinafter called "Project Manager")

The Parties hereto agree as follows for the following project:

Bluenose II Restoration
Project Number: G01-10-01-01

To provide project management services as described herein and further described in the
documents of Tender No. 60138465 dated October 2nd, 2009 for the
stipulated sum of
\$ 375,000.00.

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**AGREEMENT BETWEEN THE PROVINCE OF NOVA SCOTIA AND THE PROJECT
MANAGER**

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**AGREEMENT BETWEEN THE PROVINCE OF NOVA SCOTIA AND THE PROJECT
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TERMS AND CONDITIONS

ARTICLE 1 - DEFINITIONS

- 1.1 CERTIFICATE OF SUBSTANTIAL COMPLETION OF THE WORK**
Certificate of Substantial Performance of the Work means a certificate in a form acceptable to the Minister issued by the Consultant to the Minister certifying that the Work required by the Contract Documents is ready for use or is being used for the purpose intended and issued when the work to be done under the Construction Contract is capable of completion or correction at a cost of not more than two and one half percent of the contract price and so accepted by the Minister.
- 1.2 CERTIFICATE OF TOTAL COMPLETION OF THE WORK**
Certificate of Total Completion of the Work means a certificate in a form acceptable to the Minister issued by the Consultant to the Minister certifying that all items including those arising from the one year warranty period have been corrected by the Contractor as required by the Contract Documents.
- 1.3 CLIENT**
Client is the Department of Tourism, Culture and Heritage (DTCH) and/or its appointed representative.
- 1.4 CLIENT'S REPRESENTATIVE**
Client's Representative, for this agreement, shall be the Executive Director, Heritage Division, Nova Scotia Department of Tourism, Culture and Heritage.
- 1.5 CONTRACT**
The Contract means the agreement between the Minister and the Contractor for the provision of labour, materials, and equipment for the execution of the work agreed to by the Contractor.
- 1.6 CONTRACT DOCUMENTS**
The Contract Documents means the tender documents, executed agreement between the Minister and the Contractor, the General Conditions of the Contract, the drawings, the specifications, and such other documents as are identified in the agreement and the General Conditions as constituting part of the Contract Documents.
- 1.7 CONTRACTOR**
The Contractor means the person, partnership or corporation contracting with the Minister to provide labour, materials and equipment for the execution of the work and services set out in this agreement.
- 1.8 CONTRACTOR START-UP PROGRAM**
Contractor Start-up Program means that full set of pre-planned activities to be carried out by the Contractor after the work is installed to test and inspect the work, to start-up equipment and balance systems, to correct any deficiencies identified as a result of such activities, and in general to demonstrate readiness for Substantial Performance of the Work.
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1.9 CONSTRUCTION COST

Construction cost means the contract price of all elements of the project designed or specified by the Consultant. Construction cost does not include the compensation to the Consultant and his Sub-Consultants, or other costs which are the responsibility of the Client as provided in Article Where there is no contract price for all or part of the project, the construction cost shall mean the estimated cost as accepted by the Client.

1.10 PRE-TENDER REPORT

Pre-tender Report means a report requested by the Client from the Project Manager before the project is tendered which contains approvals of authorities having jurisdiction over the project, description of the project in comparison to the approved program floor areas of major department, occupancy classifications, product data list detailing construction materials and systems, anticipated tender call dates, project schedule and current construction estimate with comparison to the approved budget.

1.11 SUB-CONSULTANT

Sub-Consultant means professional engineers, architects and special Consultants registered with the respective professional bodies of the Province of Nova Scotia and retained by the Consultant to provide services for such disciplines as architectural, structural, mechanical, electrical, landscape and others to assist the Consultant in preparing contract documents and the administration of the construction contract.

1.12 VERIFICATION OF CONTRACTOR'S PERFORMANCE

Verification of Contractor's Performance means the full set of activities carried out by the Consultant during all phases of the work to ensure that the Contractor's work is properly installed, tested and inspected in compliance with the Contract Documents, and to ensure that the design performance requirements for the work are achieved.

ARTICLE 2 - PROJECT MANAGEMENT SERVICES AND RESPONSIBILITIES**2.0 BASIC SERVICES**

2.1 The Project Manager agrees to perform basic services as described in Articles 2.2 through 2.5 and outlined below: Project Management for this project consists of the comprehensive management of all aspects of a project from construction/working drawing specifications and commissioning on behalf of the Client. Project Manager, Consultant and Contractors will receive direction from and submit invoices to DTCH. All construction issues, approval processes, etc. will be handled by the DTCH.

2.2.1 The Project Manager shall provide the Client with an organization to deal specifically with restoration of the vessel. Essentially, the Project Manager acts as the Client's agent and has responsibility for all day-to-day decisions. The Project Manager is authorized to enter into contracts and make commitments on behalf of the Client, as set out in the contractual agreement with the Client. The Project Manager is responsible for regularly informing the Client of the progress and costs of the project. Project Management consists of the comprehensive management of all aspects of a construction project which may include, but is not necessarily limited to, the following activities:

GENERAL:

- Acts as the Client's representative for the construction, and delivery of the project.
- Represent the Client as a member of the Construction Management team consisting of the Project Manager, Naval Architect and Construction Manager.
- Establish in conjunction with the Client, all management and technical roles and responsibilities for the project.
- Establish in conjunction with the Client a program to establish baselines, and progressively review and report on: project scope, schedule, cost and quality control.
- Assess overall scope changes and make recommendations where appropriate.
- During one year warranty period following substantial completion provide the following:
 - follow up on correction of deficiencies,
 - attend four quarterly warranty meetings,
 - conduct four quarterly contract status reviews.

SPECIFIC:

- Set overall project milestone dates in conjunction with the Client and monitor progress throughout the project until completion.
- Establish detailed project schedule, review and report on progress relative to schedule, and identify variances as they occur or are anticipated, and ensure that corrective measures are implemented.
- Review and set overall project control budget in conjunction with the Client, and monitor actual project costs throughout the project.
- Identify and report on budget variances as they occur or are anticipated.
- Prepare cash flow projections.
- Review specifications and tender documents for tender call by the Client.
- Review and make recommendations on tender call results, if required.
- Attend all design and construction meetings.
- Make regular site visits to monitor overall construction progress and issues.
- Monitor and report on progress on construction against the schedule prepared by the General Contractor.
- Coordinate quality control - testing and inspection to suit the Client's requirements and distribution of reports.
- Ensure that shop drawings are submitted and reviewed in accordance with schedule.
- Review contractor's progress claims, with input from Architect and Engineers, provide copies to the Client for payment.
- Review and analyse contemplated change order, change directives and change order requests, with input from Architect and Engineers as required and make recommendations for approval by the Client and maintain current records of change order issued.
- Coordination of contract close-out and substantial completion to meet the Client requirements.
- Prepare monthly progress reports including design, construction, schedule, budget, scope change, and quality issues.

- Coordinate commissioning and handover activities and submission of reports.
- Coordinate review and submission of as built drawings and operations and maintenance manuals.
- Coordinate deficiency inspections and reports, and ensure timely correction by the General Contractor.
- Establish warranty reporting and correction procedures.
- Monitor safety requirements set out in the contract documents.
- Complete review of statutory regulations including financial grants, zoning and building permits, site access, health and safety regulations, and environmental regulations.
- Insurance and surety requirements.
- Contracting strategy.
- Verification of the accuracy of estimates and schedules.
- The Project Manager's proposed method of operation.

The objectives of Project Management are to coordinate and control, through the application of management techniques, all aspects of the project, and to produce a well-designed and constructed vessel within the Client's specifications, schedule and budget.

2.2.2 BUDGETING AND COST CONTROLS

Using professional business management methods that have been developed and proven over a wide range of projects, the Project Manager may be required to:

- Review and report on the preliminary project estimates and schedules.
- Establish a definitive budget for cost control purposes.
- Prescribe a system of reporting and controlling expenditures.
- Prepare cash flow projects.

2.2.3 PROJECT ACCOUNTING

The Project Manager should establish project accounting procedures and cost controls to the satisfaction of the Client, to cover all phases of the project, including:

- Management
- Planning and design
- Purchases, disbursements, construction, and holdback management
- Inspection and testing
- Commissioning
- Warranty administration.

2.2.4 SCHEDULING

The Project Manager will establish, in conjunction with the members of the project team*, a detailed master schedule, including key dates, to ensure strict control of all subsequent project activities. The Project Manager will regularly report on progress relative to the schedule. (*Includes the Client, Consultants, Construction Manager and other project participants)

2.2.5 **REPORTING**

The Project Manager will regularly update the Client on all aspects of the project, including:

- Budget, utilized to date and projected
- Schedule
- Bidding and contractual issues
- Scope change

2.2.6 **CONSTRUCTION DOCUMENTS REVIEW**

The Project Manager will review the complete package of bid documents for bid calls and will, where necessary, provide comments to ensure compliance with the client requirements.

2.2.7 **CONSTRUCTION**

The Project Manager may be required to pre-qualify the General Contractors. The method of selection and appointment shall be as per the Client requirements.

2.2.8 **QUALITY CONTROL**


To ensure conformity with specifications and drawings, the Project Manager will coordinate with the consultants and the Client staff respecting any inspection required by the Client. The inspection team shall include, but is not limited to consultants who shall obtain test certificates, witness performance tests, recommend and carry out other tests and reviews to ensure that material and equipment meet quality and performance requirements.

2.2.9 **COMMISSIONING**

The Project Manager will report or confirm completion of the various stages of construction. Commissioning and start-up follow completion of construction and pre-commissioning, which involves preparation of equipment for operation and, possibly, commencement of training programs for operating staff.

Commissioning is normally carried out in conjunction with the Client's staff who will operate the vessel. The role of the Project Manager is to provide assistance and specialized technical staff.

The Client's commissioning and start-up team, which may include field engineers, inspectors and technical staff from the Project Management organization, will be responsible for:

- Arranging for and witnessing hydraulic, air, mechanical and electrical tests and cleaning out equipment and piping, electrical and instrument circuits against the installation diagrams.
 - Arranging for equipment suppliers and contractors to put into operation individual equipment and system circuits, and witness performance test.
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- Arranging for the placement of all equipment in preparation for operation and, in conjunction with the Client's operating staff, ensuring that each system is brought, in sequence, into full and satisfactory operation.
- Inspecting work at the end of the warranty period.


2.3 FUNCTIONAL PERFORMANCE TEST PROGRAM

- 2.3.1 Prior to acceptance of Certificate of Substantial Completion of the Work, the Client may carry out a Functional Performance Test Program to test and measure the performance of all systems, system components and equipment at maximum load recommended by manufacturer and under simulated operating load conditions; all for the purpose of confirming that the vessel is in compliance with all Contract and design requirements. Where and as additional deficiencies are identified during the course of the Performance Test Program, the Consultant and Project Manager shall take whatever immediate and expeditious action is required to specifically define requirements for correcting such deficiencies, and to verify that such deficiencies have been properly corrected.

2.4 POST-CONSTRUCTION AND WARRANTY PHASE

- 2.4.1 The Post-Construction Phase is the period from the date of issuance of the Certificate Substantial Completion of the Work through to the end of the one year warranty period.
- 2.4.2 The Client will advise the Project Manager of defects observed during the warranty period and the Project Manager shall advise the Naval Architect in writing of the defects.
- 2.4.3 The Project Manager shall take whatever immediate and expeditious action is required to specifically define requirements for correcting such deficiencies, and to verify that such deficiencies have been properly corrected.
- 2.4.4 Thirty (30) days before expiration of the warranty period set out in 2.4.1 the Client's representatives, Project Manager, Naval Architect and the Contractor will inspect the Work noting defects of products and workmanship.
- 2.4.5 The Naval Architect will notify the Contractor of these defects and request him to remedy the defects in accordance with the Contract Documents.
- 2.4.6 The Consultant Team and Project Manager shall attend quarterly Warranty Phase meetings as well as Final Warranty meeting for all items having extended warranties, conduct site reviews and submit reports pursuant to these reviews.

ARTICLE 3 - CLIENT'S RESPONSIBILITIES.

- 3.1 The Client shall provide information regarding requirements for the project consisting of background history of the project, previous studies and draft schematic plans and design requirements.
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- 3.2 The Client's initial budget for construction will be provided to the Consultant for his/her review along with an overall schedule for the project.
- 3.3 The Client shall designate as his representative the Director of Engineering and Design of the Nova Scotia Department of transportation and Public Works who shall be responsible for the project. The Client or his representative shall examine the documents submitted by the Consultant and shall render decisions pertaining thereto. This examination by the Client and his representatives shall not relieve the Consultant of his professional and technical responsibility for the documents presented by him.
- 3.4 The Client shall:
- (1) Provide draft Instructions to Bidders, the Construction Agreement form and the General Conditions of the Contract.
 - (2) Issue the Construction documents for tender to the Public Tenders Office.
 - (3) Issue addenda prepared by the Consultant and his/her Sub-Consultants.
 - (4) Receive, open and accept or reject tenders.
 - (5) Award contract and prepare and execute contract documents.
 - (6) Carry out any required Performance Tests as described in Article 2.3.1.
- 3.5 The Client in the administration of the Contract shall provide Contract management as described in Article 3.

ARTICLE 4 - PAYMENTS TO THE PROJECT MANAGER

4.1 PAYMENT ON ACCOUNT OF BASIC SERVICES


- 4.1.1 Payments for basic services shall be made to the Project Manager as approved by the Client's representative on a monthly basis.
- 4.1.2 Payment for basic services may be negotiated on one of the following methods:
- Professional fee plus reimbursable expenses.

4.2 REIMBURSABLE EXPENSES

- 4.2.1 Reimbursable expenses are in addition to the compensation for basic and additional services and include actual expenditures made by the Consultant and his employees and Sub-Consultants in the interest of the project for the expenses listed in the following Articles and in accordance with Article 11.1.3.
- 4.2.2. Expenses incurred in pre-authorized out-of-province travel which shall be subject to the established travel policy of the Province of Nova Scotia.

4.3 PROJECT SUSPENSION OR ABANDONMENT

If the project is suspended or abandoned in whole or in part, at no fault of the Project Manager, the Project Manager shall be compensated for all services performed prior to the receipt of written notice from the Client, and will be related to the Phasing of



Compensation outlined in Article 15. If within 3 months after completion of the drawings and specifications tenders have not been called the Client shall, on request from the Project Manager, pay 80% of the 15% which would have been due when tenders are received and this shall be final payment until such time as tenders are called and a contract is awarded.

4.4 PROJECT MANAGER ACCOUNTING RECORDS AND STATUTORY DECLARATION

The Client may demand at any stage of this agreement statutory declarations verifying the payment of Sub-Consultant fees and any other sums owing by the Project Manager in connection with this agreement. Delay in submitting the statutory declaration will delay release of payments. Records of all costs, percentage payments, reimbursable expenses, expenses pertaining to additional services and services performed shall be kept on the basis of generally accepted accounting principles. At mutually convenient times, such records shall be available for inspection and audit by the Client. The Project Manager shall keep the records for a period of two years following completion of the agreement or termination of this agreement.

ARTICLE 5 - OWNERSHIP AND USE OF DOCUMENTS

5.1 All reports, calculations and other documents prepared by the Project Manager are instruments of service and are the property of the Client, whether the work be executed or not. The Client reserves the copyright in the work executed; however, they will not be used by the Client for any other work without the written permission of the Project Manager, which may not be unreasonably withheld.

5.2 The copyright shall be in accordance with Section 11, Copyright Act- R.S.C. 1970, Chapter C30:

“Without prejudice to any rights or privileges of the Crown, where any work is, or has been prepared or published by or under the direction or control of Her Majesty or any Government Departments, the copyright in the work, shall, subject to any agreement with the author, belong to Her Majesty and in such case shall continue for a period of fifty (50) years from the date of the first publication of the work.”

ARTICLE 6 - TERMINATION OF CONTRACT OR SUSPENSION

6.1 Unless otherwise stated in the Agreement, the Project Management services terminate at the end of the warranty period subject to the completion of work and approval thereof by the Client.

6.2 This agreement may be terminated by the Client without cause upon at least seven days' written notice to the Project Manager.

6.3 In the event of termination of the agreement not due to the fault of the Project Manager, the Project Manager shall be compensated for all services performed to

termination date, together with reimbursable expenses then due.

ARTICLE 7 - TIME SCHEDULE

7.1 See APPENDIX F

ARTICLE 8 - SUCCESSOR AND ASSIGNS

8.1 The Client and the Project Manager respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Client nor the Project Manager shall assign, sublet, or transfer any interest in this Agreement without the written consent of the other.

8.2 The Project Manager agrees that he shall carry on to completion with this agreement under the name contained herein to the termination or completion of the project, notwithstanding there may have been changes in its organizational structure during the currency of this Agreement.

ARTICLE 9 - LAW GOVERNING THE AGREEMENT

9.1 The laws of Nova Scotia govern this Agreement, except for Article 6.2 where the laws of Canada shall govern.

ARTICLE 10 - BASIS OF COMPENSATION

10.1.1 FOR BASIC SERVICES, as described in paragraph 2.2 through 2.2.5 and any other services set out as part of basic services, basic compensation shall be computed as follows:

.1 *Stipulated sum of \$_____ Payment for services provided under these allowances shall be as described in paragraph 4.*

10.1.2 Where compensation is based on a stipulated sum payments for basic services payment shall be made as provided in sub-paragraph 4.1.1. so that basic compensation for each phase shall equal the following percentages of the total basic compensation payable and be due at the completion of each phase unless otherwise noted. The Client may agree to interim/monthly billings as the size and type of project dictates.

PRE-CONSTRUCTION PHASE:

- 5 MonthsTwenty-five percent (25%)

CONSTRUCTION PHASE:

- 11 Months.....

POST-CONSTRUCTION PHASE

- 1 MonthSeventy Percent (70%)
(Combined with Construction Phase to = 70%)

WARRANTY PHASE

-12 MonthsFive percent (5%)
- 4 payments/ one each quarter

TOTAL BASE SERVICE FEE

.....One Hundred percent (100%)

10.1.3 REIMBURSABLE EXPENSES shall be paid at "cost" only upon submission of original receipts.

Mileage rates shall be paid according to the rates listed in the Travel Policy of the Province of Nova Scotia

If during the currency of this Agreement mileage allowances are amended, the Consultant shall be allowed the current rates.

10.2 The Client and the Project Manager agree in accordance with the terms and conditions of this agreement that, if the scope of the project and/or Consultant's services are changed materially, the amounts of compensation shall be equitably adjusted.

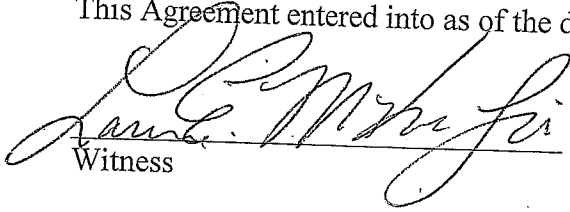
ARTICLE 11 - LIABILITY

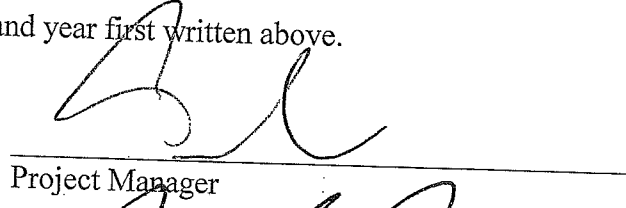
11.1 The Project Manager shall indemnify and hold harmless the Clients and the Client's representative, its employees and agents, from any and all claims, demands, actions and costs which may arise out of any negligent acts or omission by the Project Manager, or its employees or agents, in the performance by the Project Manager of the Agreement.

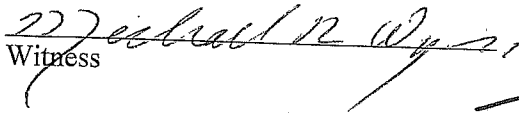
ARTICLE 12 - EXTENT OF AGREEMENT

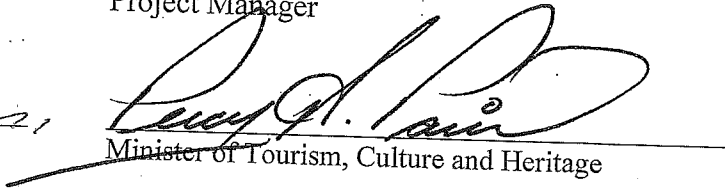
12.1 This agreement represents the entire agreement between the Client and the Project Manager and supersedes all prior negotiations, representations, or agreements, either written or oral. This agreement may be amended only by written instrument signed by both the Client and the Project Manager.

This Agreement entered into as of the date and year first written above.


Witness


Project Manager


Witness


Minister of Tourism, Culture and Heritage



AGREEMENT BETWEEN THE PROVINCE OF NOVA SCOTIA AND THE PROJECT MANAGER

Appendix G

Project No: G01-10-01-01

Bluenose II Restoration

Modifications to Standard Agreement

Reference cover page, bottom paragraph; change to read:

"To provide project management services as described herein and further described in the documents of Tender No. 60138465 dated October 2, 2009 for the sum of \$375,000.00 HST Extra."

Reference Article 1 – DEFINITIONS, Paragraph 1.5; Delete existing words "Contractor", and replace with:

"Project Manager".

Reference Article 1 – DEFINITIONS, Paragraph 1.7; Delete existing wording and replace with the following:

"CONTRACTOR

The Contractor means the person, partnership or corporation contracting with the Minister to provide labour, materials, and equipment for the execution of the work and services set out in the Contract Documents."

Reference Article 1 – DEFINITIONS, Paragraph 1.10; Delete existing wording and replace with the following:

"PRE-TENDER REPORT

Pre-Tender Report means a report requested by the Client from the Project Manager before the construction is tendered which contains approvals of authorities having jurisdiction over the project, product data list detailing construction materials and systems, anticipated tender call dates, project schedule and current construction estimate with comparison to the approved budget."

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AGREEMENT BETWEEN THE PROVINCE OF NOVA SCOTIA AND THE PROJECT MANAGER

Reference Article 1 – DEFINITIONS, Add the following Paragraph 1.13:

“PROJECT MANAGER

The Project Manager means the person, partnership or corporation contracting with the Minister to provide labour, materials, and equipment for the execution of project management services set out in this agreement.”

Reference Article 1 – DEFINITIONS, Add the following Paragraph 1.14:

“CONSULTANT

The Consultant means the person, partnership or corporation contracting with the Minister to provide labour, materials, and equipment for the execution of project design services for this project and outlined under separate agreement.”

Reference Article 2 – PROJECT MANAGEMENT SERVICES AND RESPONSIBILITIES; GENERAL: Delete the following paragraph:

“Represent the client as a member of the construction management team consisting of the Project Manager, Naval Architect, and Construction Manager.”, and replace with, “Represent the client as a member of the construction management team consisting of the Project Manager, Consultant, and General Contractor.”

Reference Article 2 – PROJECT MANAGEMENT SERVICES AND RESPONSIBILITIES; SPECIFIC: Replace the following phrasing, “Architects and Engineers” with “Consultant”, throughout this section.

Reference Article 2 – PROJECT MANAGEMENT SERVICES AND RESPONSIBILITIES; 2.2.4 SCHEDULING: Replace the wording, “Construction Manager” with “General Contractor”.

Reference Article 2 – PROJECT MANAGEMENT SERVICES AND RESPONSIBILITIES; 2.4 POST-CONSTRUCTION AND WARRANTY PHASE; Paragraphs 2.4.2, 2.4.4, and 2.4.5: Replace the wording, “Naval Architect” with “Consultant”.

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AGREEMENT BETWEEN THE PROVINCE OF NOVA SCOTIA AND THE PROJECT MANAGER

Reference Article 4 – PAYMENTS TO THE PROJECT MANAGER, Paragraph 4.2.1; Delete existing wording and replace with:

“Reimbursable expenses are in addition to the compensation for basic and additional services and include actual expenditures made by the Project Manager and his employees in the interest of the project for the expenses listed in the following articles and in accordance with Article 10.1.3.”

William Greenlaw,
Executive Director, Tourism,
Culture & Heritage, Heritage Division



Stephen Vaslet,

Vice President, Atlantic Region,
MHPM Project Managers Inc.

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