

From: [David Steele](#)
To: [Martin, Craig](#)
Subject: FW: Scanned document from David.Steele@ca.ey.com
Date: Tuesday, April 14, 2015 4:48:00 PM
Attachments: [20150414-151541.pdf](#)

Signed agreement attached. Thanks Craig.

Regards,

Dave

David Steele | Partner | Advisory Services

Ernst & Young LLP
Cell: +1 709 769 2080 | David.Steele@ca.ey.com

From: David.Steele@ca.ey.com [mailto:David.Steele@ca.ey.com]
Sent: Tuesday, April 14, 2015 4:46 PM
To: David Steele
Subject: Scanned document from David.Steele@ca.ey.com

AGREEMENT

THIS AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador, on this 1st day of April, 2015.

BETWEEN: **HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR** as
represented by the Executive Council
(“the Client”)

AND: **Ernst & Young LLP**
(“the Consultant”)

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants expressed, and as amended, the Parties agree as follows:

1. Definitions

In addition to the terms defined in the General Terms and Conditions attached as Schedule “C”, the following words and phrases shall have the following meanings:

- a. “Contract Documents” shall mean and include:
 - i. This head agreement (the “Head Agreement”);
 - ii. The Scope of Work attached as Schedule “A”;
 - iii. The Special Terms and Conditions attached as Schedule “B”;
 - iv. The General Terms and Conditions attached as Schedule “C”; and
 - v. Protocols for Security of Government Information on Information Technology assets of Contractors attached as Schedule “D”.

- b. “Representatives” means directors, officers, employees, consultants, sub-consultants, agents, advisors or partners.

2. The Consultant’s Work

The Consultant shall do all things necessary to fulfill all of the obligations of the Consultant as set out in the Contract Documents (the “Work”). The Work shall be performed by the Consultant to the satisfaction of the Client.

3. Payment

1.1 **Consideration**

It is agreed and understood that payments made for the satisfactory performance of the Work pursuant to this Agreement shall be made in accordance with the following:

Subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Consultant, for the satisfactory performance of the Work, the following time rate schedule for activities actually expended in performance of the Work (plus HST):

	Name	Position	Hourly Rate
Core Team	Richard Noble	Associate Partner	\$390
	David Steele	Partner	\$341
	Mike Haycox	Associate Partner	\$293
	Aman Gill	Senior Manager	\$268
	Emiliano Mancini	Manager	\$219
	Arun Ghosh	Senior Analyst	\$175
	Staff Level Analysts	Staff Analyst	\$100

Advisory Panel	Tim Phillpotts	Partner	\$390
	Charles-Antoine St-Jean	Partner	\$390
	Hanna Green	Senior Manager	\$268
	Andy Patterson	Associate Partner	\$390
	Steven Carroll	Senior Manager	\$268

Generic Rates - additional resources	Atlantic Based Partner	\$341
	Atlantic Based Senior Manager	\$244
	Atlantic Based Manager	\$200
	Atlantic Based Senior	\$150
	Atlantic Based Staff	\$100
	National (non-Atlantic) Based Partner	\$390
	National (non-Atlantic) Based Senior Manager	\$268
	National (non-Atlantic) Based Manager	\$219
	National (non-Atlantic) Based Senior	\$175
	National (non-Atlantic) Based Staff	\$125

1.2 Reimbursement of Expenses

It is agreed and understood that reimbursements for the Consultant's expenses pursuant to this Agreement shall be made in accordance with the following:

- (a) The Client shall only be responsible for the following reimbursable expenses, payable at cost, provided the Consultant can demonstrate to the Client that such expenses were incurred in relation to the Work, and that documentation, satisfactory to the Client, is provided in support of the reimbursable expense claimed and is attached to the applicable invoice, including for example, originals of supporting receipts, invoices or statements issued by non-parties to this Agreement:
 - (i) Travel and other reasonable disbursements
- (b) All claims submitted for reimbursable expenses in accordance with this Article 1.2 shall be reimbursed at rates not to exceed those established by Treasury Board pursuant to the guidelines and policies of the Client even if such rates are lower than the actual costs incurred by the Consultant.

1.3 Payment General

- (a) Regardless of the payment claimed pursuant to Article 1.1 and/or 1.2, the Parties agree and confirm that total amounts payable for the Work shall not exceed a monetary ceiling of \$342,000 plus HST. Further, the Client shall request and the Consultant shall provide a time estimate relating to each scope of Work requested by the Client under the terms of this contract.
- (b) The Consultant shall remain obligated to complete the Work notwithstanding that the actual costs of the Consultant, whether in respect of professional services or in respect of costs or expenses incurred, may exceed the total aggregate sum set out in Article 1.3(a), unless such additional costs or professional fees relates to i) a delay or failure of the Client to provide for the obligations under this Agreement; or ii) a breach of this Agreement by the Client.
- (c) The Parties agree and confirm that as set out in section 25(6) of the *Financial Administration Act*, RSNL1990 cF-8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.
- (d) Payment will be made within 60 calendar days of receipt of a properly documented invoice.
- (e) All invoices shall clearly show the amount of HST billed by the Consultant as a separate item.
- (f) The Consultant shall conform to any commercially reasonable request that may be made by the Client to alter the form of invoice customarily used by the Consultant as may be reasonably required for the purposes of the Client's

internal accounting systems. The Consultant agrees that each invoice shall clearly show and identify the work or service which is being charged under that invoice to the Client. The invoice shall have appended thereto any documentation required by the Client.

- (g) The Client shall not be responsible to pay any amounts invoiced by the Consultant which may arise from work, services or expenses incurred to remedy errors or omissions in the Work for which the Consultant is responsible.
- (h) The Consultant shall submit invoices to:

Mr. Craig Martin
Executive Director, Muskrat Falls Project Oversight Committee
Executive Council
Cabinet Secretariat
P.O. Box 8700
St. John's, NL, Canada
A1B 4J6

4. Notices

All notices, claims, payments, reports and other communications required under this Agreement shall be in writing. The addresses for service are as follows:

For the Client:

Mr. Craig Martin, CPA, CMA
Executive Director, Muskrat Falls Project Oversight Committee
Executive Council
Cabinet Secretariat
P.O. Box 8700
St. John's, NL
A1B 4J6

Phone: (709) 729-0966
Fax: (709) 729-3374
Email: cmartin@gov.nl.ca

For the Consultant:

Mr. David Steele, CPA, CA
Partner
Fortis Place
5 Springdale St., Suite 800
St. John's, NL
A1E 0E4

Phone: (709) 570-8264
Email: david.steele@ca.ey.com

Notices, requests or documents shall be deemed to have been received by the addressee as follows:

- (a) As of the date on which they are delivered where delivery is by a party or by messenger or special courier service;
- (b) As of the date on which they are sent where delivery is by telecopier or other means of electronic communication; and
- (c) Six (6) days after delivery to Canada Post Corporation where the postal service is used.

5. Entire Agreement

It is hereby agreed that the Contract Documents constitute the entire agreement between the parties (the "Agreement"). There are no understandings, representations or warranties of any kind except as expressly set forth herein. No changes, alterations, modifications or amendments of this Agreement shall be effective unless made in writing and signed by those persons designated for such purpose. This Agreement may be amended or otherwise modified by e-mail.

6. Representations and Warranties

The Consultant hereby represents and warrants that every fact stated or represented by the Consultant or its Representatives to the Client in connection with any proposal made by the Consultant in respect of the Work is true and agrees that the Client shall be conclusively deemed to have relied on each such representation or statement in entering into this Agreement.

7. Conflict Between Provisions

In the event of any conflict or inconsistency between provisions in the Contract Documents, the Contract Documents shall have precedence as follows: first the Head Agreement, second the Special Terms and Conditions, third the General Terms and Conditions, fourth the Protocols for Security of Government Information on Information Technology assets of Contractors, fifth the Scope of Work, and last, any documents incorporated by reference in any of the foregoing.

8. Start and Completion Date

The Consultant shall commence activities in relation to the Work with the start and completion dates mutually agreed upon as follows:

Start Date: April 1, 2015
Completion Date: March 31, 2016

9. **Effective Date**

The effective date of this Agreement shall be the earlier of the start date referred to in Clause 8 or the date on the first page of this Head Agreement.

10. **Paragraph Numbering**

In the event that the General Terms and Conditions are modified, the numbering references in the General Terms and Conditions shall remain unchanged.


11. **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be considered an original of this Agreement, and which together will constitute one and the same instrument. No Party will be bound to this Agreement unless and until all Parties have executed a counterpart. A facsimile signature or an otherwise electronically reproduced signature of either Party shall be deemed to be an original.

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND AND LABRADOR**

Ms. Julia Mullaley, CPA, CA
Clerk of the Executive Council
Chair of the Muskrat Falls Project Oversight
Committee

ERNST & YOUNG LLP



Mr. David Steele, CPA, CA
Partner, Ernst & Young LLP

SCHEDULE "A"
SCOPE OF WORK

The Consultant is expected to provide Advisory services to the Muskrat Project Oversight Committee (the 'Committee'). Key activities included in the scope of work are:

1. Support the Committee in the development of the report templates;
2. Support the Committee in the analysis of the cost and schedule reporting, and risk management;
3. Support the Committee in the assessment of project processes and controls;
4. Accompany Provincial officials at meetings and construction site walkthroughs where required;
5. Assist with the preparation and review of the Oversight Reports; and
6. Continue to provide advice regarding the established accountability/ project oversight protocol.

The Consultant will be expected to perform other activities falling within the scope of the Committee as required.

Under this Agreement, individual Scope Statements will be developed and agreed to by the Consultant and Committee prior to the commencement of any work. Included in the Scope Statements would be: scope, expected outputs (reports, if applicable), level of effort, timing and fee considerations.

The Consultant will not render an attestation or assurance report or opinion under these Contract Documents, nor will the Work constitute (1) an audit, review or examination of financial statements in accordance with generally accepted auditing standards, (2) an examination of prospective financial statements in accordance with applicable professional standards or (3) a review to detect fraud or illegal acts. The Work will not include any procedures to test compliance with the laws or regulations of any jurisdiction. None of the Work or any reports will constitute any legal opinion or legal advice.

The Consultant will not identify, address or correct any errors or defects in the Client's computer systems, other devices or components thereof ("Systems"), whether or not due to imprecise or ambiguous entry, storage, interpretation or processing or reporting of data. The Consultant shall have no responsibility or liability for any defect or problem arising out of or related to data processing in any Systems. However, during the performance of its procedures, the Consultant may become aware of issues with respect to the Client's "Systems". These findings will be promptly communicated to the Client by the Consultant.

Schedule "B"**Special Terms and Conditions**

1. Notwithstanding any other terms and conditions of the Contract Documents,
 - (a) Consultant is a member of the global network of Ernst & Young firms ("EY Firms"), each of which is a separate legal entity. Consultant alone will be responsible to client for the performance of the Work and Consultant's other obligations under this agreement. Consultant may provide Client's information (including Confidential Information and personal information) to other EY Firms and their and Consultant's respective service providers in order to facilitate performance of the Work, to comply with regulatory requirements, to check conflicts, to provide technology or administrative services, or for quality, risk management or financial accounting purposes. Consultant, other EY Firms and the service providers may process, transfer and store the Client's information (including Confidential Information and personal information) outside of Canada. Client is responsible for obtaining any required privacy consents. Client may not make a claim or bring proceedings relating to the Work or otherwise under this agreement against any other EY Firm or the subcontractors, members, shareholders, directors, officers, partners, principals, or employees of Consultant or of any other EY Firm ("EY Persons"). Client shall make any claim or bring proceedings only against Consultant. The other EY Firms and all EY Persons shall be entitled to rely on and enforce this paragraph.
 - (b) Consultant's total aggregate liability for any loss or damage arising out of or relating to this agreement or the Work, whether in contract or tort (including negligence), under statute or otherwise, shall be limited to the total fees paid to Consultant for the Work directly giving rise to such loss or damage. Consultant shall have no liability for any consequential, incidental, indirect, punitive or special damages, whether or not the likelihood of such damages was contemplated. The preceding limitations will not apply to fraud, wilful misconduct or to the extent prohibited by applicable law or professional regulations.
 - (c) Consultant shall retain all rights in any templates, precedents, utilities, tools, models, systems, software, methodologies, know-how, practices and other intellectual property which have been created, developed or licensed by Consultant prior to or in connection with the performance of the Work.
 - (d) Consultant shall be entitled to retain a copy of Confidential Information as is necessary in order to comply with its professional obligations which require the retention of working paper files. Consultant may immediately upon written notice to the Client terminate this Agreement where Consultant reasonably determines that it can no longer provide the Work in accordance with applicable law or professional obligations.
2. Article 1.1 of Schedule "C" is hereby deleted in its entirety and replaced with the following:

1.1 The Client will furnish to the Consultant all available information necessary for the performance of the Work. To the best of Client's knowledge, all information provided by it or on its behalf will be accurate and complete in all material respects. Consultant will rely on Client information made available to it and, unless it expressly agrees otherwise, will have no responsibility to evaluate or verify it.

3. Article 2.7(d) of Schedule "C" is hereby deleted in its entirety.

4. Article 5.1 of Schedule "C" is hereby deleted in its entirety and replaced with the following:

5.1 The Consultant shall keep records, books of account and supporting documents in accordance with accepted accounting procedures and practices. The Consultant's records which pertain specifically to fees and expenses charged by Consultant under this Agreement shall be made available to the Client or its authorized representative for observation or audit at mutually convenient times and up to one year after discharge of this Agreement.

The fourth bullet point of Schedule "D" is hereby deleted in its entirety.

SCHEDULE "C"

(See attached PDF of Schedule "C")

SCHEDULE D

Protocols for Security of Government Information on Information Technology assets of Contractors

The Consultant shall confirm with the client Department whether the Consultant will be required to use information technology resources, including computers, of the Government of Newfoundland and Labrador in the conduct of the work under the Agreement. The following requirements apply where the Consultant will not be using such assets, but will instead have access to confidential information (including personal information) ("Confidential Information") received from the Government of Newfoundland and Labrador ("Government") and will be storing, manipulating or accessing that Confidential Information on the Consultant's own information technology resources.

- All portable storage devices or media (e.g., flash drives, memory sticks, portable hard drives, writeable compact discs or digital video discs, etc.) may only be used to transport and / or store Confidential Information where either the Confidential Information or the device or media is encrypted.
- Unless specifically separately authorized by the Agreement or otherwise, the Consultant is not permitted to attach non-government computers or other information technology systems to any Government network.
- Consultants are expected to implement and maintain up to date versions of all ordinary business software for the reasonable protection of information on computers attached to the Internet which will have access to or store Confidential Information, including security firewall and anti-viral software.
- Consultants are not permitted to use any Peer to Peer file sharing program (e.g. Limewire, etc) or chat program (i.e., MSN, Skype) on any information technology asset which will contain Confidential Information, or which will be connected via a network to any computer which will contain Confidential Information.
- Email should not be used as a method to transmit Confidential Information across public networks such as the Internet unless the e-mail and/or its attachments are encrypted or zipped in a secure manner.
- The Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Consultant, its employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the *Access to Information and Protection of Privacy Act*, the *Management of Information Act*, SNL2005, cM-1.01, and the *Privacy Act*, RSNL1990 cP-22, as well as other legislation which may apply in the jurisdiction of the Consultant's operation. The Consultant is responsible to ensure the compliance with and satisfaction of the legislative requirements of all such information relating to the treatment of Confidential Information

by the Consultant, its employees, servants and/or agents.

- Where a Consultant will be granted access to the Government computer network during the course of the work, in addition to the requirements noted above, the Consultant shall not:
 - Share personal computer drives or folders on a computer accessing the network; or
 - Access the network remotely, either through wired or wireless connections, except through the use of secure ID and virtual private network systems.
- These requirements apply to the Consultant and all agents, employees or permitted sub-Consultants of the Consultant, and it is the responsibility of the Consultant to ensure that all such agents, employees or permitted sub-Consultants are aware of these restrictions and are in compliance with them.

END OF SCHEDULE D