

Elmsdale Business Park Phased Expansion  
Class 1 Environmental  
Assessment Application

February, 2019

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**Appendix L - Letter of  
Understanding**

Sample Letter of Understanding  
Lantz Water Transmission Main Project  
East Hants, 2018

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## Letter of Understanding for Wetland Restoration to Meet Compensation Requirements

This is a *letter of understanding* (“LOU”) made as of January 17, 2018 between:

**Municipality of the District East Hants** (“the Proponent”)

-AND-

**McCallum Environmental Ltd. Bedford NS** (“McCallum”)

WHEREAS in compliance with the *Nova Scotia Wetland Conservation Policy*, the Proponent is required by Nova Scotia Environment (“NSE”) to compensate for wetland loss across four properties located in Elmsdale and Lantz, NS, (PID’s 45282662, 45084878, 45086931 and 45334455);

AND WHEREAS on November 30, 2017 the Proponent issued a Request for Quotations (RFQ) for a wetland restoration specialist to compensate for the wetland loss associated with PID’s 45282662, 45084878, 45086931 and 45334455 in Elmsdale and Lantz, NS;

AND WHEREAS McCallum provides services to clients who need to restore, protect or create wetlands as a result of an approved wetland alteration;

AND WHEREAS McCallum provided the Proponent a Quotation on December 20, 2017 to provide certain services to restore 4,788m<sup>2</sup> of wetland habitat before the end of 2019 (“the Project”);

NOW THEREFORE this LOU witnesses that in consideration of a sum to be paid to McCallum by the Proponent in accordance with the terms and conditions of this LOU, the parties agree as follows:

i. SCOPE OF WORK AND SERVICES

McCallum shall:

1. Identify a site suitable as a wetland compensation project;
2. Obtain approval for the aforementioned project (#1) from NSE;
3. Design the Project, and provide plans to NSE for review and comment;
4. Obtain all necessary provincial and federal regulatory approvals prior to work commencing;
5. Initiate implementation of the Project as agreed to in #2;
6. Provide construction supervision for the delivery of the Project;
7. Complete the restoration of approximately 4,788m<sup>2</sup> of wetland creation before the end of 2019;
8. In consultation with NSE, complete monitoring events as required and provide reporting to NSE; and
9. Notify NSE upon Project completion.

ii. TERMS OF PAYMENT

McCallum will provide the necessary equipment, engineering, design and staff to restore 4,788m<sup>2</sup> of wetland habitat. The Proponent will provide McCallum with the funds necessary to cover the associated costs, totalling \$12,000 plus HST upon receipt of acceptance of this LOU in writing from NSE.

iii. COMPLIANCE WITH LAWS

McCallum, in the performance of the services, shall observe and abide by all applicable laws, rules and regulations of the federal, provincial and municipal bodies having jurisdiction in the location where the services are performed.

iv. ASSIGNMENT

McCallum may use subcontractors and other third parties to deliver some, or all of the services.

v. TERMINATION

The Proponent shall have the right at any time to terminate, with or without cause, the services of McCallum and to cancel this LOU by giving McCallum fourteen days prior written notice to that effect. The parties may, however, mutually agree to waive the fourteen day notice period.

In the event of termination the Proponent shall reimburse McCallum for all costs incurred by McCallum in relation to the scope of work for this LOU up to and including the fourteen day notice period.

vi. INDEPENDENT CONTRACTOR

It is understood and agreed by and between the parties hereto that the relationship between the Proponent and McCallum existing and to exist from and after the execution of this LOU, and at all times during the term of same, is that of an independent contractor.

vii. EXECUTION AND COUNTERPART

This LOU may be executed in one or more counterparts, each of which when so executed and all of which together shall constitute the same LOU.

viii. NOTICES

All notices and reports provided for in this LOU shall be in writing and delivered to the parties by email or mail delivery at the following addressed unless the parties agree otherwise.

To:

McCallum Environmental Ltd.  
2 Bluewater Road, Suite 115  
Bedford, NS  
B4B 1G7  
robert@mccallumenvironmental.com

And To:

Municipality of East Hants  
Box 230, Suite 170  
15 Commerce Court  
Elmsdale, Nova Scotia, B2S 3K5

ix. INCORPORATION

The preamble hereto is incorporated into and forms part of this LOU. In addition, the services described in this LOU shall be administered in accordance with Section 3: Terms and Conditions of the Request for Quotations (RFQ), issued by the Proponent on November 30, 2017 as "RFQ50185 – Wetland Restoration Compensation, Lantz".

THIS LOU and everything contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective executors, administrators, successors and assigns.

IN WITNESS WHEREOF both the Proponent and McCallum have executed and delivered this LOU.

**SIGNED AND DELIVERED**

*Sheralee MacEwan*  
Witness

*Connie Nolan*  
Connie Nolan, CPA, CA, CFE  
Chief Administrative Officer

Date

*[Signature]*  
Witness

*[Signature]*  
Robert McCallum  
President  
McCallum Environmental Ltd.

January 17/18  
Date

### 3: TERMS AND CONDITIONS

The primary contract with the Wetland Restoration Professional (WRP) will be a Letter of Understanding (LOU) based on the example LOU available here:

<https://www.novascotia.ca/nse/wetland/compensation.asp>

The following Terms and Conditions will apply to any agreement with respect to providing these Services:

The WRP is identified as the “Third Party Wetland Restoration Professional” in the example LOU. East Hants is identified as the “Proponent” in the LOU.

The WRP shall comply with all Federal, Provincial and Municipal regulations and other authorities having jurisdiction.

The WRP will pay all Federal and Provincial Taxes as required by the appropriate enactments.

The WRP must indicate on their invoice, as a separate amount, the Harmonized Sales Taxes that East Hants is legally obligated to pay. This amount will be included in payments to the WRP.

East Hants requires that Invoices related to Services:

- Must be supported in such detail as East Hants may request;
- will be reviewed by East Hants for completeness in a timely manner and, if acceptable, will be approved for payment;
- Where there is a discrepancy, error, or other anomaly, East Hants may reject an Invoice, request clarification or additional information, or otherwise require the Invoice to be made acceptable prior to approval. The WRP will have a duty to make corrections to the Invoice or Services to ensure they are acceptable to East Hants;
- Payment will be made on a net thirty (30) days basis from receipt of an acceptable Invoice;
- No payment made by East Hants will constitute acceptance of work or products that are not in accordance with the requirements of the WRP’s Quotation or the terms of this document; and
- Registration with the Workers’ Compensation Board of Nova Scotia (WCBNS) is required as a condition of providing these Services; a valid Clearance Letter must be included with the project invoice.

#### **Performance**

The WRP is solely responsible to develop a restoration plan describing the compensation for the wetlands which is acceptable to Nova Scotia Environment (NSE). East Hants will make no payment to the WRP until the compensation plan and the LOU are accepted by NSE.

NSE has sole discretion over the acceptability of the plan and the performance of the work to implement the planned compensation. East Hants has discretion over the terms of the LOU, but the ultimate acceptance of the LOU is at the discretion of NSE.

The WRP agrees to perform the Services to a high standard of quality and safety, at minimum to the satisfaction of Nova Scotia Environment (NSE) or their representative. Where the performance of a Service is not satisfactory to NSE, their representative, or East Hants, the WRP may be required to repair or re-perform the Services (or part thereof) to the satisfaction of NSE, their representative, or East Hants, in accordance with the terms of this agreement



or, in the case of the wetland restoration, the Letter of Understanding (LOU) and the restoration plan accepted by NSE.

The WRP will provide the results of their monitoring efforts to NSE in a timely manner as specified in their plan.

The cost provided by the WRP must be inclusive of all costs to develop and implement the restoration plan. The WRP may not request, and East Hants will not pay, any additional fees or compensation with respect to these Services.

### Indemnification

The WRP shall defend, indemnify and save harmless the Municipality of the District of East Hants its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the WRP, its directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the delivery or performance of this agreement. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the WRP in accordance with this agreement, and shall survive this agreement.

### Insurance

Good Standing with the Workers' Compensation Board of Nova Scotia is a requirement of this contract. Failure to obtain or maintain valid coverage, or to obtain or maintain an alternative form of coverage acceptable to East Hants, will make any award of Services null and void.

The WRP shall, without limiting its obligations or liabilities, maintain Commercial General Liability insurance on an occurrence basis with a minimum limit of \$5,000,000.00 for bodily injury including death, personal injury and property damage including loss of use, and shall include provisions for: Blanket contractual liability; Owners' and contractors' protective liability; Broad form property damage; Hostile fire; Tenant's legal liability; Non-owned automobile liability; Contingent employer's liability; and Products and completed operations liability.

The WRP must provide a certificate of insurance from their insurer for this coverage. The Certificate, at a minimum, must:

- a. List the Municipality of the District of East Hants as an additional insured and contain both cross-liability and severability of interest clauses;
- b. The WRP's insurance must provide for bodily injury or property damage that may result from the WRP's performance of the Services; and
- c. Excess or umbrella insurance may be used to achieve the required insurance limits noted in this section.

The WRP's insurance must include provisions for contractors' pollution liability (environmental impairment liability) and will include Difference in Conditions, Difference in Limits, products, and completed operations.

The WRP must have and must maintain automobile insurance in the amount of \$2,000,000.00 for the duration of the agreement and must provide a certificate of insurance confirming this coverage.

The certificate of insurance must provide for 30 days' written notice of cancellation or material change for Commercial General Liability insurance and 15 days written notice in the case of automobile insurance. The WRP must provide a new certificate of insurance each time the insurance is renewed and for the duration of this contract.



If so required, the WRP will comply with any requirements which NSE may have with respect to providing proof of insurance.

The WRP is responsible to have and to maintain insurance on the equipment and materials used to provide the Services for the duration of the agreement. East Hants will not be responsible in any way for lost, damaged or stolen equipment.

In addition:

- a. The WRP's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to East Hants.
- b. In the case where the WRP will use subcontractors to perform some or all of the Services, the subcontractor must obtain and, when required to by East Hants, provide proof of insurance coverage equal to that required of the WRP under this agreement, including requirements to list East Hants as an additional insured.
- c. Failure to maintain the required insurance coverage may be grounds for termination of the agreement;
- d. If a WRP no longer is in Good Standing with WCBNS, the WRP must disclose the change in WCB status immediately. Inability to return to Good Standing before the next performance of the Services may result in the termination of the agreement; and
- e. Changes to insurance coverage must be disclosed to East Hants prior to the next performance of Services after the change and the WRP must provide a revised certificate. The amended coverage must be in accordance with the requirements of this agreement or otherwise acceptable to East Hants.

### **Termination**

East Hants may terminate the Services of the WRP at any time or for any reason by providing the WRP with thirty days' written notice. In the event of such termination, East Hants will only be responsible to pay the WRP for such reasonable administrative costs incurred up to the time the Termination occurs. East Hants will not be responsible, in any way, to pay for any costs associated with the implementation of a restoration plan which is not yet approved by NSE or where the restoration plan, even if approved by NSE, has not been implemented or where the implementation (or part thereof) will not be considered by NSE as compensation in East Hants' favour

### **Safety**

Prior to the commencement of any Services, the Contractor, with the cooperation of East Hants where necessary, must:

- Perform a hazard assessment;
- Have a plan for addressing all known hazards;
- Post any required warning signs or install any necessary guards or barriers;
- Locate and mark any municipal or other services such as water, sewer, electrical, communications, etc. that may be affected by the work as identified in the hazard assessment. East Hants is responsible for any fees associated with location of services;
- Locate and confirm clearances from nearby structures and overhead obstructions such as power lines;



- Design and provide traffic control, if required; and
- Identify and removal of any other potential hazards which might result in damage or harm to public property or individuals.

The Contractor is responsible to manage their employees, including, without limitation, training, ensuring their licenses, if any, are up to date, and to monitor safe work practices.

#### **Assignment**

The Contractor may not transfer or assign this agreement without the express prior written permission of East Hants. Assignments or transfers which are attempted to be made to this agreement without such permission will be void.

#### **Independent Status**

The Contractor will provide the Services to East Hants as an Independent Contractor and not as an employee.

Accordingly:

- a. The parties acknowledge that the Contractor and any subcontractor they may engage, and their respective employees, are not, nor are they deemed to be, employees of East Hants within the meaning set out in any employment legislation that may be applicable, or otherwise.
- b. The Contractor agrees that East Hants shall have no liability or responsibility for the withholding, collection, or payment of any payroll taxes, employment insurance premiums, or Canada Pension Plan contributions, or any other relevant payroll deductions on any amounts paid by East Hants to the Contractor or amounts paid by the Contractor to its employees or contractors.
- c. The Contractor also agrees to indemnify East Hants from any and all claims in respect to East Hants's failure to withhold and/or remit any payroll taxes, employment insurance premiums, Canada Pension Plan contributions, or similar payroll deductions.
- d. Further, the Contractor shall be solely and entirely responsible for all payments under the applicable Workers' Compensation legislation as it relates to their ability to provide service and receive payment.
- e. The Contractor agrees that as an Independent Contractor, the Contractor, and any person for whom it is legally responsible, will not be qualified to participate in or to receive any employee benefits that East Hants may extend to its employees.
- f. The Contractor shall not have any power to accept an obligation, incur any liability, promise any performance, and/or request or obtain any credit on behalf of East Hants except as described herein.

#### **Governing Law**

The laws of Nova Scotia shall govern this agreement. If any dispute should arise under the terms of this agreement, the Courts of Nova Scotia shall have exclusive jurisdiction to such dispute.

#### **East Hants Representative**

The East Hants Representative for these Services is Derek Normanton, Project Engineer. East Hants may, through the Representative or their designate, supply either verbal or written instructions to a Contractor with respect to the Services to be completed.

