

DEVELOPMENT AGREEMENT

THIS AGREEMENT made this **XXth** day of **MONTH** 2023,

BETWEEN:

Mariners Centre Management Authority

(the “MCMA”)

- and -

The Town of Yarmouth

(the “TOY”)

- and -

The Municipality of the District of Yarmouth

(the “MODY”)

-and-

The Municipality of the District of Argyle

(the “MODA”)

BACKGROUND:

The Mariners Centre draws participants from all over Yarmouth County and residents in Digby and Shelbourne counties. The community is changing, and there is an increasing need for opportunities to play and connect. The community hopes that the Mariners Centre can be expanded to provide a swimming pool and other fitness, sport, recreation facilities and programs.

With significant investment from government partners, the \$31M expansion and redevelopment of Mariners Centre will be a major catalyst for a community that is reinventing itself. The Town of Yarmouth, the Municipality of the District of Yarmouth, the Municipality of the District of Argyle, and the Mariners Centre Management Authority (the Parties) have organized to jointly develop the Mariners Centre Expansion.

As part of the project planning process, the parties identified the following project objectives:

1. Redevelop the Mariners Centre to create a community hub for health, wellness, sport tourism and economic trade.
2. Provide additional recreational and community space that will better serve a wider community, including underrepresented populations, seniors, youth, and families; and,
3. Reduce operational costs by implementing more efficient and sustainable building systems.
4. Construction of a building expansion that achieves the energy efficiency requirements as defined by the Green and Inclusive Community Building fund (i.e., net-zero-ready).
5. Construction of a building expansion that achieves climate resilience and space for a community emergency centre as defined by the Green and Inclusive Community Building fund.

The parties have agreed to use their best efforts to ensure that the design and construction of the facility which is the subject of this Agreement is completed in a collaborative approach that meets the needs of each party bound by this agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions: In this Agreement the following terms shall have the following respective meanings, unless the context expressly or by implication otherwise requires:

“Architect” means the architect approved of by the EPC and retained to design and supervise the development and construction of the Project as set forth in subsection 5.5;

“Authority Matrix” means the decision-making authority as it relates to the project scope and budget as defined in Schedule “C”;

“Business Day” means a day other than a Saturday, Sunday or any other day which is a statutory holiday under the laws of Canada or the Province of Nova Scotia;

“CAO” means the Chief Administrative Officer(s) of the signatory municipalities of this agreement;

“Contracted Service Providers” means one or more of the Architect, Project Manager and General Contractor, as the context requires;

“Event of Default” has the meaning set forth in subsection 11.1;

“Expansion Steering Committee” means the Committee established by the parties in respect of the initial planning and funding application(s) for the Project;

“Final Audit” has the meaning set forth in subsection 7.4;

“Expansion Project Committee” (EPC) means the Committee established by the parties in respect of the Project as set out in section 4 of this Agreement;

“General Contractor” means the general contractor approved of by the EPC and retained for the construction of the Project as set forth in subsection 6.1;

“Lands” means the lands referred to the existing Mariners Centre property located at 45 Jody Shelley Drive, Yarmouth, Nova Scotia;

“Mariners Centre” means the facility located at 45 Jody Shelley Drive, Yarmouth, Nova Scotia;

“Mariners Centre Expansion Board” (MCEB) means the Board established by the parties in respect to the Project as set out in section 3 of this Agreement;

“Mariners Centre Management Authority” (MCMA) means the Board who oversees the operations and management of the Mariners Centre facility;

“Parties” means the signing representatives of this agreement including the Mariners Centre, the Town of Yarmouth, the Municipality of the District of Yarmouth, and the Municipality of the District of Argyle;

“Project” means the construction of the building renovation and expansion on the Lands, as more particularly described in Schedule “A”;

“Project Costs” means all hard and soft costs that are required to complete the Project, as more particularly described in Schedule “B”, and excluding any exceptions described therein or elsewhere in this Agreement;

“Project Lead” means the person approved by the ~~Councils~~ MCEB to act as a member of the ~~Project Expansion Sub-Committee~~ EPC and to provide ~~oversight of the Project Manager~~ stakeholder management and act as a MCEB representative through the development and construction phases of the Project on a project management basis as set forth in subsection 5.7;

“Project Manager” means the person or entity approved of by the EPC and retained by the Project Expansion Committee to manage and supervise the development and construction of the Project on a project management basis as set forth in subsection 5.6;

1.2 Number and Gender: In this Agreement, words in or implying the singular include the plural and vice versa, and words having gender include all genders.

1.3 Schedules:

The following schedules form part of this Agreement:

Schedule “A”: Description of the Project

Schedule “B”: Project Costs

Schedule “C”: Authority Matrix

and the parties agree that unless the context clearly indicates otherwise, all references in this Agreement to “this Agreement” shall be deemed to include such Schedules.

1.4 Entire Agreement: This Agreement, including any prior Agreements, which the parties agree are incorporated into it by reference, constitute the entire agreement between the parties with respect to the subject matter hereof and all other prior agreements, representations, statements, negotiations, and undertakings with respect to such subject matter are superseded hereby. All schedules annexed or to be annexed to this Agreement shall have the same force and effect as if the information contained therein was included in the body of this Agreement. In case of a conflict between this agreement and the Intermunicipal Joint Venture Agreement, the Intermunicipal Joint Venture Agreement shall take precedence.

1.5 Headings: Any heading, subheading or marginal note contained in this Agreement and the table of contents, if any, preceding this Agreement are inserted for convenience and for reference only and in no way define, limit, or describe the scope or intent of this Agreement or form part of this Agreement.

1.6 References to Statutes: References to any statute or a statutory provision shall include any by-laws, rules, and regulations made from time to time thereunder, and shall be read in each case as amended, replaced, extended, or re-enacted from time to time.

2. MUTUAL INTENTION AND COMMITMENT

2.1 Mutual Intention and Commitment: The TOY, MODY, MODA and MCMA acknowledge their mutual intention and commitment to work co-operatively on the Project and to present, wherever possible a unified position in their dealings with third parties, including external stakeholders. To that end, the parties covenant and agree to use their best efforts to build consensus on issues and ensure that their

interests are, to the extent possible, aligned, and compatible. Without limiting the foregoing, the parties covenant and agree to:

- (a) dedicate adequate financial and other resources and assign appropriate personnel to the Project;
- (b) act, and to cause their members on the EPC and any other of their representatives and agents from time to time, to act without delay, time being of the essence for the completion of the construction of the Project, and also to act reasonably and in good faith in taking all actions and in making all decisions pertaining to the development and construction of the Project to ensure that the Project is completed within four (4) years of the funding approval;
- (c) expedite, to the extent possible, all internal approvals required for the Project;
- (d) share relevant information relating to the Project in a timely manner; and,
- (e) take and perform such other actions as may be reasonably necessary to advance the Project.

2.2 Joint Communication Strategy: The MCEB and EPC shall develop a joint communication strategy with the objective of ensuring that any media releases, public statements, and other communications related to the Project are accurate and consistent with the intent and terms set out herein.

3. MARINERS CENTRE EXPANSION BOARD

3.1 Mariners Centre Expansion Board: The parties hereby establish the MCEB to make decisions and give approvals as defined in the Authority Matrix included as Schedule “C” and in accordance with the requirements of this Agreement and any previous Agreements. The Board shall consist of one (1) representative from each municipality, one (1) Mariners Centre representative and one (1) community representative.

3.2 Appointment of Members: Each municipality and the MCMA Board shall nominate representatives for the MCEB as well as a maximum of three (3) additional community representatives. The Expansion Steering Committee shall review the nominated persons and shall select one (1) representative from each of the municipalities as a Board member and one (1) representative as a Designated Alternate representative. The Expansion Steering Committee will also select one (1) Mariners Centre representative and one (1) community representative. Representatives will be selected based on their ability to work collaboratively, make decisions at milestone submissions, and develop and manage an external communications plan as outlined in Schedule “C”.

3.3 Vacancies: Should a representative of the MCEB resign, or be unable to fulfill their duties, the Designated Alternate (DA) will take their place. If a DA does not exist, or is also unable to fulfill their duties, the original nominating entity shall nominate a replacement representative within ten (10) Business Days for consideration by the Expansion Steering Committee. The Expansion Steering Committee shall review the nominated person(s) and select a replacement representative within five (5) Business Days of receipt of the nominations. If an appointment to fill a vacancy is not made within fifteen (15) Business Days of the notice of resignation, the remaining members may continue to exercise all powers of the MCEB in accordance with the terms of this Agreement until such time as the vacancy is filled.

3.4 Meetings: The first meeting of the MCEB shall take place no later than ten (10) Business Days after this Agreement is executed by the last of the parties to do so. At the first meeting, the MCEB shall (at a minimum) appoint a Board Chair and review the Authority Matrix. Following the first meeting, the MCEB shall meet no less frequently than quarterly unless the MCEB agrees otherwise, or an approval is required to progress the project. Meetings will be scheduled by the Board Chair or their designate. Members may participate in meetings by virtual call, telephone conference call or in person. The Party from whom the Board Chair was nominated shall assign an administrator to assist in scheduling meetings.

3.5 Quorum: A quorum for any meeting of the MCEB shall be a majority of its members or their Designated Alternate.

3.6 Binding Effect of MCEB Decisions and Approvals: All decisions and approvals of the MCEB made in respect to any matter within its jurisdiction and authority are binding upon all parties.

3.7 Defaulting Party: If a party has committed an Event of Default, then, for so long as such party is in default, the MCEB members appointed by that party shall not be entitled to attend or vote at any meeting of the MCEB. Board members appointed by a party that is in default shall be entitled to continue receiving notices and agendas of meetings and shall be deemed to be present for the purpose of determining quorum pursuant to subsection 3.5.

3.8 Invitees to Meetings: Each Board member shall be entitled to be represented at any meeting of the MCEB by one other professional, advisor, consultant, or staff member. Meeting invitees shall act as advisors only and shall be non-voting participants. No other persons may attend meetings of the MCEB without permission of the Board.

3.9 Board Voting: Each Board member including the Chair shall have one (1) equal vote. The Chair does not receive any additional vote(s). If a Board member cannot attend a meeting, or has resigned their position, their Designated Alternate will have one (1) vote in their absence. A Board member and their Designated Alternate may not both vote on the same decision.

3.10 Records: The administrator assigned to maintain proper written records of its meetings and decisions shall maintain all records and copies of same shall be sent to each member and the CAO's within five (5) Business Days following each meeting of the MCEB. Each Board member shall be entitled to reasonable access to all files and records of the MCEB at all reasonable times and shall be given the opportunity to make copies thereof from time to time.

3.11 Notification of MCEB Decisions: The Board Chair or their designate shall convey the final decisions of the MCEB to the CAO's and EPC as appropriate.

4. EXPANSION PROJECT COMMITTEE

4.1 Expansion Project Committee: The parties hereby establish the EPC to provide recommendations, make decisions and give approvals in connection with the design, development, construction, budget management, and communication of the Project as defined in the Authority Matrix included as Schedule "C" and in accordance with the requirements of this Agreement and any previous Agreements. The Committee shall consist of three (3) municipal representatives, one (1) Mariners Centre representative and the Project Lead. The Prime Design Consultant team, the Project Manager and the Construction Services provider may participate in Committee meetings in an advisory role.

4.2 Appointment of Members: Each municipality and the MCMA Board shall nominate representatives for the EPC. Nominated persons shall be non-elected representatives and shall have the

skills, experience, and authority to make decisions on behalf of his or her respective entity. Nominated persons may have experience in sectors (i.e., Finance, legal, recreational programming, engineering etc.) which would benefit the project delivery. The Expansion Steering Committee shall review the nominated persons and shall select three (3) representatives from any combination of the municipalities as well as one (1) Mariners Centre representative. Representatives will be selected based on who will provide the best multi-disciplinary representation, as well as their individual and collective abilities to work collaboratively to resolve issues and deliver the project.

4.3 Vacancies: Should a municipal representative member of the EPC resign or be unable to fulfill their duties, each municipality shall nominate replacement representatives within ten (10) Business Days for consideration by the MCEB. Should the Mariners Centre representative resign or be unable to fulfill their duties, the MCMA shall nominate replacement representatives within ten (10) Business Days for consideration by the Expansion Steering Committee. The MCEB shall review the nominated persons and select a replacement representative within five (5) Business Days of receipt of the nominations. If an appointment to fill a vacancy is not made within fifteen (15) Business Days of the notice of resignation, the remaining members may continue to exercise all powers of the EPC in accordance with the terms of this Agreement until such time as the vacancy is filled.

The MCEB may replace an EPC member at any time, and shall request nominations as per section 4.3 - Vacancies.

4.4 Meetings: The first meeting of the EPC shall take place no later than ten (10) Business Days after this Agreement is executed by the last of the parties to do so. The EPC shall meet no less frequently than bi-weekly unless the EPC agrees otherwise. Meetings will be scheduled by the Project Lead or their designate. Members may participate in meetings by virtual call, telephone conference call or in person. The Project Lead or their designate will document meeting discussions and decisions through meeting minutes which will be distributed to all EPC members, CAO's and meeting attendees.

4.5 Quorum: A quorum for any meeting of the EPC shall be a majority of its members.

4.6 Binding Effect of EPC Decisions and Approvals: All decisions and approvals of the EPC made in respect to any matter within its jurisdiction and authority as defined in the "Authority Matrix" are binding upon all parties.

4.7 Invitees to Meetings: Each Committee member shall be entitled to be represented at any meeting of the EPC by one other professional, advisor, consultant, or staff member. Meeting invitees shall act in an advisory role only. No other persons may attend meetings of the EPC without the approval of the EPC.

4.8 Records: The EPC shall direct the Project ~~Lead-Manager~~ or their designate to maintain proper written records of its meetings and decisions to be kept and copies of same shall be sent to each member and CAO's within five (5) Business Days following each meeting of the EPC. Each member and CAO's shall be entitled to reasonable access to all files and records of the EPC at all reasonable times and shall be given the opportunity to make copies thereof from time to time.

4.9 Implementation of EPC Decisions: The Project Lead or their designate shall convey the final decisions of the EPC to the Contracted Service Providers as appropriate.

5. PRE-CONSTRUCTION MATTERS

5.1 Approvals Required by the Federal Government: The MCEB shall, throughout the term of this Agreement, take all steps as expeditiously as possible as are required to obtain all internal approvals from

the Federal Government as required for the Project. Written confirmation that the required approvals have been received shall be provided by MCEB, at the EPCs' request.

5.2 Approvals Required by the Provincial Government: The MCEB shall, throughout the term of this Agreement, take all steps as expeditiously as possible as are required to obtain all internal approvals from the Provincial Government as required for the Project. Written confirmation that the required approvals have been received shall be provided by MCEB, at the EPCs' request.

5.3 Approvals Required by Municipal Governments: The EPC Representatives shall, throughout the term of this Agreement, take all steps as expeditiously as possible as are required to obtain all Council approvals as required for the Project. Written confirmation that the required approvals have been received shall be provided by the EPC Representatives to the MCEB as requested.

5.4 Development Approvals: The TOY shall receive all necessary applications for planning approvals and shall process these applications in a diligent and expeditious manner. The Project Lead or their designate shall provide the EPC with written reports on a regular basis of the status of all such applications.

5.5 Retainer of Architect: The parties acknowledge that the Project Lead, on behalf of the Councils and the Mariners Centre, will undertake a competitive bid process to engage and thereafter enter into an agreement with the Architect for Prime Design Consulting Services. The Councils acknowledge and agree that the bid documents must be developed in consultation with duly authorized representatives of the Expansion Steering Committee as outlined in the Prime Design Consultant Services RFP issued by the Project Lead on January 25, 2023 for the purpose of obtaining architectural services for the Project. An Evaluation Committee comprised of three (3) municipal representatives, the Project Lead and the Project Manager shall evaluate the proposals received in response to the aforementioned RFP and shall unanimously determine the successful proponent that provides the highest technical and financial value to the project. The Evaluation Committee will bring a recommendation to the EPC to award the contract and to enter into an agreement with the successful proponent. The EPC shall make a recommendation to the MCEB for approval to award the contract. If the approval is granted, the EPC shall promptly provide each municipal Chief Administrative Officer (CAO) with a copy of the executed agreement with the Architect. If the MCEB and EPC selections have not been completed, the Expansion Steering Committee shall act on behalf of the EPC and see the approval of the Municipal Councils to award the contract to the Architect.

5.6 Retainer of Project Manager: The parties acknowledge that the EPC, on behalf of the MCEB, may appoint a staff member or undertake a competitive bid process ~~to engage to engage~~ and thereafter enter into an agreement with a Project Management Consultant. The Councils acknowledge and agree that the bid documents will be developed in consultation with duly authorized representatives of the EPC. Should ~~this a competitive bid~~ process take place, the EPC shall evaluate the proposals received in response to the aforementioned RFP and shall unanimously determine the successful proponent that provides the highest technical and financial value to the project. The EPC will bring a recommendation to the MCEB to award the contract and to enter into an agreement with the successful proponent. The EPC shall promptly provide each municipal CAO with a copy of the executed agreement the EPC enters into with the Project Manager.

5.7 Retainer of Project Lead: The parties acknowledge that a Project Lead ~~has been retained is~~ selected by the ~~Expansion Steering Committee MCEB~~ and shall be a ~~non~~-voting member of the EPC. The Project Lead shall assist the parties with all aspects of the Project and for the purpose of so doing, the Project Lead, or their designate shall be the lead for the procurement processes for the Contracted Service

Providers, act as a liaison between the MCEB and the Contracted Service Providers, oversee the administration of the payment of Project Costs and carry out such other functions as set out in this Agreement. It is understood and agreed by the parties that the Project Lead has no authority to bind the parties or to make any decisions contrary to those approved by the EPC in accordance with section 4. If the Project Lead is unable to continue in their role, the Project Manager shall act as the Project Lead replacement until a replacement is selected, if required.

As the MCEB representative on the EPC, the Project Lead's priority is stakeholder management including: project updates, reporting, and communications.

5.8 Approval of Plans and Specifications and Budget: The EPC shall review the plans and specifications and budget for the Project, as prepared by the Prime Design Consultant team and the Project Manager and shall distribute in parallel, the design submissions (i.e., Schematic Design, Design Development, 33%, 66%, 99% Construction Documents) to the Municipalities, the MCMA and the MCEB for comments as related to their review authority. The design submissions shall be reviewed, and comments submitted to their respective CAO and/or Board/Committee Chairperson within ten (10) Business Days of receipt. The EPC shall receive the comments from the CAO's and Chairperson and will consolidate and track all comments received. They shall document decisions made related to project scope and budget. The EPC shall give approval to proceed with design no later than fifteen (15) Business Days after document submission, which approval shall not be unreasonably withheld. Once approved no modifications shall be made to the plans and specifications and budget unless approved by MCEB.

6. CONSTRUCTION OF THE PROJECT

6.1 General Construction Contract: In the event the plans and specifications and the budget for the Project are approved by the EPC as set out in subsection 5.8, the EPC shall undertake a competitive bid process to engage and thereafter enter into a fixed price agreement with a single general contractor (the "General Contractor") for the construction of the Project. The bid documents shall be developed by the Architect and the Project Manager, in accordance with its policies and practices, in consultation with the EPC and shall not be issued until such time as the MCEB has given its approval in writing of the bid documents. The bid documents shall require the bidders to provide proof of their ability to obtain standard insurance coverage naming the municipal partners as additional insured. All proposals shall be evaluated by the EPC. Following the evaluation, the EPC shall make a recommendation to the MCEB to award the contract to the lowest compliant bid. Once approval is received from MCEB to award the contract, the Committee, on behalf of the MCMA shall enter into an agreement with the successful proponent. The MCEB shall promptly provide each municipal CAO with a copy of the executed agreement the EPC enters into with the General Contractor.

6.2 Oversight of Construction: The EPC shall meet no less frequently than bi-weekly, or as they deem necessary throughout the construction period to review the progress of the Project and shall work co-operatively in order to ensure that the Project is completed as expeditiously as possible in accordance with the plans and specifications and budget approved by the MCEB.

6.3 Payment Administration: The Project Lead or their designate shall be responsible for the administration of payment to the Contracted Service Providers and any other costs related to the Project, including construction liens and holdbacks, whether arising from the default of the MC or the municipal partners. Any costs associated with construction lien matters, including legal fees and disbursements directly or indirectly arising out of the failure of a municipal partners to make a payment as required under this Agreement shall be payable by the relevant municipal partners forthwith upon receipt of written demand from the MCMA. Any amounts so paid by a municipal partner and any amount paid by

the MCMA in respect of a construction lien arising as a result of non-payment by the MCMA shall not be considered Project Costs.

6.4 Modification of Scope of Project: If, after the General Contractor has been engaged as set out in subsection 6.1, the EPC anticipates that the Project Costs for the Project will or may exceed its budget, the members of the EPC shall work co-operatively with the assistance of the Contracted Service Providers to modify or reduce the scope of work required for the Project, and for the purpose of so doing:

- (a) the Project Lead or their designate shall arrange for the preparation of revised plans and specifications and budget for the Project in accordance with the recommendations of the EPC, the cost of which shall be considered an approved Project Cost, and submit the revised plans and specifications and budget to the MCEB for approval;
- (b) the MCEB, acting reasonably, shall communicate its approval or disapproval of the revised plans and specifications and budget or make requests for revisions to same within fifteen (15) Business Days of their receipt. Where applicable, the Project Lead shall advise the MCEB of time sensitive decisions which may require shorter timelines than those stated above.
- (c) if the revised plans, specifications, and risk register indicate that the project will or may still exceed the budget, and the members of the EPC and the MCEB are of the opinion that the project budget should be increased to meet the project objectives and provide the best value to the community, the MCEB may make a request to the municipal partners to increase their funding contribution(s). The municipal partners will meet together to review the request. and each council shall make a decision within twenty (20) Business days. Following the meetings, each municipal partner CAO will communicate their respective municipalities decision to the Project Lead.
- (d) once the revised plans, specifications and budget have been approved by the MCEB, the Project Lead or their designate shall advise the Contracted Service Providers of the revisions and take all necessary steps, to ensure that the remainder of the work required to complete the Project is carried out in accordance with the revised plans and specifications and budget. Contract amendments will be prepared by the Project Manager or designate.

7. FINANCIAL MATTERS

7.1 General: Each party shall be responsible for ensuring that it has adequate funds to pay its share of Project Costs as determined in accordance with this Agreement. In any event pursuant to sections 10 through 15 of this agreement, inclusive, that the amounts required to be paid by a party under this Agreement exceed its share, that party shall be solely responsible for obtaining additional funds as required and shall not seek contribution from the other parties.

7.2 Cost Sharing: The Project Costs shall be shared by the municipal partners as defined in the Joint Venture Intermunicipal Agreement:

- (a) all costs (including additional costs for the services of the Contracted Service Providers) shall be shared as follows:

Town of Yarmouth: 30.666%

Municipality of the District of Yarmouth: 38.666%

Municipality of the District of Argyle: 30.666%

(b) each party shall bear their own administrative costs relating to the Project.

7.3 Payment by Municipal Partners: The Project Lead or their designate will prepare and update, as required, monthly and quarterly cash flow statements for all expected expenditures for the Project and shall calculate each party's share of the Project Costs in accordance with the cost sharing formulas determined in accordance with subsection 7.2. The municipal partners shall deposit with the MCMA their share of all costs set out in a quarterly cash flow statement no later than the first day of the relevant quarter. The MCMA shall deposit funds paid by the municipal partners pursuant to this subsection in a separate interest-bearing account with the interest earned to be for the credit of the municipal partners. Payments to be made from such trust account shall only be made concurrently with the MCMA's payment to the applicable Contracted Service Provider.

7.4 Final Audit: Within a reasonable time following substantial completion within the meaning of the Builders Lien Act, the final Project Costs shall be audited (the "Final Audit"). The Final Audit shall address such matters as may be decided upon by the MCEB not limited to (i) an audit of all Project Costs, (ii) all amounts paid by the parties pursuant to this Agreement and (iii) a reconciliation of all amounts paid by each of the parties with respect to their financial obligations hereunder. Forthwith following completion of the Final Audit, the parties shall promptly make whatever payments between themselves as may be necessary to correct any underpayment or overpayments which are identified by the Final Audit.

8. OWNERSHIP OF THE PROJECT

8.1 The Lands: At all times, title to the Lands shall remain with the signing parties as outlined in the executed Joint Venture Intermunicipal Agreement.

9. LABOUR RELATIONS MATTERS

9.1 Indemnification: Each Council hereby, severally, shall indemnify and save harmless the EPC, the MCEB, the MCMA, and the Mariners Centre from and in respect of all manner of grievances, applications, arbitrations, proceedings before the Labour Relations Board, actions, causes of action, suits, debts, duties, dues, accounts, covenants, contracts, claims, charges, demands or other proceedings of any nature whatsoever at law or equity brought by a trade union with which the Councils has entered into a collective agreement or hereafter enters into a collective agreement or becomes certified by or becomes bound to and any costs, expenses or damages arising out of the breach by the Councils of its representation and warranty.

10. RELEASE, WAIVER AND INDEMNITIES

10.1 Release and Waiver: The Councils hereby release, waive and forever discharge the EPC and MCEB of and from all manner of action or actions, cause and causes of action, suits, debts, duties, dues, accounts, covenants, contracts, claims, charges, demands or other proceedings of any nature whatsoever at law or equity and any costs, expenses or damages resulting or alleged to result from the acts or omissions of the Contracted Service Providers unless the same have been contributed to or occasioned by the gross negligence of the EPC and MCEB.

10.2 Indemnity: Each of the signatories to this Agreement shall indemnify and save harmless the others from and in respect of all manner of action or actions, cause and causes of action, suits, debts, duties, dues, accounts, covenants, contracts, claims, charges, demands or other proceedings of any nature

whatsoever at law or equity and any costs, expenses or damages arising out of the breach by such party of its covenants and obligations in this Agreement.

11. DEFAULT AND REMEDIES

11.1 Default: “Event of Default” means the occurrence of any of the following events:

- (a) if a party fails to make a payment on account of its share of Project Costs as is required to be made pursuant to this Agreement from time to time and such failure continues for a period of five Business Days after written notice of such failure and the demand for observance, performance or compliance has been given by any other party not in default; or;
- (b) if any party fails in any material respect to observe, perform, or comply with any agreement, condition or obligation required by this Agreement and such failure continues for a period of five (5) Business Days after written notice of such failure and the demand for observance, performance or compliance has been given by any other party not in default provided however, that if the nature of such failure is such that it cannot be cured by payment of money and cannot be cured within a period of five (5) Business Days, such party shall have such additional time as is necessary as long as the curing of such default is begun promptly and is prosecuted with due diligence to completion.

11.2 Remedies: If an Event of Default has occurred and is continuing in respect of a party, any other party not in default shall have the right to:

- (a) bring any proceedings in the nature of specific performance, injunction, or other equitable remedy, it being acknowledged by each of the parties hereto that damages at law may be an inadequate remedy for a default or breach of this Agreement; and/or
- (b) remedy such Event of Default and be entitled upon demand to be reimbursed by the defaulting party (and to bring any legal proceedings for the recovery thereof) for any monies expended to remedy any such default and any other expenses (including legal fees on a solicitor and client basis) incurred by such party together with any applicable interest; and/or
- (c) bring any action at law as may be permitted in order to recover damages.

11.3 Independent Remedies: The rights available to the parties under this Agreement and at law shall be deemed to be separate and not dependent on each other and each such right accordingly shall be construed as complete in itself and not by reference to any other such right. Any one or more and/or any combination of such rights may be exercised by the parties from time to time and no such exercise shall exhaust the rights or preclude the parties from exercising any one or more such rights or combination thereof from time to time thereafter or simultaneously.

12. MCMA AS CONTRACTING AUTHORITY

12.1 Enforcement of Contracts: The MCMA acknowledges and agrees that the contracts entered into by the EPC with the Contracted Service Providers including all indemnifications, and all rights under insurance policies, shall be held by the EPC for the benefit of the MCMA and the municipal partners according to their respective interests in the Project. It is understood that the EPC as the direct party to such contracts, shall have the primary responsibility to enforce the provisions of those contracts on behalf of all parties in a manner which, in its reasonable judgement, adequately protects the rights and interests

of all parties in relation to the Project. If the EPC is not prepared to enforce such contracts, the MCMA and the municipal partners shall be entitled to require the EPC to assign to the MCMA such rights under the applicable contract or contracts as are necessary to enable the MCMA to do so. In the event of such an assignment, all costs of the enforcement measures undertaken by the MCMA shall be paid by the Councils without contribution from the EPC and same shall not be considered Project Costs.

13. NO FETTERING

13.1 No Fettering: The municipal partners acknowledge and agree that nothing in this Agreement derogates from or interferes with or fetters the exercise by the MCEB of its rights, or imposes any obligations on the MCEB, in its role related to the Project. Neither the MCEB nor its officers, employees, agents, representatives or elected and appointed officials shall be prevented from or prejudiced in carrying out their statutory rights and responsibilities, including planning rights and responsibilities.

14. TERMINATION

14.1 Grounds for Termination: Any party may, by written notice to the other parties, terminate this Agreement upon occurrence of one or more of the following events:

- (a) the EPC fails, despite making good faith efforts, to approve plans and specifications or a budget for the Project within 15 months of engagement of the Architect; or
- (b) all of the bids received for the construction of the Project exceed the budget approved by the parties provided that no party shall give notice of termination under this provision until such time as the parties, acting reasonably, have made good faith efforts to reduce the scope of the Project to accommodate the available funds.

14.2 Exception with Respect to Termination: No party may terminate this Agreement pursuant to subsection 14.1 at any time after the EPC has entered into an agreement with the General Contractor.

14.3 Responsibility for Repayment in the Event of Termination: In the event this Agreement is terminated in accordance with subsection 14.1, the MCEB shall ensure that each municipal partner's share of the funding contribution which remain unused are repaid as required.

15. DISPUTE RESOLUTION

15.1 Good Faith Resolution: In the event of a dispute between the parties with respect to the interpretation of this Agreement or their obligations thereunder (a "Dispute"), the parties shall make good faith efforts to resolve the Dispute by negotiation.

15.2 Consideration of Alternative Dispute Resolution: In the event that negotiations do not lead to a resolution of the Dispute, the parties agree that alternative dispute resolution processes such as mediation, appointment of a neutral third-party evaluator or arbitration are preferable to litigation, and they agree to give good faith consideration to having resort to an alternate dispute resolution process before initiating legal proceedings to deal with any such Disputes.

15.3 Notice of a Dispute: Any party may, at any time, give written notice of a Dispute to the other parties.

15.4 Initial Attempt to Resolve: No later than ten (10) Business Days after the delivery of a notice of a Dispute, the parties shall meet and attempt, in good faith, to resolve the Dispute.

15.5 Next Steps: If the Dispute is not resolved within thirty (30) Business Days of the delivery of a notice of a Dispute, a party may, by giving written notice to the other parties, require that the Dispute be submitted to mediation or arbitration and the parties agree that notice requiring arbitration may be given whether or not a mediation is ongoing. If notice requiring arbitration is given while mediation is ongoing, the parties shall cease all mediation activities and proceed with arbitration in accordance with subsection 15.7.

15.6 Mediation of a Dispute: Mediation of a Dispute shall be subject to the following terms and conditions:

- (a) the party giving a notice of mediation shall include the names of two individuals to act as mediator in the notice. After receiving the notice of mediation, the other parties shall within five (5) Business Days submit the names of two individuals to act as mediator. If a party fails to submit names within five (5) Business Days that party shall be deemed to accept as a mediator, the persons selected by the party giving notice. Individuals submitted to act as mediator shall be qualified and experienced professional mediators whose practice is based in Nova Scotia. Preference shall be given to mediators located in the Yarmouth Area.
- (b) a single individual shall be unanimously chosen by the parties from the names submitted provided however, that if the parties are unable to reach unanimous agreement on the selection of a mediator within five (5) Business Days after the last party has provided, or was required to provide under subsection (a), the names of its proposed mediators, the mediator shall be selected at random by draw from among the mediators proposed by the parties;
- (c) not more than ten (10) Business Days after the date of the appointment of the mediator, each party shall submit to the mediator and to the other parties a without prejudice written mediation brief of not more than ten (10) pages in length setting out the party's position concerning the matters involved in the Dispute;
- (d) the mediation shall be attended by the representatives of the parties with full authority to settle the Dispute. A party may be accompanied to the mediation by its lawyer provided that it gives the other parties written notice at least three (3) Business Days in advance of its intention to do so;
- (e) any party or the mediator shall be entitled to withdraw from the mediation at any time;
- (f) the mediation shall end on the earlier of (a) the date that the parties enter into a binding settlement agreement with respect to the Dispute or (b) the date that any party or the mediator withdraws from the mediation, or (c) at 5:00 p.m. (Atlantic time) on the day that is the 30th Business Day after the notice of mediation was received in accordance with the terms of this Agreement, or (d) if a party applies for arbitration as per subsection 15.5; and
- (g) the fees and expenses of the mediation shall be borne as specified in a settlement if a settlement is obtained. If no settlement is obtained, the mediator's fees and expenses shall be as specified in the notice issued by the mediator stating that the mediation has failed. Each party shall bear its own expenses of the mediation whether or not it is successful.

15.7 Arbitration of a Dispute: Arbitration of a Dispute shall be subject to the following terms and conditions:

- (a) Arbitration shall be by the Official Arbitrator for the MCMA, TOY, MODA and MODY in the manner provided by the Commercial Arbitration Act (Nova Scotia) or if the provisions of the Act relating to arbitrations shall not then apply to the MCMA, then the Dispute shall be determined in the manner provided by the Municipal Government Act (Nova Scotia), or if the provisions of the Commercial Arbitration Act relating to arbitrations shall not then apply to the MCMA, the Dispute shall be determined by arbitration in the manner then prescribed by law as applying to the MCMA, or, if no such specific legislation applies to the MCMA at such time, the Dispute shall be determined by the provisions of the Commercial Arbitration Act (Nova Scotia) by a sole arbitrator agreed upon by the parties, or failing agreement, appointed by a judge of the Nova Scotia Superior Court of Justice upon the application of any of the parties; and
- (b) any determination by arbitration shall include a determination as to payment of the costs of the arbitration and shall be binding upon the parties, who shall not have any right of appeal from such determination.

15.8 Confidentiality: The negotiations and other settlement efforts of the parties shall, in all respects be kept confidential and shall be strictly without prejudice. All information provided, documents disclosed or statements made in the course of those negotiations and settlement efforts, including without limitation, any admission, view, suggestion, notice, response, discussion, position or settlement proposal, shall be held in strict confidence by the parties and, unless there is a legal requirement that such Information be revealed, it shall not be subject to disclosure through discovery or any other process or relied upon by any party and shall not be admissible into evidence for any purpose, including impeaching credibility, in any subsequent proceeding except as required by law.

16. NOTICE

16.1 Method of Giving Notice: Any notice, demand, request, or other instrument required or permitted to be given under this Agreement shall be sufficiently given if in writing and if delivered in person or mailed in the Province of Nova Scotia by registered mail, addressed to:

Mariners Centre

45 Jody Shelley Dr,

Yarmouth, NS

B5A 4R3

Attention: Dorgam Hideib

and to:

Town of Yarmouth

400 Main Street

Yarmouth, NS B5A 1G2

Attention: Jeff Gushue

The Municipality of the District of Yarmouth

932 Highway 1

Hebron, NS B5A 5Z5

Attention: Victoria Brooks

The Municipality of the District of Argyle

5 Rue J.E. Hatfield Court

Tusket, NS B0W 3M0

Attention: Alain Muise

16.2 Receipt of Notice: Any notice, demand, request, or other instrument shall be deemed to have been received by the party to whom it is addressed on the fourth Business Day following the date of mailing, or in the event of delivery by personal delivery, on the date of delivery, respectively. In the event of an actual or apprehended interruption of mail service in the Province of Nova Scotia, by labour dispute or otherwise, such notice, demand, request, or other instrument shall be delivered in person. Any party may, at any time, give notice to the other parties of a change in the address of the party giving the notice and, from and after the giving of said notice, the address therein specified will be deemed to be the address of that party for the purposes of this paragraph.

17. RELATIONSHIP OF THE PARTIES

17.1 Relationship of the Parties: Nothing contained herein shall create a partnership, or agency relationship between the parties hereto. The parties agree that any obligation or liability agreed to, undertaken by, imposed on, or incurred by any party in connection with the Project which is not expressly provided for or referred to in this Agreement shall, unless approved in writing by the voting members of the EPC, be the sole responsibility, and at the sole cost, of that party.

18. ASSIGNMENT

18.1 Assignment: Subject to subsection 11.1, the parties hereby acknowledge and agree that this Agreement and the rights hereunder may not be assigned by any party hereto without the express consent in writing of the remaining parties, which consent may be unreasonably or arbitrarily withheld.

19. SEVERABILITY

19.1 Severability: If any provision of this Agreement, or the application thereof, shall be invalid or unenforceable at law to any extent, it shall be deemed severed or severable from the remainder of this Agreement, and the remainder of this Agreement and the application thereof to the parties shall not be affected and shall be enforceable in accordance with their terms to the extent permitted by law.

20. GOVERNING LAW

20.1 Compliance: In fulfilling their obligations under this Agreement, the parties shall comply with all applicable federal, provincial, and municipal legislation, regulations, and by-laws.

20.2 Governance: This Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia.

20.3 Attornment: The parties hereby attorn to the exclusive jurisdiction of the courts of the Province of Nova Scotia with respect to the enforcement and interpretation of this Agreement.

21. FURTHER ASSURANCES

21.1 Further Assurances: Each party hereto shall, from time-to-time hereafter and upon any reasonable request by any other party, execute, perform, and make or cause to be executed, performed, and made all such further acts, deeds, assurances, and things as may be required in order to give full effect to this Agreement.

22. SUCCESSORS AND ASSIGNS

22.1 Successors and Assigns: All of the provisions of this Agreement shall ensure to the benefit of and be binding upon the parties and their respective successors and permitted assigns, but only to the extent that such successors and permitted assigns are successors and permitted assigns in compliance with this Agreement.

23. TERM

23.1 Term: This Agreement shall commence on the date it is executed by the last of the parties to do so and shall end twelve (12) months after the Substantial Completion date of the project.

IN WITNESS WHEREOF the parties have hereunto affixed their corporate seals, duly attested by the hands of their proper signing officers in that behalf as of the date first above written.

MARINERS CENTRE

Per:

Date:

TOWN OF YARMOUTH

Per:

Date:

MUNICIPALITY OF THE DISTRICT OF YARMOUTH

Per:

Date:

MUNICIPALITY OF THE DISTRICT OF ARGYLE

Per:

Date:

Schedule “A”

The Project

1.1 The Project shall consist of the potential scope items as identified in the Scope Ladder (Doc. ID P0802-968235596-28) and outlined below. The inclusion of these scope items is contingent on the prioritization of the approved budget allocation to provide the most value to the community and the facility users.

- (a) Aquatic Facility
 - a. 6-lane, 25-metre Pool
 - b. Recreation Pool
 - c. Therapy Pool
 - d. Pool Support Spaces
 - i. Change Rooms (Pool Area)
 - ii. Storage
 - iii. Pool Services and Storage
 - iv. General FF&E Storage
- (b) Wellness Centre
 - a. Fitness Centre (weights and cardio)
 - b. Fitness Studios (classes)
 - c. Casual Seating Areas
 - d. Public Washrooms
 - e. Storage
 - f. Reception / Admin
 - g. Upper Lobby (if required)
- (c) Walking Track
- (d) Net-Zero-ready Expansion
- (e) High Priority Renovations
 - a. Renovation of Existing Lobby
 - b. Public Washrooms Accessibility and Inclusivity (Existing Only)
- (f) Viewing Area
- (g) Lower Priority Renovations
 - a. Expansion of Upper Floor Lobby
 - b. Relocation Of Large Overhead Door
 - c. Expanded parking
- (h) Future Building Improvements
 - a. Retrofitted Exterior Walls and Roof
 - b. Offset Electrical Energy Via Biomass or Photovoltaic Generators
 - c. Existing Building System Upgrades
- (i) Community Requests
 - a. Splashpad (indoor)
 - b. Basketball Court
 - c. Turf (Soccer, Etc.)
 - d. Viewing Gallery
 - e. Conference Rooms

Schedule “B”

Project Costs

1. For the purposes of this Agreement, “Project Costs” means all hard and soft costs which are required to complete the Project including without limitation,

- (a) fees and disbursements incurred for architects, engineers, surveyors, construction managers, auditors, lawyers and all other professionals and consultants, (excluding any costs or fees associated with environmental consultations incurred prior to the date of this Agreement);
- (b) costs associated with any approvals required to complete a Project including all development costs, site application and permit fees;
- (c) all hard and soft construction costs including excavation, site preparation (including any and all costs related to environmental assessment, remediation, repair, or consultation) and landscape costs;
- (d) all payments to contractors for labour materials, supplies and services;
- (e) all costs of insurance (excluding any and all costs related to environmental assessment, remediation, repair, or consultation) and all applicable taxes, including HST and net of all rebate amounts;
- (f) costs incurred to remove any construction liens from title that are not related to the non-payment of accounts by any of the parties, audit costs and, subject to section 11 of this Agreement, costs incurred to enforce contracts with third parties including the Contracted Service Providers;
- (g) any costs arising from delays in payment to any person or entity contracted to provide services in respect of the Project; and
- (h) any other item for the Project approved in writing, in advance, by the parties.

2. Despite paragraph 1 above, the parties agree that each party shall bear its own costs for legal fees related to this Development Agreement, which fees shall not be considered Project Costs. Such legal fees however may be paid, at a party's sole discretion.

Schedule “C”

Authority Matrix

Representative Group	Role	Financial Authority Limit	Project Authority Limit
<p>Municipal Partners:</p> <ul style="list-style-type: none"> ■ MODY ■ MODA ■ TOY 	<p>Funding contributors as defined in GICB application and Joint Venture Intermunicipal Agreement.</p> <p>Provide feedback at design milestones related to Project Charter and Scope Ladder.</p> <p>Support implementation of external communications plan with MCEB.</p> <p>Review of escalated project issues where MCEB cannot reach consensus or is outside of their approval authority.</p>	<p>Funding requests above the committed funding approvals.</p>	<p>Scope: Input in the development of the Project Charter and Scope Ladder</p>
<p>Mariners Centre Management Authority (MCMA)</p>	<p>Provide feedback at design (SD, DD, 33%, 66%, 99%) milestones related to building operations, maintenance, and programming.</p>	<p>N/A</p>	<p>N/A</p>
<p>Mariners Centre Expansion Board (MCEB)</p>	<p>Approval of funding for Design Phase to prepare Tender ready documentation.</p> <p>Review of design submissions, stakeholder feedback and EPC responses. Provide direction (as required) related to conflicting feedback.</p> <p>Approval of Request to issue Tender.</p> <p>Approval of request to award Tender.</p> <p>Development and management of external communications plan.</p> <p>Obtain all internal approvals from the Federal and Provincial</p>	<p>Design Phase: \$3M</p> <p>Construction Phase: \$26.8M</p>	<p>Scope: Re-prioritization of Scope Ladder (if required) based on financial and schedule impacts.</p>

	<p>Governments as required for the Project</p> <p>Review of project issues where EPC cannot reach consensus or is outside of their approval authority.</p> <p>Engage Auditors for the completion of the Final Audit of the Project</p>		
<p>Expansion Project Committee (EPC)</p>	<p>Procurement oversight of consultant team to prepare Tender ready documentation.</p> <p>Preparation of request to issue Tender.</p> <p>Procurement oversight and recommendation to award of Construction Services Tender</p> <p>Oversight of the design and construction phases in accordance with the defined project scope and budget constraints.</p> <p>Enforce all contracts with Contracted Service Providers</p> <p>Collect and review stakeholder feedback at milestone reviews. Coordinate responses for submission to MCEB.</p> <p>Provide monthly status reports to MCEB related to project scope, schedule, budget, and risks.</p> <p>Development and management of internal communications plan</p> <p>Obtain all internal approvals from the Municipal Governments as required for the Project</p>	<p>Contingency values as approved by the MCEB</p>	<p>Scope: As defined by Project Charter and Scope Ladder</p> <p>Schedule: As defined by the Master Project Schedule and coordinated with the Construction Services contractor.</p> <p>Risk: Identification and mitigation as documented in the Risk Register.</p>