



AGREEMENT

2019-080602P

Qualified Security Assessor Services

Saint John, NB

AGREEMENT

This Agreement made in duplicate copies this ____ day of _____, 2019.

BETWEEN:

THE CITY OF SAINT JOHN, having its City Hall at 15 Market Square, Saint John, New Brunswick, a body corporate by Royal Charter, confirmed and amended by Acts of the Legislative Assembly of the Province of New Brunswick, hereinafter called the “City”

OF THE FIRST PART

And

[Name of Organization] a [Type of organization], having offices located at [address], in the City of [City] and the Province of [Province], hereinafter referred to as the “Consultant”

OF THE SECOND PART

WHEREAS the City issued Request for Proposal **[2019-080602P]** for **[Qualified Security Assessor Services]** (the “Request for Proposal”); and

AND WHEREAS the Consultant submitted a technical proposal and a financial proposal, both dated **[Date]** in response to the Request for Proposal (collectively, the “Proposal”); and

AND WHEREAS the Request for Proposal and the Proposal are attached hereto as Schedules “A” and “B” respectively and form part hereof;

AND WHEREAS the Financial Proposal forms part of the Proposal, is attached hereto as Schedule “C”; and

AND WHEREAS the Common Council at its meeting held on [Date] resolved that:

“[Resolution].”

NOW THEREFORE THIS AGREEMENT WITNESSETH, that in consideration of the mutual covenants and agreements herein and subject to the terms and conditions set out in the Request for Proposal and the Proposal, the parties for themselves, their successors and permitted assigns respectively, mutually agree as follows:

1. The Consultant shall perform the services and carry out the terms and conditions set out in the Request for Proposal and the Proposal.

2. The City shall pay the Consultant, in return for the services performed, fees as outlined in the financial proposal part of the Proposal, plus HST.

Term

3. The terms of this Agreement is for a period of two (2) years. The City with the consultant's mutual agreement may choose to extend this contract for two (2) additional one (1) year periods.].

Termination

4. The City may immediately terminate this Agreement upon giving notice to the Consultant where:
 - a. The Consultant makes an assignment for the benefit of its creditors, is declared bankrupt or commits an act of bankruptcy, becomes insolvent, makes a proposal or otherwise takes advantage of provisions for relief under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Consultant under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation;
 - b. The Consultant breaches any of the terms or conditions of the within Agreement;
 - c. In the City's reasonable opinion, the Consultant, prior to or after executing this Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to the City;
 - d. The Consultant undergoes a change of control which, in the reasonable opinion of the City, adversely affects the Consultant's ability to satisfy some or all of its obligation under the within Agreement;
 - e. The Consultant subcontracts for the provision of part or all of the services without first obtaining the written approval of the City.

The above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

Performance

5. Both parties agree to do everything necessary to ensure that the terms of this Agreement take effect.

Non-Performance

6. The failure on the part of either party to exercise or enforce any right conferred upon it under this Agreement shall not be deemed to be a waiver of any such right or operate to bar the exercise or enforcement thereof at any time or times thereafter.

Indemnification

7. The Consultant hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively "Claims"), by whomever made, sustained, brought or prosecuted, for third party bodily injury (including death), personal injury and damage to real or tangible personal property, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Consultant, its subcontractors or their respective directors, officers, agents, employees or independent contractors in the course of performance of the Consultant's obligations under, or otherwise in connection with, this Agreement. The obligations contained in this paragraph shall survive the termination or expiry of this Agreement.

Remedies

8. Upon default by either party under any terms of this Agreement, and at any time after the default, either party shall have all rights and remedies provided by law and by this Agreement.
9. No delay or omission by either party in exercising any right or remedy shall operate as a waiver of them or of any other right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy. Furthermore, either party may remedy any default by the other party in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the defaulting party. All rights and remedies of each party granted or recognized in this Agreement are cumulative and may be exercised at any time and from time to time independently or in combination.

Mediation

10. All disputes arising out or in connection with this Agreement, or in respect of any legal relationship associated with or derived from this Agreement, shall be mediated pursuant to the National Mediation Rules of the ADR Institute of Canada, Inc. Despite this Agreement to mediate, a party may apply to a court of competent jurisdiction or other competent authority for interim measures of protection at any time. The place of mediation shall be the City of Saint John and Province of New Brunswick.

Force Majeure

11. It is agreed between the parties that neither party shall be held responsible for damages caused by delay or failure to perform his undertakings under the terms of the Agreement when the delay or failure is due to fires, strikes, floods, acts of God, lawful acts of public authorities, or delays or defaults caused by common carriers, which cannot be reasonably foreseen or provided against.

No Assignment

12. This Agreement is not assignable. Any attempt to assign any of the rights, duties or obligations of this Agreement is void.

Time

13. This Agreement shall not be enforced, or bind any of the parties, until executed by all the parties named in it.

Notices

14. Any notice under this Agreement shall be sufficiently given by personal delivery or by registered letter, postage prepaid, mailed in a Canadian post office and prepaid courier, addressed, in the case of notice to the City of Saint John, to the Common Clerk, 15 Market Square, P. O. Box 1971, Saint John, New Brunswick, E2L 4L1 and in the case of notice to the Consultant to [Address], or to any other address as may be designated in writing by the parties, and the date of receipt of any notice by mailing shall be deemed conclusively to be 5 days after the mailing.

Amendments

15. No change or modification of this Agreement shall be valid unless it is in writing and signed by each party.

Acknowledgment of Terms and of Entirety

16. It is agreed that this written instrument embodies the entire agreement of the parties with regard to the matters dealt within it, and that no understandings or agreements, verbal or otherwise, exist between the parties except as expressly set out in this instrument.

Further Documents

17. The parties agree that each of them shall, upon reasonable request of the other, do or cause to be done all further lawful acts, deeds and assurances whatever for the better performance of the terms and conditions of this Agreement.

Validity and Interpretation

18. Descriptive headings are inserted solely for convenience of reference, do not form part of this Agreement, and are not to be used as an aid in the interpretation of this Agreement.
19. It is intended that all provisions of this Agreement shall be fully binding and effective between the parties, but in the event that any particular provision or provisions or part of one is found to be void, voidable or unenforceable for any reason whatsoever, then the particular provision or provisions or part of the provision shall be deemed severed from the remainder of this Agreement and all other provisions shall remain in full force.

Governing Law

20. This Agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick.

Successors, Assigns

21. This Agreement shall enure to the benefit of and be binding on the respective successors and permitted assigns of each of the parties.

Independent Legal Advice

22. The parties each acknowledge having obtained their own independent legal advice with respect to the terms of this Agreement prior to its execution.

Acknowledgment of Receipt of Copy

23. Each party acknowledges receipt of a true copy of this Agreement.

Defined Terms

24. When used in this Agreement, the following word or expression has the following meaning:

“Indemnified Parties” means the City, its officers, directors, employees, agents or independent contractors.

IN WITNESS WHEREOF the parties have affixed their respective corporate seals, attested by the hands of their respective officers duly authorized in that behalf on the day aforementioned.

SIGNED, SEALED & DELIVERED)

In the presence of:

THE CITY OF SAINT JOHN

per

Mayor

Assistant Common Clerk

Common Council Resolution:

[Organization]

Per:

[Title]