



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 referred to as 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.

Release and Indemnification

7. The ~~Cityompany~~ agrees to release, indemnify and hold harmless ~~the ConsultantGrant Thornton~~, its affiliates and their respective directors, officers, partners, principals, employees, consultants and contractors from any and all claims, liabilities, costs and expenses (including any and all legal expenses incurred by ~~the ConsultantGrant Thornton~~) arising out of or based upon: (a) any misstatement or omission in any material information or representation supplied or approved by the client; or (b) any other matter related to or arising out of this Engagement, except to the extent finally determined to have resulted from the negligence, wilful misconduct or fraudulent behaviour of ~~the ConsultantGrant Thornton~~.

Limitation of liability

8. In any action, claim, loss or damage arising out of the Engagement, the ~~Cityompany~~ agrees that ~~the ConsultantGrant Thornton~~'s liability will be several, and not joint and several, and the ~~Cityompany~~ may only claim payment from ~~the ConsultantGrant Thornton~~ of ~~the ConsultantGrant Thornton~~'s proportionate share of the total liability based on degree of fault as finally determined. -Any action against ~~us~~~~the Consultant~~ must be commenced on or before the date which is the earlier of i) two years (24 months) from the completion of the Services; or ii) the date by which an action must be commenced under any applicable legislation other than limitation legislation.
9. The total liability assumed by ~~the ConsultantGrant Thornton~~ for any claim, loss or damage arising out of or in connection with the Engagement, regardless of the form of action, claim, loss or damage be it tort, contract or otherwise, shall in no event exceed the aggregate of three times the professional fees paid to ~~the ConsultantGrant Thornton~~ for that portion of the Services that has given rise to the claim.

Remedies

10. 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.
11. 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

12. 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

13. 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

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

Time

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

Notices

16. 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

17. 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

18. 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

19. 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

20. 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.

Common Council Resolution:

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[Organization]

Per:

[Title]