



The City of Saint John

## **Request for Proposals**

### **2022-545001P – Public Space at Market Slip & Harbour Passage Extension – Harbour Passage Railing**

**Saint John, New Brunswick**

Request for Proposals No.: 2022-545001P –  
Public Space at Market Slip & Harbour Passage Extension – Harbour Passage Railing

Issued: March 3, 2022

Submission Deadline: Thursday, March 24, 2022, 4:00:00 p.m., ADT

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## **PART 1 – INTRODUCTION**

### **1.1 Invitation to Proponents**

- (1) This Request for Proposals (“RFP”) is an invitation by The City of Saint John (the “City”) to prospective proponents to submit proposals for the fabrication and supply of a metal and wood “Ipe” railing system along the seawall as further described in Part 2 – The Deliverables (the “Deliverables”).

### **1.2 RFP Contact Person**

- (1) For the purposes of this procurement process, the “City Contact” shall be:

Chris Roberts, SCMP, CPPB  
Procurement Manager  
Supply Chain Management  
City of Saint John  
Email: [supplychainmanagement@saintjohn.ca](mailto:supplychainmanagement@saintjohn.ca)

### **1.3 Type of Contract for Deliverables**

- (1) The City will issue a Purchase Order to the successful proponent for the scope of services detailed in this request for proposal.
- (2) The City may issue a contract to the successful proponent for the scope of services detailed in this request for proposal as found in Appendix E.

### **1.4 No Guarantee of Volume of Work or Exclusivity of Contract**

- (1) The City makes no guarantee as to the value or volume of the Deliverables. The contract to be entered with the selected proponent will not be an exclusive contract for the provision of the described Deliverables. The City may contract with others for same or similar to the Deliverables or may obtain the same or similar to the Deliverables internally.

### **1.5 Canadian Free Trade Agreement (CFTA)**

- (1) Proponents should note that procurements falling within the scope of Chapter 5 of the Canadian Free Trade Agreement (CFTA) are subject to that chapter but that the rights and obligations of the parties shall be governed by the specific terms of this RFP. For further reference, please see the Internal Trade Secretariat website at <https://www.cfta-alec.ca/>.

**[End of Part 1]**

## **PART 2 – THE DELIVERABLES**

### **2.1     Description of Deliverables**

- (1)     This RFP is an invitation to submit offers for the provision of a metal and wood “Ipe” Harbour Passage railing system, as further described in Appendix D – RFP Particulars – Section A - The Deliverables.

**[End of Part 2]**

## PART 3 – EVALUATION OF PROPOSALS

### 3.1 Timetable

- (1) The RFP timetable is tentative only and may be changed by the City at any time.

Issue Date of RFP	March 3, 2022
Deadline for Questions	Wednesday, March 16, 2022, 4:00 pm, ADT
Deadline for Issuing Addenda	Thursday, March 17, 2022, 4:00 pm, ADT
Submission Deadline	Thursday, March 24, 2022, 4:00:00 pm, ADT
Rectification Period	3 Business Days
Evaluation	Complete within 2 weeks of closing
Anticipated Deadline for Selection of Highest Ranked Proponent	TBD

### 3.2 Submission Instructions

#### (A) **Proposals Should Be Submitted at Prescribed Location**

- (1) Proposals should be submitted at:

The City of Saint John  
Supply Chain Management, 1<sup>st</sup> Floor  
175 Rothesay Avenue  
Saint John, New Brunswick, E2J 2B4 (the “**Prescribed Location**”)

Attention: Chris Roberts, SCMP, CPPB

#### (B) **Proposals Should Be Submitted in Prescribed Manner**

- (1) Proponents should submit one (1) signed original and three (3) bound copies of the technical proposal and supporting information, one (1) signed original copy and three (3) bound copies of the financial proposal and supporting information, and one (1) electronic copy of each proposal on a flash drive.
- (2) The technical proposal should be sealed in an envelope, clearly indicating the proponent’s name and address and marked: “**Technical Proposal: 2022-545001P – Public Space at Market Slip & Harbour Passage Extension – Harbour Passage Railing**”.
- (3) The financial proposal should be sealed in a separate envelope, clearly indicating the proponent’s name and address and marked: “**Financial Proposal: 2022-545001P – Public Space at Market Slip & Harbour Passage Extension – Harbour Passage Railing**”.
- (4) Proposals sent by fax or email will be rejected.

**(C) Proposals Should Be Submitted on Time**

- (1) Proposals shall be submitted at the Prescribed Location on or before the Submission Deadline. Proposals submitted after the Submission Deadline will be rejected.
- (2) Immediately following the Submission Deadline, proposals will be publicly opened in the office of the City Contact, at the Prescribed Location. Only the names and addresses of the proponents will be made public.

**(D) Amendment of Proposals**

- (1) Proponents may amend their proposals prior to the Submission Deadline by submitting the amendment in a sealed package to the Prescribed Location. The sealed package shall be prominently marked with the RFP title and number and the full legal name and return address of the proponent. Any amendment should clearly indicate which part of the proposal the amendment is intended to affect.

**(E) Withdrawal of Proposals**

- (1) At any time throughout the RFP process, a proponent may withdraw a submitted proposal. To effect a withdrawal, a notice of withdrawal must be sent to the City Contact and must be signed by an authorized representative. The City is under no obligation to return withdrawn proposals.

**3.3 Stages of Proposal Evaluation**

- (1) The City will conduct the evaluation of proposals and selection of the highest ranked proponent in the following three stages described in further detail below:
  - (a) Stage I – Mandatory Requirements and Rectification
  - (b) Stage II – Evaluation of Rated Criteria and Pricing
  - (c) Stage III – Selection and Final Negotiation

**(A) Stage I – Mandatory Requirements and Rectification**

**Submission and Rectification Period**

Stage I will consist of a review to determine which proposals comply with all of the mandatory requirements. Proposals failing to satisfy the mandatory requirements as of the Submission Deadline will be provided an opportunity to rectify any deficiencies. Proposals satisfying the mandatory requirements during the Rectification Period, as described in Part 3 – Section 3.1 – Timetable will proceed to Stage II. Proposals failing to satisfy the mandatory requirements within the Rectification Period will be excluded from further consideration. The Rectification Period will begin to run from the date and time that the City issues its rectification notice to the proponents.

## **Mandatory Submission Forms**

Other than inserting the information requested on the mandatory submission forms set out in this RFP, a proponent may not make any changes to any of the forms.

### **Submission Form (Appendix A)**

Each proponent must complete the Submission Form and include it with their technical proposal. The Submission Form must be signed by an authorized representative of the proponent.

### **Pricing Form (Appendix B)**

Each proponent must complete the Pricing Form and include it with their financial proposal. The Pricing Form must be completed according to the instructions contained in the form. Fees must be provided in Canadian funds, inclusive of all costs, applicable duties, overhead, and insurance costs, except for HST/GST.

### **Reference Form (Appendix C)**

Each proponent must complete the Reference Form and include it with its technical proposal.

## **Other Mandatory Requirements**

Each proposal must:

- (a) Be in English.
- (b) Be for the entire scope of work as described in Appendix D – Section A - The Deliverables. Incomplete proposals or proposals for only part of the Deliverables described in Appendix D shall be disqualified.

### **(B) Stage II – Evaluation of Rated Criteria and Pricing**

Stage II will consist of a scoring by the City of each qualified proposal on the basis of the rated criteria and the pricing in accordance Appendix D – Section B – Evaluation Criteria. The City intends to shortlist to up to Three (3) proponents, however, should the City deem it to be in its best interest, it may expand this number accordingly.

### **(C) Stage III – Selection and Final Negotiation**

Once the proposals have been evaluated as per Stage II, the top-ranked proponent may be selected to enter into direct negotiations.

During the negotiation, the City may provide the top-ranked proponent with any additional information and may seek further information and proposal improvements. After the negotiation, the top-ranked proponent may be invited to revise its initial proposal and submit its Best and Final Offer (BAFO) to the City.

**[End of Part 3]**

## **PART 4 – TERMS AND CONDITIONS OF THE RFP PROCESS**

### **4.1 General Information and Instructions**

#### **(A) Proponents to Follow Instructions**

- (1) Proponents should structure their proposals in accordance with the instructions in this RFP. Where information is requested in this RFP, any response made in a proposal should reference the applicable part, section, subsection or paragraph numbers of this RFP.

#### **(B) Information in RFP Only an Estimate**

- (1) The City and its representatives shall not be liable for any information or advice or any discrepancies or errors or omissions that may be contained in this RFP or an Addenda, appendices, data, materials or documents (electronic or otherwise) attached or provided to the proponents pursuant to this RFP.
- (2) The City and its advisors make no representation, warranty or guarantee as to the accuracy of the information contained in this RFP or issued by way of addenda. Any quantities shown or data contained in this RFP or provided by way of addenda are estimates only and are for the sole purpose of indicating to proponents the general scale and scope of the work. It is the proponent's responsibility to obtain all the information necessary to prepare a proposal in response to this RFP.

#### **(C) Proponents Shall Bear Their Own Costs**

- (1) The proponent shall bear all costs associated with or incurred in the preparation and presentation of its proposal, including, if applicable, costs incurred for interviews, and/or presentations.

### **4.2 Communication after Issuance of RFP**

#### **(A) Proponents to Review RFP**

- (1) Proponents shall promptly examine all of the documents comprising this RFP, and
  - (a) Shall report any errors, omissions or ambiguities; and
  - (b) May direct questions or seek additional information in writing by email to the City Contact on or before the Deadline for Questions. All questions submitted by proponents by email to the City Contact shall be deemed to be received once the email has entered into the City Contact's email inbox. No such communications are to be directed to anyone other than the City Contact. The City is under no obligation to provide additional information, and the City shall not be responsible for any information provided by or obtained from any source other than the City Contact.



- (2) It is the responsibility of the proponent to seek clarification from the City Contact on any matter it considers to be unclear. The City shall not be responsible for any misunderstanding on the part of the proponent concerning this RFP or its process.

**(B) All New Information to Proponents by Way of Addenda**

- (1) This RFP may be amended only by an addendum in accordance with this subsection. If the City, for any reason, determines that it is necessary to provide additional information relating to this RFP, such information will be communicated to all proponents by addenda. Each addendum forms an integral part of this RFP.
- (2) Such addenda may contain important information, including significant changes to this RFP. Proponents are responsible for obtaining all addenda issued by the City. Addenda may be obtained from the City's website ([www.saintjohn.ca](http://www.saintjohn.ca)) under the menu option "Tender and Proposals". In Appendix A, proponents should confirm their receipt of all addenda by setting out the number of each addendum in the space provided.

**(C) Post-Deadline Addenda and Extension of Submission Deadline**

- (1) If any addendum is issued after the Deadline for Issuing Addenda, the City may at its discretion extend the Submission Deadline for a reasonable period of time.

**(D) Verify, Clarify and Supplement**

- (1) When evaluating responses, the City may request further information from the proponent or third parties in order to verify, clarify, or supplement the information provided in the proponent's proposal. The City may revisit and re-evaluate the proponent's response or ranking on the basis of any such information.

**(E) No Incorporation by Reference**

- (1) The entire content of the proponent's proposal should be submitted in a fixed form, and the content of websites or other external documents referred to in the proponent's proposal will not be considered to form part of its proposal.

**(F) Proposal to Be Retained by the City**

- (1) The City will not return the proposal or any accompanying documentation submitted by a proponent.

**4.3 Debriefing**

**(A) Debriefing – Following Award**

- (1) Upon written request from any proponent, the City may provide a more detailed oral debriefing either by phone or in person, as required by the proponent. The written request shall be submitted to the City Contact no later than 15 calendar days after notification of award.

- (2) The acceptance of the successful proposal shall not be discussed during a debriefing.

#### **4.4 Prohibited Conduct**

##### **(A) Proponent Not to Communicate with Media**

- (1) A proponent may not at any time directly or indirectly communicate with the media in relation to this RFP or any agreement entered into pursuant to this RFP without first obtaining the written permission of the City Contact.

##### **(B) No Lobbying**

- (1) A proponent may not, in relation to this RFP or the evaluation and selection process, engage directly or indirectly in any form of political or other lobbying whatsoever to influence the selection of the successful proponent.

##### **(C) Illegal or Unethical Conduct**

- (1) Proponents shall not engage in any illegal business practices, including but not limited to, activities such as bid-rigging, price-fixing, bribery, fraud or collusion. Proponents shall not engage in any unethical conduct, including but not limited to, other inappropriate communications, offering gifts to members of Common Council, employees, officers or other representatives of the City, deceitfulness, submitting proposals containing misrepresentations or other misleading or inaccurate information, or any other conduct that compromises or maybe seen to compromise the competitive process provided for in this RFP.

##### **(D) Past Performance or Inappropriate Conduct**

- (1) The City may prohibit a proponent from participating in the procurement process based on past performance or based on inappropriate conduct in a prior procurement process.
- (2) Such inappropriate conduct shall include, but not be limited to the following:
  - (a) All the conducts as described in Part 4 – Section 4.4;
  - (b) The refusal of the proponent to honour its pricing or other commitments made in its proposal; or
  - (c) Any other conduct, situation or circumstance determined by the City, in its sole and absolute discretion, to constitute a Conflict of Interest.

#### **4.5 Confidential Information**

##### **(A) Confidential Information of City**

- (1) All information provided by or obtained from the City in any form in connection with this RFP either before or after the issuance of this RFP:

- (a) Is the sole property of the City and must be treated as confidential;
- (b) Is not to be used for any purpose other than replying to this RFP and the performance of any subsequent Contract;
- (c) Must not be disclosed by the proponent to any person, other than persons involved in the preparation of the proponent's proposal or the performance of any subsequent contract, without prior written authorization from the City; and
- (d) Shall be returned by the proponents to the City immediately upon the request of the City.

**(B) Confidential Information of Proponent**

- (1) A proponent should identify any information in its proposal or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the City. The confidentiality of such information will be maintained by the City, except as otherwise required by law or by order of a court or tribunal. Proponents are advised that their proposals will, as necessary, be disclosed, on a confidential basis, to the City's advisors retained for the purpose of evaluating or participating in the evaluation of their proposals. If a proponent has any questions about the collection and use of personal information pursuant to this RFP, questions are to be submitted to the City Contact.

**4.6 Procurement Process Non-Binding**

**(A) No Contract A and No Claims**

- (1) The procurement process is not intended to create and shall not create a formal legally binding bidding process and shall instead be governed by law applicable to direct commercial negotiations.
- (2) For greater certainty and without limitation:
  - (a) Neither the proponent nor the City shall have the right to make any claims (in contract, tort, equity or otherwise) against the other with respect to the award of a contract, failure to award a contract or failure to honour a response to this RFP.

**(B) No Contract until Execution of Written Contract**

- (1) The RFP process is intended to identify the highest ranked proponent for the purposes of entering into a contract. No legal relationship or obligation regarding the procurement of any good or service shall be created between the proponent and the City by the RFP process until the issuance of a purchase order for the acquisition of such goods and/or services.

**(C) Non-Binding Price Estimates**

- (1) While the pricing information provided in responses will be non-binding prior to the issuance of a purchase order, such information will be assessed during the evaluation of the responses and the ranking of the proponents. Any inaccurate, misleading or incomplete information, including

withdrawn or altered pricing, could adversely impact any such evaluation, ranking or contract award.

**(D) Disqualification for Misrepresentation**

- (1) The City may disqualify the proponent or rescind a contract subsequently entered into if the proponent's response contains misrepresentations, omissions, or any other inaccurate, misleading or incomplete information.

**(E) Cancellation**

- (1) The City may cancel or amend the RFP process without liability at any time.

**4.7 Governing Law and Interpretation**

**A. Governing Law**

- (1) The terms and conditions in this Part 4:
  - (a) Are included for greater certainty and are intended to be interpreted broadly and separately (with no particular provision intended to limit the scope of any other provision);
  - (b) Are non-exhaustive (and shall not be construed as intending to limit the pre-existing rights of the parties to engage in pre-contractual discussions in accordance with the common law governing direct commercial negotiations); and
  - (c) Are to be governed by and construed in accordance with the laws of the province of New Brunswick and the federal laws of Canada applicable therein.

**[End of Part 4]**

## APPENDIX A – SUBMISSION FORM

### (A) Proponent Information

Please fill out the following form, and name one person to be the contact for your response to this RFP response and for any clarifications or amendments that might be necessary.	
Full Legal Name of Proponent:	
Any Other Relevant Name under Which the Proponent Carries on Business:	
Street Address:	
City, Province/State:	
Postal Code:	
Phone Number:	
Fax Number:	
Company Website (If Any):	
RFP Contact Person and Title:	
RFP Contact Phone:	
RFP Contact Facsimile:	
RFP Contact E-mail:	

### (B) Acknowledgment of Non-Binding Procurement Process

The proponent acknowledges that the RFP process will be governed by the terms and conditions of this RFP, and that, among other things, such terms and conditions confirm that this procurement process does not constitute a formal legally binding bidding process, and that there will be no legal relationship or obligations created until the City and the selected proponent have executed a Supply Agreement.

### (C) Ability to Provide Deliverables

The proponent has carefully examined this RFP documents and has a clear and comprehensive knowledge of the Deliverables required under this RFP. The proponent represents and warrants its ability to provide the Deliverables required under this RFP in accordance with the requirements of this RFP for the prices set out in the Pricing Form.

### (D) Mandatory Forms

The proponent encloses as part of the proposal the mandatory forms set out below:

FORM	INITIAL TO ACKNOWLEDGE
Submission Form	
Pricing Form	
Reference Form	

**Notice to proponents:** There may be forms required in this RFP other than those set out above. See the Mandatory Requirements section of this RFP for a complete listing of mandatory forms.

**(E) Non-Binding Price Estimates**

The proponent has submitted its fees in accordance with the instructions in this RFP and in the Pricing Form set out in Appendix B. The proponent confirms that the pricing information provided is accurate. The proponent acknowledges that any inaccurate, misleading or incomplete information, including withdrawn or altered pricing, could adversely impact the acceptance of its quotation or its eligibility for future work.

**(F) Addenda**

The proponent is deemed to have read and accepted all addenda issued by the City prior to the Deadline for Issuing Addenda. The onus remains on proponents to make any necessary amendments to their proposal based on the addenda. The proponent confirms that it has received all addenda by listing the addenda numbers, or, if no addenda were issued, by writing the word "None", on the following line:\_\_\_\_\_. Proponents who fail to complete this section will be deemed to have received all posted addenda.

**(G) No Prohibited Conduct**

The proponent declares that it has not engaged in any conduct prohibited by this RFP.

**(H) Disclosure of Information**

The proponent hereby agrees that any information provided in this proposal, even if it is identified as being supplied in confidence, may be disclosed where required by law or if required by order of a court or tribunal. The proponent hereby consents to the disclosure, on a confidential basis, of this proposal by the City to the City's advisers retained for the purpose of evaluating or participating in the evaluation of this proposal.

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Proponent Representative

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

I have the authority to bind the proponent.

## APPENDIX B – PRICING FORM

### (A) Pricing Form

- (1) Complete the following table to provide pricing for the supply/provision of metal and Ipe wood Harbour Passage railing system for Proposal 2022-545001P, and **exclusive of HST/GST**.

Item	Description	Quantity	Unit	Unit Price	Total Price
1	IPE WOOD TOP RAIL 3.66 METER LENGTH	128	Each		
2	STAINLESS STEEL RAILING POSTS (EACH SPACED AT A MAXIMUM DISTANCE OF 1.2 METRES)	365	Each		
3	STAINLESS STEEL RAILING CORNERS (CUSTOM ANGLES)	11	Each		
4	CABLING <b>INCLUDING</b> FASTNERS AND TENSIONERS, ADDITIONAL TENSIONORS AND CABLE BREAKS WILL BE REUQUIRED TO REMOVABLE SECTIONS AS INDICACTED ON PLAN	450	LM		
Please quote your net price on each of the commodity(s) F.O.B. delivered to City of Saint John December 15 <sup>th</sup> 2022.					

### Optional Price Item:

Item	Description	Quantity	Unit	Unit Price	Total Price
3B	PAINTED ALUMINUM RAILING POSTS (EACH SPACED AT A MAXIMUM DISTANCE OF 1.2 METRES)	365	Each		
4B	PAINTED ALUMINUM RAILING POST CORNERS (CUSTOM ANGLES)	11	Each		
		Please quote your net price on each of the commodity(s) F.O.B. delivered to City of Saint John. December 15 <sup>th</sup> 2022.			

The tendered prices for all materials to include pick-up, transportation, delivery, unloading, duty, fuel surcharge and any other charges incurred in order to provide required materials and/or services.

## APPENDIX C – REFERENCE FORM

Each proponent is requested to provide three references from clients who have obtained similar goods or services to those requested in this RFP from the proponent in the last two years.

### Reference #1

<b>Company Name:</b>	
<b>Company Address:</b>	
<b>Contact Name:</b>	
<b>Contact Telephone Number:</b>	
<b>Date Work Undertaken:</b>	
<b>Nature of Assignment:</b>	

### Reference #2

<b>Company Name:</b>	
<b>Company Address:</b>	
<b>Contact Name:</b>	
<b>Contact Telephone Number:</b>	
<b>Date Work Undertaken:</b>	
<b>Nature of Assignment:</b>	

### Reference #3

<b>Company Name:</b>	
<b>Company Address:</b>	
<b>Contact Name:</b>	
<b>Contact Telephone Number:</b>	
<b>Date Work Undertaken:</b>	
<b>Nature of Assignment:</b>	



## APPENDIX D – RFP PARTICULARS

### (A) The Deliverables

#### (1) SCOPE

The City of Saint John is soliciting proposals from qualified providers for the supply of a metal and lpe wood Harbour Passage railing system (see accompanying document for exact layout) as per the below specifications, terms and conditions.

The supply includes but is not limited to wood Top Rail, Railing Posts, Cabling, Tensioners, Fasteners

The cable railing is composed of one style of railing post for straight sections, custom railing post for corner sections, cables connecting the uprights, and an lpe wood top rail.



#### (2) SPECIFICATIONS

##### Standard of Acceptance

Keuka Studios model “Keuka” style cable railing or approved equal, including Engineered stamped shop drawings meeting the following specifications:

Modules	Description
<b>KEUKA STYLE CABLE RAILING</b>	<p>Height of each railing section shall be 1,067 mm (42”).</p> <p>The railing posts shall be surface mounted (by others)</p> <p>The railing posts shall be stainless steel.</p> <p>The wood handrail shall be lpe wood in 3.66 m (12') lengths, custom cut with routed underside to accommodate future light strip (lighting is by others).</p> <p>Router wire chase in bottom of wood rail to hide electrical control boxes for undermount LED strip lights (separate contract), prior to fabrication.</p>

	<b>No other hanging objects shall be mounted on the railing ensuring its neat design.</b>
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Total Height – 1,067 mm (42")

## **General**

All cabling and installation hardware included for permanent and removable sections, as shown on drawings

## **Materials & Finish**

### Railing Posts:

- Type 316 stainless steel for coastal environments
- Optional Price Item: Painted Aluminum, colour RAL9006

### Top Rail:

- Ipe wood (Brazilian Walnut, Lapacho)
- Grade "A" Architectural, mixed grain premium clear all heart, kiln dried
- Treat with one coat of Penofin Marine Oil or Ipe Oil with UV blocker, natural finish

### Cabling:

- Type 316 stainless steel for coastal environments
- Diameter 4.76 mm (3/16")

### Hardware:

- Type 316 stainless steel for coastal environments

## **Operating Conditions**

Temperature Range - 40°C up to 50°C with wind effect

## **Grade Changes**

The fabricator shall note the change in grade on the drawings and make recommendations to ensure easy, clean install that results in a stable finished product.

## **Warranty**

Three years after installation, for product defects in material and workmanship under normal use and with normal maintenance. Provide conditions upon which the warranty would not be included.

## **Removable Sections**

The fabricator shall provide sufficient hardware to accommodate numerous breaks in fencing required to facilitate removable sections indicated on the attached plans.

## **Consultation**

Supplier shall review layout and recommend adjustments in conjunction with Consultant and Contractor. Field measurements to be determined by the Fabricator in consultation with the Consultant. Installer will field cut wood handrail (NIC). Upon award, supplier shall provide samples of fabricated handrail, post and cable to consultant for approval, prior to fabrication of entire order.

### **(3) DURATION**

To be determined.

### **(4) PAYMENT**

Payment shall be based on Net 45 Days from date of invoice or receipt of goods, whichever is later. Invoices can **either** be mailed to: City of Saint John, Accounts Payable Department, P.O. Box 1971, Saint John, NB, E2L 4L1, **or** by email to the Accounts Payable department ([accountspayable@saintjohn.ca](mailto:accountspayable@saintjohn.ca)). Vendors are to ensure invoices are not sent both ways.

**(5) FREIGHT AND DELIVERY**

Please quote your net price on each of the commodity(s) F.O.B. delivered to City of Saint John.

The proposed prices for all materials and/or services are to include pick-up, transportation, delivery, duty, fuel surcharge and any other charges incurred in order to provide the required materials and/or services.

**(6) SPECIFICATION SHEETS AND WARRANTY**

Specification sheets along with warranty information and any limiting conditions must be submitted with the proposal.

**(7) TERMINATION OF THE CONTRACT**

The City reserves the right to terminate the contract at any time during the course of this agreement. In such an event, payment will be made only for the product received up to the time of termination.

**(8) BASIS FOR AWARD**

The City does not bind itself to accept the lowest or any proposal submitted, but reserves the right to accept any proposal deemed to be in its best interest. The City also reserves the right to split this contract between two or more proponents based upon the overall best value to the City.

**(9) NO GUARANTEE**

The City makes no guarantee as to the value or volume of the Deliverables. The quantities stated herein reflect the anticipated requirements of the City; however, the City reserves the right to purchase more or less than the total quantity stated.

**(10) RESERVED RIGHTS**

The City reserves the right to:

- a) Reject an unbalanced Proposal. For the purpose of this section, an unbalanced Proposal is a Proposal containing a unit price which deviates substantially from, or does not fairly represent, reasonable and proper compensation for the unit of work bid or one that contains prices which appear to be so unbalanced as to adversely affect the interests of the City. The City reserves the right to use Proposals submitted in response to other like or similar Requests for Proposals as a guideline in determining if a proposal is unbalanced.
- b) Amend or modify the scope of a project, and/or cancel or suspend the Proposal Solicitation at any time for any reason.
- c) Require proponents to provide additional information after the Closing Date for the Proposal Solicitation to support or clarify their proposals.

- d) Not accept any or all proposals.
- e) Not accept a proposal from a proponent who is involved in litigation, arbitration or any other similar proceeding against the City.
- f) Reject any or all proposals without any obligation, compensation or reimbursement to any proponent or any of its team members.
- g) Withdraw a Proposal Solicitation and cancel or suspend the Proposal Solicitation process.
- h) Extend, from time to time, any date, any time period or deadline provided in a Proposal Solicitation (including, without limitation, the Proposal Solicitation Closing Date), upon written notice to all proponents.
  - i) Assess and reject a proposal on the basis of
    - i. Information provided by references;
    - ii. The proponent's past performance on previous contracts;
    - iii. Information provided by a proponent pursuant to the City exercising its clarification rights under the Proposal Solicitation process;
    - iv. The proponent's experience with performing the type and scope of work specified including the proponent's experience;
    - v. Other relevant information that arises during a Proposal Solicitation process.
- j) Waive formalities and accept proposals which substantially comply with the requirements of the Proposal Solicitation.
- k) Verify with any proponent or with a third party any information set out in a proposal.
- l) Disqualify any proponent whose proposal contains misrepresentations or any other inaccurate or misleading information.
- m) Disqualify any proponent who has engaged in conduct prohibited by the Proposal Solicitation documents.
- n) Make changes including substantial changes to the proposal documents provided that those changes are issued by way of an addendum in the manner set out in the Proposal Solicitation documents.
- o) Select any proponent other than the proponent whose proposal reflects the lowest cost to the City.
- p) Cancel a Proposal Solicitation process at any stage.
- q) Cancel a Proposal Solicitation process at any stage and issue a new Proposal Solicitation for the same or similar deliverable.
- r) Accept any proposal in whole or in part.

And these reserved rights are in addition to any other express rights or any other rights which may be implied in the circumstances and the City shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any proponent or any third party resulting from the City exercising any of its express or implied rights under a Proposal Solicitation.

**(11) LIMITATION OF LIABILITY AND WAIVER**

In every Proposal Solicitation, the City shall draft the documents such that each proponent, by submitting a proposal, agrees that:

- a) Neither the City nor any of its employees, agents, advisers or representatives will be liable, under any circumstances, for any claims arising out of a Proposal Solicitation process including but not limited to costs of preparation of the proposal, loss of profits, loss of opportunity or any other claim.
- b) The proponent waives any claim for any compensation of any kind whatsoever including claims for costs of preparation of the proposal, loss of profit or loss of opportunity by reason of the City's decision to not accept the proposal submitted by the proponent, to award a contract to any other proponent or to cancel the Proposal Solicitation process, and the proponent shall be deemed to have agreed to waive such right or claim.

## **(B) Evaluation Criteria**

- (1) The following is an overview of the categories and weighting for the rated criteria relevant to the evaluation of proposals under this RFP.

<b>STAGE II OF EVALUATION PROCESS</b>	<b>SCORING (POINTS)</b>
<b>Quality and Completeness:</b> <ul style="list-style-type: none"><li>• <b>Has the proponent addressed all of the needs identified?</b></li><li>• <b>Is the proposal presented in an organized and professional manner? Have SPEC Sheets and WARRANTY information been submitted.</b></li></ul>	<b>10</b>
<b>Specifications and Quality:</b> <ul style="list-style-type: none"><li>• <b>Meet/exceed Specifications outlined (Spec Sheets).</b></li><li>• <b>Warranty Information provided.</b></li><li>• <b>Delivery timeframe.</b></li></ul>	<b>60</b>
<b>Cost:</b> <ul style="list-style-type: none"><li>• <b>Cost will be a factor, however, neither the only factor nor the determined factor, in the evaluation of the proposals.</b></li><li>• <b>The financial proposal shall include:</b><ul style="list-style-type: none"><li>○ <b>Pricing Form</b></li></ul></li></ul>	<b>30</b>
<b>TOTAL POINTS FOR STAGE II</b>	<b>100</b>

## **(C) Submission Requirements**

(1) Proponents should include the following information in respect of each of the rated criteria:

(a) Quality and completeness – 10 Points

- i. Has the proponent addressed all of the needs identified and is the proposal presented in an organized and professional manner, have specification sheets and warranty information been provided?

(b) Specifications and Quality – 60 Points

- i. Meet/exceed specifications outlined (specifications sheets);
- ii. Warranty information;
- iii. Delivery timeframe.

(c) Cost (Financial Proposal) – 30 Points

- i. completed Pricing Form as provided in Appendix B;
- ii. proposed cost for the Deliverables, as described in Appendix D – Part A – The Deliverables;



## **APPENDIX E – SAMPLE AGREEMENT**

## AGREEMENT

This Agreement made in duplicate copies this XX day of XX, 2022.

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

**XXX**, a company, having offices located at XXX, in the City of XX and the Province of XX, hereinafter referred to as the “Supplier”

### OF THE SECOND PART

WHEREAS the City issued Request for Proposal **2022-XXXXXX** for **XXX** (the “Request for Proposal”); and

AND WHEREAS the Supplier submitted a technical proposal and a financial proposal, both dated **XX, 2022** 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 XX, 2022 resolved that:

*“That as recommended by the City Manager ...”*

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 Supplier shall supply the goods and/or services and carry out the terms and conditions set out in the Request for Proposal and the Proposal.
2. The City shall pay the Supplier, in return for the goods and/or services, fees as outlined in the financial proposal part of the Proposal, plus HST.

### **Term**

3. The term of this Agreement is XX.

### **Termination**

4. The City may immediately terminate this Agreement upon giving notice to the Supplier where:
  - a. The Supplier 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 Supplier under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation;
  - b. The Supplier breaches any of the terms or conditions of the within Agreement;
  - c. In the City's reasonable opinion, the Supplier, prior to or after executing this Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to the City;
  - d. The Supplier undergoes a change of control which, in the reasonable opinion of the City, adversely affects the Supplier's ability to satisfy some or all of its obligation under the within Agreement;
  - e. The Supplier 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 Supplier 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 Supplier, its subcontractors or their respective directors, officers, agents, employees or independent contractors in the course of performance of the Supplier'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 Supplier 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:

$$\begin{array}{c} ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \end{array}$$

## THE CITY OF SAINT JOHN

per

Mayor

Assistant Common Clerk

**Common Council Resolution:**

XXXXXX

Per:

[Title]