

## **CONSULTING/PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT made this 10 day of May 2019.

BY AND BETWEEN

**The Corporation of the City of Port Colborne**

(hereinafter referred to as "the City")

and

**ROYAL LEPAGE Niagara Real Estate Centre**

(hereinafter referred to as "the Consultant")

WHEREAS the City desires to sell selected municipally owned property (hereinafter referred to as the "Project");

AND WHEREAS in response to the "Request for Proposal" call in 2010 for the sale of 40-44 Killaly Street West and the CMT School Lots, the Consultant submitted to the City a "Proposal" for the provision of real estate services relating to the Project;

AND WHEREAS the City has engaged the Consultant to sell other municipal properties;

AND WHEREAS the City intends to engage the services of the Consultant in connection with the provision of professional services relating to the completion of the Project;

NOW THEREFORE THIS AGREEMENT WITNESSES that the parties hereby agree as follows:

### **ARTICLE I                      SCOPE OF SERVICES**

#### *1.1            General*

The Consultant shall render services to the City with a degree of care, skill and diligence normally provided in the performance of completing real estate transactions. The project is required to commence as soon as possible from the executing of this Agreement with the anticipation and hope that all properties will be sold expeditiously.

#### *1.2            Scope of Professional Services*

The Consultant shall provide consulting services in accordance with sale of selected properties for the municipality.

#### *1.3            Term*

The term of the Agreement shall be for a period of five (5) years from the date of its execution. The City shall inform the Consultant in writing of its interest to

continue with the provision of consulting services for an additional five (5) year term under the same terms and conditions within one (1) month from the expiration of the Agreement.

## **ARTICLE II                      CITY RESPONSIBILITIES**

### **2.1        *Information***

The City shall provide the Consultant, in a timely manner, access to all relevant information determined to be required by the Consultant to complete the project and shall instruct the Consultant fully as to any City requirements. The Consultant shall be entitled to rely upon the accuracy and completeness of all such information made available.

### **2.2        *Authority***

The City shall provide the Consultant with the authority to act as its agent in all matters falling within the scope of the Consultant's services.

### **2.3        *Access***

To the greatest extent possible, the City shall arrange and make provision for the Consultant's entry to public and private property as is necessary to perform the services.

### **2.4        *Other***

The City shall:

- Directly engage the Consultant to perform services necessary to enable the Consultant to fully carry out their duties, such services to include legal advice;
- Promptly review all documentation submitted by the Consultant and inform the Consultant of decisions in time for the orderly progress of the Consultant's services, and, of the work;
- Designate the Director of Planning and Development as the representative to have authority to transmit instructions to and receive information from, the Consultant.

## **ARTICLE III                      CONSULTANT RESPONSIBILITIES**

### **3.1        *Deliverables***

The Consultant shall be responsible to market and sell any other property that the City desires.

### 3.2 *Progress Reports*

Bi-monthly progress reports, in a form acceptable to the City, will be prepared by the Consultant and submitted to the City representative.

### 3.3 *Indemnities and Insurance*

The Consultant agrees to indemnify and hold the City harmless from and against any and all losses incurred or sustained or for which the City may become liable for, as a result of or in connection with or in relation to any matter arising under this Agreement or in consequence of any breach of any warranty, representation, term, obligation or covenant of the Consultant contained in this Agreement, any of the acts, omissions, or negligence of the Consultant or of any other person or any loss otherwise arising directly or indirectly in relation to the provision of services hereunder.

The Consultant shall insure and keep in force professional and/or general liability insurance against all demands, charges, damages or claims for damages or other claims for losses from an insurer satisfactory to the City. Such policy(ies) shall include the City as additional named insured. The Consultant shall deliver with this agreement, if not previously delivered, a certified copy of the policy(ies) or a certificate of insurance setting out the essential terms and conditions of insurance, the form and content of which shall be satisfactory to the City. Such policy(ies) shall be kept in full force and effect until all of the Consultant's obligations under this Agreement have been fulfilled and shall comply with the following provisions:

- The minimum limit of the insurance coverage shall be \$2,000,000 all inclusive;
- The policy(ies) shall provide for cross liability and severability of interest protecting the City against claims by the Consultant as if it were separately insured and providing that the City shall be insured notwithstanding any breach of any condition in the policy by any other insured; and
- The policy(ies) shall provide that the insurer shall not cancel or refuse to renew the policy without first giving the City a minimum of sixty (60) days prior written notice.

## **ARTICLE IV                      FEE BASIS**

### 4.1 *Professional Services*

The City agrees to compensate the Consultant for its professional services on the following basis:

Payment of 4.5% commission upon the completion of each sale that result in a legal change of ownership.

#### **ARTICLE V                    DEFECTS IN SERVICE AND TERMINATION**

- 5.1      The City shall promptly report to the Consultant any defects or suspected defects in the Consultant's work or services to which the City becomes aware, so that the Consultant may take measures to minimize the consequences of such defects. Failure by the City to notify the Consultant in a timely manner shall relieve the Consultant of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given.
- 5.2      This Agreement may be terminated by the City upon fifteen (15) Business Days written notice should the Consultant fail to perform its obligations in accordance with the terms of this Agreement through no fault of the City. Notice of the failure with reasonable time to rectify, shall be provided prior to the issuance of written notice to terminate.
- 5.3      This Agreement may be terminated by the City upon ten (10) Business Days written notice to the consultant in the event that the Project is permanently abandoned.

#### **ARTICLE VI                  PAYMENT**

- 6.1      Invoices for professional services, shall be submitted to the City by the Consultant upon the completion of a change in ownership. Invoices are due and payable upon receipt by the City and are overdue if not paid in full within 30 days of the invoice date.

#### **ARTICLE VII                SUSPENSION OF SERVICES**

- 7.1      If the City fails to make payments when due, or otherwise is in breach of this Agreement, the Consultant may suspend performance of services upon ten (10) Business Days notice to the City. The Consultant shall have no liability whatsoever to the City for any costs or damages as result of such suspension.

#### **ARTICLE VIII              AMENDMENTS**

- 8.1      With the consent of the Consultant, the City may, in writing, at any time after the execution of this Agreement, increase the services forming the subject of this Agreement by way of an amendment to the agreement, and if such action by the City necessitates additional services, the Consultant shall be paid based on the same fee basis for professional services.
- 8.2      No amendment to the Agreement shall be binding unless it is incorporated into the Agreement by written amendment, executed by the authorized representatives of the City and of the Consultant.

## **ARTICLE IX            OTHER**

### **9.1      Confidentiality**

The Consultant shall not divulge any confidential information acquired in the course of carrying out the services provided for in this Agreement.

This requirement shall not prohibit the Consultant from:

- Complying with an order to provide information or data when such order is issued by a court or other authority with proper jurisdiction;
- Acting to correct or report a situation which the Consultant may reasonably believe to endanger the safety or welfare of the public.

## **ARTICLE X            GOVERNING LAW**

10.1    This Agreement shall be governed by the laws of the Province of Ontario.

## **ARTICLE XI           ASSIGNMENT**

11.1    Neither party may assign this Agreement without the prior consent in writing of the other party.

## **ARTICLE XII          NOTICE**

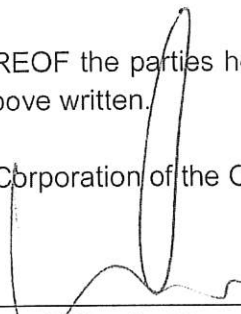
12.1    Notice pursuant to this Agreement shall be delivered in person, by prepaid first-class mail, by email or facsimile transmission to the parties addressed at:

The City of Port Colborne  
66 Charlotte Street  
Port Colborne Ontario, L3K 3C8  
Attention: Dan Aquilina, Director of Planning and Development  
Email: danaquilina@portcolborne.ca  
Fax: 905-835-2969

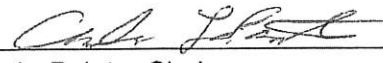
ROYAL LEPAGE Niagara Real Estate Centre  
368 King Street  
Port Colborne, Ontario L3K 4H4  
Attention: Brad Johnstone, Broker of Record  
Email: brad@royallepage.ca  
Fax: 905-714-7300

IN WITNESS WHEREOF the parties hereto have executed this Agreement all as of the day and year first above written.


The Corporation of the City of Port Colborne

Per:   
William C. Steele, Mayor  
(I have the authority to bind the City)

SEAL

Per:   
Amber LaPointe, Clerk  
(I have the authority to bind the City)

ROYAL LEPAGE Niagara Real Estate Centre

Per:   
Brad Johnstone, Broker of Record  
(I have authority to bind the Corporation)