

## AGREEMENT

THIS AGREEMENT is made as of April 3, 2017 (the "**Effective Date**").

BETWEEN:

**HER MAJESTY THE QUEEN**, in Right of the Province of New Brunswick as represented by the Clerk of the Executive Council Office ("**ECO**")

- and -

**THE HONOURABLE JOSEPH T. ROBERTSON, Q.C.**  
("**Mr. Robertson**")

(each a "**Party**")

THE PARTIES wish to enter into a binding agreement for the conduct by Mr. Robertson of an independent review of Service New Brunswick's real property tax assessment methodologies and values for the past seven taxation years.

IN CONSIDERATION of the mutual responsibilities and obligations in this Contract the Parties agree as follows:

### 1. **INTERPRETATION**

1.1. **Definitions.** Unless the context requires otherwise, capitalized terms in this Contract will have the following meanings:

- a) "**Applicable Law**" means all applicable federal, provincial and municipal laws, statutes, codes, ordinances, orders, decrees, by-laws, rules, regulations, permits, licenses, authorizations and directives;
- b) "**Business Day**" means any day other than Saturday, Sunday or a statutory holiday under the laws of Canada or New Brunswick;
- c) "**Confidential Information**"
  - i) means information in any form disclosed directly or indirectly to Mr. Robertson by or on behalf of Executive Council Office (ECO), Service New Brunswick (SNB) or the Government of New Brunswick or gathered by

Mr. Robertson from observation of any records, property, or activities of ECO, SNB or the Government of New Brunswick, regardless of whether Mr. Robertson obtained the information before or after the Term or whether the information is specifically identified or marked as confidential or proprietary; and

- ii) includes any analyses, compilations, studies and other documents prepared by or on behalf of ECO which contain or are derived from the information listed in Section 1.1(c)(i);
- d) "**Contract**" means this written agreement, including all amendments, attached schedules and appendices, and documents incorporated by reference;
- e) "**Contract Records**" means records, in sufficient detail, to properly account for public funds expended under this Contract, including records of account in accordance with generally accepted accounting principles respecting: (i) the Work; and (ii) all financial commitments and expenses incurred in relation to this Contract;
- f) "**Deliverables**" means the products or outcomes of the Services which are stated by the terms of this Contract to be deliverable to ECO;
- g) "**main text**" means the main body of this Contract from the title to the signatures.
- h) "**Permitted Expenses**" means the travel, accommodation and other expenses incurred by Mr. Robertson in carrying out the Services which are subject to reimbursement by ECO under Schedule B.
- i) "**Person**" means an individual, partnership, association, corporation, trustee, executor, administrator or legal representative;
- j) "**Services**" means the services to be performed by Mr. Robertson as listed in Schedule "A";
- k) "**Work**" means the Services and the Deliverables.

## 1.2. Rules of Interpretation

- a) In this Contract:
  - i) The division of the text into sections and paragraphs and the insertion of headings are for the reader's convenience only and will not affect the interpretation of any provision;
  - ii) Words expressed in the singular include the plural and vice versa. Words connoting gender include both genders. A derivative of a defined term will have a corresponding meaning unless the context requires otherwise;
  - iii) In the event of a conflict between a provision of the main text and an attached schedule, the main text will prevail;
  - iv) Citations of "**Sections**" are references to provisions of the main text, and may include articles, sections, paragraphs or sub-paragraphs as indicated by the numbers or letters cited; and
  - v) Sums of money are expressed in Canadian currency.
- b) The Parties acknowledge that they have participated equally in the preparation of this Contract. If any term of this Contract requires judicial interpretation, mediation or arbitration, the court, mediator or arbitrator will not apply a presumption that this Contract is to be interpreted more strictly against the Party that prepared it.
- c) The following schedules are attached to and form part of this Contract:
  - Schedule A - Services
  - Schedule B - Payment

## 2. SERVICES AND DELIVERABLES

- 2.1. Mr. Robertson will perform the Services and produce the Deliverables promptly and professionally.

## 3. DURATION

- 3.1. **Initial Term.** This Contract will commence on the Effective Date and, unless terminated earlier, will remain in effect until August 15, 2017.



- 3.2. **Renewals.** The Parties may by mutual agreement renew this Contract for a further three month period on the same terms and conditions except as to payment.

4. **PAYMENT**

- 4.1. ECO will pay Mr. Robertson for the Work as specified in Schedule B.

5. **INVOICING**

- 5.1. Mr. Robertson will invoice ECO monthly for the Work and Permitted Expenses in the month in which they are performed or incurred. Invoices will be substantiated by supporting information as required by ECO. Invoiced amounts will be due within 30 days of receipt of the invoice.
- 5.2. Invoices will be emailed in "pdf" or "tiff" format to [invoices@snb.ca](mailto:invoices@snb.ca) or mailed to the following address:

SNB AP – c/o Executive Council Office  
P.O. Box 6000  
Fredericton, NB E3B 5H1

Attention: Judy Wagner

6. **CONFIDENTIALITY**

- 6.1. Mr. Robertson acknowledges that personal information about any individual arising from the performance of this Contract is subject to privacy legislation, including the *Right to Information and Protection of Privacy Act* (New Brunswick). Mr. Robertson will maintain the confidentiality of personal and confidential information and adhere to any applicable privacy legislation and any agreements entered into regarding the handling of personal information. Mr. Robertson acknowledges that all information relating to this Contract that is in the custody or control of ECO is subject to the *Right to Information and Protection of Privacy Act* (New Brunswick), under which ECO may be required to disclose certain information.

7. **THIRD PARTY RETAINERS**

- 7.1. Mr. Robertson may enlist the services of such third party contractors as may be necessary to complete the Work, including persons experienced in property appraisal and legal counsel ("**Experts**"), subject to reasonable market rates to be approved by ECO.



**8. INVESTIGATIVE AUTHORITY**

- 8.1. In order to carry out the Work, Mr. Robertson is authorized to request of New Brunswick Government agencies and departments access to all documents in their possession, subject to restrictions on disclosure under Applicable Law.
- 8.2. Mr. Robertson is also authorized to seek the assistance of government employees in procuring information deemed necessary to carry out the Work. Requests for assistance must be made in writing to the appropriate authority and in accordance with applicable government policies and procedures and Applicable Law.
- 8.3. ECO, on behalf of the New Brunswick Government, will direct agencies and departments to comply with requests made under sections 8.1 and/or 8.2.

**9. RECORDS**

- 9.1. During the initial term and any renewal term for seven years following the termination or expiry of the Contract, Mr. Robertson will:
  - a) prepare and maintain the Contract Records; and
  - b) allow ECO access to examine all Contract Records and all other contracts, correspondence, financial statements, books, accounts, and other records and information of Mr. Robertson relating to this Contract for the purpose of review, analysis, inspection, audit, and reproduction.

**10. CONFLICT OF INTEREST**

- 10.1. Mr. Robertson certifies that as of the Effective Date no Conflict of Interest exists or is likely to arise. Mr. Robertson will notify ECO in writing immediately upon becoming aware of the existence or possibility of a Conflict of Interest and will comply with any reasonable directions of ECO to appropriately manage the Conflict of Interest.

11. GENERAL PROVISIONS

- 11.1. **Notices.** Any demand, notice or other communication ("**Notice**") to be given in connection with this Contract will be in writing and will be given by personal delivery, commercial courier service, registered mail (postage prepaid) or by electronic transmission and addressed to the applicable Party as follows:

To Mr. Robertson

Hon. Joseph T. Robertson, Q.C.  
[REDACTED]

To ECO

Chancery Place  
6<sup>th</sup> Floor  
P. O. Box 6000  
Fredericton, NB  
E3B 5H1  
Facsimile: (506) 453-2266  
e-mail: Judy.Wagner@gnb.ca  
Attention: Judy Wagner

For the purpose of this Section 11.1, a Notice will be considered validly given at the following times:

Delivery Method	Time of Notice
- by personal delivery or commercial courier service	day of actual delivery
- by registered mail	the 5 <sup>th</sup> Business Day following the deposit in the mail, except that in the event of an actual or threatened disruption of regular postal service, notice will not be effective if given by mail.
- by electronic transmission	on the day of transmission

If the time of delivery is not a Business Day or if the Notice is received after ordinary office hours at the place of receipt, the Notice will be considered received on the next Business Day. Either Party may change its address for Notice by giving Notice to the other Party.

- 11.2. **Waiver.** Either Party (the "**Waiving Party**") may, at its option, waive in whole or in part any failure by the other Party (the "**Obligated Party**") to perform any of the obligations under this Contract. A waiver applies only to the specific matter it addresses, extends only to the Waiving Party and will not prejudice the right of the Waiving Party to require the subsequent performance by the Obligated Party of any obligation under this Contract, including the waived obligation on subsequent occasions.




- 11.3. **Entire Agreement.** This Contract is a complete and self-contained record of the agreement between the Parties. No promise, representation, commitment, agreement, negotiation or discussion by either Party in any form, express or implied, that occurred before the execution of this Contract is of any effect with respect to the subject matter of this Contract. The Parties acknowledge that in entering into this Contract they have not relied on any promise, representation, commitment, agreement, discussion or information, express or implied, that is not written in this Contract.
- 11.4. **Assignment.** Neither Party may assign this Contract or any part of it without the written consent of the other Party.
- 11.5. **Amendment.** This Agreement may not be amended except by an agreement in writing signed by the Parties or by their successors or permitted assignees.
- 11.6. **Relationship of Parties.**
- a) Mr. Robertson is an independent contractor only. Nothing in this Contract will be interpreted to mean that Mr. Robertson or his Personnel are employees of ECO or the Province of New Brunswick.
  - b) Nothing in this Contract creates a joint venture, agency or partnership between ECO and Mr. Robertson.
  - c) No Party is responsible for the actions of the other Party except as agreed in this Contract.
  - d) Neither Party has any right or authority to speak on behalf of or obligate the other Party.
- 11.7. **Subject to Appropriation.** No payment is to be made by ECO under this Contract in any fiscal year unless an appropriation against which the payment is to be charged is made in the same fiscal year.
- 11.8. **Survival of Provisions.** Despite any other provision of this Agreement, Section 6 and all other Sections which by their nature would continue beyond the termination or expiry of this Contract will survive and remain in force until the Parties agree to their termination.

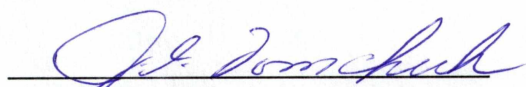
- 11.9. **Severability.** If any provision of this Contract (the "**Invalidated Provision**") is found by a court of competent jurisdiction to be invalid or unenforceable for any reason, the Invalidated Provision will not affect the remainder of this Contract. The Invalidated Provision will be treated as being modified to the extent necessary to make it enforceable while preserving as much as possible the intent of the Parties expressed in this Contract.
- 11.10. **Signed Originals.** Identical copies of this Contract may be signed separately by the Parties and combined to form fully executed originals. A signed Contract delivered by electronic means is as valid as if delivered physically and will be treated as an executed original of this Contract.
- 11.11. **Time Requirements.** Compliance with provisions of this Contract that establish deadlines is vital to this Contract and mandatory.
- 11.12. **Governing Law.** This Contract will be governed by the laws of New Brunswick and Canada.
- 11.13. **Binding Effect.** This Contract is for the benefit of and binds the Parties and their successors and permitted assignees.


**THE PARTIES** enter into this agreement by signing below.

**HER MAJESTY THE QUEEN IN RIGHT OF  
THE PROVINCE OF NEW BRUNSWICK**

  
Witness

  
Judy Wagner  
Clerk of the Executive Council Office

  
Witness

  
The Honourable Joseph T. Robertson, Q.C.



## SCHEDULE A

### Services

#### ***Terms of Reference - Real Property Tax Assessment Review***

Mr. Robertson will undertake an independent review of the facts and circumstances related to the inaccuracies and possible errors in Service New Brunswick's calculation of real property tax assessment values for the taxation years 2011 through 2017.

A comprehensive review of all administrative policies and procedures in place related to the assessment process over the past seven years will be undertaken, including a review of the assessment methodology, factors related to timing and deadlines, and the use of the various technological aids, quality control processes, and the use of formulas to estimate values.

The review will look at all significant changes to the assessment process and procedures over the past seven years, how previous assessment errors were corrected and how present assessment errors have or will be addressed.

On or before August 15, 2017, Mr. Robertson will produce and deliver to ECO a written report (the "**Report**") of his review findings, together with his recommendations as to what measures or policies should be implemented to reduce the probability of any future assessment errors. The findings of the review will be used to assist with the design and setup of a new independent real property tax assessment agency.

Mr. Robertson will coordinate the efforts of any Experts retained and incorporate their contributions in the Report as he deems appropriate.

## SCHEDULE B

### Payment

1. **Professional Fees.** ECO will pay Mr. Robertson for Services performed under this Contract at the hourly senior counsel rate, as determined by the Province (the "**Hourly Rate**").
2. **Expenses.** Mr. Robertson will invoice ECO monthly for costs and reasonable travel and accommodation expenses related to the Services at rates no greater than the Province of New Brunswick's expense rates then in effect (the "**Expense Rates**"). The Expense Rates include all applicable taxes. ECO will pay only for base rental cost and will not be responsible for any costs associated with insurance fees charged by vehicle rental companies for property damage. Mr. Robertson will assume all responsibility for providing adequate coverage on rental vehicles, and ECO cannot be held liable.
3. **Experts.** Payment of Experts' fees and expenses, as retained by Mr. Robertson, will be the responsibility of ECO.