


F30.254



INTEROFFICE MEMORANDUM

TO: Board of Representatives

FROM: David R. Martin, Mayor 

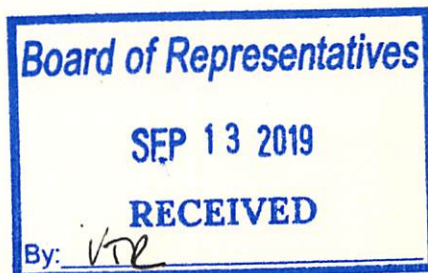
DATE: September 13, 2019

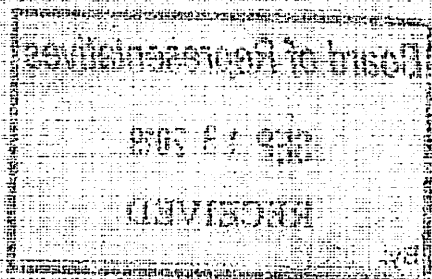
RE: Blum, Shapiro & Company / City of Stamford
Agreement for Professional Auditing Services; RFP No. 764

Attached, please review the attached Agreement and advise your recommendation regarding approval.

Thank you.

Enc.





MAYOR
DAVID R. MARTIN



**CITY OF STAMFORD
OFFICE OF LEGAL AFFAIRS**

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September 10, 2019



To: Mayor David R. Martin

From: Chris Dellaselva, Asst. Corporation Counsel

Re: Blum, Shapiro & Company/City of Stamford
Agreement for Professional Auditing Services
RFP No. 764

Dear Mayor Martin:

Attached is **one (1) copy** of the above-mentioned Agreement, which I have approved as to form. These services will provide to the City's Office of Administration auditing of its comprehensive annual financial statements, Single Audit Reporting Package, three (3) of the City's pension plans, and the Stamford WPCA.

As the contract price exceeds \$100,000, it must be approved by the Board of Finance and the Board of Representatives. **Please note, the Agreement has already been submitted to the Board of Finance and will be presented at their meeting on September 12, 2019.** Therefore, please submit the Agreement to the Board of Representatives for their approval. **After Board approval, two originals will be sent to you for signature.**

The business manager of these services is David Yanik. Please direct any questions regarding these services to Mr. Yanik and invite Mr. Yanik to all meetings. You may, of course contact me if I may be of further assistance.

Thank you for your consideration.


Chris Dellaselva

Encl.

AGREEMENT

THIS AGREEMENT dated the _____ day of _____, 2019, is by and between the **CITY OF STAMFORD**, a municipal corporation organized and existing pursuant to the laws of the State of Connecticut with a principal place of business located at 888 Washington Boulevard, Stamford, Connecticut (hereinafter the "City"), acting herein by David R. Martin, its duly authorized Mayor, and **BLUM, SHAPIRO & COMPANY, P.C.**, a domestic professional corporation with a principal place of business located at 29 South Main Street, West Hartford, Connecticut (hereinafter the "Consultant") and acting herein by Nikoleta McTigue, its duly authorized Partner.

WITNESSETH

WHEREAS, The City solicited Request for Proposals No. 764 for Professional Auditing Services;

WHEREAS, The Consultant submitted a proposal in response to said Request for Proposals; and

WHEREAS, The City has accepted the Consultant's proposal for said work pursuant to the terms hereinafter set forth;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. INCORPORATION OF RECITALS. The above terms and conditions are contractual in nature and not merely recitals and are hereby incorporated into this Agreement;

2. SCOPE OF SERVICES. The Scope of Services shall consist of those duties, functions, obligations, responsibilities, and tasks set forth in:

Exhibit A – The City's Request for Proposals No. 764, issued January 16, 2019;
and

Exhibit B – The Consultant's Proposal, dated February 21, 2019;

all attached hereto and hereby made a part hereof as if fully set forth herein;

Remainder of page intentionally left blank. Compensation Section follows on next page.

3. COMPENSATION. The Consultant shall be compensated for the services set forth in Section 2, above, pursuant to the chart of not-to-exceed fees below and to the additional terms and conditions regarding hourly rates set forth in the Proposed Audit Fees included in the Consultant's Proposal attached hereto as Exhibit B:

	Year 1 2019	Year 2 2020	Year 3 2021
General Audit:			
City CAFR ⁽¹⁾	\$160,000	\$163,000	\$166,500
Pension Plan Audit(s) (in total, for all 3 audits)	\$19,000	\$19,500	\$19,500
SWPCA Financial Statements	\$22,000	\$22,500	\$23,000
Estimated Out of Pocket Expenses - City	Included	Included	Included
Estimated Out of Pocket Expenses - Pensions	Included	Included	Included
Estimated Out of Pocket Expenses - SWPCA	<u>Included</u>	<u>Included</u>	<u>Included</u>
Totals	<u>\$201,000</u>	<u>\$205,000</u>	<u>\$209,000</u>
Hourly Rates for Audit Services Outside the Scope of the Annual Audit (See chart in Proposal – Exhibit B)			

(1) Includes management letter and report on the combined and individual fund financial statements and assistance with submitting the CAFR for the Certificate of Achievement for Excellence in Financial Reporting issued by the Government Finance Officers Association.

4. TERM. The Term of this Agreement shall commence, retroactively, on July 1, 2019, to begin with the audits for the fiscal year ending June 30, 2019, and terminate three (3) years thereafter or until such time as the audits are complete for the fiscal year ending 2021. The Term of this Agreement may be extended for two (2) additional one- year extensions by mutual agreement of the parties. No such extension shall exceed one (1) year and under no circumstances shall the total Term of this Agreement exceed five (5) years or until such time as the audits are complete for the fiscal year ending 2023.

The Consultant's sole remedy for City delays shall be an extension of time to complete the work and the Consultant hereby waives any claims for consequential damages, including, but not limited to, principal office expense, loss of financing, reputation and/or lost profit;

5. REVIEW OF WORK. The Consultant shall permit the City, its agents and/or employees to review, at any time, all work performed pursuant to the terms of this Agreement at any stage of the work;

6. INDEMNIFICATION. The Consultant shall defend and indemnify the City, its officers, agents and employees, from third party claims for loss, cost, damage or liability resulting directly from the Consultant's negligent performance of the audit services contemplated by this Agreement, and the City represents, warrants and acknowledges that the audit services to be performed by the Consultant pursuant to this Agreement are for the benefit of and to satisfy the legal obligations of the City and are not for the benefit of any third party; The foregoing indemnity shall include reasonable attorneys' fees and costs of suit, if applicable, and shall not be limited by reason of any insurance coverage required pursuant to this Agreement;

7. ASSIGNMENT. The Consultant shall not assign or transfer any portion of the work set forth herein without the prior written approval of the City;

8. BOOKS AND RECORDS. The Consultant shall maintain or cause to be maintained all records, books, or other documents relative to charges, costs, expenses, fees, alleged breaches of this Agreement, settlement of claims, or any other matter pertaining to the Consultant's demand for compensation by the City for a period of not less than three (3) years from the date of the final payment for work performed under this Agreement;

9. INSURANCE. The Consultant shall procure, at its sole expense, and maintain for the entire term of this Agreement, including any extensions, insurance coverages as set forth in the City of Stamford Insurance Provision included in the City's Request for Proposals No. 764 attached hereto as Exhibit A;

10. REPRESENTATIONS. The Consultant represents that it is qualified in relation to the work to be performed under this Agreement and further represents that it has the requisite skill, expertise, and knowledge necessary to perform the scope of services required under the terms of this Agreement, including any supplementary work. The Consultant hereby acknowledges that the City has relied upon said representations in entering into this Agreement;

11. INTERPRETATION. The parties agree and represent that this Agreement has been negotiated at arm's length between parties represented by counsel of their choice and that any rule of construction or interpretation requiring that any ambiguity be construed against the drafter is not applicable and is waived. In the event of any ambiguity, the contract documents shall be given the following order of precedence: (1) this Agreement; (2) the Consultant's Proposal – Exhibit B; and (3) the City's RFP No. 764 – Exhibit A;

12. SUBCONTRACTING. Aside from those subconsultants disclosed in the Consultant's Proposal, attached hereto as Exhibit B, the Consultant is prohibited from further subcontracting the work of this Agreement or any part of it unless the City first approves such subcontracting in writing and approves, in writing, of the specific subconsultant(s) the Consultant proposes to be used. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. Should the

City approve of a proposed subconsultant, the Consultant agrees to comply with the City's Code of Ordinances § 103.4;

13. CONTRACT EXTRAS. To the extent the City's Code of Ordinances Section 23-18.4 C. is applicable to this Agreement, it is specifically understood and agreed by the Consultant that all contract extras regarding this Agreement shall be governed by the City's Charter and/or Code of Ordinances. The City shall not be liable for payment of any additional costs, except as otherwise expressly set forth in this Agreement, unless the provisions of the City's Charter and/or Code of Ordinances are fully complied with. The City's Charter and Code of Ordinances can be found at www.municode.com;

14. NON-APPROPRIATION. The Consultant acknowledges that the City is a municipal corporation, that the City's obligation to make payments under this Agreement is contingent upon the appropriation by the City's Board of Representatives of funds sufficient for such purposes for each budget year in which the Agreement is in effect, and that the City may terminate this Agreement, upon full payment of the compensation required by section 3 for work already performed pursuant to this Agreement, by way of written notice to the Consultant if sufficient funds to provide for the payment(s) hereunder are not so appropriated;

15. COMPLIANCE WITH CITY CODE PROVISIONS. The Consultant hereby agrees to fully comply with the requirements of the City's Code of Ordinances, Sections 103-1 through 103-10, regarding consultants in general. Failure to so comply shall constitute a material breach of the terms of this Agreement, for which the City may unilaterally terminate this Agreement by way of written notice to the Consultant. The provisions of the City Code can be found at www.municode.com ;

16. TERMINATION.

A. **TERMINATION FOR CAUSE.** If, through any cause, the Consultant shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if the Consultant shall violate any laws or any of the covenants, agreements, or stipulations of this Agreement, the City shall have the right to terminate this Agreement for cause by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished reports, documents, data, studies, or other material prepared by the Consultant pursuant to its performance under this Agreement shall, at the option of the City, become the City's property, except that the Consultant's work papers shall be and at all times remain the Consultant's property. The City shall pay the Consultant at its regular hourly rates for all services performed pursuant to this Agreement up to the date of termination. The Consultant may terminate this Agreement if the City fails or refuses to pay the compensation required by section 3 of this Agreement or in the event that the acts or omissions of the City's representatives, agents, employees or officials prevent the Consultant's partners, employees and agents from performing the audit services contemplated by this Agreement.

With regard to any termination of the Consultant's engagement, the term "cause" includes, without limitation the following:

- 1) If the Consultant furnished any statement, representation, warranty or certification in connection with this Agreement, which is materially false, deceptive, incorrect, or incomplete; or
- 2) If the Consultant fails to perform any material requirement of this Agreement or is in violation of any specific provision thereof or any State or Federal law or regulation; or
- 3) If the City reasonably determines that satisfactory performance of this Agreement is substantially endangered or can reasonably anticipate such an occurrence or default.

Should the City terminate this Agreement for cause, the Consultant shall not be relieved of liability to the City for any damages sustained by the City by virtue of any breach of this Agreement by the Consultant and the City may withhold any payment to the Consultant for the purposes of setoff until such time as the exact amount of damages due the City from the Consultant is determined.

- B. TERMINATION FOR CONVENIENCE.** The City may terminate this Agreement at any time the City determines that the purposes of the distribution of monies under the Agreement would no longer be served by the services provided. The City shall effect such termination by giving written notice of termination to the Consultant and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished documents and other materials as described Subsection A shall, at the option of the City, become property of the City, except that the Consultant's work papers shall be and at all times remain the Consultant's property. If the Agreement is terminated by the City as provided herein, the Consultant shall be paid an amount which bears the same ratio to the total compensation as the services actually performed to the effective date of termination bear to the total services of the Consultant pursuant to the terms of the section 3 of this Agreement, less payments of compensation previously made, and subject to the City's right of set off for any damages pursuant to the terms of the Agreement;

17. DISPUTE RESOLUTION.

- A. EXECUTIVE MEETING.** The parties shall endeavor to resolve all claims, disputes, or other matters in controversy arising out of or related to this Agreement ("Claims") through a meeting of the chief executives of each party, or their respective designees ("Executive Meeting").

A request for an Executive Meeting shall be made by a party in writing and delivered to the other party. The request may be made concurrently with the filing of a request for non-binding mediation as set forth herein. The Executive Meeting shall be a condition precedent to mediation unless 30 days have passed after the Executive Meeting has been requested with no meeting having been held.

The Executive Meeting shall be held in the place where the Project is located, unless another location is mutually agreed upon.

- B. MEDIATION.** Any Claim subject to, but not resolved by, an Executive Meeting shall be subject to mediation before a mediator to be chosen by the agreement of the parties. A request for mediation shall be made in writing, delivered to the other party to this Agreement and provided to the mediator chosen by the parties.

The request may be made concurrently with the filing of an arbitration demand but, in such event, mediation shall proceed in advance of arbitration, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for arbitration hearings.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Any agreement or settlement reached through or as a result of mediation shall be enforceable in any Connecticut state court of competent jurisdiction.

- C. ARBITRATION.** Any Claim subject to, but not resolved through, mediation may, upon mutual agreement of the parties, be submitted to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered by the party demanding arbitration to the other party and filed with the person or entity administering the arbitration.

A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a party's written demand for arbitration by the other party shall constitute the institution of legal or equitable proceedings based on the Claim and shall toll the running of the statute of limitations.

The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law.

Any judgment will be entered or court action will be brought in a court of competent jurisdiction within the State of Connecticut.

- D. PERFORMANCE DURING DISPUTE.** Unless otherwise directed by the City, the Consultant shall continue performance under this Agreement while matters in dispute are being resolved, provided that the City pays the Consultant the compensation required pursuant to section 3 of this Agreement.

E. **CLAIMS FOR DAMAGES.** Should either party to this Agreement suffer injury or damage to person or property because of any act or omission of the other party or of any of its officials, employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

18. GOVERNING LAWS. This Agreement shall be governed by the laws of the State of Connecticut without regard to any choice of law rules or provisions;

19. CONFIDENTIALITY. During and after the term of this Agreement, the Consultant, including, without limitation, its employees, agents, servants and representatives, shall not directly or indirectly disclose or make available to any person, firm, corporation, association or other entity of any reason or purpose whatsoever, or use or cause to be used in any manner adverse to the interest of the City, any medical, financial, administrative or other confidential business or patient information, including both open and closed patient records, except as require by law.

20. GIFTS. During the term of this Agreement, including any extensions, the Consultant shall refrain from making gifts of money, goods, real or personal property or services to any appointed or elected official or employee of the City or the Stamford Board of Education or any appointed or elected official or employee of their Boards, Commissions, Departments, Agencies or Authorities. All references to the Consultant shall include its members, officers, directors, employees, and owners of more than 5% equity in the Consultant. Violation of this provision shall constitute a material breach of this Agreement, for which this Agreement may be summarily terminated; and

21. CODE OF ETHICS. The Consultant shall comply with the Stamford Municipal Code of Ethics as codified in Chapter 19 of the City of Stamford Code of Ordinances and shall be considered an "employee", as defined in that Chapter, strictly for the purpose of compliance thereto. The Consultant is prohibited from using its status as a consultant to the City to derive any interest(s) or benefit(s) from other individuals or organizations.

22. MORALS CLAUSE. Neither the Consultant, the Consultant's Representatives nor the Consultant's key personnel shall commit any act or do anything which might reasonably be considered: (i) to be immoral, deceptive, scandalous or obscene; or (ii) to injure, tarnish, damage or otherwise negatively affect the community and/or the reputation and goodwill associated with the City. If the Consultant, the Consultant's Representative or the Consultant's key personnel is accused of any act involving moral or ethical issues, dishonestly, theft or misappropriation, under any law, or any act which casts an unfavorable light upon its association with the community and/or the City or the Consultant is accused of performing or committing any act which could adversely impact the Consultant's events, programs, services, or reputation, the City shall have the right to terminate this contract upon fifteen (15) days written notice specifying the reason, within which period the Consultant may cure such offense. The determination of whether and to what extent the offense is cured shall be made by the City at its sole discretion.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written. Signed, sealed and delivered in the presence of:

CITY OF STAMFORD


Print:
Witness

By: _____
David R. Martin, Mayor

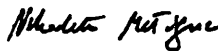
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BLUM, SHAPIRO & COMPANY, P.C.

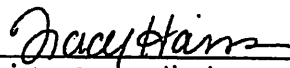


Print: Elena Badner
Witness

By: 

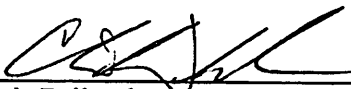
Nikoleta McTigue, Partner

Date: September 9, 2019



Print: Tracy Hains
Witness


Approved as to Form:



Chris Dellaselva
Asst. Corp. Counsel

Date: Sept. 9, 2019

Approved as to Insurance:



David Villalva
Risk Manager

Date: Sept 9, 2019