



holmesfire

C O R R E S P O N D E N C E

To: NZ Project 29 Limited
c/o Simon Wilson RDT Pacific By Email Only

From: Antony Walker Project: 92833.04

Date: 16 June 2016 Page: 1 of 4

Subject: CMC BUILDING, 89 COURTENAY PLACE – FEASIBILITY ADVICE
FEE PROPOSAL FOR CONSULTING FIRE ENGINEERING SERVICES

Simon,

Thank you for the opportunity to provide a proposal for Fire Engineering Services for this significant project. We have reviewed the plans provided by email on 10 May 2016 and believe we may be able to design a solution for the buildings that meets the minimum requirements of the Building Act 2004 as it relates to fire safety and ultimately adds value.

PROJECT DESCRIPTION

The project consists of the change of use of the existing building at 89 Courtenay Place to provide temporary accommodation on the upper levels, with a conference centre and retail on the podium levels.

We will provide high level feasibility advice relating to compliance with the New Zealand Building Code as required by Section 115 of the New Zealand Building Act.

OUR SERVICES

As discussed we offer our service at the standard hourly rates noted below, and will work on a time basis up to an agreed budget, noting that the amount of time we spend will directly affect the quality, rigour, and robustness of our advice and hence the risks to budget and constraints not being understood and considered accordingly .

Hourly rates where applicable are \$250.00 ex GST for Principals and Senior Fire Engineers, \$200.00 ex GST for Fire Engineers, and \$170.00 ex GST for Fire Safety Technologists.

Our services are provided in accordance with the IPENZ/ACENZ Short Form Model Conditions of Engagement as amended below. Should the above be acceptable please complete the attached form where indicated by an arrow and return it to our office.

Wellington

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New Zealand

Offices in

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California

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Should you have any queries regarding the above please don't hesitate to call me.

Regards,

Antony M. Walker

Antony Walker
BRANCH MANAGER | SENIOR FIRE ENGINEER

92833.04AMW.F002.doc

SHORT FORM AGREEMENT FOR CONSULTANT ENGAGEMENT

BETWEEN:
(CLIENT)

AND: Holmes Fire LP
(CONSULTANT)

PROJECT:
CMC Building, 89 Courtenay Place – Change of Use

LOCATION:
89 Courtenay Place, Wellington

SCOPE & NATURE OF THE SERVICES:

1. Feasibility Advice

Detail as per attached 92833.04AMW.F002.doc.

PROGRAMME FOR THE SERVICES:

To be agreed.

FEES & TIMING OF PAYMENTS:

☐ 1) \$ 250.00 / \$200.00 / \$ 170.00 / hr

Work to be invoiced on a percentage completed basis at the end of each calendar month.

Tick those applicable. All fees exclude GST.

INFORMATION OR SERVICES TO BE PROVIDED BY THE CLIENT:

Details of property boundaries and Unit Title plans related to the building.

Client Name:

Billing Address:

Telephone:

Email:

The Client engages the Consultant to provide the Services described above and the Consultant agrees to perform the Services for the remuneration provided above. Both Parties agree to be bound by the provision of the Short Form Model Conditions of Engagement (overleaf), including clauses 2, 3, 9 and 10 and any variations noted below. Once signed, this agreement, together with the conditions overleaf and any attachments, will replace all or any oral agreement previously reached between the Parties.

VARIATIONS TO THE SHORT FORM MODEL CONDITIONS OF ENGAGEMENT (OVERLEAF):

Further to Clause 5, the responsibility for the accuracy of information provided by the Client remains with the Client. New Clauses 20 and 21. Further to Clauses 7 we reserve the right to require payment prior to delivery of each stage of work noted above.

CLIENT AUTHORISED SIGNATORY (IES) *refer Clause 7:*

CONSULTANTS AUTHORISED SIGNATORY (IES):

Antony M. Walker

PRINT NAME:
DATE:

PRINT NAME: Antony Walker
DATE: 16 June 2016

SHORT FORM MODEL CONDITIONS OF ENGAGEMENT

1. The Consultant shall perform the Services as described in the attached documents.
2. Nothing in this Agreement shall restrict, negate, modify or limit any of the Client's rights under the Consumer Guarantees Act 1993 where the Services acquired are of a kind ordinarily acquired for personal, domestic or household use or consumption and the Client is not acquiring the Services for the purpose of a business.
3. The Client and the Consultant agree that where all, or any of, the Services are acquired for the purposes of a business the provisions of the Consumer Guarantees Act 1993 are excluded in relation to those Services.
4. In providing the Services the Consultant shall exercise the degree of skill, care and diligence normally expected of a competent professional.
5. The Client shall provide to the Consultant, free of cost, as soon as practicable following any request for information, all information in his or her power to obtain which may relate to the Services. The Consultant shall not, without the Client's prior consent, use information provided by the Client for purposes unrelated to the Services. In providing the information to the Consultant, the Client shall ensure compliance with the Copyright Act 1994 and shall identify any proprietary rights that any other person may have in any information provided.
6. The Client may order variations to the Services in writing or may request the Consultant to submit proposals for variation to the Services. Where the Consultant considers a direction from the Client or any other circumstance is a Variation the Consultant shall notify the Client as soon as practicable.
7. The Client shall pay the Consultant for the Services the fees and expenses at the times and in the manner set out in the attached documents. Where this Agreement has been entered by an agent (or a person purporting to act as agent) on behalf of the Client, the agent and Client shall be jointly and severally liable for payment of all fees and expenses due to the Consultant under this Agreement.
8. All amounts payable by the Client shall be paid within twenty (20) working days of the relevant invoice being mailed to the Client. Late payment shall constitute a default, and the Client shall pay default interest on overdue amounts from the date payment falls due to the date of payment at the rate of the Consultant's overdraft rate plus 2% and in addition the costs of any actions taken by the Consultant to recover the debt.
9. Where Services are carried out on a time charge basis, the Consultant may purchase such incidental goods and/or Services as are reasonably required for the Consultant to perform the Services. The cost of obtaining such incidental goods and/or Services shall be payable by the Client. The Consultant shall maintain records which clearly identify time and expenses incurred.
10. Where the Consultant breaches this Agreement, the Consultant is liable to the Client for reasonably foreseeable claims, damages, liabilities), losses or expenses caused directly by the breach. The Consultant shall not be liable to the Client under this Agreement for the Client's indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort or otherwise.
11. The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be five times the fee (exclusive of GST and disbursements) with a maximum limit of \$NZ250,000.
12. Neither Party shall be liable for any loss or damage occurring after a period of six years from the date on which the Services were completed.
13. The Consultant acknowledges that the Consultant currently holds a policy of Professional Indemnity insurance for the amount of liability under clause 11. The Consultant undertakes to use all reasonable endeavours to maintain a similar policy of insurance for six years after the completion of the Services.
14. If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a Third Party has contributed to the loss or damage, the liable Party shall only be liable to the proportional extent of its own contribution.
15. The Consultant shall retain intellectual property/copyright in all drawings, specifications and other documents prepared by the Consultant. The Client shall be entitled to use them or copy them only for the works to which the Services relate and the purpose for which they are intended. The ownership of data and factual information collected by the Consultant and paid for by the Client shall, after payment by the Client, lie with the Client. The Client may reproduce drawings, specifications and other documents in which the Consultant has copyright, as reasonably required in connection with the project but not otherwise. The Client shall have no right to use any of these documents where any or all of the fees and expenses remain payable to the Consultant.
16. The Consultant has not and will not assume any obligation as the Client's Agent or otherwise which may be imposed upon the Client from time to time pursuant to the Health and Safety in Employment Act 1992 ("the Act") arising out of this engagement. The Consultant and Client agree that in terms of the Act, the Consultant will not be the person who controls the place of work.
17. The Client may suspend all or part of the Services by notice to the Consultant who shall immediately make arrangements to stop the Services and minimise further expenditure. The Client and the Consultant may (in the event the other Party is in material default) terminate the Agreement by notice to the other Party. Suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.
18. The Parties shall attempt in good faith to settle any dispute by mediation.
19. This Agreement is governed by the New Zealand law, the New Zealand courts have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.
20. The Consultant may, as of right, assign or novate this contract to another entity under the same control of the consultant, in the event of any restructuring of the Consultant's business into the form of a Limited Partnership. Such assignment / novation shall otherwise have no material affect on the expectations, rights or obligations of either party to this agreement, as are contained in this agreement and the new entity shall be bound by the terms of this contract. In the event of such assignment the Consultant shall advise the Client in writing.
21. Any liability whatsoever (including in contract, tort including negligence) accrues only to the Consultant and not to individual employees (for the benefit of employees for the purposes of the Contracts (Privity) Act 1982).