



THE CORPORATION OF THE CITY OF NIAGARA FALLS

REQUEST FOR PROPOSAL

RFP10-2019

**SUPPLY & INSTALLATION OF NEW PLAYGROUND EQUIPMENT
AT VARIOUS CITY PARKS**

CLOSING DATE: Wed., May 8, 2019 at 2:00 p.m. local time

Proposals are invited for the **Supply and Installation of New Playground Equipment at Five (5) City Parks** all in accordance with this Request for Proposal. This RFP is posted on the City of Niagara Falls web site at www.niagarafalls.ca/bids.

Questions Regarding this RFP

Questions regarding this RFP must be submitted in writing only to Dave Butyniec, Manager of Procurement, e-mail dbutyniec@niagarafalls.ca no later than **Wed., May 1, 2019 at 2:00 p.m. local time**. Questions received later than this stated time and date may not be acknowledged or answered.

Addenda

All addenda to this RFP will be posted on the City's Bid Opportunities Web Page: www.niagarafalls.ca/bids. Addenda will not be posted until after the date for questions has closed. It is the Bidder's sole responsibility to check this Web Page to avail themselves of any posted addenda. Proposals submitted that do not include the first page, completed and signed, of all posted addenda may be rejected.

Proposal Submission

The Proposal submission, **including original and five copies**, must be sealed in an envelope using the attached mailing label and submitted to Dave Butyniec, Manager of Procurement, City of Niagara Falls, Municipal Service Centre, 3200 Stanley Ave., Niagara Falls, ON., L2E 6S4, by **Wed., May 8, 2019 at 2:00 p.m. local time** (hereinafter referred to as the "closing time"). **If the required copy is not provided with the original document when submitted, the submission will not be accepted.** Binder submissions will not be accepted. (Coil binding is acceptable).

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INSTRUCTIONS TO BIDDERS

1. Definitions

Throughout this Request for Proposal - Services, unless inconsistent with the subject matter or context:

- a) *City* and *Owner* shall mean The Corporation of Niagara Falls.
- b) *Bidder* means a legal entity, being a person, partnership or firm that submits a Proposal in response to this RFP.
- c) *RFP* means this Request for Proposal in its entirety, inclusive of all appendices, attachments and any addenda that may be issued by the City of Niagara Falls.
- d) The words *Proposal* shall mean the Proposal received from the Bidder by the City, in response to the RFP.
- e) The word *Contractor* shall mean the successful Bidder.
- f) *Contract* means the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in this Request for Proposal per the Purchase Order issued by the City.

2. Named Parties

For the purposes of this Request for Proposal (RFP) the following parties are identified:

Owner:	The Corporation of the City of Niagara Falls, the "City"
City's Contract Administrator:	David Antonsen, Landscape Architect
Contact for Inquiries:	Dave Butyniec, Manager of Procurement dbutyniec@niagarafalls.ca

3. Additional Insured

The following party/parties are identified to be included as additional insured for this project:
The Corporation of the City of Niagara Falls.

PROPOSAL SUBMISSION PROCEDURE

The following policy regarding the submission of Proposals and the RFP opening procedures will be applicable for this project. Bidders are requested to adhere strictly to the instructions concerning submission.

1. Proposals should include all required pages and must be signed by the Bidder, in ink, where stated on *Appendix A: Form of Proposal* page (s) and on any other pages so stated.
2. Proposals received later than the time specified will not be accepted, regardless of the postal seal date. Proposals delivered by mail or courier must have the Proposal description and Proposal number clearly stated on the exterior of the envelope or package. The City assumes no responsibility for the Proposals delivered by mail or courier.

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3. Proposals submitted shall include the following and must be in the following sequence:
 - 1) *Appendix A: Form of Proposal*
 - 2) Addenda issued (if any)
 - 4) *Appendix B: Sub-Contractor Form*
 - 4) *Standard Certificate of Insurance*
 - 5) *Appendix C: References Form*
 - 6) *Appendix D: Evaluation Form*
 - 7) *Contractor Safety Program Checklist*
 - 8) WSIB Certificate
 - 9) Optional Supplementary bidder information (i.e. product information)

4. The following Documents shall form this Contract as noted on *Appendix A: Form of Proposal*.
 - a) Request for Proposal – Services - Instructions to Bidders
 - b) Addenda, issued during the Proposal period.
 - c) Proposal Forms. *Appendices A, B, C, D.*
 - d) Standard Certificate of Insurance
 - e) W.S.I.B.
 - f) Scope of Work
 - g) Contractor Safety Program Checklist

BIDDER REQUIREMENTS

1. Notification of Potential Bidders Not Guaranteed

The City posts notification of all RFP and other opportunities on its Internet Web Page (www.niagarafalls.ca/bids). Bidders are to review this Web Page to inform themselves of any requests for Proposals, etc. The City shall not guarantee that previous successful Bidder or any potential Bidder shall be notified by any means electronic or otherwise of any RFP or other opportunity. It is the responsibility of any potential Bidder to check this Web Page to avail themselves of any RFP or other opportunity.

2. Questions Regarding Possible Discrepancies

If a Bidder finds discrepancies, ambiguities or omissions in the Contract Documents, or should be in doubt as to their meaning, he shall notify the Owner at once, who will have prepared and posted on the website a written addendum to all Bidders. All addenda are to be incorporated in the Proposal and will become part of the Contract. The Owner will be responsible for any other explanations or interpretations of the proposed Contract Documents.

3. Proposal Submission and Correspondence in English

Proposal must be prepared in English and Bidders must be able to converse and correspond fluently in English directly or through an interpreter supplied by and at the total cost to the Bidder.

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4. Form of Proposal Pages – Appendix A

- a) Bidders must complete all required spaces and sign where indicated on *Appendix A: Form of Proposal*.
- b) Bidders must attach all required documents to *Appendix A: Form of Proposal*.
- c) The *Appendix A: Form of Proposal* pages must be signed by an Officer of the Bidder's Company who has authority to bind the Company.
- d) All taxes to be extra to the unit prices stated on the Form of Proposal.
- e) By submitting a Proposal in response to this RFP, the Bidder thereby acknowledges that offers contained within its Proposal shall be irrevocable and remain open for acceptance by the City for a period of not less than ninety (90) days from the closing date and time specified in this RFP.

5. Adherence to Requirements

The Bidder is requested to adhere strictly to all requirements and complete all sections of this RFP including all appendices and addendums. Failure to do so may be sufficient cause for rejection of the Proposal.

6. Liability for Errors

While the City has used considerable efforts to ensure an accurate representation of information in this RFP, the information contained in this RFP is supplied solely as a guide for Bidders. The information is not guaranteed or warranted to be accurate by the City, nor is it necessarily comprehensive or exhaustive. Nothing in this RFP is intended to relieve Bidders from forming their own opinions and conclusions with respect to the matters addressed in this RFP.

7. Collusion

By submitting a Proposal, a Bidder certifies that the Proposal has been prepared independently and without collusion with any other Bidder.

8. Conflicts of Interest

- a) In its Proposal, the Bidder must disclose to the City any potential conflict of interest that might compromise the performance of the service. If such a conflict of interest does exist, the City may, at its discretion, refuse to consider the said Proposal.
- b) The Bidder must also disclose whether it is aware of any City employee, City Council member or member of a City agency, or commission thereof, having a financial interest in the Bidder and the nature of that interest. If such an interest exists or arises during the evaluation process or the negotiation of the Contract, the City may, as its discretion, refuse to consider the Bidder's Proposal or withhold the awarding of any Contract to the Bidder until the matter is resolved to the City's sole satisfaction.

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9. Anti-Lobbying Restrictions and Required Disclosure

- a) Bidders, their company staff members, or anyone involved in preparing their Proposal, must not engage in any form of political or other lobbying whatsoever with respect to this project or seek to influence the outcome of the RFP and subsequent procurement process. This anti-lobbying restriction extends to all City Staff and elected Council members of the City.
- b) In the event of any such lobbying, the City shall reject any Proposal by that Bidder without further consideration and terminate that Bidder's right to continue in the RFP and any subsequent procurement process. All correspondence or contact by interested parties with the City must be directly and only with the Contact for Inquiries identified in this RFP. It should be duly noted by all Bidders that this anti-lobbying restriction extends from the release date of this RFP through to the date and time when the City formally awards the Contract. Any lobbying undertaken during this timeframe by any Bidder or the Bidders company staff members, or anyone involved with their Proposal may result in immediate disqualification from the process. This anti-lobbying restriction is not meant to affect the day-to-day operations of the City, its Staff and the elected Council of the City that may include contact with the potential Bidder to this RFP regarding other business.
- c) This section shall not be intended to disallow any meetings, interviews or clarifications requested or authorized by the City, its authorized Staff, the City's representative for this work or their authorized designates.

10. Bidders Expenses

Bidders are solely responsible for their own expenses in preparing and submitting a Proposal and for subsequent meeting or negotiations with the City, if any. If the City elects to reject all Proposals received, the City will not be liable to any Bidder for any claims, whether for costs or damages incurred by the Bidder in preparing the Proposal, loss of anticipated profit in connection with any final Contract, or any other matter whatsoever.

11. Examination of Drawings, Specifications, and Work Site

- a) Bidders shall carefully examine all Contract Documents and inspect the work site in order to satisfy themselves by personal examination as to all conditions and materials affecting the Contract and as to the detailed requirements of the construction. Bidders must not rely upon any verbal confirmation or any estimate or representations, made by an officer, servant or employee of the City.
- b) If a Bidder finds discrepancies, ambiguities or omissions in the Contract Documents, or should be in doubt as to their meaning, he shall notify the Owner at once, who will have prepared and posted on the website a written addendum to all Bidders. All addenda are to be incorporated in the Proposal and will become part of the Contract. Neither the Owner nor the Named Party will be responsible for any other explanations or interpretations of the proposed Contract Documents.

12. Erasures and Alterations

Any erasures, alterations or cross-outs must be initialed in ink by the Bidder. Failure to do so shall result in the rejection of Bidder's Proposal by the City.

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13. Public Comment or Promotion of Proposal

Except for Bidders interviews, meetings or presentations specifically authorized or arranged by the City contact person or authorized designate, either Bidders or their representatives shall make any public comment, respond to questions in a public forum, or carry out any activities to publicly promote or advertise their Proposal, or their interest or participation in the Proposal and subsequent procurement processes (if any) without the City's prior written consent, which consent may be arbitrarily withheld or delayed.

14. Adjustments to Proposals after Closing Date

No adjustments by any Bidders to their Proposals will be permitted after the stated closing date for this RFP, except as otherwise provided herein.

15. Conditional Proposals

Proposals which are incomplete, conditional, obscure, contain additions not called for, or contain agreements, contracts or obligations from the Bidder's company or parent company, erasures, or contain alterations irregularities of any kind, shall be rejected.

16. Unbalanced Proposals

Each item in *Appendix A: Form of Proposal* shall be a reasonable price for such work, as is the custom of the trade. Proposals that contain prices which appear to be so unbalanced or out of line with the custom of the trade as likely to affect adversely the interests of the City, may be rejected.

17. Prices

All prices, as proposed, are to remain in effect for the duration of the Contract. If it is deemed necessary, at the request of the Contractor and subject to approval by the City Representative, the Contract is to be extended for a period not exceeding one year; the Contractor agrees that the Contract prices shall remain in effect until completion of the Contract.

18. Irrevocability and Firm Prices

Proposals received from Bidders are to be irrevocable and open for acceptance for a period of not less than ninety (90) days after the closing date stated in this RFP. The prices stated on *Appendix A: Form of Proposal* shall remain firm for the duration of the Contract period.

19. Escalation Clauses

Proposals containing an escalation clause of any kind shall be rejected.

20. Harmonized Sales Tax

The Harmonized Sales Tax shall be shown as a separate item on *Appendix A: Form of Proposal* and be included in the total proposed price. The Harmonized Sales Tax registration number must also be shown on *Appendix A: Form of Proposal*, at the designated location, below the Bidder's signature. The Contractor will be required to pay Harmonized Sales Tax on purchases which he/she makes under any Contract resulting from this RFP. Bidders are instructed to include this tax in the prices Proposed herein. The Contractor shall make allowances for the savings which may accrue due to the Ontario Harmonized Sales Tax and the City expects that these savings will be deducted from the dollar value of the Contract.

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21. Workplace Safety & Insurance Board Requirements

- a) The Contractor must be in good standing with all the provisions of the Workplace Safety and Insurance Board (WSIB) and shall submit to the City's Contract Administrator a "**letter in good standing**" from the WSIB prior to the start of any work. Following substantial completion of the work as determined by the City, the Contractor must furnish the City with a "**Certificate of Clearance**" from the WSIB. For work of long duration the Contractor must supply the City with a "**Certificate of Clearance**" every 90 days. Progress payments will not be paid by the City unless a valid "**Certificate of Clearance**" is supplied to the City. Final payment to the Contractor will not be made unless this certificate is received from the Contractor.
- b) A Contractor who operates under an "Independent Operator Status" must supply the City with a document from the WSIB that clearly states that the WSIB has deemed that the successful Contractor is classified as an independent operator as defined under the provisions as issued by the Workplace Safety & Insurance Board. Such document shall be required for each subsequent work under this Contract and updated if the work covered under the Contract resulting from this RFP is of an intermittent nature involving the same or different types of work over a determined period of time. The successful Contractor will not be permitted to start any work under the Contract until such Contract is received by the City.

22. Health & Safety

- a) All work performed under a Contract resulting from this RFP must be carried out in accordance with the terms and conditions of the **OCCUPATIONAL HEALTH & SAFETY ACT, R.S.O. 1990**, as amended. The City reserves the right to obtain the Health and Safety records from the appropriate Ontario Government Ministry of the selected Contractor and may determine its selection of the successful Contractor based upon these records.
- b) Pre-Start Health and Safety Review:
A Pre-Start Health and Safety Review means the production of a report as required by *O. reg. 528/00* amending Section 7 of the Regulations for Industrial Establishments of the *Occupational Health and Safety Act, R.S.O. 1990* as amended. When required by the City, the successful Contractor shall provide a Pre-Start Health and Safety Report.

23. W.H.M.I.S. Requirements

The Contractor must supply a supplier label and appropriate Material Safety Data Sheet under the W.H.M.I.S. legislation and Hazardous Protection Act for all controlled products to be supplied as a result of this RFP. Any controlled good supplied without appropriate data sheet and proper labeling will not be accepted and will be returned at the sole cost to the successful Contractor.

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24. Insurance Documentation

Commercial General Liability Insurance

The Proponent shall, at their expense obtain and keep in force during the term of the Agreement, Commercial General Liability Insurance satisfactory to the City and underwritten by an insurer licensed to conduct business in the Province of Ontario. The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- a) a limit of liability of not less than \$5,000,000/occurrence;
- b) add the Municipality as an additional insured with respect to the operations of the Named Insured;
- c) the policy shall contain a provision for cross liability in respect of the Named Insured;
- d) non-owned automobile coverage with a limit not less than \$2,000,000 and shall include contractual non-owned coverage;
- e) products and completed operations coverage ;
- f) Broad Form Property Damage;
- g) Contractual Liability;
- h) The Policy shall not contain any exclusions of liability for damage to property, building or land, arising from the removal or weakening of support of any property, building or land whether such support is natural or otherwise.;
- i) The Policy shall be written on an "occurrence basis". 'Claims Made' insurance policies will not be permitted.

Automobile Liability Insurance

The Proponent shall maintain automobile liability insurance covering third party property damage and bodily injury liability (including accident benefits) as may be required by Applicable Laws on all Owned and Leased Automobiles to a limit of Two million (\$2,000,000) throughout the term of this Agreement/Purchase Order. Five million (\$5,000,000) is required if Heavy Equipment is to be used as to completed the work or project.

Provisions

Prior to issuance of a Agreement and prior to the commencement of any work, the Proponent shall forward **certified Certificates of Insurance forms attached (no substitutes or omissions will be accepted)** evidencing the above noted insurance with the executed Agreement. These Certificates shall state that coverage will not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail to the City.

All policies listed above to remain in force until final acceptance of the work described herein by the City

It is also understood and agreed that in the event of a claim any deductible or self-insured retention under this policy of insurance shall be the sole responsibility of the Proponent and that this coverage shall be primary insurance as respects the City. Any insurance or self-insurance maintained by the City shall be considered excess of the Proponent's insurance.

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25. Sub-Contractors or Service Providers

- a) The Contractor shall be solely responsible for the payment of every sub-contractor or service provider employed, engaged, or retained by it for the purpose of providing the services as described herein. The Contractor shall coordinate the services of its sub-contractors and service providers in a manner acceptable to the City, and ensure that they comply with all the relevant requirements of the said services. The Contractor shall be liable to the City for all costs or damages arising from acts, omissions, negligence or willful misconduct of its sub-contractors or service providers.
- b) The Contractor shall be responsible for its own staff resources and for the staff resources of any sub-contractors and third-party service providers. Personnel assigned by the Contractor to perform or produce the Services or any part of it may, in the sole discretion of the City, be required to sign non-disclosure agreement(s) satisfactory to the City before being permitted to perform such services.

26. Goods and Materials Suitable for Use

The Bidder warrants that any goods, materials, articles or equipment to be supplied under or pursuant to any Contract resulting from this RFP, that is or are to be made or used for a particular purpose, will be fit and suitable for that purpose.

27. New Goods and Materials Only

Unless otherwise stated all goods supplied as a result of this RFP shall be new only, never used, of the latest manufacture and not re-manufactured.

28. Origin of Goods and Materials

Wherever possible, the goods, materials, articles or equipment, specified or called for in or under this RFP shall be of Canadian origin and manufacture.

29. Removal and Disposal

- a) All materials as specified herein to be removed and disposed shall be removed by the Contractor and disposed of in a manner that is satisfactory to the City. The entire job site shall be left in an orderly and appropriate condition upon the completion of the work.
- b) It is the responsibility of the Contractor and/or their agent to ensure, where the removal of material is required, that all material is disposed of in a manner that meets or exceeds all Federal, Provincial, Regional and Municipal Acts and Regulations, as amended.

30. Co-ordination of Services

The Contractor will be responsible for obtaining locates and for coordinating the response to, and involvement of, all other required services or facility suppliers, including Natural Gas, Hydro, Telephone, Water, all other services and any related fees.

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31. Licences, Permits, Locates and Approvals

Prior to the commencement of work the Contractor shall, at his own expense, be responsible for obtaining, maintaining and keeping available for inspection, all Provincial, Municipal and any other licenses, building and other permits, or approvals, necessary to permit them, their employees or company to carry out the requirements of this agreement.

32. Compliance with Laws and Acts

The Contractor shall comply with all Federal, Provincial and Municipal Laws, statutes, regulations and bylaws, relevant to this RFP including but not limited to:

- *The Construction Lien Act*, R.S.O. 1990, c. C.30
- *The Occupational Health and Safety Act*, R.S.O. 1990, c. 0.1, as amended.
- *Workplace Safety and Insurance Act*, effective January 1, 1998, as amended
- *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56, as amended.
- Highway Traffic Act, R.S.O. 1990, c. H.8, as amended
- Employment Standards Act, 2000, S.O. 2000, c. 41, as amended
- Accessibility for Ontarians with Disabilities Act (AODA) 2005. Third party contractors who deliver goods and services on behalf of the City are required to ensure they meet the legislative requirements of the AODA's Integrated Accessibility Standard, as per Ontario Regulation 191/11, Section 7.

33. Third Party Software

Where the City is in possession of software containing or constituting confidential proprietary information belonging to third parties, the Contractor shall not, except in the usual incidental manner genuinely necessary for the intended use of such software on the equipment of the City;

- a) analyse, copy, decompile, disassemble, translate, convert, reverse engineer or duplicate any physical embodiment or part thereof, or permit any person to do so; or
- b) divulge to any unauthorized person, the ideas, concepts or techniques, or make any other improper use, of such software.
- c) The Contractor shall fully defend, save harmless and indemnify the City from and against any loss or damages suffered by the City as a result of any failure by the Contractor, its officers, directors, partners, contract personnel, agents and employees or any of them to comply with the provisions hereof.
- d) Should the Contractor include third party components within the documents, expertise, design and any other aspect of the Proposal submitted to the City, the Contractor must secure the rights to use and repackage third party components and pass on those rights to the City without additional charges.
- e) The City will own all intellectual property rights, including (without limitation) copyright, in and to all deliverables provided by the Contractor and its sub-consultants.

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34. Patents, Intellectual Property Rights, Copyright, Trademarks, Technology Rights

By submitting a Proposal, the Bidder warrants that the information contained in its Proposal does not infringe any Patents, intellectual property rights, Copyright, Trademarks, Technology Rights of any third party and agrees to defend The Corporation of the City of Niagara Falls at the Bidders own expense, in all suits, actions or proceedings in which the City of Niagara Falls is made a defendant for actual or alleged infringement of any Canadian or foreign letters patent, intellectual property rights, copyright trademarks, technology rights or any other related rights to the above resulting from the City of Niagara Fall's contractual relationship with the Bidder and the Bidders use of any or all technologies, methodologies, strategies in providing the services required herein. The Bidder further agrees to pay and discharge any and all judgments or decrees which may be rendered in any such suit, action or proceeding against the City of Niagara Falls. The Bidder agrees to indemnify and hold harmless the City of Niagara Falls from any and all license, royalty and proprietary fees or costs, including legal costs, which may arise out of the City of Niagara Fall's contractual relationship with the Bidder and the Bidders use of any or all technologies, methodologies, strategies in providing the services required herein. It is expressly agreed by the Bidder that these covenants are irrevocable and perpetual.

35. Freedom of Information

Any information including all work as described in this RFP, service or product details, prices, statements, and any other information provided by the Bidder shall be kept strictly confidential and release of same, except for any details regarding this bid document stated in a Report to the Council of the City, shall only be granted in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 as amended.

37. Omission & Mis-statements

- a) All pages of this RFP and the Contract, shall be taken together to explain each other, and to make the whole consistent; and if it be found that anything has been omitted or misstated, which is necessary for the proper performance and completion of any part of the work contemplated, the Contractor shall, at the Contractor's own expense, and without making any extra claim, therefore, execute the same as if it has been properly described, and the correction of any such omission or mis-statement shall not be deemed to be an addition to, or deviation from the works hereby contracted for; nor shall such decision or correction entitle the Contractor to any extension of time for the completion of the Contract.
- b) It is to be understood that the complete RFP containing all documents and drawings as posted on the City's Bid Opportunities Web Page (www.niagarafalls.ca/bids) shall constitute the RFP. Any Proposals received that have clauses or any wording or figures, statistics, numbers, quantities or any other items that have been changed or altered in any way shall be rejected and not accepted by The Corporation of the City of Niagara Falls.

36. Withdrawal of Proposal

Bidders shall be permitted to withdraw their unopened Proposal after the Proposal has been delivered to the Manager of Procurement at any time up to the official closing time by submitting a written request from the Bidder to the Manager of Procurement,

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at its discretion, this RFP at any time and shall not be liable for any expense, cost, loss or damage incurred or suffered by any Bidder as a result of such withdrawal.

37. Agreement with Terms

By submitting a Proposal, the Bidder agrees to all the terms and conditions of this RFP. Bidders who have obtained this RFP and any addenda electronically must not alter any portion of this RFP. To do so will invalidate the Proposal and the Bidder's delivered Proposal will be rejected.

38. Waiver of Rights in Proposal and Indemnity

- a) Each Bidder acknowledges and agrees that the City is likely to receive, and be required to deal with, multiple Proposals, all of which may contain or disclose information considered by their Bidders to be of special, unique, secret or proprietary nature, and that such information and the manner in which the City may use it may be entitled or subject to protection under any of Canada's intellectual property laws, the Competition Act, Municipal Freedom of Information and Privacy Protection Act or the common law relating to unfair competition.
- b) The City will not accept any Proposal that is subject to a reservation by the Bidder of any such rights, and each Bidder, by virtue of submitting a Proposal pursuant to this RFP, expressly waives any and all protection to which the Bidder might otherwise be entitled in respect of that Proposal under all of the foregoing laws, and expressly releases the City and its staff, as well as the qualified Bidders from any claims, actions, suits and proceedings whatsoever for the infringement of any intellectual property right or for the use of any secret or proprietary information disclosed to the City in that Proposal.
- c) Each Bidder shall indemnify and save harmless The Corporation of the City of Niagara Falls and its staff, against all claims, actions, suits and proceedings brought by any person in respect of the infringement or alleged infringement of any patent, copyright, trademark or industrial design or the use or misuse in connection with their Proposal, including any and all costs incurred by the City.

39. Rights of the City

- a) The City reserves the right, in its absolute discretion to accept a Proposal which it deems most advantageous to itself and the right to reject any Proposals, in each case without giving any notice. The lowest or any Proposal will not necessarily be accepted. In no event will the City be responsible for the costs of the preparation of the submission of a Proposal.
- b) Proposals which contain conditions or otherwise fail to conform to the Instructions to Bidders may be disqualified or rejected. The City may, however, in its sole discretion, reject or retain for its consideration Proposals, which are non-conforming because they do not contain the content or form required by the Instructions to Bidders or for the failure to comply with the process for submission set out in these instructions to the Bidders.

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- c) Except as expressly and specifically permitted in the Instructions to Bidders, no Bidder shall have any claim for any compensation of any kind, as a result of participating in this RFP process and by submitting a Proposal each Bidder shall be deemed to have agreed that it has no claim.
- d) Proposals which are incomplete, conditional or obscure, or which contain additives not called for, Proposal's agreements or contracts, erasures, alterations or irregularities of any kind, may be rejected as informal. The City reserves the right to waive informalities at its sole discretion.

40. Rights to Proposal Submission

Upon receipt of the Bidder's Proposal, the City shall retain the right to determine the use of the said Proposal for its own purposes. Bidders shall not use their Proposal for any other purposes whatsoever, including revealing any content of their Proposal or making copies for other agencies, firms or companies not being a legal part or division of the Bidder's company, unless permission for any such use is received in writing by the Bidder from the Corporation of the City of Niagara Falls. Bidders must make a request in writing to the City for the intended use of their Proposal for any other purposes than as stated herein.

41. Ownership and Disclosure of Proposal

The documentation comprising any Proposal submitted in response to this RFP, along with all correspondence, documentation and information provided to the City by any Bidder in connection with, or arising out of this RFP, once received by the City:

- a) Shall become the sole and unfettered property of the City and may be appended to the Agreement with the Contractor;
- b) Shall become subject to the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA"), and may be released, pursuant to that Act.

Because of *MFIPPA*, prospective Bidders are advised to identify in their Proposal any scientific, technical, commercial, proprietary or similar confidential information, the disclosure of which could cause them injury.

42. Limitation and Waiver of Damages

The Bidder, by submitting a Proposal, agrees that it will not claim damages, for whatever reason, relating to the RFP or any resulting Contract or in respect of the competitive process. The Bidder, by submitting a Proposal, also waives any claim for loss of profits if no Agreement is made between the Bidder and the City.

43. Protection of the City

The successful Contractor shall at all times well and truly save, defend, keep harmless and fully indemnify the City and its servants, employees and agents, from and against all actions, suits, claims, demands, loss, costs, charges, damages and expense, brought or made against or incurred by the City, its servants, employees or agents, in any way relating to goods, materials, articles or equipment, supplied, or the supplying thereof, or work or services, performed, or the performing thereof, pursuant to this RFP, or relating to inventions, copyrights, trademarks or patents, or rights thereto, used in supplying such

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goods, materials, articles, equipment, or in performing such work or services or arising out of the subsequent use or operation of such goods, materials, articles, equipment or work.

44. Confidentiality of Information

Except as noted, all communications between the Bidders and the City regarding this RFP shall be treated as confidential, commencing the date of issuance of the RFP to and after the receipt and opening of Proposals. The City, in its sole and unfettered discretion, may at any time reject any Proposal from a Bidder without further consideration and terminate that Bidder's right to continue in the RFP process in the event of any breach of confidentiality by the Bidder.

EVALUATION AND AWARD

1. Order of Precedence

In the event of any inconsistency or conflict in the contents of the following documents, such documents shall take precedence and govern in the following descending order:

- Contract
- Addenda to the RFP (if any)
- The RFP including all appendices and attachments.
- The Proposal Submission

2. Reasons for Rejection of the Bidders Submission:

- a) All *Appendix A: Form of Proposal* pages are not completed and are not signed by the Bidder in the stated place;
- b) All required pricing and information are not stated on the Form of Proposal pages and any other pages of this RFP;
- c) Any erasures, alterations or cross-outs must be initialed in ink by the Bidder.
- d) All Addenda requirements are not included;
- e) The first page of all Addenda, completed and signed by the Bidder, are not included;
- f) All other reasons as stated in this Request For Proposal – Services.

3. Vendor Performance

The Corporation may, in its sole discretion, reject a Bid if a bidder:

- a) has, at any time, threatened, commenced or engaged in legal claims or litigation against the Corporation;
- b) is involved in a claim or litigation initiated by the Corporation;
- c) previously provided goods or services to the Corporation in an unsatisfactory manner;
- d) has failed to satisfy an outstanding debt to the Corporation;
- e) has a history of illegitimate, frivolous, unreasonable or invalid claims;
- f) provides incomplete, unrepresentative or unsatisfactory references; or
- g) has engaged in conduct that leads the Corporation to determine that it would not be in the Corporation/s best interests to accept the Bid.

4. Suspension of Activity

- a) All Bidders are advised and put on notice that notwithstanding anything else contained in this RFP that all Bidders are forewarned and advised that if the City chooses not to proceed with the RFP process or any subsequent procurement process or any stage,

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including without limitation, the completion of the RFP process, the commencement, implementation or completion of any Proposal process or other procurement process and/or the award, negotiation or the finalization of any Agreement or Contract and that accordingly, all Bidders acknowledge and agree that if any such processes are suspended, terminated or cancelled at any time or times during any stage of the RFP or subsequent procurement process (if any) by the City, then the Bidders shall have no claim against the City for any costs, expenses, losses including loss of profits, liabilities or damages whatsoever.

- b) The City reserves the right to exercise complete and unfettered discretion in all aspects of the conduct of the RFP and any subsequent procurement process, the assessment and evaluation of Proposals, including the determination of criteria and the selection, if any, of a successful Bidder, without incurring any liability whatsoever to any Bidder, including any liability for costs, expenses, losses or damages, and without giving any reasons therefore.
- c) Without limiting the generality of the foregoing, the City, in its sole and unfettered discretion, reserves the right to change the dates, schedules and deadlines set out in this RFP, or to change the scope of the project, or to cancel the RFP or the project, without stating reasons therefore and accordingly the City also reserves the right to accept or to reject any or all of the Proposals and the City reserves the right to proceed as, in its sole and unfettered discretion, following receipt of the Proposals, including, without limitation, issuing a second or more, or a modified RFP for the project or entering into contract negotiations with any Bidder.
- d) The issuance of this RFP and the receipt of any Proposal submission by any Bidder do not commit the City to award a Contract or to pay any costs incurred in the preparation of any Proposal by any Bidder, or in any Bidder's attendance at any meetings with the City.

5. Contractor

The City Representative will deal only with the Contractor, whose name is shown in the Agreement, or his appointed Representative.

6. Inducements

Any Bidder who offers any kind of a reward to any person having influence over the administration of this Proposal during the administration of the Proposal shall have their Proposal disqualified.

7. Proposal Opening Procedure and Bid Results

Proposal will be opened by City staff following the closing date and time as stated in this RFP. The lowest priced Proposal received will not necessarily be accepted.

8. Decision by City

The Bidder agrees by submitting a Proposal in response to this RFP that the City has no obligation to reveal its decision in selecting a successful Bidder.

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9. Contract Award

Upon acceptance of the Bidder's Proposal, or any part thereof, by the Corporation, either by the issuing of a Purchase Order by the City or otherwise, the Bidder shall, if requested by the Solicitor for the City, execute and enter into a formal contract that is satisfactory to the Solicitor for the City, to properly secure the contract resulting therefrom and to embody indemnity and City related provisions that in the opinion of such Solicitor are required to protect the City. See attached *Sample Agreement*.

10. Execution of Contract

The successful Bidder shall be notified in writing of the acceptance of their Proposal and shall be bound to execute the Agreement with the Corporation within two weeks of Contract award. Date of Contract award shall be taken as the date on which the successful Bidder is notified in writing of the acceptance of the Proposal by the City.

The successful Bidder must submit the following to the City's Contract Administrator within two weeks of the Contract award:

- a) A certified copy of all required Insurance Policies which complies with the requirements of the Contract conditions for a minimum amount of Five Million Dollars (\$5,000,000.00), including all endorsements.
- b) A Certificate of Insurance.
- c) A letter from Workplace Safety and Insurance Board certifying that the Contractor is in good standing with the Board. A "letter of good standing" must be re-submitted throughout the Contract every 90 days.

11. Examination of Records

The Bidder agrees that the City of Niagara Falls or any of their duly authorized representatives shall, until the expiration of three (3) years after the final payment under this Contract, have access to and the right to examine any directly pertinent books, documents and records of the Bidder involving transactions related to this Contract.

12. Additional Requirements

Corporation of the City of Niagara Falls reserves the right to add or delete items listed herein following award of any Contract resulting from this RFP. Unit prices stated by the Bidder shall apply.

13. City not Employer

The Bidder agrees that the Corporation of the City of Niagara Falls is not to be understood as the employer to any successful Contractor nor to such Contractor's personnel or staff for any work, services, or supply of any products or materials that may be awarded as a result of this RFP. Also, in accordance the *Occupational Health and Safety Act*, **the successful Contractor herewith agrees to be the "constructor" as defined under this Act.**

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14. Agreement in Writing Only

No verbal arrangement or agreement, relating to the goods, materials, articles, equipment, work or services, specified or called for under this RFP, will be considered binding, and every notice, advice or other communication pertaining thereto, must be in writing and signed by Contact for Enquiries.

15. Payment Schedule

- a) A payment schedule satisfactory to the City shall form part of the contract governing the required service. No fees or reimbursable expenses shall become payable to the Contractor pursuant to the Contract other than pursuant to one or more signed schedules.
- b) The Contractor shall submit invoices in such detail as may be required by the City, and the City reserves the right to require further proof or documentation from the Contractor in respect of services performed or expenses incurred by the Contractor and the Contractor shall provide, without delay, such further proof or documentation.
- c) Invoices must be submitted to the Accounts Payable Department, City Hall, 4310 Queen St., Niagara Falls, ON L2E 6X5.
- d) If the City does not approve of the Services which are the subject of the invoice, the City shall advise the Contractor in writing of the reasons for non-approval and the Contractor shall remedy the problem at no additional cost to the City before the City shall be obliged to pay the invoice or any part of it, as the case may be.
- e) The Contractor shall be solely responsible for the payment of all personnel (including without limitation sub-respondents and their respective personnel) made available by it and used for performance of any of the Services. Payments shall be made net thirty (30) days from date of receipt of invoice and completion of the services required to the complete satisfaction of the City.
- f) The City shall not pay the final invoice to the Contractor for the work, services, products or materials stated in this RFP until the City is fully satisfied that all terms and conditions stated in this RFP and all work, service performed, products or materials delivered shall be deemed to have been completed, installed or delivered to the complete satisfaction of the City.

16. Extension of Purchase Order

The time period duration of any Purchase Order issued by the City resulting from this RFP may be extended for a specific period provided that both the City and the Contractor agree to such extension. The City may notify the Contractor at any time to seek an extension.

17. Failure to Execute Contract

Failure by the successful Bidder to execute the Agreement with the City and to deposit with the City the said Bonds, certified copies of all required Insurance Policies and a Workplace Safety and Insurance Board letter within the specified times as provided herein shall be just cause for the annulment of the Contract award and the forfeiture of the Proposal deposit to the Corporation, not as a penalty, but as liquidated damages sustained.

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18. Standards and Legislation: Failure to Comply

The successful Bidder may be required to provide written documentation that all materials proposed meet Municipal, Provincial and Federal Government standards, legislation and laws. Also, the successful Bidder must comply with all laws, legislation, regulations, and provisions of the Federal, Provincial, Municipal Governments or any governmental agency as they pertain to the work described herein. Failure by the successful Bidder to comply with these laws, legislation, regulations and provisions shall be just cause for the City, at its discretion, to stop performance of the Contract resulting from this RFP, until such times as the successful Contractor complies with these laws etc. Also, the City may, at its discretion, award the Contract to any other contractor or may re-issue the RFP. The City may assess against the Contractor any damages whatsoever as a result of failure to comply.

19. Failure to comply with all Proposal Terms

Failure to comply with all terms, specifications, requirements, conditions and general provisions of this RFP, to the satisfaction of the City, shall be just cause for the cancellation of the Contract award. The City shall then have the right to award this contract to any other contractor or to re-issue the RFP. The City shall assess against the Contractor any damages whatsoever as a result of failure to perform. In addition, the City may, at its discretion, stop the performance of this Contract until such time as the Contractor complies with all the provisions of this Contract.

20. Termination for Convenience of the City

The City of Niagara Falls, upon giving thirty (30) days written notice (unless a longer period is given) may terminate the Contract, in whole or in part, when it is in the best interest of the City of Niagara Falls. To the extent that the Contract is for services and is so terminated, the City shall be liable only for payment in accordance with the payment provisions of the Contract for services rendered prior to the effective date of termination.

21. Termination

Nothing herein shall be construed as giving the Contractor the right to perform the services contemplated under the Contract beyond the time when such services become unsatisfactory to the City of Niagara Falls; and in the event that the Contractor shall be discharged before all the services contemplated hereunder have been completed, or the services are for any reason terminated, stopped or discontinued because of the inability of the Contractor to serve under the Contract, the Contractor shall be paid only for that portion of the said services which shall have been satisfactorily completed at the time of termination.

22. Removal from Bidders List

The City reserves the right to remove from its list of Bidders, for an indeterminate period, the name of any Bidder who fails to execute a Contract or for unsatisfactory performance on any previous or current contract held with the City or if the Bidder is currently involved in or responsible for litigation of any kind against the City.