



THE CORPORATION OF THE CITY OF NIAGARA FALLS

REQUEST FOR TENDER - SERVICES

RFT21-2021

**SUPPLY OF MATERIALS AND SERVICES FOR
PAVEMENT MARKINGS USING TRUCK MOUNTED AND SMALL MACHINES
(ON-STREET, MUNICIPAL PARKING LOTS, & CITY OWNED LANDS)
FOR A THREE (3) YEAR PERIOD MAY 1, 2021 TO APRIL 31, 2024
WITH 1 + 1 OPTION YEARS**

CLOSING DATE: Wednesday, April 21, 2021, at 2:00 p.m. local time

INSTRUCTIONS TO TENDERERS

Tenders are invited for the **Supply of Materials and Services for Pavement Markings Using Truck Mounted and Small Machines (On-Street, Municipal Parking Lot & City owned lands)** all in accordance with this Request for Tender - Services. This RFT is posted on the City of Niagara Falls web site at www.niagarafalls.ca/bids.

Questions Regarding this RFT

Questions regarding this RFT must be submitted in writing only to Dave Butyniec, Manager of Procurement, e-mail dbutyniec@niagarafalls.ca no later than **Wednesday, April 7, 2021, 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 RFT will be posted on the City's Bid Opportunities webpage: www.niagarafalls.ca/bids. It is the Bidder's sole responsibility to check this webpage to avail themselves of any posted addenda. Tenders submitted that do not include the first page, completed and signed, of all posted addenda will be rejected.

Addenda will not be posted until after the date for questions has closed. The deadline for addenda issuance will be **Wednesday, April 14, 2021 at 2:00 p.m.** If the City determines that it is necessary to issue an addendum after the deadline, the City may extend the submission deadline.

Tender Submission

All Bidders must submit **(1) one submission**, sealed in envelopes using the attached mailing labels and submitted to the Municipal Service Centre, 3200 Stanley Avenue by **Wednesday, April 21, 2021 at 1:45 p.m. local standard time** (hereinafter referred to as the "closing time").

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1. Definitions

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

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

2. Named Parties

For the purposes of this Request for Tender (RFT) the following parties are identified:

Owner: The Corporation of the City of Niagara Falls, the “City”

City’s Contract Administrator: Mathew Bilodeau, Manager of Traffic Engineering

Contact for Inquiries: Dave Butyniec, Manager of Procurement, e-mail 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.

TENDER SUBMISSION PROCEDURE

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

1. Tenders should include all required pages and must be signed by the Tenderer, in ink, where stated on *Appendix A: Form of Tender* page(s) and on any other pages so stated.
2. Tenders received later than the time specified will not be accepted, regardless of the postal seal date. Tenders delivered by mail or courier must have the Tender description and Tender number clearly stated on the exterior of the envelope or package. The City assumes no responsibility for the Tenders delivered by mail or courier.
3. Tenders shall be submitted in the two envelopes supplied, as follows:
 - a) The first envelope (smaller white envelope) using the City envelope label shall contain: *Appendix B: “Agreement to Bond”*, duly signed and sealed (no copies or facsimiles will be accepted). “Agreement to Bond” must be on the form provided as *Appendix B*. The

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City will accept the Surety providers Agreement to Bond as long as it meets the requirements of Appendix B and is an original duly signed and sealed.

A Tender Deposit is not required.

b) The second envelope, using the City envelope label shall contain submissions and must be in the following sequence:

- 1) *Appendix A*: Form of Tender
- 2) Addenda issued (if any)
- 3) Standard Certificate of Insurance
- 4) *Appendix E*: References Form
- 5) *Appendix F*: Contractor's Equipment
- 6) Contractor Safety Program Checklist
- 7) WSIB Certificate

Please note that the RFT specifications shall not be included in the second envelope. In the event the first envelope does not contain the proper documents the second envelope will not be opened.

4. Tender Opening

Tenders will not be opened publicly due to Covid-19. Tenders will be opened same day by City Staff and unofficial results will be posted on the City bid site after the opening.

5. The following Documents shall form this Contract as noted on *Appendix A* – Form of Tender.

- a) Instructions to Tenderers
- b) Addenda, issued during the tendering period.
- c) *Appendices A, B, C, D, F & G*.
- d) Standard Certificate of Insurance.
- e) WSIB.
- f) Specifications
- g) Special Provisions
- h) Contractor Safety Program Checklist

6. Tender Deposit

A Tender deposit is not required.

7. Agreement to Bond

Tenderers shall include with their Tender submission *Appendix B: Agreement to Bond* form attached to this RFT, indicating that a Bonding Company licensed in the Province of Ontario undertakes and consents to issue a Performance Bond in favour of the City upon the award of the Contract. The said Bonds deposited with the City shall be held by the City to secure the due performance and observance of the Contract and the payment of all creditors as required by the Contract.

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TENDERER REQUIREMENTS

1. Notification of Potential Tenderers Not Guaranteed

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

2. Questions Regarding Possible Discrepancies

If a Tenderer 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 Tenderers. All addenda are to be incorporated in the Tender and will become part of the Contract. The Owner will be responsible for any other explanations or interpretations of the proposed Contract Documents.

3. Tender Submission and Correspondence in English

Tender must be prepared in English and Tenderers must be able to converse and correspond fluently in English directly or through an interpreter supplied by and at the total cost to the Tenderer.

4. Form of Tender Pages – Appendix A

- a) Tenderers must complete all required spaces and sign where indicated on the *Appendix A: Form of Tender*.
- b) Tenderers must attach all required documents to *the Appendix A: Form of Tender pages*.
- c) The *Appendix A: Form of Tender* pages must be signed by an Officer of the Tenderer's Company who has authority to bind the Company.
- d) All taxes to be extra to the unit prices stated on the Form of Tender.
- e) By submitting a Tender in response to this RFT, the Tenderer thereby acknowledges that offers contained within its Tender 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 RFT.

5. Adherence to Requirements

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

6. Liability for Errors

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

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7. Collusion

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

8. Conflicts of Interest

- a) In the Tender submission, the Tenderer 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 Tender.
- b) The Tenderer 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 Tenderer 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 Tender submission or withhold the awarding of any Contract to the Tenderer until the matter is resolved to the City's sole satisfaction.

9. Anti-Lobbying Restrictions and Required Disclosure

- a) Tenderers, their company staff members, or anyone involved in preparing their Tender, 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 RFT 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 Tender by that Tenderer without further consideration and terminate that Tenderers right to continue in the RFT and any subsequent procurement process. All correspondence or contact by interested parties with the City must be directly and only with the Contact for Inquires identified in this RFT. It should be duly noted by all Tenderers that this anti-lobbying restriction extends from the release date of this RFT through to the date and time when the City formally awards the Contract. Any lobbying undertaken during this timeframe by any Tenderer or the Tenderers company staff members, or anyone involved with their Tender 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 Tenderer to this RFT 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. Tenderers Expenses

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

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11. Examination of Drawings, Specifications, and Work Site

- a) Tenderers 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. Tenderers 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 Tenderer 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 Tenderers. All addenda are to be incorporated in the Tender 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 Tenderer. Failure to do so shall result in the rejection of the Tender submission by the City.

13. Public Comment or Promotion of Tender

Except for Tenderer interviews, meetings or presentations specifically authorized or arranged by the City contact person or authorized designate, neither Tenderers 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 Tender, or their interest or participation in the Tender and subsequent procurement processes (if any) without the City's prior written consent, which consent may be arbitrarily withheld or delayed.

14. Adjustments to Tenders after Closing Date

No adjustments by any Tenderers to their Tenders will be permitted after the stated closing date for this RFT, except as otherwise provided herein.

15. Conditional Tenders

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

16. Unbalanced Tenders

Each item in *Appendix A: Form of Tender* shall be a reasonable price for such work, as is the custom of the trade. Tenders 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.

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18. Irrevocability and Firm Prices

Tenders received from Tenderers 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 RFT. The prices stated on *Appendix A: Form of Tender* shall remain firm for the duration of the Contract period.

19. Escalation Clauses

Tenders 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 Tender* and be included in the total proposed price. The Harmonized Sales Tax registration number must also be shown on *Appendix A: Form of Tender*, at the designated location, below the Tenderer's signature. The Contractor will be required to pay Harmonized Sales Tax on purchases which he/she makes under any Contract resulting from this RFT. Tenderers 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.

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 RFT 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. Workplace Safety and Insurance Board Certificate

The successful Tenderer shall obtain and submit to the City's Contractor Administrator a certificate from the Workplace Safety and Insurance Board, pursuant to the General Provisions, stating that the successful Tenderer has complied with the requirements of the *Workers' Compensation Act* as of the Contract signing date. A similar certificate must be produced prior to the issuing of the Total Performance Certificate covering the Contractor's standing as of the Contract completion date.

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23. Health & Safety

- a) All work performed under a Contract resulting from this RFT 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.

24. 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 RFT. 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.

25. Insurance Documentation

The Tenderer 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 City 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 **Tenderer** 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**

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(\$5,000,000) is required if Heavy Equipment is to be used as to complete the work or project.

Provisions

Prior to issuance of an **Agreement** and prior to the commencement of any work, the Tenderer 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 Contractor and that this coverage shall be primary insurance. Any insurance or self-insurance maintained by the City shall be considered excess of the Contractor's insurance.

26. Sub-Contractors

No Sub-Contractors are allowed.

27. Goods and Materials Suitable for Use

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

28. New Goods and Materials Only

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

29. Origin of Goods and Materials

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

30. 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.

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31. 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.

32. 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.

33. Compliance with Laws and Acts

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

- *The Construction 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.

34. 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 Tender 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.

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- 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.
35. **Patents, Intellectual Property Rights, Copyright, Trademarks, Technology Rights**
By submitting a Tender, the Tenderer warrants that the information contained in its Tender 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 Tenderer's 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 Falls contractual relationship with the Tenderer and the Tenderer's use of any or all technologies, methodologies, strategies in providing the services required herein. The Tenderer 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 Tenderer 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 Falls contractual relationship with the Tenderer and the Tenderers use of any or all technologies, methodologies, strategies in providing the services required herein. It is expressly agreed by the Tenderer that these covenants are irrevocable and perpetual.
36. **Freedom of Information**
Any information including all work as described in this RFT, service or product details, prices, statements, and any other information provided by the Tenderer 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 RFT 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 RFT containing all documents and drawings as posted on the City's Bid Opportunities Web Page (www.niagarafalls.ca/bids) shall constitute the RFT. Any Tenders 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.

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38. Withdrawal of Tender

Tenderers shall be permitted to withdraw their unopened Tender after the Tender has been delivered to the Manager of Procurement at any time up to the official closing time by submitting a written request to the Manager of Procurement, prior to the time specified for the Tender closing. The City reserves the right to withdraw, at its discretion, this RFT at any time and shall not be liable for any expense, cost, loss or damage incurred or suffered by any Tenderer as a result of such withdrawal.

39. Agreement with Terms

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

40. Waiver of Rights in Tender and Indemnity

- a) Each Tenderer acknowledges and agrees that the City is likely to receive, and be required to deal with, multiple Tenders, all of which may contain or disclose information considered by their Tenderers 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 Tender that is subject to a reservation by the Tenderer of any such rights, and each Tenderer, by virtue of submitting a Tender pursuant to this RFT, expressly waives any and all protection to which the Tenderer might otherwise be entitled in respect of that Tender under all of the foregoing laws, and expressly releases the City and its staff, as well as the qualified Tenderers 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 Tender.
- c) Each Tenderer 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 Tender, including any and all costs incurred by the City.

41. Rights of the City

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

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Tenderers or for the failure to comply with the process for submission set out in these Instructions to Tenderers.

- c) Except as expressly and specifically permitted in the Instructions to Tenderers, no Tenderer shall have any claim for any compensation of any kind, as a result of participating in this RFT process and by submitting a Tender, each Tenderer shall be deemed to have agreed that it has no claim.
- d) Tenders which are incomplete, conditional or obscure, or which contain additives not called for, Tender 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.

42. Rights to Tender Submission

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

43. Ownership and Disclosure of Tender

The documentation comprising any Tender submitted in response to this RFT, along with all correspondence, documentation and information provided to the City by any Tenderer in connection with, or arising out of this RFT, 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 Tenderers are advised to identify in their Tender any scientific, technical, commercial, proprietary or similar confidential information, the disclosure of which could cause them injury.

44. Limitation and Waiver of Damages

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

45. 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

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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 RFT, or relating to inventions, copyrights, trademarks or patents, or rights thereto, used in supplying such 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.

46. Confidentiality of Information

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

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 RFT (if any)
- The RFT including all appendices and attachments.
- The Tender Submission

2. Reasons for Rejection of the Tenderers Submission:

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

3. Vendor Performance

The Corporation may, in its sole discretion, reject a Tender Submission if a Tenderer:

- 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 Tender.

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4. Suspension of Activity

- a) All Tenderers are advised and put on notice that notwithstanding anything else contained in this RFT that all Tenderers are forewarned and advised that if the City chooses not to proceed with the RFT process or any subsequent procurement process or any stage, including without limitation, the completion of the RFT process, the commencement, implementation or completion of any Tender process or other procurement process and/or the award, negotiation or the finalization of any Agreement or Contract and that accordingly, all Tenderers acknowledge and agree that if any such processes are suspended, terminated or cancelled at any time or times during any stage of the RFT or subsequent procurement process (if any) by the City, then the Tenderers 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 RFT and any subsequent procurement process, the assessment and evaluation of Tenders, including the determination of criteria and the selection, if any, of a successful Tenderer, without incurring any liability whatsoever to any Tenderer, 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 RFT, or to change the scope of the project, or to cancel the RFT 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 Tenders and the City reserves the right to proceed as, in its sole and unfettered discretion, following receipt of the Tenders, including, without limitation, issuing a second or more, or a modified RFT for the project or entering into contract negotiations with any Tenderer.
- d) The issuance of this RFT and the receipt of any Tender submission by any Tenderer does not commit the City to award a Contract or to pay any costs incurred in the preparation of any Tender by any Tenderer, or in any Tenderer'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. This Contract, if awarded, will be awarded to only one Tenderer.

6. Inducements

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

7. Tender Opening Procedure and Tender Results

To assist in the containment of COVID-19 the City has suspended all public openings. Tenders will be opened the same day that is stated for the closing of the RFT.

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Unofficial results, of the Total Tender Amount (including HST), will be posted on the City's website before the end of business that day.

8. Decision by the City

The Tenderer agrees by submitting a Tender in response to this RFT that the City has no obligation to reveal its decision in selecting a successful Tenderer.

9. Contract Award

No announcement concerning information about any Tender submission received by the City or about the evaluation process of the City in determining a successful Tendered (if any) will be made until City staff have approval to award. Any notification of award shall be in accordance with the *Municipal Freedom of Information and Protection of Privacy Act* R.S.O. 1990, c. M.56 as amended.

10. Execution of Contract

The successful Tenderer shall be notified in writing of the acceptance of their Tender 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 Tenderer is notified in writing of the acceptance of the Tender by the City.

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

- a) A Performance Bond which complies with the requirements of the conditions of the Contract for **50%** of the Contract price. The said Performance Bond shall include maintenance of the work for a period of **one year** from the final date of completion thereof. The final date of completion shall be understood as of March 31st of each contract year, unless otherwise stated by the Contract Administrator.
- b)
 - (i) 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.
 - (ii) 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 Tenderer 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 Tenderer involving transactions related to this Contract.

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12. Additional Requirements

The 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 RFT. Unit prices stated by the Tenderer shall apply.

13. City not Employer

The Tenderer 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 RFT. Also, in accordance the *Occupational Health and Safety Act*, **the successful Contractor herewith agrees to be the “constructor” as defined under this Act.**

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 RFT, 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 twenty-eight (28) 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 RFT until the City is fully satisfied that all terms and conditions stated in this RFT and all work, service performed, products or materials delivered shall

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be deemed to have been completed, installed or delivered to the complete satisfaction of the City.

16. Extension of Contract

The time period duration of any Contract resulting from this RFT may be extended for a specific period, provided that both the City and the successful Contractor agree to such extension. The City may notify the successful Contractor at any time to seek an extension.

17. Warranties and Covenants

The Contractor will represent, warrant and covenant to the City, and acknowledge that any service resulting from or to be supplied or developed as a result of this RFT with the City will be in strict accordance with the functional and technical requirements set out in this RFT.

18. Failure to Execute Contract

Failure by the successful Tenderer 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 Tender deposit to the Corporation, not as a penalty, but as liquidated damages sustained.

19. Standards and Legislation: Failure to Comply

The successful Tenderer may be required to provide written documentation that all materials proposed meet Municipal, Provincial and Federal Government standards, legislation and laws. Also, the successful Tenderer 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 Tenderer 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 RFT, 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 RFT. The City may assess against the Contractor any damages whatsoever as a result of failure to comply.

20. Failure to comply with all Tender Terms

Failure to comply with all terms, specifications, requirements, conditions and general provisions of this RFT, 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 RFT. 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.

21. 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,

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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.

22. 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.

23. Removal from Tenderers List

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