



**Request for Proposal**

**Advertising Opportunity – Handrails & On-Street Waste Receptacles**

Request for Proposal No.: **RFP51-2021**

Issued: **Thursday, November 18<sup>th</sup>, 2021**

Submission Deadline: **Thursday, December 9<sup>th</sup>, 2021 by 2:00:00 pm local time**



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## PART 1 – INVITATION AND SUBMISSION INSTRUCTIONS

### 1.1 Invitation to Proponents

This Request for Proposal (“RFP”) is an invitation to qualified and experienced proponents to submit proposals for the advertising services opportunity on handrail and on-street waste receptacles at selected locations for the City of Niagara Falls (“the City”), as further described in the RFP Particulars (Appendix D). The contract term will be for five (5) years. The City will expect to receive revenue from the successful proponent for the rights granted to the said successful proponent for this advertising opportunity.

### 1.2 RFP Contact

For the purposes of this procurement process, the “RFP Contact” will be:

Jessica Curno – Procurement Agent – [jcurno@niagarafalls.ca](mailto:jcurno@niagarafalls.ca)

Proponents and their representatives are not permitted to contact any employees, officers, agents, elected or appointed officials, or other representatives of the City, other than the RFP Contact, concerning matters regarding this RFP. Failure to adhere to this rule may result in the disqualification of the proponent and the rejection of the proponent’s proposal.

### 1.3 Contract for Deliverables

#### 1.3.1 Type of Contract

The selected proponent will be requested to enter into direct contract negotiations to finalize an agreement with the City for the provision of the Deliverables. Proponents should submit a sample Form of Agreement and attached as (Appendix A) and include in the submission response. This sample contract is to form the basis for commencing negotiations between the City and the selected proponent. It is the City’s intention to enter into an agreement with only one (1) legal entity per awarded contract. Joint submissions are acceptable, however, if a joint submission is made the submission must clearly indicate which party will act as the primary contractor.

### 1.4 RFP Timetable

#### 1.4.1 Key Dates

Issue Date of RFP	Thursday, November 18 <sup>th</sup> , 2021
Deadline for Questions	Thursday, November 25 <sup>th</sup> , 2021 by 12:00 pm local time
Deadline for Issuing Addenda	Thursday, December 2 <sup>nd</sup> , 2021 by 2:00 pm local time
Submission Deadline	Thursday, December 9 <sup>th</sup> , 2021 by 2:00:00 pm local time



Anticipated Contract Award (subject to approval)	December 2021
City Contract Administrator	Mathew Bilodeau

The RFP timetable is tentative only, and may be changed by the City at any time. For greater clarity, business days means all days that the City’s administrative office is open for business.

## 1.5 Submission of Proposals

### 1.5.1 Proposals to be Submitted at Prescribed Location

Sealed Submissions of the Proposal in a clearly marked envelope which includes the prescribed form(s) as instructed are to be delivered to:

**Gale Centre Arena - Box Office**  
**Attn: Procurement**  
**5152 Thorold Stone Road, Niagara Falls, Ontario L2E 0A2**

### 1.5.2 Proposals to be Submitted on Time

Proposals must be submitted on or before the Submission Deadline set out in the RFP Timetable. Proposals received after the Submission Deadline will not be accepted. Proponents are advised to make submissions well before the deadline. Proponents making submissions near the deadline do so at their own risk.

Submissions received after the deadline, whether delivered personally, or if mailed, regardless of post markings, will not be considered. Fax or electronic (e-mail) submissions will not be accepted.

### 1.5.3 Proposals to be Submitted in Prescribed Format

Proposals should be comprised, formatted and submitted in 3 envelopes as indicated below:

#### Envelope #1

One (1) original “marked as original” and three (3) paper copies of the technical proposal in an envelope (excluding all pricing) and any attachments to such schedules (the “Pricing Documents”);

One (1) electronic copy (USB Key) in either Microsoft Office or Adobe Acrobat format of the complete proposal (excluding the pricing).

#### Envelope #2

One (1) original “marked as original” and (1) paper copy of the Respondent’s Pricing Documents (Refer to Appendix C, Price Form).



### Envelope #3

Envelope #1 and Envelope #2 must be sealed in envelope #3 and be clearly labelled to the following address;

**Gale Centre Arena - Box Office  
Attn: Procurement  
5152 Thorold Stone Road, Niagara Falls, Ontario L2E 0A2**

### **1.5.4 Amendment of Proposals**

Proponents may amend their proposals prior to the Submission Deadline. If amending the proposal, a written request must be made to the City's Procurement contact.

### **1.5.5 Withdrawal of Proposals**

At any time throughout the RFP process until the execution of a written agreement for provision of the Deliverables, a proponent may withdraw a submitted proposal. To withdraw a proposal prior to the Submission Deadline, the proponent should contact the City's Procurement Contact. To withdraw a proposal after the Submission Deadline, a notice of withdrawal must be sent to the RFP Contact and must be signed by an authorized representative of the proponent. The City is under no obligation to return withdrawn proposals.

[End of Part 1]

## **PART 2 – EVALUATION, NEGOTIATION AND AWARD**

### **2.1 Stages of Evaluation and Negotiation**

The City will conduct the evaluation of proposals and negotiations in the following stages:

### **2.2 Stage I – Mandatory Submission Requirements**

Stage I will consist of a review to determine which proposals comply with all of the mandatory submission requirements. If a proposal fails to satisfy all of the mandatory submission requirements, the proposal will be excluded from further consideration. The mandatory submission requirements are set out in Section C of the RFP Particulars (Appendix D).

### **2.3 Stage II – Evaluation**

Stage II will consist of the following two (2) sub-stages:

#### **2.3.1 Mandatory Technical Requirements**

The City will review the proposals to determine whether the mandatory technical requirements as set out in Section D of the RFP Particulars (Appendix D) have been met. Questions or queries on



the part of the City as to whether a proposal has met the mandatory technical requirements will be subject to the verification and clarification process set out in Part 3.

### **2.3.2 Rated Criteria**

The City will evaluate each qualified proposal on the basis of the non-price rated criteria as set out in Section F of the RFP Particulars (Appendix D).

## **2.4 Stage III – Pricing**

Stage III will consist of a scoring of the submitted pricing of each qualified proposal in accordance with the price evaluation method set out in Pricing (Appendix C). The evaluation of price will be undertaken after the evaluation of mandatory requirements and rated criteria has been completed.

## **2.5 Stage IV – Ranking and Contract Negotiations**

### **2.5.1 Ranking of Proponents**

After the completion of Stage III, all scores from Stage II and Stage III will be added together and the proponents will be ranked based on their total scores. The highest scoring proponent will receive a written invitation to enter into direct contract negotiations to finalize the agreement with the City. In the event of a tie, the selected proponent will be the proponent selected by way of coin toss. The City reserves the right to publish the name of the selected proponent on the electronic bidding system.

### **2.5.2 Contract Negotiation Process**

Any negotiations will be subject to the process rules contained in the Terms and Conditions of the RFP Process (Part 3) and will not constitute a legally binding offer to enter into an Agreement on the part of the City or the proponent, and there will be no legally binding relationship created with any proponent prior to the execution of a written Agreement. The terms and conditions found in the Form of Agreement (Appendix A) are to form the basis for commencing negotiations between the City and the selected proponent. Negotiations may include requests by the City for supplementary information from the proponent to verify, clarify, or supplement the information provided in its proposal or to confirm the conclusions reached in the evaluation, and may include requests by the City for improved pricing, reasonable changes in the scope or performance terms from the select proponent.

### **2.5.3 Time Period for Negotiations**

The City intends to conclude negotiations and finalize the agreement with the top-ranked proponent during the Contract Negotiation Period, commencing from the date the City invites the top-ranked proponent to enter negotiations. A proponent invited to enter into direct contract negotiations should therefore be prepared to satisfy the pre-conditions of award listed in Section E of the RFP Particulars (Appendix D), provide requested information in a timely fashion and conduct its negotiations expeditiously.



## **2.5.4 Failure to Enter into Agreement**

If the pre-conditions of award listed in Section E of the RFP Particulars (Appendix D) are not satisfied or if the parties cannot conclude negotiations and finalize the agreement for the Deliverables within the Contract Negotiation Period, the City may discontinue negotiations with the top-ranked proponent and may invite the next-best-ranked proponent to enter into negotiations. This process will continue until an agreement is finalized, until there are no more proponents remaining that are eligible for negotiations, or until the City elects to cancel the RFP process.

## **2.5.5 Notification of Negotiation Status**

Other proponents that may become eligible for contract negotiations may be notified at the commencement of the negotiation process with the top-ranked proponent.

[End of Part 2]

# **PART 3 – TERMS AND CONDITIONS OF THE RFP PROCESS**

## **3.1 General Information and Instructions**

### **3.1.1 Proponents to Follow Instructions**

Proponents should structure their proposals in accordance with the instructions in this RFP. Where information is requested in this RFP, any response made in a proposal should reference the applicable section numbers of this RFP.

### **3.1.2 Proposals in English**

All proposals are to be in English only.

### **3.1.3 No Incorporation by Reference**

The entire content of the proponent's proposal should be submitted in an integrated format, without reference to the content of websites or other external documents. The examination of the proponent's proposal should not require a reviewer to search outside the proposal for external documents. Any document not integrated with a proposal will not be considered to form part of the proposal.

### **3.1.4 References and Past Performance**

In the evaluation process, the City may consider the proponent's references and may also consider the proponents past performance or conduct on previous contracts with the City or other institutions.



### **3.1.5 Information in RFP Only an Estimate**

The City and its advisers make no representation, warranty, or guarantee as to the accuracy of the information contained in this RFP or issued by way of addenda. Any quantities shown or data contained in this RFP or provided by way of addenda are estimates only, and are for the sole purpose of indicating to proponents the general scale and scope of the Deliverables. It is the proponent's responsibility to obtain all the information necessary to prepare a proposal in response to this RFP.

### **3.1.6 Proponents to Bear Their Own Costs**

The proponent will bear all costs associated with or incurred in the preparation and presentation of its proposal, including, if applicable, costs incurred for interviews or demonstrations.

### **3.1.7 Proposal to be Retained by the City**

The City will not return the proposal or any accompanying documentation submitted by a proponent.

### **3.1.8 No Guarantee of Volume of Work or Exclusivity of Contract**

The City makes no guarantee of the value or volume of work to be assigned to the successful proponent. The Agreement to be negotiated with the selected proponent will not be an exclusive contract for the provision of the described Deliverables. The City may contract with others for goods and services the same as or similar to the Deliverables or may obtain such goods and services internally.

## **3.2 Communication after Issuance of RFP**

### **3.2.1 Proponents to Review RFP**

Proponents should promptly examine all the documents comprising this RFP and may direct questions or seek additional information in writing by e-mail to the RFP Contact on or before the Deadline for Questions. No such communications are to be directed to anyone other than the RFP Contact. The City is under no obligation to provide additional information, and the City is not responsible for any information provided by or obtained from any source other than the RFP Contact. It is the responsibility of the proponent to seek clarification from the RFP Contact on any matter it considers to be unclear. The City is not responsible for any misunderstanding on the part of the proponent concerning this RFP.

### **3.2.2 All New Information to Proponents by Way of Addenda**

This RFP may be amended only by addenda in accordance with this section. If the City, for any reason, determines that it is necessary to provide additional information relating to this RFP, such information will be communicated to all proponents by way of addenda. Each addendum forms an integral part of the RFP and may contain important information, including significant changes to the RFP. Proponents are responsible for obtaining all addenda issued by the City.





In the Submission Form (Appendix B), proponents should confirm their receipt of all addenda by setting out the number of each addendum in the space provided.

### **3.2.3 Post-Deadline Addenda and Extension of Submission Deadline**

If the City determines that it is necessary to issue an addendum after the Deadline for Issuing Addenda, the City may extend the Submission Deadline for a reasonable period of time.

### **3.2.4 Verify, Clarify, and Supplement**

When evaluating proposals, the City may request further information from the proponent or third parties in order to verify, clarify, or supplement the information provided in the proponent's proposal, including but not limited to clarification with respect to whether a proposal meets the mandatory technical requirements set out in Section D of the RFP Particulars (Appendix D). The City may revisit, re-evaluate, and rescore, or reject the proponent's proposal or ranking on the basis of any such information.

## **3.3 Notification and Debriefing**

### **3.3.1 Notification to Other Proponents**

Once an Agreement is executed by the City and a proponent, the other proponents may be notified directly by public posting, in the same manner that this RFP was originally posted, of the outcome of the procurement process.

### **3.3.2 Debriefing**

Proponents may request a debriefing after publication of the outcome of the procurement process. All requests must be in writing to the RFP Contact and must be made within thirty (30) days of such notification.

### **3.3.3 Procurement Protest Procedure**

If a proponent wishes to challenge the RFP process, it should provide written notice to the RFP Contact in accordance with applicable procurement protest procedures as identified in the City's Procurement Policy Dispute Resolution section. The Substantive Objection must provide a detailed explanation of the proponent's concerns with the procurement process or its outcome.

## **3.4 Conflict of Interest and Prohibited Conduct**

### **3.4.1 Conflict of Interest**

For the purposes of this RFP, the term "Conflict of Interest" includes, but is not limited to, any situation or circumstance where:

- (a) in relation to the RFP process, the proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not



limited to (i) having, or having access to, confidential information of the City in the preparation of its proposal that is not available to other proponents; (ii) having been involved in the development of the RFP, including having provided advice or assistance in the development of the RFP; (iii) receiving advice or assistance in the preparation of its response from any individual or entity that was involved in the development of the RFP; (iv) communicating with any person with a view to influencing preferred treatment in the RFP process (including but not limited to the lobbying of decision makers involved in the RFP process); or (v) engaging in conduct that compromises, or could be seen to compromise, the integrity of the open and competitive RFP process or render that process non-competitive or unfair; or

- (b) in relation to the performance of its contractual obligations under an agreement for the Deliverables, the proponent's other commitments, relationships, or financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased, and impartial exercise of its independent judgement; or (ii) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

### **3.4.2 Disqualification for Conflict of Interest**

The City may disqualify a proponent for any conduct, situation, or circumstances, determined by the City, in its sole and absolute discretion, to constitute a Conflict of Interest as defined above.

### **3.4.3 Disqualification for Prohibited Conduct**

The City may disqualify a proponent, rescind an invitation to negotiate or terminate an agreement subsequently entered into if the City determines that the proponent has engaged in any conduct prohibited by this RFP.

### **3.4.4 Prohibited Proponent Communications**

Proponents must not engage in any communications that could constitute a Conflict of Interest and should take note of the Conflict of Interest declaration set out in the Submission Form (Appendix B).

### **3.4.5 Proponent Not to Communicate with Media**

Proponents must not at any time directly or indirectly communicate with the media in relation to this RFP or the ranking or selection of proponents pursuant to this RFP, or any agreement entered into pursuant to this RFP without first obtaining the written permission of the RFP Contact.

### **3.4.6 No Lobbying**

Proponents must not, in relation to this RFP or the evaluation and selection process, engage directly or indirectly in any form of political or other lobbying whatsoever to influence the selection of the successful proponent(s).



### **3.4.7 Illegal or Unethical Conduct**

Proponents must not engage in any illegal business practices, including activities such as bid-rigging, price-fixing, bribery, fraud, coercion, or collusion. Proponents must not engage in any unethical conduct, including lobbying, as described above, or other inappropriate communications; offering gifts to any employees, officers, agents, elected or appointed officials, or other representatives of the City; deceitfulness; submitting proposals containing misrepresentations or other misleading or inaccurate information; or any other conduct that compromises or may be seen to compromise the competitive process provided for in this RFP.

### **3.4.8 Past Performance or Past Conduct**

The City may prohibit a proponent from participating in a procurement process based on past performance or based on inappropriate conduct in a prior procurement process, including but not limited to the following:

- (a) illegal or unethical conduct;
- (b) refusal of the proponent to honour submitted pricing or other commitments;
- (c) any conduct, situation or circumstance determined by the City, in its sole and absolute discretion, to have constituted a Conflict of Interest;
- (d) the involvement of the respondent in a lawsuit with the City; or
- (e) the respondent having threatened the City with a lawsuit within the previous two years.

## **3.5 Confidential Information**

### **3.5.1 Confidential Information of the City**

All information provided by or obtained from the City in any form in connection with this RFP either before or after the issuance of this RFP.

- (a) is the sole property of the City and must be treated as the City's confidential information;
- (b) is not to be used for any purpose other than replying to this RFP and the performance of any subsequent Agreement for the Deliverables;
- (c) must not be disclosed without prior written authorization from the City; and
- (d) must be returned by the proponent to the City, or destroyed if so requested by the City, immediately upon the request of the City.

### **3.5.2 Confidential Information of Proponent**

A proponent should identify any information in its proposal or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the City. The



confidentiality of such information will be maintained by the City, except as otherwise required by law or by order of a court or tribunal, including the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, as amended (“MFIPPA”). Proponents are advised that their proposals will, as necessary, be disclosed, on a confidential basis, to advisers retained by the City to advise or assist with the RFP process, including the evaluation of proposals. If a proponent has any questions about the collection and use of personal information pursuant to this RFP, such questions are to be submitted to the RFP Contact.

### **3.6 Procurement Process Non-Binding**

#### **3.6.1 No Contract A and No Claims**

This procurement process is not intended to create and will not create a formal, legally binding bidding process and will instead be governed by the law applicable to direct commercial negotiations. For greater certainty and without limitation:

- (a) this RFP will not give rise to any Contract A–based tendering law duties or any other legal obligations arising out of any process contract or collateral contract; and
- (b) neither the proponent nor the City will have the right to make any claims (in contract, tort, or otherwise) against the other with respect to the award of a contract, failure to award a contract, or failure to honour a proposal submitted in response to this RFP.

#### **3.6.2 No Contract until Execution of Written Agreement**

This RFP process is intended to identify prospective suppliers for the purposes of negotiating potential Agreements. No legal relationship or obligation regarding the procurement of any good or service will be created between the proponent and the City by this RFP process until the successful negotiation and execution of a written agreement for the acquisition of such goods and/or services.

#### **3.6.3 Non-Binding Price Estimates**

While the pricing information provided in proposals will be non-binding prior to the execution of a written Agreement, such information will be assessed during the evaluation of the proposals and the ranking of the proponents. Any inaccurate, misleading, or incomplete information, including withdrawn or altered pricing, could adversely impact any such evaluation or ranking or the decision of the City to enter into an Agreement for the Deliverables.

#### **3.6.4 Cancellation**

The City may cancel or amend the RFP process without liability at any time.

### **3.7 Governing Law and Interpretation**

The Terms and Conditions of the RFP Process (Part 3):



- (a) are intended to be interpreted broadly and independently (with no particular provision intended to limit the scope of any other provision);
- (b) are non-exhaustive and will not be construed as intending to limit the pre-existing rights of the parties to engage in pre-contractual discussions in accordance with the common law governing direct commercial negotiations; and
- (c) are to be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein.



## APPENDIX A – FORM OF AGREEMENT

Sample Only – To be modified by Legal to meet requirements of this RFP.

**THIS AGREEMENT** made this            day of            , 20\_\_.

**B E T W E E N:**

Hereinafter referred to as “Vendor”,

OF THE FIRST PART;

- and -

**THE CORPORATION OF THE CITY OF NIAGARA FALLS**

Hereinafter referred to as the “City”

OF THE SECOND PART.

**WHEREAS** the Vendor is engaged in selling space on advertising faces on handrails and on-street waste receptacles (hereinafter collectively referred to as the “hardware”, for the purpose of advertising goods and services and more particularly described in the City of Niagara Falls Request for Proposal for Advertising Opportunity on Handrails and On-Street Waste Receptacles RFP51-2021, hereinafter referred to as Schedule A” attached hereto and forming part of this Agreement and the Proposal response of (name of Vendor) entitled “RFP Response to: RFP51-2021 for the City of Niagara Falls ” dated (insert date) 2021, hereinafter referred to as Schedule “B”: Form of Proposal” attached to and forming part of this Agreement, all hereinafter referred to as the “Project”.

**AND WHEREAS** Section 11(1) of the *Municipal Act, 2001* provides that municipal corporations may pass by-laws permitting any person, under such conditions as may be agreed upon, to place, construct, install, maintain and use objects in, on, under or over sidewalks and highways under its jurisdiction.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the mutual covenants, conditions and agreements herein contained, the parties agree as follows:

### **1. INSTALLATION OF HARDWARE & ADVERTISING**

1.1 The City shall permit the Vendor to install the hardware with or without advertising faces on roads and highways under the jurisdiction of the City and to install or cause to be installed, advertising matter on such advertising faces during the term of this Agreement, which term shall be five (5) years, commencing February 1, 2022, to and including January 31, 2027.

1.2 Provided the Vendor duly and regularly and punctually pays the fees as set out in paragraph 7 hereof, and all other sums payable and observes and performs every



covenant and proviso herein contained and is not in default under any of the terms contained in this Agreement, the City shall, upon written request of the Vendor given to the City not more than six (6) months and not less than three (3) months prior to the expiration of the original term of this Agreement, grant to the Vendor an extension of this Agreement, for a further term of one (1) year, on the same terms and conditions, save and except for a further right of extension.

1.3 The Vendor shall obtain the approval of the Director of Municipal Works, or designate (hereinafter referred to as the "Director"), to the design, manufacture and installation of the hardware and advertising, prior to the installation and the Vendor covenants and agrees to obtain the consent and approval of the Director, to any alterations to the design or specifications.

1.4 The Vendor acknowledges and agrees that the rights and privileges granted by this Agreement are not exclusive and that the City may also, itself and/or through other persons, install such hardware with or without advertising faces.

## **2. OWNERSHIP**

2.1 The City acknowledges that the hardware and advertising is and shall continue to be the property of Vendor, subject to the following. At the expiry of this Agreement, the Vendor shall peaceably surrender and return to the City, at no cost to the City, the hand rails in the state of repair required by the City pursuant to this Agreement, together with copies of all available construction, technical, engineering and design drawings which are in the possession of the Vendor and which pertain to the handrails and on-street waste receptacles or any part or parts thereof.

2.2 The Vendor shall retain ownership of the associated waste receptacles and at the expiry of this Agreement, the Vendor shall forthwith remove all such waste receptacles.

## **3. LOCATION**

3.1 The Vendor shall, during the term of this Agreement, submit an application for each proposed new location of hardware in the form attached hereto as Schedule "C".

3.2 Hardware shall be installed only in locations approved by the Director.

3.3 In the event that the proposed new location falls within the boundaries of a local Business Improvement Area, the Vendor must obtain written consent from said Business Improvement Area, to the installation of its hardware. A copy of the written consent must be provided to the City at the time of the proposal.

3.4 In determining the location of any hardware to be installed, the Vendor and the City shall consider any and all appropriate factors, including:

- (a) the convenience and safety of pedestrians;
- (b) the exposure available for the purpose of advertising; and



(c) safety of motorists to ensure hardware does not obstruct visibility

3.5 The City shall have the right to cancel or revoke the approval of any location previously approved for the installation of hardware or of an advertising face, notwithstanding that such location may have been previously approved. The decision of the City in this regard shall be final.

3.6 Nothing contained herein shall make the City liable to the Vendor for consequential loss or economic loss sustained by the Vendor, including losses from the removal or relocation of handrails and on-street waste receptacles, for any reason.

3.7 On the 1<sup>st</sup> day of July in each year of the term of this Agreement, the Vendor shall give the City a list of the current locations of all handrails and on-street waste receptacles.

#### **4. INSTALLATION**

4.1 The City shall have the right to inspect any hardware during installation and the Vendor shall remedy any defect in installation to the satisfaction of the City, upon notice, within the time specified in the notice.

4.2 When installing, maintaining or otherwise working on the handrails and on-street waste receptacles, the Vendor shall not occupy any lane or traffic on any road, at any time, when the stopping, standing or parking of vehicles is restricted or prohibited by operation of traffic by-laws.

4.3 The Vendor must install and maintain at a minimum the same number of hardware, as listed in the RFP. Installation must occur within ninety (90) days of the formal agreement being executed.

#### **5. MAINTENANCE**

5.1 The Vendor shall carry out all necessary repairs to the hardware and the replacement of any parts, as required, or as directed by the Director in accordance with this Agreement.

5.2 The Vendor shall repair all damage caused by vandalism to any hardware, within five (5) business days, provided that if the hardware repeated damage due to vandalism, the Vendor may at its sole expense, move the hardware to an alternate location, approved in accordance with paragraph 3 hereof, and restore the handrails and on-street waste receptacles, at its sole expense, to its original condition, to the satisfaction of the City.

5.3 Should the Director deem any handrails and on-street waste receptacles to be an immediate health or safety hazard, the City may remove the damaged hardware immediately, at the sole expense of the Vendor.

#### **6. ADVERTISING**

6.1 The Vendor shall have the exclusive right, during the term of this Agreement, to supply advertising on the hardware installed by the Vendor.





- 6.2 The Vendor shall not permit any advertising on any advertising face installed on the hardware that:
- Condone any form of personal discrimination, including that based upon race, national origin, religion, sex, age, etc.
  - Appear to exploit, condone or incite violence; nor directly encourage or exhibit indifference to, unlawful or reprehensible behaviour.
  - Advertise / promote alcohol, tobacco, vaping, marijuana or other illicit drug products.
  - Demean, denigrate or disparage any identifiable person, group of persons, firm, organization, industry or commercial activity, profession, product or service or attempt to bring them into public contempt or ridicule.
  - Undermine human dignity, or appear to encourage or be indifferent to conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population.
  - Promote political affiliations.
  - Violate or conflict with any existing City policies or any new policies which may be adopted.
  - Contravene any law or other restriction in effect

Further, all advertising shall also be in accordance with the guidelines of the Canadian Council of Advertisers. The decision of the Director in this regard shall be final and binding.

- 6.3 If any advertising does not comply with the provisions, the City may require the removal of such advertising by the Vendor and the Vendor shall, at its sole expense, remove the advertising to the satisfaction of the City, within the time frame specified by the City and the City shall not be liable to the Vendor or anyone claiming through or against the Vendor for any damages, loss, costs or expenses by reason thereof.
- 6.4 The Vendor shall make available to the City, at no cost to the City, five (5) percent of all advertising faces for public service messages.
- 6.5 The City shall produce and the Vendor shall install, at the Vendor's own expense, all public service messages on any advertising faces which the Vendor has made available to the City as above. The cost of production of all public service messages shall be the responsibility of the City or its' designates, as the case may be.
- 6.6 The Vendor shall approve the design for the public service messages, which approval may not be unreasonably withheld.
- 6.7 The Vendor acknowledges that the City does hereby reserve the right to install or permit to be installed, other advertising devices in the vicinity of the handrails and on-street waste receptacles, without compensation to the Vendor.

## **7. REVENUE**

- 7.1 In consideration for the rights granted herein, the Vendor shall pay to the City, at such place or places as the City shall designate from time to time in writing, a fee per month



per advertising face, together with all applicable taxes, in accordance with 4. Price Form of Schedule "B" to this Agreement.

7.2 For purposes of this Agreement, "advertising faces" means:

(a) *on a pedestrian handrail:*

A surface of approximately 1.5 metres by 0.75 metres, equaling approximately 1.1 square metres; and

(b) *on an associated waste receptacle:*

A surface of approximately 0.75 metres by 1.5 metres, equaling approximately 1.1 square metres; and

7.3 Payment of the fees payable during the term of the Agreement commencing February 1, 2022 through to and including January 31, 2027 shall be made to the City on the 15<sup>th</sup> day of each month in each and every year of this contract. The first payment shall be made to the City within ninety (90) days of the formal being agreement being executed.

7.4 The parties hereto agree that the fees set out hereinabove are intended to represent the fair market value of such rights.

## **8. TAXES**

8.1 The Vendor shall promptly pay any business taxes, real property taxes, grants in lieu, Harmonized Sales Tax or any other taxes whatsoever assessed against the handrails, on-street waste receptacles and advertising or advertising, or the City, in respect of the carrying out of the activities contemplated by this Agreement or the payment of any amount pursuant to this Agreement. In the event that the City shall be required to pay such taxes, the Vendor shall forthwith, upon demand, reimburse the City for the amount of such taxes.

## **9. INDEMNITY AND INSURANCE**

9.1 (a) The Vendor shall indemnify and save harmless the City from and against all claims, actions, losses, expenses, costs, demands, suits and other proceedings or damages of every nature and kind whatsoever which the City, its employees, officers or agents may suffer as a result of the negligence of the Vendor, its employees, officers or agents in performance of this Agreement;

(b) The Vendor shall indemnify and save harmless the City from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the City, its employees, officers or agents may suffer as a result of misuse, misappropriation or alleged misuse or misappropriation by the Vendor, its employees, officers or agents of intellectual property in the performance of this Agreement; and



- (c) The City agrees to indemnify and save harmless the Vendor from and against any and all claims, losses, damages, liability and costs arising out of or in any way connected with the presence, discharge, release or escape of contaminants of any kind, excluding only such liability as may arise out of the negligence of the Vendor in the performance of consulting services to the City within this Project.

9.2 The liability insurance shall:

The Vendor shall be required to purchase and maintain in force, at its own expense (including the payment of all deductibles) and for the duration of this Agreement, the following policies of insurance, which policies shall be in a form and with an insurer acceptable to the City. A certificate of these policies originally signed by the insurer or an authorized agent of the insurer must be delivered to the City prior to the commencement of the Vendor's Services:

- a) Commercial General Liability Insurance  
Commercial General Liability insurance for all Deliverables to a limit of not less than five million dollars (\$5,000,000) per occurrence.

The policy will be extended to include:

- Bodily injury, death and property damage;
- Cross liability and severability of interest;
- Blanket contractual;
- Premises and operations;
- Personal and advertising injury;
- Broad form property damage;
- Products and completed operations;
- Owner's and contractor's protective;
- Non-owned Automobile to a limit of not less than two million dollars (\$2,000,000).

The policy shall be endorsed to:

- Include **The Corporation of the City of Niagara Falls** as an additional insured; and
- Contain an undertaking by the insurers to give thirty (30) days prior written notice in the event that there is a material change in the foregoing policies or coverage affecting the Additional Insured(s) or cancellation of coverage before the expiration date of any of the foregoing policies.

- b) Automobile Insurance

Automobile Insurance (OAP1) for both owned and leased vehicles with inclusive limits of not less than two million dollars (\$5,000,000). Coverage must also apply in the event the operations of the insured results in a pollution condition, including remediation costs.

- (c) All policies listed above:



- (i) Shall apply as primary insurance and not excess to any other insurance available to the City; and
- (ii) To remain in force until final acceptance of the work described herein by the City.

At the expiry date of the policies, the Vendor shall provide original signed Certificates or electronic equivalents thereof, evidencing renewals or replacements to the City prior to the expiration date of the original policies, without notice or request by the City.

## 10. WORKPLACE SAFETY & INSURANCE BOARD REQUIREMENTS

- 10.1 The Vendor 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 Successful Bidder must furnish the City with a **"Certificate of Clearance"** from the WSIB. For work of long duration the Successful Bidder 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 Successful Bidder will not be made unless this certificate is received from the Successful Bidder.
- 10.2 A Successful Bidder 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 Bidder 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 Bidder will not be permitted to start any work under the Contract until such Contract is received by the City.

## 11. ASSISTANCE

- 11.1 The City shall use reasonable efforts (excluding any expenditure of money) to prevent obstacles such as garbage cans owned by the City and newspaper boxes, if the location of such boxes is within the control of the City, from interfering with the line of vision of pedestrians and motorists to the advertising faces.
- 11.2 The City shall use reasonable efforts (excluding expenditure of money) to make available to the Vendor at no charge, any transit route or vehicular or pedestrian traffic information in the possession of the City and available pursuant to the *Municipal Freedom of Information and Protection of Privacy Act*, provided that the Vendor acknowledges that the City does not warrant the accuracy or completeness of any information so provided and that the City shall not be required to provide copies at any charge for any information to the Vendor.

## 12. DEFAULT AND REMEDY



- 12.1 If the Vendor shall be in default of any of its covenants, obligations or agreements hereunder, the City may give to the Vendor written notice thereof, specifying with reasonable particularity, the nature of the default, the time within which the same is to be remedied (maintenance - to be completed forthwith; and all other requirements - to be completed within forty-eight (48) hours or such other period of time as may be set out in the said notice) and requiring the same to be remedied and upon receipt by the Vendor of the notice, which may be delivered by a facsimile transmission, the Vendor shall remedy the default within the time specified.
- 12.2 If such default shall continue for a period of time longer than the period of time specified in paragraph 12.1 or for such longer period of time as may be reasonably required in the circumstances to cure such default, the City may, without prejudice to any other rights which it may have with respect to such default, remedy such default and the cost thereof to the City and interest thereon at the rate of prime plus three (3) percent per annum (compounded semi-annually, not in advance) from the date such cost was incurred by the City, shall be paid forthwith by the Vendor to the City, upon demand by the City.

### **13. TERMINATION AND SURRENDER**

- 13.1 Notwithstanding anything in this Agreement contained, in case of default, breach or non-observance made or suffered by the Vendor at any time or times in respect of any of the covenants, obligations or agreements herein contained on the part of the Vendor and provided such default, breach or non-observance is not cured within the time or times provided in this Agreement, the City may terminate this Agreement by giving the Vendor written notice, which may be given by facsimile transmission, and this Agreement shall be terminated and ended.
- 13.2 If the Vendor becomes insolvent, bankrupt or makes an unauthorized assignment or compromise with its creditors and is unable to perform its duties under this Agreement, the City may, in addition to and without prejudice to its other lawful rights and remedies, forthwith terminate this Agreement by written notice.
- 13.3 Notwithstanding any termination of this Agreement, the Vendor shall be liable to the City for any default hereunder by the Vendor occurring during the term of this Agreement.
- 13.4 If the exercise of the rights or the performance of the obligations of one of the parties hereto is rendered impossible by an act or event beyond the reasonable control of the party exercising the right or performing the obligation, then this Agreement may be terminated without any obligation or liability after the effective date of termination.

### **14. CONSTRUCTION ACT**

- 14.1 The terms "substantial performance" and "completion" shall have the meaning as in the *Construction Act*.
- 14.2 The Vendor hereby indemnifies the City from and against all liability from any damages, loss, costs and expenses of any nature whatsoever arising on account of any liens or other claims that may be filed pursuant to the *Construction Act* on account of the Vendor's work.



- 14.3 If any Claim for Lien under the *Construction Act* or any like statute shall at any time be given to the Clerk of the City by reason of work done or materials supplied for or to the Vendor or anyone holding an interest in the handrails, on-street waste receptacles and advertising through the Vendor, the Vendor shall vacate the Claim for Lien within five (5) business days after the Claim for Lien has come to the notice or knowledge of the Vendor. If the Vendor wishes to contest the amount or validity of any lien and has so notified the City and if the Vendor has deposited with the City or paid into Court to the credit of the lien action, the amount of the lien plus a reasonable amount for costs, the Vendor may defer payment of such lien for a period of time sufficient to enable the Vendor to contest the lien with due diligence. The Vendor shall contest the lien on behalf of the City at the Vendor's own cost and shall, as soon as possible, have the registration of any Claim for Lien and/or Certificate of Action vacated.
- 14.4 The City, where applicable, may but shall not be obligated to, vacate any Claim for Lien and any amount paid by the City in so doing, together with all reasonable costs and expenses of the City shall be reimbursed to the City by the Vendor within fifteen (15) clear days after demand. If the Vendor fails to pay the amount demanded, the City may forthwith terminate this Agreement.

## **15. GENERAL**

### **15.1 OBSERVANCE OF GOVERNMENT REGULATIONS**

The Vendor shall comply with all provisions of law applicable to the advertisement and the placement of advertising faces in or on such handrails, on-street waste receptacles and advertising during the term of this Agreement including, without limitation, federal and provincial legislative enactments, zoning and building by-laws (where applicable) and any other government or municipal regulations or agreements which relate to the demolition or construction of structures and to the equipping of and maintenance,

operation and use of the handrails, on-street waste receptacles and advertising, structures and public ways adjacent thereto and to the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the handrails, on-street waste receptacles and advertising, or any part thereof. The Vendor shall also comply with all police, safety, fire and sanitary regulations imposed by any federal, provincial or municipal authorities and with the requirements made by the insurance underwriters to the extent required in order to keep the required insurance in force.

### **15.2 CONDONATION**

Any condonation or failure by the City to enforce the rights and remedies available to it under this Agreement arising from failure by the Vendor to observe or perform any provisions of this Agreement shall not be deemed a waiver of the City's rights hereunder nor shall such failure or condonation preclude the City from enforcing its rights and remedies against the Vendor for any subsequent breach or non-performance.

### **15.3 NOTICE**



- (a) Where this Agreement requires notices, demands, requests, agreements, consents, approvals or a document to be delivered by one party to the other, such notice, demand, request, agreement, consent, approval or document shall be in writing and delivered either personally, by e-mail, by fax or by prepaid ordinary first class post, by the party wishing to give such notice, demand, request, agreement, consent, approval or document, to the other party at the address noted below.
- (b) Such notice, demand, request, agreement, consent, approval or document shall be deemed to have been given:
  - (i) in the case of personal delivery, on the date of delivery;
  - (ii) in the case of e-mail or fax, on the date of transmission provided it is received before 4:30 p.m. on a day that is not a holiday, as defined in the *Interpretation Act*, failing which it shall be deemed to have been received the next day, provided the next day is not a holiday; and
  - (iii) in the case of registered post, on the third day, which is not a holiday, following posting.

(c) Notice shall be given, to the Vendor, at:

(Vendor name & address)

Attention:

Telephone No:

and to the City at: The Corporation of the City of Niagara Falls

4310 Queen Street

Niagara Falls, ON L2E 6X5

Attention: Director of Municipal Works

Telephone No: (905) 356-7521

Fax No: (905) 356-5576

- (d) It is the responsibility of the Vendor to notify the City immediately upon any change of municipal address, e-mail address, telephone number and or facsimile transmission number.

#### 15.4 NUMBER

Words importing the singular shall include the plural and vice versa.

#### 15.5 INDEX AND CAPTIONS



The index and captions contained in this Agreement are for reference only and in no way affect this Agreement.

#### **15.6 APPLICABLE LAW**

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein from time to time and shall be treated in all respects as an Ontario Agreement.

#### **15.7 OBLIGATIONS AND COVENANTS**

Each obligation or agreement of the City or of the Vendor contained in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.

#### **15.8 INVALIDITY**

The invalidity or unenforceability of any provision or covenant contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed severable.

#### **15.9 COVENANTS INDEPENDENT**

Each covenant in this Agreement is a separate and independent covenant and a breach of a covenant by any party shall not relieve the other party from the obligation to perform each of its covenants, except as expressly provided herein.

#### **15.10 AMENDMENT**

No supplement, modification, amendment, waiver or termination of this Agreement shall be binding unless executed in writing by the parties.

#### **15.11 NON-WAIVER**

No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions (whether or not similar) nor shall any waiver constitute a continuing waiver, unless otherwise provided.

#### **15.12 SUCCESSORS AND ASSIGNS**

All of the provisions of this Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

### **16. ASSIGNMENT**

16.1 The Vendor shall not assign the obligations, duties, responsibilities, rights and privileges contained in this Agreement unless the City has given its prior written consent. Prior to giving such consent, the City may require that it be satisfied as to the following:





- (a) The proposed assignee company must be identified (name of company, contact name and telephone number);
- (b) The proposed assignee company must provide to the City, satisfactory financial statements for the last two (2) fiscal years;
- (c) The proposed assignee company must provide an outline of satisfactory previous experience relating to advertising and preferably outdoor type advertising; and
- (d) The City reserves the right to meet with senior officers of the proposed assignee company prior to responding to a request for assignment from the Vendor.

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement.

**THE CORPORATION OF THE  
CITY OF NIAGARA FALLS**

**Per:** \_\_\_\_\_

**James M. Diodati, Mayor**

\_\_\_\_\_

**William G. Matson, City Clerk**

**Date** \_\_\_\_\_

**xxxx**

**Per:** \_\_\_\_\_

**I have authority to bind the Corporation**

**Date** \_\_\_\_\_



## APPENDIX B – SUBMISSION FORM

### 1. Proponent Information

Please fill out the following form, naming one person to be the proponent's contact for the RFP process and for any clarifications or communication that might be necessary.	
Full Legal Name of Proponent:	
Any Other Relevant Name under which Proponent Carries on Business:	
Street Address:	
City, Province/State:	
Postal Code:	
Phone Number:	
Fax Number:	
Company Website (if any):	
Proponent Contact Name and Title:	
Proponent Contact Phone:	
Proponent Contact Fax:	
Proponent Contact Email:	



## **2. Acknowledgment of Non-Binding Procurement Process**

The proponent acknowledges that the RFP process will be governed by the terms and conditions of the RFP, and that, among other things, such terms and conditions confirm that this procurement process does not constitute a formal, legally binding bidding process (and for greater certainty, does not give rise to a Contract A bidding process contract), and that no legal relationship or obligation regarding the procurement of any good or service will be created between the City and the proponent unless and until the City and the proponent execute a written agreement for the Deliverables.

## **3. Ability to Provide Deliverables**

The proponent has carefully examined the RFP documents and has a clear and comprehensive knowledge of the Deliverables required. The proponent represents and warrants its ability to provide the Deliverables in accordance with the requirements of the RFP for the rates set out in its proposal.

## **4. Non-Binding Pricing**

The proponent has submitted its pricing in accordance with the instructions in the RFP and in Pricing (Appendix C) in particular. The proponent confirms that the pricing information provided is accurate. The proponent acknowledges that any inaccurate, misleading or incomplete information, including withdrawn or altered pricing, could adversely impact the acceptance of its proposal or its eligibility for future work.

## **5. Addenda**

The proponent is deemed to have read and taken into account all addenda issued by the City prior to the Deadline for Issuing Addenda. The proponent is requested to confirm that it has received all addenda by listing the addenda numbers, or if no addenda were issued by writing the word "None", on the following line: \_\_\_\_\_ . Proponents who fail to complete this section will be deemed to have received all posted addenda. Addenda to be submitted in Envelope #1

## **6. No Prohibited Conduct**

The proponent declares that it has not engaged in any conduct prohibited by this RFP.

## **7. Conflict of Interest**

Proponents must declare all potential Conflicts of Interest, as defined in section 3.4.1 of the RFP. This includes disclosing the names and all pertinent details of all individuals (employees, advisers, or individuals acting in any other capacity) who: (a) participated in the preparation of the proposal; **AND** (b) were employees of the City within twelve (12) months prior to the Submission Deadline.



If the box below is left blank, the proponent will be deemed to declare that (a) there was no Conflict of Interest in preparing its proposal; and (b) there is no foreseeable Conflict of Interest in performing the contractual obligations contemplated in the RFP.

Otherwise, if the statement below applies, check the box.

- The proponent declares that there is an actual or potential Conflict of Interest relating to the preparation of its proposal, and/or the proponent foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the RFP.

If the proponent declares an actual or potential Conflict of Interest by marking the box above, the proponent must set out below details of the actual or potential Conflict of Interest:

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## 8. Disclosure of Information

The proponent hereby agrees that any information provided in this proposal, even if it is identified as being supplied in confidence, may be disclosed where required by law or by order of a court or tribunal. The proponent hereby consents to the disclosure, on a confidential basis, of this proposal by the City to the advisers retained by the City to advise or assist with the RFP process, including with respect to the evaluation this proposal.

---

Signature of Witness

---

Signature of Proponent  
Representative

---

Name of Witness

---

Name of Proponent Representative

---

Title of Proponent Representative

---

Date

I have the authority to bind the  
proponent.



## APPENDIX C – PRICING

### 1. Instructions on How to Provide Pricing

- (a) Proponents should provide the information requested under section 3 below (“Required Pricing Information”). The pricing (revenue amounts) shall be in accordance with the prescribed Price Form identified on the subsequent pages.
- (b) Pricing to be provided in Canadian funds, inclusive of all applicable duties and fees, excluding HST, which should be itemized separately.
- (c) Pricing (Revenue Payment) amounts are required to be payment complete to include expenses related to all labour, material, equipment, parts, supervision, tools and site preparation & clean-up and all other requirements.
- (d) The quantities indicated are estimates only and may be subject to change. The quantities are intended to reflect the anticipated annual requirements. The actual quantities under the agreement will be as and when required, with no fixed amounts implied.

### 2. Evaluation of Pricing

Pricing is worth 30 points of the total score.

Pricing will be scored based on a relative pricing formula using the rates set out in the pricing form. Each proponent will receive a percentage of the total possible points allocated to price for the particular category it has submitted a proposal for, which will be calculated in accordance with the following formula:

$$\text{Proponent's Price (Total Revenue)} \div \text{Highest Price (Total Revenue)} \times \text{Weighting} = \text{Proponent's Pricing Points}$$

### 3. Required Pricing Information

In a separate envelope (Envelope #2), the Price Form shall be provided.



#### 4. PRICE FORM

Proponents must complete all minimum revenue dollar amounts on the Price Form.

<b>REVENUE</b>			
<b>Description of Work/Services</b>	<b>Year</b>	<b>Minimum Revenue Per Handrail and Waste Receptacle</b>	
		<b>Monthly</b>	<b>Annually</b>
Handrail With or Without Advertising	2022	\$	\$
On-Street Waste Receptacle With or Without Advertising	2022	\$	\$
Handrail With or Without Advertising	2023	\$	\$
On-Street Waste Receptacle With or Without Advertising	2023	\$	\$
Handrail With or Without Advertising	2024	\$	\$
On-Street Waste Receptacle With or Without Advertising	2024	\$	\$
Handrail With or Without Advertising	2025	\$	\$
On-Street Waste Receptacle With or Without Advertising	2025	\$	\$
Handrail With or Without Advertising	2026	\$	\$
On-Street Waste Receptacle With or Without Advertising	2026	\$	\$
Total Revenue for Contract Term (excluding HST)			\$
<b>Company Name</b> (Please Print)		<b>Dated</b> (Please Print)	



## APPENDIX D – RFP PARTICULARS

### A. RFP Deliverables

#### 1. Introduction

The City is seeking qualified and experienced proponents to submit proposals for the advertising services opportunity on handrail and on-street waste receptacles at selected locations for the City of Niagara Falls (“the City”), as further described in the RFP Particulars (Appendix D). The contract term will be for five (5) years. The City will expect to receive revenue from the successful proponent for the rights granted to the said successful proponent for this advertising opportunity.

#### 2. Installation of Handrails and/or On-Street Waste Receptacles & Installation of Advertising

- a) The City shall permit installation of handrails and/or on-street waste receptacles, with or without advertising faces, on roads and highways under the jurisdiction of the City and permit the installation of advertising matter on such advertising faces during the term of this Agreement, which term shall be five (5) years.
- b) The successful proponent shall obtain the approval of the Director or Municipal Works, or designate (hereinafter referred to as the “Director”) of the design, manufacture and installation of the handrails and/or on-street waste receptacles, prior to the installation. The successful bidder also agrees to obtain the consent and approval of the Director regarding any alterations to the design or specifications.
- c) The successful bidder acknowledges and agrees that the rights and privileges granted by the Agreement are not exclusive and that the City may also, itself and/or through other persons, install such handrails and/or on-street waste receptacles with or without advertising faces.

#### 3. Ownership

- a) The City acknowledges that the handrails and/or on-street waste receptacles shall continue to be the property of the successful proponent subject to the following:

At the expiry of this Agreement, the successful proponent shall peaceably surrender and return to the City, at no cost to the City, the handrails in the state of repair required by the City pursuant to this Agreement, together with copies of all available construction, technical, engineering, and design drawings which are in the possession of the successful proponent and which pertain to the handrails and/or on-street waste receptacles or any part or parts thereof.

- b) The successful proponent shall retain ownership of the associated waste receptacles and at the expiry of this Agreement, and shall forthwith remove all such waste receptacles.





#### 4. Location

- a) The successful proponent shall, during the term of this Agreement, submit an application for each proposed new location of handrails and/or on-street waste receptacles as noted on Appendix "F".
- b) Handrails and/or on-street waste receptacles shall be installed only in locations approved by the Director.
- c) In the event that the proposed new location falls within the boundaries of a local Business Improvement Area, the successful bidder must obtain written consent from the said Business Improvement Area for the installation of any handrails and/or on-street waste receptacles. A copy of the written consent must be provided to the City prior to installation.
- d) In determining the location of any hardware to be installed, the successful bidder and the City shall consider any and all appropriate factors, including:
  - i) the convenience and safety of pedestrians;
  - ii) the exposure available for the purpose of advertising
  - iii) safety of motorists to ensure hardware does not obstruct visibility
- e) The City shall have the right to cancel or revoke the approval of any location previously approved for the installation of handrails and/or on-street waste receptacles or of an advertising face, notwithstanding that such location may have been previously approved. The decision of the City in this regard shall be final.
- f) Nothing contained herein shall make the City liable to the successful proponent for consequential loss or economic loss sustained by the successful proponent including losses from the removal or relocation of handrails and/or on-street waste receptacles, for any reason.
- g) On the 1<sup>st</sup> day of July in each year of the term of this Agreement, the successful proponent shall give the City a list of the current locations of all handrails and/or on-street waste receptacles.

Current locations and quantities of handrails:  
Victoria Avenue @ Falls Avenue – quantity: 3

Current location and quantities of waste receptacles:  
Victoria Avenue @ Falls Avenue - quantity: 1  
Victoria Avenue @ McRae Street - quantity: 1  
Victoria Avenue @ Morrison Street - quantity: 1  
Victoria Avenue @ Great Wolf Lodge - quantity: 1  
Erie Avenue @ Park Street (Niagara Falls Bus Terminal Loop) - quantity: 1  
McLeod Road @ Parkside Road - quantity: 1  
McLeod Road @ Kalar Road - quantity: 1  
McLeod Road @ Montrose Road - quantity: 1



Current location and quantities of waste receptacles (cont'd):

McLeod Road @ Pin Oak Drive - quantity: 1  
Portage Road @ Colborne Street - quantity: 1  
Kalar Road @ Coventry Road - quantity: 1  
McLeod Road @ Kalar Road - quantity: 1  
Portage Road @ O'Neil Street - quantity: 1  
Oakwood Drive @ Walmart North Entrance - quantity: 1  
Canadian Drive @ Transit Hub - quantity: 3

**5. Installation**

- a) The City shall have the right to inspect any handrails and/or on-street waste receptacles during installation and the successful proponent shall remedy any defect in installation to the satisfaction of the City, upon notice, within the time specified in the notice.
- b) When installing, maintaining or otherwise working on the handrails and/or on-street waste receptacles, the Successful Bidder shall not occupy any lane or traffic on any road, at any time, when the stopping, standing or parking of vehicles is restricted or prohibited by operation of traffic by-laws.
- c) The successful proponent must install and maintain at a minimum the same number of handrails and on-street waste receptacles, as listed above in Section 4. Locations. Installation must occur within ninety (90) days of the formal agreement being executed.

**6. MAINTENANCE**

- a) The successful proponent shall carry out all necessary repairs to the handrails and/or on-street waste receptacles and the replacement of any parts, as required, or as directed by the Director in accordance with this Agreement.
- b) The successful proponent, shall repair all damage caused by vandalism to any hardware, within five (5) business days, provided that if the handrails and/or on-street waste receptacles sustains repeated damage due to vandalism, the successful proponent may at its sole expense, move the hardware to an alternate location, approved in accordance with Section 4. Location hereof, and restore the handrails and/or on-street waste receptacles site, at its sole expense, to its original condition, to the satisfaction of the City.
- c) Should the Director deem any hardware to be an immediate health or safety hazard, the City may remove the damaged hardware immediately, at the sole expense of the successful proponent.



## 7. ADVERTISING

- a) The successful proponent shall have the exclusive right, during the term of this Agreement, to supply advertising on the handrails and/or on-street waste receptacles installed by said successful proponent.
- b) The Vendor shall not permit any advertising on any advertising face installed on the hardware that:
  - Condone any form of personal discrimination, including that based upon race, national origin, religion, sex, age, etc.
  - Appear to exploit, condone or incite violence; nor directly encourage or exhibit indifference to, unlawful or reprehensible behaviour.
  - Advertise / promote alcohol, tobacco, vaping, marijuana or other illicit drug products.
  - Demean, denigrate or disparage any identifiable person, group of persons, firm, organization, industry or commercial activity, profession, product or service or attempt to bring them into public contempt or ridicule.
  - Undermine human dignity, or appear to encourage or be indifferent to conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population.
  - Promote political affiliations.
  - Violate or conflict with any existing City policies or any new policies which may be adopted.
  - Contravene any law or other restriction in effect

Further, all advertising shall also be in accordance with the guidelines of the Canadian Council of Advertisers. The decision of the Director in this regard shall be final and binding.

- c) If any advertising does not comply with the provisions, the City may require the removal of such advertising by the successful proponent and shall, at its sole expense, remove the advertising to the satisfaction of the City, within the time frame specified by the City and the City shall not be liable to the successful proponent or anyone claiming through or against successful proponent for damages, loss, costs, or expenses by reason thereof.
- d) The successful proponent shall make available to the City, at no cost to the City, five (5) percent of all advertising faces for public service messages.
- e) The City shall produce and the successful proponent shall install, at the successful proponent's own expense, all public service messages on any advertising faces which the successful proponent has made available to the City as above. The cost of production of all public service messages shall be the responsibility of the City or its designates, as the case may be.



- f) The successful proponent shall approve the design for the public service messages, which approval may not be unreasonably withheld.
- g) The successful proponent acknowledges that the City does hereby reserve the right to install or permit to be installed, other advertising devices in the vicinity of the handrails and/or on-street waste receptacles, without compensation to the successful proponent.
- h) The Bidder agrees that the advertising services specified or called for in or under this RFP, will be fulfilled in strict compliance with the requirements of this RFP.

## 8. **ADVERTISING SURFACE SPECIFICATIONS**

Advertising faces shall be defined as:

- a) On pedestrian handrail  
A surface of approximately 1.5 metres by 0.75 metres, equaling approximately 1.1 square metres; and
- b) On an associated on-street waste receptacle  
A surface of approximately 0.75 metres by 1.5 metres, equaling approximately twelve and 1.1 square metres.

## 9. **REVENUE**

- a) The revenue to be stated by Bidders in their proposal submissions (envelope #2) must be stated on an annual basis for each of the five (5) years of the Contract as per Appendix C - Pricing. Taxes are not included.
- b) The Revenues stated in all proposal submissions are to be in Canadian Funds and are to remain firm for the complete term of the contract.
- c) Payment for the contract period commencing February 1, 2022 through to and including January 31, 2027 shall be made to the City on the 15th day of each month in each and every year of this contract. The first payment shall be made to the City within ninety (90) days of the formal agreement being executed.
- d) The parties hereto agree that the fees set out herein above are intended to represent the fair market value of such rights.

## **B. Material Disclosures**

In responding to this RFP, the Proponent accepts full responsibility to understand the RFP in its entirety, and in detail, including any inquiries to the City of Niagara Falls as necessary to gain such understanding. The City of Niagara Falls reserves the right to disqualify any Proponent who, in the City's sole opinion, demonstrates less than such understanding. Further, the City reserves the right to determine, at its sole discretion, whether the Proponent has demonstrated such understanding. That right extends to cancellation of award, if award has been made. Such



disqualification and/or cancellation shall be at no fault, cost, or liability whatsoever to the City of Niagara Falls.

Based on the performance of the successful Proponent, funding availability and approval by the Municipality, the City reserves the right to utilize the services of the successful Proponent for additional related work as yet unknown, that is over and above the scope identified, or return to the market with a new RFP document when it is deemed to be in the Municipalities' best interest.

## **C. Mandatory Submission Requirements**

### **i. Submission Format Requirements**

Proposals should be formatted to the requirements listed below. Proponents will be scored on their comprehension of the Request for Proposal and completion of their submission.

- a. Proposals should be formatted with the identified Proposal Sections, named and listed in the same order listed below.
- b. Include tabs for each Proposals Section with the section number and name as listed below.
- c. Only the material requested below should be provided within each Proposal Section and in the order listed.
- d. **Proposals shall be a maximum of twenty-five (25) single sided pages**, excluding Appendices and Supplemental Information. Any pages beyond the first 25 will not be considered in the evaluation.
- e. Any additional information proponents wish to include such as Corporate Brochures, project photographs and letters of references shall be provided as Supplemental Information.

### **ii. Proposal Sections**

Proposals shall be formatted with table of contents and proper labels for each section below and be submitted in the correct envelopes.

- i. Appendix B – Submission Form and all addenda (if applicable) & statement of understanding
- ii. Experience & Qualifications
- iii. Infrastructure Supply & Maintenance
- iv. Advertising
- v. Innovative & Value Added
- vi. References



### **iii. Pricing**

Pricing (Appendix C – Price Form) information must be separated and enclosed in a separate sealed envelope (Envelope #2) as identified in section 1.5.3 of this RFP. The pricing shall be in accordance with the supplied Price Form.

### **iv. Supplemental Information**

Proponent may include any additional information in this section, however, this section will not be considered in the scoring matrix. Envelope #1

### **v. Submission Form (Appendix B)**

Each proposal must include a Submission Form (Appendix B) completed and signed by an authorized representative of the proponent. Envelope #1

## **D. Mandatory Technical Requirements**

In conjunction with the Mandatory Submission Requirements, proponents must meet a minimum score of 60% (45/75) for each of the technical requirements. A breakdown of the requirements for each of the sections is provided below:

### **i. RFP Deliverables Comprehension & Completion**

Proponent to provide a statement outlining their understanding of the deliverables. The statement shall include an overview of the proponent's company history/background.

Proposal was formatted with table of contents in order and proper labels for each section.

### **ii. Experience & Qualifications**

It is important that the work be undertaken by a proponent who can demonstrate knowledge of, and experience in performing work comparable in nature, size and scope to the City's requirements.

- Provide a brief overview of your organization highlighting services provided and areas of expertise.
- Describe previous experience in undertaking work of a similar nature, size and scope. List up to three (3) similar projects.
- List the other company name(s) your company operates under.
- Provide details of any subcontractors that will be utilized.
- Provide the name and contact information of the main account representative and provide details on their experience/credentials.
- Add any other pertinent company information, qualifications and/or experience in this section (if applicable).



### **iii. Infrastructure Supply & Maintenance**

Proponents are to provide the requested information in order to demonstrate their ability to service the City.

- Describe the installation process, standards, and materials that you will use including resistance to vandalism, moving of benches, etc.
- Provide a high level installation/implementation plan.
- Describe how you will assure and control quality of design and construction of infrastructure. How will advertising materials be installed onto infrastructure?
- Describe ongoing maintenance, cleaning and repair program following the initial installation of infrastructure.

### **iv. Advertising**

- Provide advertising samples from company portfolio to demonstrate the quality of advertising to be provided to the City. Portfolio advertising samples shall not exceed eight (8) pages.
- Describe how you will assess the current locations, as well as your intent and rationale to relocate and add advertising opportunities in new locations.
- Detail the expected frequency of new or replacement advertisements (i.e. minimum and maximum term of advertisement).

### **v. Innovative & Value-Added**

- Detail information on new and innovative processes or materials that they feel would be beneficial to the City. This could include environmentally sustainable elements.
- Detail value-added solutions available that would generate additional revenue for the City annually. Provide a detailed list of each value solution and the total annual dollar value of new revenue generation for the term of the contract.

### **vi. References**

Provide at least three (3) relevant contracts of similar scope that have been awarded within the last five (5) years. References provided must not include the City of Niagara Falls.

If the City is unable to obtain a satisfactory reference or if the reference does not respond to the reference call or chooses not to comment, the reference will be deemed unsatisfactory.

Each contract listed shall provide the following information:

- a) Brief description of the scope of work, approximate annual value and applicable contract dates.
- b) Each client/owner's information to include:



- Corporate name
- Name of contact
- Telephone number
- Email address

Proponents who do not meet the minimum threshold will not receive consideration for the Financial Proposal. Further to this, Proponents who feel that they cannot meet the timelines identified in this RFP should not submit a proposal.

## E. Rated Criteria

The following sets out the categories, weightings and descriptions of the rated criteria of the RFP. Proponents who do not meet a minimum threshold score for a category will not proceed to the next stage of the evaluation process.

<b>Rated Criteria Category</b>	<b>Weighting (Points)</b>
RFP Deliverables Comprehension & Completion	10
Experience & Qualifications	15
Infrastructure Supply & Maintenance	15
Advertising	15
Innovative & Value-Added	10
References	5
Score of 45 out of 75 to move on to Financial Opening	
Proposed Price / Financial Model	30
<b>Total Points</b>	<b>100</b>

Proposals whose Pricing is significantly and disproportionately lower than that of the other proponents, may be considered to have undervalued, and therefore, misinterpreted the scope of work. These proposals may not be considered in this evaluation.

## F. Pre-Conditions of Award

The selected proponent must satisfy the following conditions and provide the following information within 14 days of the notice of selection:

### 1. CERTIFICATE OF INSURANCE

The selected proponent must provide the City with a Certificate of Insurance acceptable to the City Solicitor and must be on forms acceptable to the City. If the Certificate of Insurance is provided in a non-original form (e.g. a facsimile, photocopy or scanned electronic copy), the proponent acknowledges and agrees that the City is fully entitled to treat any such Certificate as an original and that the proponent will be responsible for the accuracy and validity of the information contained therein. If required by the City, certified copies of all the above-mentioned policies shall be delivered to the City. All subsequent policy renewals and Certificates of Insurance





thereafter, during the time that the Contract is in force, shall be forwarded to the City within fifteen (15) days of their renewal date.

The Supplier hereby agrees to put in effect and maintain insurance for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Supplier purchase and maintain at all times during the term of the Contract or cause to purchase and maintain at all times during the term of the Contract, but not limited to, the following:

- c) Commercial General Liability Insurance  
Commercial General Liability insurance for all Deliverables to a limit of not less than five million dollars (\$5,000,000) per occurrence.

The policy will be extended to include:

- Bodily injury, death and property damage;
- Cross liability and severability of interest;
- Blanket contractual;
- Premises and operations;
- Personal and advertising injury;
- Broad form property damage;
- Products and completed operations;
- Owner's and contractor's protective;
- Non-owned Automobile to a limit of not less than two million dollars (\$2,000,000).

The policy shall be endorsed to:

- Include **The Corporation of the City of Niagara Falls** as an additional insured; and
- Contain an undertaking by the insurers to give thirty (30) days prior written notice in the event that there is a material change in the foregoing policies or coverage affecting the Additional Insured(s) or cancellation of coverage before the expiration date of any of the foregoing policies.

- d) Automobile Insurance

Automobile Insurance (OAP1) for both owned and leased vehicles with inclusive limits of not less than two million dollars (\$5,000,000). Coverage must also apply in the event the operations of the insured results in a pollution condition, including remediation costs.

## 2. WORKPLACE SAFETY AND INSURANCE BOARD CLEARANCE

The selected proponent shall provide:

- a) A valid, current Clearance Certificate declaring that the selected bidder is registered with Workplace Safety and Insurance Board ("WSIB"), and has an account in good standing;  
or



b) A Letter of Good Standing issued by WSIB.

If WSIB coverage is not required by law to be carried by the selected proponent, the selected proponent shall provide one of the following (as the case may be):

- a) An Exemption Letter from WSIB, satisfactory to the City's Solicitor;
- b) An Independent Operators Status Certificate issued by WSIB; or
- c) Such further and other evidence as may be satisfactory to the City's Solicitor.



## APPENDIX E – BID IRREGULARITIES

### RESPONSES FOR ADMINISTERING IRREGULARITIES CONTAINED IN BIDS, WHERE APPLICABLE

	<u>IRREGULARITY</u>	<u>RESPONSE</u>
1.	Late Bids.	Automatic rejection.
2.	Unsealed Envelopes.	Automatic rejection.
3.	<b>Insufficient Financial Security</b>	
	A) No Bid Deposit, uncertified cheque, or financial security not an original (e.g. a photocopy or a facsimile of a financial security).	Automatic rejection.
	B) Amount of financial security is insufficient:	Automatic rejection.
	C) i. Name or signature of Supplier is missing or incomplete.	Automatic rejection.
	ii. Seal of Supplier is missing or incomplete.	Two (2) working days* to obtain missing or incomplete items.
	D) Name, signature, or seal of bonding company is missing or incomplete.	Automatic rejection.
	E) Failure to provide a letter of agreement to bond (if required).	Automatic rejection.
4.	<b>Bid Document – execution</b>	
	A) Bids completed in erasable medium.	Automatic rejection.
	B) i. Signature of representative authorized to bind the Supplier missing or incomplete on the prescribed form which is to be submitted in response to a Bid Solicitation.	Automatic rejection.
	ii. Electronic signature of representative or absence of corporate seal authorized to bind the Supplier shown on the prescribed form which is to be submitted in response to a Bid Solicitation.	Two (2) working days* to obtain original signature.
	C) Form of Proposal missing or incomplete.	Two (2) working days* to correct to the satisfaction of Procurement Division, otherwise automatic rejection.
	D) Form of Quotation or Tender missing or incomplete.	Automatic rejection.
	E) Signature of witness, if required, missing or incomplete.	Two (2) working days* to correct, otherwise automatic rejection.



<b>IRREGULARITY</b>		<b>RESPONSE</b>
	F) Date of Bid missing or incomplete.	Two (2) working days* to correct, otherwise automatic rejection or, if stated in the Bid Solicitation, automatic rejection.
5.	Incomplete, illegible or obscure Bids or Bids which contain information not called for, erasures, overwriting or strike outs (not initialed).	Two (2) working days* to correct to the satisfaction of Procurement Division, otherwise automatic rejection.
6.	Document, in which all necessary Addenda have not been acknowledged.	Two (2) working days* to confirm Bid to the satisfaction of Procurement Division or, if stated in the Bid Solicitation, automatic rejection.
7.	Failure to attend mandatory site visit (if required).	Automatic rejection.
8.	Bid received on documents other than those provided in the Bid Solicitation.	Automatic rejection, unless allowed for in the Bid Solicitation.
9.	Failure to insert the bidder's business name in the space provided in the Bid Solicitation form.	Automatic rejection unless, in the opinion of Procurement Division the incomplete nature is trivial or insignificant.
10.	Mathematical errors.	Two (2) working days* to initial the corrections as made by the Corporation. Unless otherwise stated in the Bid, the unit price shall prevail and the total Bid price shall be adjusted accordingly. The Corporation reserves the right to waive initialing and accept Bid as corrected.
11.	Qualified Bids (Bids qualified or restricted by an attached statement).	Automatic rejection
12.	Bids containing minor obvious clerical errors.	Two (2) working days* to confirm Bid to the satisfaction of Procurement and Strategic Acquisitions.
13.	Any other irregularities.	The Manager of Procurement, or Designate, shall have authority to waive other irregularities or grant two (2) working days * to initial such other irregularities considered to be minor.

\*\* Where "working days" specified, this is from the hour the Bidder is notified by The Corporation of the City of Niagara Falls staff of the irregularity



## APPENDIX F – ON STREET HARDWARE APPLICATION

### City of Niagara Falls – Transportation Services

**Note:** Please allow 4-6 weeks for processing. All requests on Regional roads will be forwarded onto the Region of Niagara for review and approval.

Date: \_\_\_\_\_ Applicant/Contact: \_\_\_\_\_

Organization Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_

### **Site Drawing:**

In the space provided below, please include: street names, location, sidewalks, curbs, utility poles, hydrants, signs, driveways, bus stop location, etc. with all distances & dimensions (add photo of immediate area)



Type of Installation: \_\_\_\_\_

Location (be specific): \_\_\_\_\_

### **For Staff Use Only:**

Approved (Y/N) & Reason: \_\_\_\_\_

Comment: \_\_\_\_\_

Date: \_\_\_\_\_ Authorization: \_\_\_\_\_