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GEORGINA

THE CORPORATION OF THE TOWN OF GEORGINA STANDARD TERMS AND CONDITIONS

The Standard Terms and Conditions contained within are applicable to all Corporation of the Town of Georgina (Town) Bid Opportunities and shall form part of the Town's Bid Call Documents.

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1. Definitions

All italicized terms not otherwise defined in these Standard Terms and Conditions shall have the meanings ascribed thereto in the Town's Procurement Policy Number 2018-0051, as it may be amended, restated, supplemented or replaced from time to time.

"*Acquisition*" or "*Procurement*" includes a purchase, rental, *lease* or conditional sale, of *deliverables*, but does not include:

- a) Any form of assistance such as grants, loans, equity infusion, guarantees or fiscal incentives;
- b) Provision of *deliverables* to *persons* or other government organizations;
- c) A revenue generating arrangement; or
- d) Acquisition of *real property*;

"*Acquisition Value*" means the total financial commitment resulting from a *procurement process*, including all expenses related to fully executing all available renewals and *contract extension* options available in the *contract* in Canadian currency, exclusive of taxes;

"*Addendum*" means a document or information attached or added to clarify, modify, or support the information in the original *bid call document* and may also include "*addenda*";

"*Bid*" or "*Bids*" means an offer or *submission* received in response to a call for *bids*, and includes a *proposal*;

"*Bidder*" means any legal entity that submits a *bid* in response to a call for *bids*, and may include "*proponent*" or "*respondent*";

"*Bid Bond*" means a bond given to the *Town* to guarantee entry into a *contract*. This bond is given to indemnify the *Town* against increased costs if the *bidder* does not carry out the specified undertaking to enter into a *contract*.

"*Bid Call Document*" means the *Town's bid document* which may be in the form of *request for quotation (RFQ)* (including quick bid), *request for proposal (RFP)*, *request for tender (RFT)*, or other RFX bid documents;

"*Blackout Period*" means the period of time from when the *bid call document* is issued and when the *contract* is *awarded* by the *Town* to the selected *vendor* during which time the *vendor* shall communicate exclusively with the *Procurement Representative*;

"*Conflict of Interest*" means a real or perceived incompatibility between one's private interests and one's public or fiduciary duties in which a *person* is in a position to derive personal benefit from actions or decisions made in their official capacity;

"*Contractor*" means the selected *bidder* that has a *contract* with the *Town* to perform the *deliverables* described in a *bid call document*. For clarity, for this *procedure* only, "*contractor*" includes "*consultant*", "*supplier*" and "*vendor*".

"*Deliverables*" means *goods, services and construction*;

"*Procurement*" means the process of *acquiring deliverables* from an external source, often using a defined method. The most appropriate method is used to ensure the *Town* receives *deliverables* at the best total *acquisition value*;

"*Procurement Representative*" means the *procurement representative* of the *Town* as specified in a *bid call document* and is an *employee* of *Procurement Services*, and includes *Procurement Advisor*;

"*Procurement Services*" means the Department responsible for the centralized *acquisition* of *deliverables* and the *disposal* of *personal property* for the *Town*;

"*Proponent*" means the legal entity that submits a *bid* in response to a *bid call document* and may include *bidder* or *respondent*;

"*Proposal*" means a *submission* received in response to a *request for proposal* (RFP);

"*Purchase Order*" means the document issued by the *Town* to a *contractor* that sets out, or references other *contract* documents that set out, the terms and conditions applicable to the supply of *deliverables* by a *contractor*, including, at minimum, the *acquisition value*. It is also *authorizes* the *contractor* to ship and charge for the *deliverables* specified on the order;

"*Requisitioner*" means the member of the *requisitioning department* that has been assigned the responsibility for the *acquisition* of *deliverables* and the management of the resulting *contract* with a *contractor* by the *Director* of that *requisitioning department*;

"*Requisitioning Department*" means the Department that has budget responsibility for the *acquisition*, except in the case of an *acquisition* of information technology, in which case the *requisitioning department* also includes the department that will be the main user of the technology;

"*Respondent*" means the legal entity that submits a *bid* in response to a *bid call*, and may include *bidder* or *proponent*;

"*Specifications*" means the precise requirements or characteristics of the *deliverables* to be *acquired*;

"*Submission*" means a response received from a *bidder* to *bid call* or other form of request for *deliverables*;

"*Town*" means The Corporation of the *Town* of Georgina and its *local boards* (except library) and *committees*;

"*Working Day*" means Monday through Friday, excluding any recognized statutory holiday, public holiday or civic holiday; and,

"*WSIB*" means Workplace Safety and Insurance Board.

2. Bid Submission

The Bid Call Document shall state the **single method** for submitting a bid to the Town, as follows:

- a) Bid Opportunities identified as **ELECTRONIC BID SUBMISSIONS ONLY**, Bidders shall submit their bid submission electronically through the Town's Bidding System.
- b) Bid Opportunities identified as **HARD COPY BID SUBMISSIONS ONLY**, Bidders shall submit a hard copy of their bid submission as stated in the Bid Call Document.

3. English Language

All Bids submitted shall be in the English language only. The Contractor, and in particular, all site supervisors for construction projects, must be able to communicate effectively in the English language.

4. Procurement Policy

4.1 Bids will be called, received, evaluated, accepted and processed in accordance with the Procurement Policy 2018-0051, as amended. By submitting a Bid, the Bidder agrees to be bound by the terms and conditions of the Procurement Policy, as fully as if they were incorporated herein.

4.2 Use this hyperlink, to view a copy of the [Procurement Policy](#).

5. Bidder's Statement of Understanding

By submitting a Bid, it is understood and accepted by each Bidder that the Bidder has carefully examined all of the Bid Call Documents and has carefully examined the Work to be performed under the Contract, if awarded. The Bidder offers to furnish all labour, machinery, tools, apparatus and other means of implementation, and any other materials to complete the Work in strict accordance with the Bid Call Documents for the prices set forth in the Bid.

6. Errors and Omissions

The Town shall not be held liable for any errors or omissions in any part of its Solicitation. While the Town has used considerable effort to ensure an accurate representation of information in its Solicitation, the information contained in the Bid Call Documents is supplied solely as a guideline for Bidders. The information is not guaranteed or warranted to be accurate by the Town, nor is it necessarily comprehensive or exhaustive. Nothing in the Bid Call Documents is intended to relieve the Bidders from forming their own opinions and conclusions with respect to the matters addressed in the Bid Call Documents.

If a Bidder needs to address any discrepancies, errors and/or omissions in the Bid Document or if they were in doubt as to any part thereof, they shall submit questions in writing as instructed in the Bid Document.

7. Blackout Period

- 7.1 A communication Blackout Period will commence when the Bid Call Document is issued and ends when the Contract is awarded by the Town. During the Blackout Period, Bidders must conduct all communication about the Project only with the Purchasing Representative stated herein.
- 7.2 Any communication initiated by a Bidder to elected officials or employees of the Town other than to the Procurement Representative during the Blackout Period may be grounds for disqualifying the offending Bidder from consideration for Contract award.
- 7.3 During the Blackout Period, Bidders may submit questions, as described in the Bid Call Document. The Purchasing Representative may issue a written addendum to provide clarification or modification to the Bid Call Document. The addendum will be published on the Town's Bidding Site. These addenda shall then be considered as part of the Submission.

8. Lobbying Prohibited

The Town will be entitled to reject a Bid if any director, officer, employee, agent or other representative of a Bidder, including any other parties that may be involved in a joint venture, consortium or similar business relationship with the Bidder, makes, during the Blackout Period, any representation or solicitation to any elected representative or employee or agent of the Town including Project consultants, or to the media, with respect to the Bidder's Submission. This requirement does not extend to any public deputations.

9. Litigation, Probation & Suspension

The Town shall reject any Bid from any Bidder or any other party (including any related or affiliated entities and any principal thereof) who is in unresolved dispute with the Town or who is currently serving a Suspension Period. Furthermore, the Town shall retain the right to reject Bids that may have been received and/or awarded by the Town, notwithstanding efforts by the Town to screen the acceptance of Bids from parties engaged in unresolved dispute with the Town or serving a Suspension period, once the Town becomes aware of such unresolved litigation or Suspension period.

10. Limit on Liability

The Bidder agrees that, if the Town is found to be liable for any act or omission in respect of, without limitation, the administration of the Procurement Process or award by it of this Bid Solicitation, the total liability and aggregate amount of damages recoverable against the Town for any matter or relating to or arising from any act or omission by the Town, whether based upon an action or claim in contract, warranty, equity, negligence or otherwise, shall be limited to the Bidder's cost of preparing its Bid.

11. Criminal Record Check

The Contractor, their employees or contracted persons who come in regular and direct contact with, or are in a “position of trust or authority” over children, the disadvantaged, the elderly, or other persons as determined by the Town (Participants), shall obtain a current Police Vulnerable Sector Check (PVSC) or a Vulnerable Sector Screening (VSS), as performed by their local police service at their expense. This is to verify that the Contractor, their employees or contracted persons are clear of unpardoned criminal offences that could result in unsuitability for inclusion in this Contract. This document shall make reference to “The Corporation of the Town of Georgina”.

By submitting a response, the Contractor agrees to obtain a current PVSC or VSS for all employees or contracted persons who will be working at any Town Site, prior to the commencement of the Work. The Contractor further agrees that they will obtain and submit to the Town, an Offense Declaration from each employee or contracted persons at the commencement of each Contract Term, which would confirm that no new offenses have occurred since the PCSC or VSS was completed.

The Contractor also agrees that, in the event that the results from the PVSC or VSS of any employee or contracted person discloses any offenses which, in the absolute discretion of the Town, could cause concern to the Town as to the safety and well being of the Participants, the Contractor shall not permit any such employee or contracted person to work at any Town Site, whether owned or leased, in the provision of the Work identified in the Contract.

In the event that the Contractor uses or permits any such employee or contracted person to provide any of the Work as identified in the Contract, the Town may, in its sole discretion, treat the Contract as terminated and may charge back to the Contractor any costs associated with obtaining replacement Contractor(s) for the otherwise remaining portion of the term.

12. Commencement of Work

No Work shall commence at the beginning of each Term, and no deliverables shall be supplied, without a Corporation of the Town of Georgina Purchase Order issued by the Procurement Representative. Failure to abide by this instruction will result in non-payment for Work conducted or Goods supplied prior to the issuance of an official Purchase Order. No Work shall commence until all required Bonding, Insurance and other required documentation has been submitted to the Town if applicable.

13. Examination of the Place of the Work

13.1 Notwithstanding any drawings or specifications provided in the Bid Call Documents, Bidders are required to satisfy themselves, by personal visitation and examination of each site for the Work, with respect to the existing conditions which may be encountered on or adjacent to the site, including without limitation, all underground/overhead utilities locations, surface & sub-surface conditions, existing structures on or adjacent to the sites, access routes and other conditions which may affect performance of the Work.

13.2 Access to the place of the Work will be provided during the site meeting (if applicable).

- 13.3 By submitting a Bid, the Bidder acknowledges and agrees that he/she has satisfied themselves as to all the provisions of the Bid Call Documents and of all the conditions which may be encountered at the site or any other matter which may affect performance of the Work and no claims may be made by the Contractor, that it was uninformed as to any of the conditions affecting the site or the provisions or conditions intended to be covered by the Contract.
- 13.4 Bidders shall accept sole responsibility for any error or neglect on their part in respect to the foregoing. No claims shall be accepted by the Town for any additional labour, equipment or material cost that was not included in the Bid and may be required for the proper execution and completion of the Work, due to any failure to comply with the above.
- 13.5 The Bidder is not entitled to claim at any time after the submission of its Bid that there was any misunderstanding of the terms and conditions relating to site conditions. The Town is not responsible for any misunderstandings on the part of the Bidder.

14. Enquiries

- 14.1 All requests for clarification and questions regarding the Bid Call Document shall be submitted in writing as instructed in the Bid Call Document prior to the stated deadline for emailed questions. All questions or clarifications should be specific to the Bid Call Document and should include references to a specific section or schedule and item number.
- 14.2 The Town cannot guarantee that the Procurement Representative will answer clarifications or questions received beyond the deadline.
- 14.3 Requests will be answered by the Procurement Representative or forwarded to the appropriate technical contact for reply. Dependent on their nature, comments or answers will be returned via email from the Procurement Representative or through an addendum to the Bid Call Document should the information be applicable to all Bidders, in the opinion of the Town.
- 14.4 Verbal clarifications shall not change any of the terms or conditions of the Bid Call Documents. Bidders shall only rely on information provided by the Town in writing.

15. Bid Debrief

- 15.1 Bidders shall have up to the deadline as stated in the [Procurement Policy 2018-0051](#) to submit a written request for Bid Debrief, question(s) or clarification request and/or concern pertaining to; the Bid Call Document, the procurement process, discrepancies, errors and/or omissions, or other matters to the Procurement Representative regarding a particular bid solicitation.
- 15.2 The Town reserves the right not to conduct a bid debrief, over matters of which the Bidder failed to notify the Procurement Representative, in accordance with the above paragraph.
- 15.3 All Bid Debriefs shall be conducted in accordance with the Procurement Services Policy and Procedures, as amended.

16. Bid Irregularity or Proposal Irregularity

Bid Irregularities and Proposal Irregularities shall be dealt with in accordance with the applicable schedule(s) of the [Procurement Policy 2018-0051](#), as amended.

17. Capability of Bidder

The Bidder shall, if requested by the Town, provide evidence of experience, ability, capacity, financial resources, etc., if deemed necessary by the Town for the performance of the Contract. The Town reserves the right to investigate a Bidder's claim or background at any time and in any manner deemed appropriate by the Town and shall not be required to disclose the information obtained or the source.

18. Piggyback Option

Is a form of intergovernmental cooperative procurement in which the Town may extend the pricing and terms and conditions of a Contract to other government entities, if agreed to, in writing, by the Contractor. No individual person or agency shall be responsible in any way whatsoever for the actions or acquisitions of any other person or agency which may arise, directly or indirectly, as a result of the Bid or any Contract(s) which may result.

19. Non-Exclusive

Any Contract awarded as a result of this solicitation will be non-exclusive. The Town may, at its sole discretion, acquire the same or similar services from other sources during the term of the Contract.

20. Duplicate Vendor Account Submissions

Bidders shall submit all Bids (including Green or Alternative Bids) related to a Bid Opportunity from the same vendor account. If a Bid is received from two vendor accounts related to the same Bidder, then the Town shall only consider the Bid last submitted. Any previous Bids submitted shall be superseded by the last submission and will not be reviewed. It is the Bidder's sole responsibility to ensure that duplicate Vendor Accounts are not created or used inappropriately.

21. Unofficial Bid Results

- 21.1 **PAPER BIDDING ONLY (NOT ELECTRONIC BIDDING)** Where the Town has requested paper Bids only, a public Bid opening will be held by the Town. The Town shall read out the names of the Bidders (whose Bids were received by the Town prior to the submission deadline) and the unverified Sub Total Acquisition Value (excluding the Harmonized Sales Tax (H.S.T.)). If Part Bids are acceptable, as stated in the Bid Call Document, the unverified Sub Total of each Part(s) Bid shall be read out. In addition, if a percentage (%) annual increase is requested, the percentage increase stated, shall be read out. The closing time and date shall be determined by the clock in Procurement Services office. The Bidder's unverified Sub Total Acquisition Value or if a Part Bid is acceptable, the unverified Sub Total of each Part(s) Bid will be posted on the Town's Bidding System, the next business day.
- 21.2 **ELECTRONIC BIDDING ONLY** Where the Town has requested Electronic Bids only, a public Bid opening will **not** be held. The Town shall post the names of the Bidders, on the Town's Bidding System, (whose bids were received by the Bidding System website, prior to the Submission deadline) and the unverified Sub Total Acquisition Value (exclusive of taxes) – the Harmonized Sales Tax (H.S.T.) is additional. If Part Bids are acceptable, as stated in the Bid Call Document, the unverified Sub Total of each Part(s) Bid shall be posted. The closing time and date shall be determined by the Town's Bidding System web clock.

- 21.3 The unverified Bid prices are subject to review, verification, calculation and adjustment by the Town and if necessary, consideration by the Town's Bid Review Panel, in accordance with the terms and conditions of the Bid Call Document and the Town's Procurement Policy.
- 21.4 For Request for Proposal or Quick Bid Request for Proposals, **only the names of Bidders submitting Proposals shall be released publicly.**

22. Checking of Bids

- 22.1 Bids opened are checked by the Procurement Representative and Consultant (if applicable) to ensure that:
- a) The required Bid Deposit and undertaking to provide a Bond are properly executed and satisfy the requirements of the Bid Call Documents.
 - b) Bids comply with the Bid Call Documents, and that all items as specified have been bid on and all Bid forms are completed, unless Part Bids are permitted under the Solicitation. Any Bid Irregularities shall be dealt in the manner described in the Procurement Policy.
 - c) All mathematical extension calculations are correct. Where there is an obvious error in the extended price, the unit price stipulated shall govern and the extended price shall be re-calculated using the unit price, along with the estimate quantity. Where there is an obvious calculation error in the addition of individual lump sum prices into a subtotal price, the Town may make the appropriate mathematical correction to the subtotal price so that the calculation is correct.

23. Bidders Teams (if Applicable)

- 23.1 In the event that there is more than one legal entity submitting a combined Bid, the lead Bidder must be clearly identified. The Town will contract only with the identified lead Bidder (herein referred to as the "Bidder") who shall be completely responsible for the full performance of the Contract, and who shall act at all times as the primary contact for the Town. The Bidder shall arrange the business relationships between the Bidder and its team members and any resulting conflicts resolved without the Town involvement.
- 23.2 The Bidder agrees that no member of the Bidder's team will be substituted for any other individual or firm without the express written authorization of the Town.
- 23.3 Payments pursuant to the Contract will be made directly to the Bidder for distribution to the Bidder's team. The Bidder shall save the Town harmless from all costs, damages, judgements, claims, demands, suits or other proceedings brought by any member of the Bidder team in connection with the distribution of such fees.

24. Gifts and Donations

- 24.1 Contractors shall ensure that there will be no gifts, gratuities, discounts, special services or personal benefits provided or offered to any employee or representative or consultant of the Town, prior to or during or upon completion of the Contract, from the Contractor or any of its employees or representatives in connection with the Contract. The Contractor shall report to the Manager of Procurement Services any attempt by any employee or representative or consultant of the Town to obtain any such or similar favour or personal benefit. Any material failure on the part of a Contractor to comply with this provision may be grounds for disqualification from a Bid or for termination if an award has already been made.

- 24.2 Should any prospective Contractor or any of its agents give or offer any gratuity or attempt to bribe any employee of the Town, or to commit fraud, the Town shall be at liberty to:(i) reject the Bid of such Bidder, or (ii) terminate the Contract of such Contractor. If either the rejection of the Bid or the termination of a Contract pursuant to this provision results in an increased cost to the Town in having the Work completed, the Town shall be entitled to rely upon the Bid Bond or the Performance Bond (as applicable) to recover the increased costs incurred by the Town as compensation and where the amount of the Bid Bond or the Performance Bond (as applicable) is insufficient to compensate the Town, the Contractor shall indemnify the Town for the full amount of the increased costs incurred by the Town. Should there be no Bond in place, the Town shall deduct the increased costs from future payments, or invoice the Contractor to recover the costs.

25. Conflict of Interest

- 25.1 Each Bidder, in their Bid, shall declare on a separate sheet of paper or, in the case of electronic Bid submission, the Bidder shall declare in the text field provided in the Bidding System, all Conflicts of Interest or any situation that may be reasonably perceived as a Conflict of Interest that exists now or may exist in the future. Failure to comply with this requirement may render the Bid non-compliant and shall cause the Bid to be rejected. The Town reserves the right to disqualify from further consideration Bids, which in the Town's sole opinion demonstrate a Conflict of Interest.

26. Ethical Conduct

In addition to being in compliance with all applicable federal, provincial and municipal laws and regulations, within the context of a Contract, Contractors shall behave in an ethical manner having regard for and demonstrating care for, the condition of or well-being and fair treatment of all persons, places and things.

27. Inspection and Testing

- 27.1 The Town reserves the right to inspect and have a demonstration of any/all goods, which may be offered, or of the Bidder's premises/equipment, prior to award and/or at any point during the Contract.
- 27.2 The Town or the Town's consultant shall carry out the inspection of all Bid items to determine whether they meet the requirements of the Bid Call Document and/or Contract, as applicable.
- 27.3 If any services, Work, material or workmanship, which fails in any way to meet the terms of the Bid Call Document and/or Contract, the Town, will notify the Contractor and the Contractor will take immediate steps for corrective actions, at its own expense and within the periods specified by the Town. Should the Contractor fail to remedy any part of the rejected services, Work, material or workmanship, the Town may make alternative arrangements for rectification and any expense(s) incurred by the Town shall be paid by the Contractor within ten (10) business days' following receipt of an invoice or the costs shall be deducted from any payment owed the Contractor.
- 27.4 All cost associated with the inspection or testing of any service/material that does not meet the Town's specification shall be charged to the Contractor.

28. Purchase Order

- 28.1 Payment for work satisfactorily performed in the opinion of the Town is Net Thirty (30) days.
- 28.2 For payment purposes, a Purchase Order shall be generated and issued to the Contractor. The terms and conditions of the Contract supersede those of any Purchase Order issued.
- 28.3 An alternate payment option, via the Town's Corporate Purchase Card (P-Card), may be available to the Contractor at the sole discretion of the Town, based upon considerations, which include, but may not be limited to, its practical application given the commodities or services acquired and the terms and conditions of the Contract.
- 28.4 All payment requests shall be provided with an up to date Insurance Certificate and a copy of the Contractor's valid WSIB Clearance certificate where applicable.
- 28.5 Where there is a question of non-performance, payment in whole or in part may be withheld. In the event a cash discount, the withholding of payment as provided herein shall not deprive the Town from taking such discount.

29. Invoicing

- 29.1 All invoices shall be issued to "The Corporation of the Town of Georgina".
- 29.2 All invoices shall be sent to the Corporation of the Town of Georgina, 26557 Civic Centre Road, Keswick, Ontario L4P 3G1 to the attention of the Requisitioning Department.
- 29.3 All invoices submitted by the Contractor shall reference the Purchase Order number and conform to the order and content as set out in the Town's Purchase Order and shall provide additional information as follows:
- Harmonized Sales Tax shown separately
 - Contractor's HST registration number
- 29.4 The Invoice shall contain sufficient detail in accordance with the items and unit prices of the awarded Bid. For example: Time and Material Contracts should provide a breakdown of labour and material utilized for the project based on the contract unit rate and/or lump sum prices.

30. Set Off Clause

The Contractor hereby agrees that the Town may, at any time, set-off against any monies due or payable to the Contractor, any monies including but not limited to; property taxes (or any penalties and/or interest thereon) owing to the Town by the Contractor at the time such monies become due and payable to the Contractor.

31. Taxes

- 31.1 Bidders shall submit Bid prices (including unit pricing) **exclusive** of all applicable taxes.
- 31.2 In addition to the H.S.T. Registration number, the Contractor shall state the amount of H.S.T. separately on all invoices.

- 31.3 Where a change in Canadian Federal or Provincial Taxes occurs after the Bid closing date for the Contract, which change could not have been anticipated at the time of Bidding, the Town shall increase or decrease Contract payments to account for the exact amount of the change involved and the Contract will be deemed to be amended accordingly

32. Availability of Funds

- 32.1 All Awards are subject to the approval of the Requisitioning Department Director, Director of Corporate Services & Treasure, Chief Administrative Officer (CAO), and/or Council (as applicable, in accordance with the Procurement Policy) and the availability of funds.
- 32.2 In the event that the sub total Contract Bid amount from the selected Bidder exceeds the Town budget for the Solicitation, the Town reserves the right to:
- a) Where in the opinion of the Town it is possible to do so, award part of the Solicitation to the selected Bidder(s); or
 - b) Negotiate, where it is in the Best Interest of the Town, in the opinion of the Manager of Procurement Services; or
 - c) Cancel the Solicitation in its entirety.

33. Payment of Workers

The Contractor shall pay or cause to be paid weekly/biweekly to every worker employed in the execution of the Contract, wages at not less than the following rates:

- a) For workers employed in the execution of the Contract, who are in contractual relationship with a union, the minimum rate of wages shall be the union rate of wages in the particular district or locality in which the Work is undertaken.
- b) For workers employed in the execution of the Contract, who are not in contractual relationship with a union, the minimum rate of wages shall be the current Fair Wage Schedules of the Labour Standards Branch, of the Ministry of Labour, in the particular district or locality in which the Work is undertaken. Revisions made to the schedule during the course of the Contract shall apply from the effective date of such revisions and all additional resultant costs shall be borne by the Contractor.

34. Estimated Quantities and Provisional Items

- 34.1 The quantities listed in the Bid Call Document are estimates only. The Town reserves the right to increase or decrease the estimated quantities shown in the Bid Call Document and will adjust the Contract amount accordingly based on the unit price or lump sum price, whichever is applicable. The Town will only pay the Contractor for the actual quantity used based on the unit price or extended price. The Contractor acknowledges that this may result in the Contract payment being less than their total Bid for the Contract.
- 34.2 Items listed in the Bid form as “**Provisional Items**”, may or may not be required for completion of the Work called for under the Contract. The Town shall determine the necessity and/or actual quantities of these items as the Work progresses. Should any of these items be required, the Contractor shall be compensated based on the unit prices(s) quoted. In the event that any or all of these items are found not to be required, the Contractor may not claim extra payment for loss of anticipated profits.

- 34.3 The Contractor may be required to supply services to additional locations, or add additional quantities of item(s), if required, by the Town. Acceptance of additional service or item(s) may be added with the understanding that the rates and discounts submitted by the Bidder in their Bid would apply.
- 34.4 Bidders acknowledge and accept, by way of submitting a Bid, that the Town's award of the Contract shall be based on the "SUB TOTAL ACQUISITION VALUE", including any Provisional Prices. The Town may, in its sole and absolute discretion, include or delete any or all Provisional Price(s) in the final Contract price.

35. Over Shipments of Goods

Any over shipments made are the responsibility of the Contractor. The Town reserves the right to reject and return, at the Contractor's expense, any goods in excess of the quantity ordered or, at the Contractor's discretion, the Town may keep the goods on a "no charge" basis.

36. Emergency Telephone Number

Prior to commencing the Work, the Contractor shall provide the Town with the name(s) and telephone number(s) of his/her representative(s) who can be contacted on a 24-hour basis in case of an emergency during the term of the Contract.

37. Identification, Uniform and Site Safety Requirements

- 37.1 If working at a Town facility, all representatives of the Contractor or Consultant are required to sign in at reception upon arrival at the Town's facilities, obtain, and wear a visitor identification card at all times while at the Town's facilities (if available). Upon leaving, all representatives shall sign out at reception and return the visitor identification card. Tradesmen (service personnel) shall in addition to the above, wear a company uniform with a nameplate identifying the name of their employer.
- 37.2 In addition, all of the Contractor's staff and/or sub-contractors shall be equipped with proper Personal Protective Equipment (PPE), in accordance with all federal, provincial or municipal laws, acts, and/or regulations.

38. Meetings

- 38.1 The Contractor's representative(s), as requested by the Town, shall attend all meetings required for the Work.
- 38.2 The Contractor's representative(s) attending meetings shall be thoroughly versed and knowledgeable with respect to the proposed topics of discussion and shall have the authority to make the necessary decisions and commitments with respect to matters agreed upon at the meetings.

39. Reporting

The Contractor may be required to submit a Contract utilization report. These reports may be requested monthly, quarterly, annually or at the conclusion of the Contract and must be submitted to the Procurement Representative within five (5) business days of the request, at no additional cost.

40. No Substitutions

Where materials are specified in the Bid Call Document, Contractor shall not ship or use any alternative materials without the prior written approval by the Town.

41. Performance

The Contractor shall thoroughly complete each specified task in a professional manner, using trained, experienced staff and quality equipment/materials. The Bidder warrants that its employees, agents, sub-contractors and/or representatives have the qualifications, experience, knowledge, skills and abilities necessary for the fulfilment of the Contract. Services will be performed in accordance with the frequencies specified. The whole of the Services and the manner of performing them shall be done to the satisfaction of the Town.

42. Training

Where necessary or otherwise specified in the Bid Call Document, the Contractor will be required to provide qualified training personnel to instruct the Town's operators until they are familiar and competent in the operation and daily maintenance of the acquired goods or services. Unless otherwise stated, the cost of training shall be included in the bid cost submitted.

43. Warranty/Fit for Intended Use

- 43.1 The Bidder warrants that the Work, goods, materials, equipment and/or services supplied by the Bidder to the Town will be in full conformity with the Bid Call Documents, and any samples provided. The Bidder further warrants that the goods, materials and/or equipment are of merchantable quality, and fit for the intended use and will perform according to the requirements set out by the Town as well as in accordance with all published performance specifications contained in any of the Bidder's product manuals. For greater certainty, equipment and materials shall be new, the latest model, and shall be complete with all necessary accessories for operation.
- 43.2 The Town will be afforded a reasonable period of time (not greater than thirty (30) calendar days) for the purpose of inspecting the goods to confirm their compliance with the specifications, terms and conditions of the purchase order.
- 43.3 Unless a greater warranty period is stated in the Bid Call Document, the warranty period shall be for a minimum of one (1) year on all goods, services and construction. Unless stated otherwise in the Bid Call Document, the warranty period shall commence for goods and services the day after delivery and acceptance or installation date, if installation occurred at a later date and for construction, as stated in the Bid Call Document.

- 43.4 This general warranty (stated above) is independent of and without prejudice to any specific warranty or service guarantee offered by the Contractor or third party manufacturer or supplier of the Goods in connection with the purpose for which the Goods were acquired. The Contractor shall assign to the Town any warranty or service guarantee offered by a third party manufacturer or supplier of the Goods. Notwithstanding this assignment, if at any time up to one (1) year from the date of delivery or installation (if applicable) the Town determines the Goods or any part do not conform to these warranties, the Town shall notify the Contractor within a reasonable time after such discovery, and the Contractor shall then promptly correct such nonconformity at the Contractor's expense. Goods used to correct nonconformity shall be similarly warranted for one (1) year from the date of installation. The Contractor's liability shall extend to all liabilities, losses, damages, claims and expenses incurred by the Town caused by any breach of any of the above warranties.
- 43.5 Upon rejection of good(s) or equipment the same shall be removed by the Contractor from the premises of the Town within five (5) days after notification unless public health and safety require immediate destruction or other disposal of such rejected good(s) or equipment, in which case the Town may take such actions as it deems necessary, and the Contractor shall reimburse the Town for the cost of such actions within ten (10) business days' following receipt of an invoice. Rejected items left longer than five (5) days shall be considered as abandoned and the Town shall have the right to dispose of them as its own property.

44. No Lemon Policy

Any equipment acquired by the Town shall be subject to a "No Lemon Policy" whereby after three attempts to repair a recurring malfunction, the Town, in its sole discretion can direct the Contractor to replace the equipment, at the Contractor's cost, on a like-for-like basis and new at no additional cost to the Town.

45. Delivery Schedule

Time is of the essence for the delivery or provision of the Work requested herein. The delivery date shall be adhered to, as the Town is relying on that date for their part of its operations. Failure to comply with the time schedule in providing the goods and services may result in the Town taking further action to obtain an alternative supply, in which event the cost incurred shall be charged to the Contractor. If the Contractor does not pay such cost, it shall be deducted from the balance of the purchase price owing.

46. F.O.B. Destination Point

- 46.1 All shipments shall be FOB Destination, Freight Prepaid and Allowed.
- 46.2 The F.O.B. Prepaid Destination point shall be the destination as indicated on the purchase order. For greater certainty, the Contractor shall be responsible for the payment of shipping, bearing the cost of shipping and for all liability related to the goods until the goods are delivered to and accepted by the Town at the Town's facility or if stated, the actual Facility Room or Department location indicated on the purchase order.
- 46.3 Once Contract is awarded, the Town shall provide a release schedule to the Contractor, advising when materials are required. Note: There is no delivery dock at the Georgina Civic Centre, 26557 Civic Centre Road, Keswick, Ontario L4P 3G1.

47. Damage Claims

- 47.1 The Bidder agrees that all products to be provided shall be new and of the latest model, unless otherwise stated in the Bid Call Document, in good operating condition and free of defects in workmanship and material, and the Contractor shall repair or replace any damaged or marred items caused or occasioned through the handling or installation by the Contractor or otherwise occasioned in transit.
- 47.2 The Contractor shall protect the Work, the Town property, and any surrounding private property from damage.
- 47.3 The Contractor accepts full responsibility for any damage caused by the Contractor, or its officers, employees, workers, equipment or sub-contractors to any part of the Town's property, including but not limited to any buildings, parking lots, sidewalks, curbs, store fronts, doors, walls, light standards, landscaping, or equipment of the property and will promptly report to the Town, in writing and remedy any such damage in accordance with the Town instructions.
- 47.4 The Town, acting reasonably, shall allocate such damages between the Contractor and the Town.

48. Completion Date

- 48.1 The Contract requirements shall be completed within the number of Working Days or by the stated completion date indicated in the Bid Call Document and/or within the Contract.
- 48.2 If the time limit is not sufficient to permit completion of the Work by the Contractor working a reasonable number of hours each day or week on a single shift basis, it is expected that additional shifts shall be required throughout the life of the Contract to the extent deemed necessary by the Contractor to insure the Work shall be completed within the time limit specified. Any additional costs occasioned by compliance with these provisions shall be considered included in the prices Bid for the various items of Work and no additional compensation shall be allowed.

49. Prohibited Behaviours

- 49.1 While performing the Contract, the Contractor's employees, agents, representatives, and/or subcontractors must conduct themselves in a safe, pleasant, and responsible manner at all times, and for greater certainty shall not:
- a) Consume alcoholic beverages, narcotics or prescription drugs which may impair their abilities while in the performance of services for the Contract, or be under the influence of same when reporting to duty;
 - b) Smoke on property owned or leased by the Town.
 - c) Use foul, profane, vulgar or obscene language or gestures;
 - d) Solicit gratuities or tips from any person for services performed under the Contract;
 - e) Engage or participate in any action which may constitute a public nuisance or disorderly conduct;
 - f) Engage or participate in any action which may constitute an illegal act;

- g) Engage or participate in any willful, negligent or reckless action in disregard of safety or sanitary requirements or regulations;
- h) Perform Work without having obtained any required clearance, including security clearances;
- i) Play radios or other sound equipment, or wear ear/head phones;
- j) Overly fraternize with Town staff, clients, residents, tenants, or visitors to the site or building nor unnecessarily disrupt business while performing their duties;
- k) Interfere with building or staff property;
- l) The Contractor shall respect the boundaries and not trespass on any private properties, without prior, written approval from the property Town, and the Town;
- m) The Contractor shall take appropriate measures to avoid any situation where the general public is required or encouraged to trespass on adjacent lands;
- n) The Contractor shall not park, store materials or equipment on private property without prior written permission from the property Town; and
- o) At the request of the Town or Consultant, the Contractor shall remove from the Site any person (whether employed on the Work or not) who, in the opinion of the Town or Consultant, is incompetent, intoxicated or otherwise impaired, or who is conducting himself (or herself) improperly, and the Contractor shall not permit any such person to remain on the Site nor return to the Site without the written approval of the Town or Consultant as the case may be.

49.2 On the written request of the Town, the Contractor immediately shall remove any employee, sub-contractor, representative or agent for engaging or participating in any of the foregoing prohibited activities, or for any other reason, where it is in the Town's Best Interest. The employee or sub-contractor so removed shall not be placed in another Town facility or assigned to any Contract between the Town and the Contractor.

50. Non-Resident Contractor

If the Contractor is a non-resident of Ontario or Canada:

- a) It shall obtain from the Retail Sales Tax Branch a certificate showing that the Contractor has registered with the Retail Sales Tax Branch and shall submit such certificate to the Town at the same time that it furnishes the Bonds; and
- b) It shall not commence the Work or order any materials or equipment for the Contract until it has registered with the Retail Sales Tax Branch; and
- c) It shall obtain all necessary approvals, consents, permits, licenses, certificates, registrations and other authorizations required by law, prior to execution of the Contract.

51. Non-Resident Subcontractor

The Contractor shall ensure that all subcontractors whom it proposes to use for carrying out any of the Work and who are non-residents of Ontario or Canada have:

- a) Registered with and have complied with the requirements of the Retail Sales Tax Branch before they commence any such Work; and

- b) Obtained all necessary approvals, consents, permits, licenses, certificates, registrations and other authorizations required by law prior to execution of the subcontract.

52. Protection of Public

- 52.1 The Contractor shall provide adequate warning signage, devices, barricades, guards, flagmen, or other necessary precautions shall be taken by the Contractor to give advice and reasonable protection, safety and warning to persons and vehicular traffic concerned in the area(s) affected by the Contract.
- 52.2 The Contractor shall position barricades to adequately keep pedestrian traffic away from ladders and other equipment.

53. Clean Up

During performance and completion of Work, the Contractor shall remove all unused equipment and instruments of service, all excess or unsuitable material and debris, and legally dispose of the debris. The Contractor shall leave the entire area in a neat, clean and acceptable condition as approved by the Town. Failure to do so may require the Town's employees to perform necessary clean up and the Contractor will be either; 1) invoiced for the direct cost associated with such clean up. All such invoices shall be due and payable within ten (10) business days or 2) such direct costs shall be deducted from any monies owed to the Contractor.

54. Packaging and Disposal

The Contractor shall eliminate or reduce the amount of packaging to the extent possible and shall remove packaging from delivered and installed items. Packaging once removed, must be recycled or transported and disposed of in accordance with all applicable laws and regulations governing waste disposal. Further, the Contractor must indicate where garbage is taken for disposal when requested to do so by the Town.

55. Contract Alterations and Amendments

- 55.1 Town shall have the right at any time to order changes in the Work in accordance with the terms of the Contract. Alterations, additions, or deletions to the Contract, shall not be valid or binding on the Town unless authorized in writing by the Procurement Representative and the Contractor.
- 55.2 Except as stated in the contract change order, the Work shall remain unaltered and the rights and obligations of the Parties shall remain unaltered and in full force and effect. The cost of the Contract, including costs to the Contractor of the remaining Work, shall not change except as may be specified in the change order. Each Contract change order, unless otherwise specified, shall be deemed to incorporate the terms and conditions of the Contract and shall be deemed part thereof.
- 55.3 In all cases of misunderstanding and disputes, verbal arrangements shall not be considered. The Contractor shall produce written authority in support of its contentions and shall advance no claim in the absence of such written authority, or use, or attempt to use any conversation with any parties against the Town or in prosecuting any claim against the Town.

56. Termination of Contract

56.1 Termination for Contractor Default

Notwithstanding anything to the contrary in this document, should the Contractor fail to comply with a direction or decision of the Town properly given under the terms of the Contract, or where the Contractor is deemed by the Town to be in default in any other manner as set forth by the following reasons constituting default, the Town may, after giving ten (10) days prior written notice to the Contractor, give notice to immediately terminate this Contract, in whole or in part, and without charge with respect to all or any part of the Contract. Reasons constituting default include:

- a) The Contractor commits a material breach of its duties and obligations under this Contract, unless, in the case of such breach, the Contractor, within ten (10) calendar days after receipt of written notice of such breach from the Town, in a manner satisfactory to the Town in its sole, absolute and non-reviewable discretion, (a) cures such breach and (b) indemnifies the Town for any resulting damage or loss;
- b) The Contractor commits numerous breaches of its duties under the Contract that collectively constitutes a material breach;
- c) A change in control of the Contractor where such control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of the Contractor are acquired, by any entity, or the Contractor is merged with or into another entity to form a new entity, unless the Contractor demonstrates to the satisfaction of the Town that such event will not adversely affect its ability to perform the services under the Contract;
- d) The Contractor commits fraud or gross misconduct; or the Contractor has contravened the Town Supplier Code of Conduct.
- e) Where the Contractor becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or takes the benefit of any statute relating to bankrupt or insolvent debtors, or where a receiver is appointed under a debt instrument or a receiving order is made against the Contractor, or an order is made or a resolution passed for the winding up of the Contractor.

In the event of a termination notice being given under the provisions of this section, the Contractor shall be liable to the Town for any milestone payments paid by the Town for unfinished work, including all losses and damages which may be suffered by the Town by reason of the default or occurrence upon which the notice was based, and also including any increase in the cost incurred by the Town in acquiring the Work from another source.

In the event of a termination notice being given under the provisions of this section, the Town may do such things and incur such costs as it deems necessary to correct the Contractor's default, including without limitation the withholding of payment due or accrued due to the Contractor for services rendered pursuant to this Contract, which moneys may be set off by the Town against any expenses that it may incur in remedying a default or failures as described above.

In the event of a termination notice being given under the provisions of this section, the Contractor shall agree to repay immediately to the Town the portion of any advance payment at the date of the termination.

In the event of a termination notice being given under the provisions of this section, and subject to the resolution of any claim or claims which the Town may have against the Contractor as set forth in the previous three paragraphs, payment will be made within thirty (30) days of the date of the invoice from the Town to the Contractor for the value of all finished work delivered and accepted by the Town, such value to be determined in accordance with the rate (s) specified in the Contract.

No specific remedy expressed in the Contract is to be interpreted as limiting the rights and remedies which the Town may be entitled to, to mitigate damages, under any contract or otherwise in law.

All Town information (including copies thereof) shall be returned to the Town within thirty (30) days' following notice of termination in the form specified by the Town. In addition, the Town shall have the right to take possession of and use any completed or partially completed portions of the Work despite any Contract provisions expressed or implied to the contrary.

Upon the termination or expiry of this Contract, or the completion of the Work, the Contractor shall promptly discontinue use of any Data, and return the same to the Town.

51.2 Termination for Convenience

- a) Notwithstanding anything contained in the Contract, the Town may, at any time prior to the completion of the Work, by giving notice to the Contractor, terminate the Contract as regards all or any part of the Work not completed. Upon a termination notice being given, the Contractor shall cease work in accordance with and to the extent specified in the notice, but shall proceed to complete such part or parts of the Work as are not affected by the termination notice. The Town may, at any time or from time to time, give one or more additional termination notices with respect to any or all parts of the Work not terminated by any previous termination notice.
- b) In the event of a termination notice being given pursuant to this section, the Contractor shall be entitled to be paid, to the extent that costs have been reasonably and properly incurred for purposes of performing the Contract and to the extent that the Contractor has not already been so paid or reimbursed by the Town:
 - i. on the basis of the Contract Price, for all completed Work that is inspected and accepted in accordance with the Contract, whether completed before, or after and in compliance with the instructions contained in, the termination notice; or
 - ii. the cost to the Contractor for all Work terminated by the termination notice before completion, the cost to the Contractor being determined in accordance the Contract Price and percentage completed.
- c) The Contractor shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of, or directly or indirectly arising out of, any action taken or termination notice given by the Town under this section, except to the extent that this section expressly provides.

57. Indemnification

The Contractor shall indemnify and hold harmless the Town, its officers, Council members, partners, agents and employees from and against all actions, claims, demands, losses, costs, damages, suits or proceedings whatsoever which may be brought against or made upon the Town and against all losses, liabilities, judgements, claims, suits, demands or expenses which the Town may sustain, suffer or be put to resulting from or arising out of the selected Contractor's actions or omissions in the performance or rendering of any Work or service required hereunder to be performed or rendered by the Contractor, its agents, officials and employees, or any damage or injury caused to any third party by reason of or arising out of any breach, violation or non-performance of any provision of the Contract by the Contractor, its agents, officials and employees. This indemnification shall include any legal costs incurred by the Town on a substantial indemnity basis, including those incurred to defend any criminal prosecutions against the Town, resulting from the actions of the selected Contractor.

58. Legal Jurisdiction

The laws of Ontario and the laws of Canada applicable in that province, excluding any rule or principle of conflicts of law that may provide otherwise, govern this agreement. All Bidders submitting Bids and all Contractors agree that they shall and will deal with any legal matters concerning this solicitation only in and through the courts of the Province of Ontario.

59. Laws and Regulations

- 59.1 The Contractor shall comply with all applicable statutes, laws, by-laws, regulations, ordinances and orders whether Federal, Provincial, Municipal or otherwise, at any time in effect during the term of the Contract, and all rules and requirements of the Police and Fire departments, or other governmental authorities, and all C.S.A. approvals, if required. The Contractor shall obtain and pay for all necessary permits and licenses, and shall not do or suffer to be done anything in violation of any such laws, ordinances, rules or requirements. If the attention of the Contractor is called to any such violation on his/her part, or of any person employed or engaged by the Contractor, he/she shall immediately desist from and/or correct such violation.

60. The Occupational Health and Safety Act

- 60.1 The Contractor, for purposes of the Ontario Occupational Health and Safety Act (the "OHSA"), shall be designated as the Constructor for this project and shall assume all of the responsibilities of the "Constructor" as set out in the OHSA and its regulations. The foregoing shall apply notwithstanding that; the Contractor has been referred to as the "Contractor" in this and any other related document.
- a) The Contractor acknowledges that they have read and understood the Occupational Health and Safety Act (RSO 1990, C-0.1, as amended).
 - b) The Contractor covenants and agrees to observe strictly and faithfully the provisions of the said Occupational Health and Safety Act and all regulations and rules promulgated thereunder, and in particular (without limiting the generality of the foregoing), the provisions regarding the obligations and responsibilities of the "Constructor".
 - c) The Contractor agrees to indemnify and save the Town harmless for damages or fines arising from any breach or breaches of the said Occupational Health and Safety Act including but not limited to the legal fees incurred by the Town.

- d) The Contractor agrees to assume full responsibility for the enforcement of the said Occupational Health and Safety Act to ensure compliance therewith.
- e) The Contractor further acknowledges and agrees that any breach or breaches of the Occupational Health and Safety Act whether by the Contractor or any of its subcontractors, may result in the immediate termination of the Contract. The Town reserves the right to draw from the Contract deposit or surety (if available) to complete the said Work to the Town specifications.
- f) The Contractor shall allow access to the Work site on demand to representatives of the Town to review Work sites to ensure compliance with the Occupational Health and Safety Act, but no such review shall relieve the Contractor from its responsibilities as Constructor.
- g) The Contractor agrees that any damages or fines that may be assessed against the Town by reason of a breach or breaches of the Occupational Health and Safety Act by the Contractor or any of its subcontractors shall entitle the Town to set-off the damages so assessed against any monies that the Town may from time to time owe the Contractor under the Contract or under any other Contract whatsoever.
- h) The Contractor shall provide a list of all controlled hazardous materials or products containing hazardous materials, all physical agents or devices or equipment producing or emitting physical agents and any substance, compound, product or physical agent that is deemed to be or contains a designated substance in accordance with the Workplace Hazardous Materials Information System (WHMIS) as defined under the Ontario Occupational Health and Safety Act and shall provide appropriate Material Health and Safety Data Sheets for these substances used for the performance of the required Work, all prior to the performance of the Work.
- i) When hazardous materials, physical agents and/or designated substances are used in the performance of the required Work or may have been used in the original construction, the selected Contractor shall ensure compliance to the requirements of the Ontario Occupational Health and Safety Act and associated regulations.
- j) The Town reserves the right to terminate the Contract without obligation for non-compliance with the terms set out herein, health and safety regulations, the Environmental Protection Act, associated regulations or other applicable legislation.
- k) The Contractor shall perform the Work to cause the public the least inconvenience possible. In particular, the Contractor shall not obstruct any street, thoroughfare, or footwalk longer or to a greater extent than necessary.
- l) The Contractor shall take all reasonable precaution necessary to ensure the safety of the workers and the public, particularly children who may play in the area of Work.

60.2 If any person is killed or Critically Injured (as defined in R.R.O. 1990, Regulation 834 made under the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1), in addition to complying with the reporting requirements under the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1, the Contractor shall notify the Town immediately and in any event by no later than twelve (12) hours after the Critical Injury or death occurred.

60.3 In addition to complying with the reporting requirements under the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1, the Contractor shall notify the Town of any other incident or injury (apart from a death or Critical Injury) as soon as possible, but in any event by no later than five (5) business days after the incident or injury occurred.

61. Safety Data Sheets (formerly Material Safety Data Sheets)

The Contractor shall supply current Safety Data Sheets for all controlled products supplied on or before delivery of initial shipments and again sixty (60) days prior to expiry of the sheet. Failure to comply with this instruction or to label products in accordance with the amended [Hazardous Products Act](#) and the new [Hazardous Products Regulations \(HPR\)](#) may result in cancellation of the Contract, in which event any existing stocks shall be removed and credited back to the Town in full by the Contractor. The Town shall be under no obligation whatsoever, to any Contractor who does not comply with the Town's procedure in this regard.

62. Workplace Safety and Insurance Board (WSIB)

The Contractor shall be in good standing with the Workplace Safety and Insurance Board and shall furnish the Town with satisfactory evidence, in the form of a valid WSIB Clearance Certificate:

- a) Within the timeframe specified in the award letter, and, in any event, prior to the commencement of the Work;
- b) Prior to release of each and every progress draw or every sixty (60) days throughout the term of the Contract; and
- c) At any other time during the Contract at the Town's request.

If the Contractor is an Independent Operator, the Contractor is required to provide the Town with a valid Independent Operator's Ruling issued by WSIB:

- a) Within the timeframe specified in the award letter, and, in any event, prior to the commencement of the Work;
- b) Prior to release of each and every progress draw or every sixty (60) days throughout the term of the Contract; and
- c) At any other time during the Contract at the Town's request.

In order to obtain an Independent Operator's Ruling, the Contractor must download the form that corresponds to the applicable classification from the WSIB site at: <http://www.wsib.on.ca> and submit the completed form to WSIB. The WSIB Independent Operator's Ruling is to be submitted to the Town prior to commencement of the Contract. To ensure that the WSIB Independent Operator's Ruling is obtained within the period specified in the Town's award letter, the Contractor shall ensure that an "**Expedited Ruling**" is requested. (For more information about obtaining an "Expedited Ruling", please contact your local Workplace Safety & Insurance Board Office.)

The Town recommends that all Independent Operators obtain valid WSIB optional insurance providing for long-term disability coverage.

Failure of the recommended Bidder to provide the above-noted documentation within the timeframe set out in the award letter may result in cancellation of the award notice to the Bidder and the Town may proceed to award to another Bidder.

Failure of the Contractor, to provide the above documentation, at any time during the Contract, may result in the termination of the Contract.

63. Health and Safety Policy

The Contractor shall provide the Town, prior to commencement of Work, with a written copy of the Health and Safety Policy for their firm along with Health and Safety procedure(s) relevant to the Work to be performed where applicable. If the firm does not have written procedures relevant to the Work, then the firm shall be expected to abide by the Town's safety procedures in addition to the Occupational Health and Safety Act (re: duties of employers).

64. Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)

In accordance with the Municipal Freedom of Information and Protection of Privacy Act, the personal information Bidders provide in response to this Solicitation is being collected under authority of the Municipal Act and will be used exclusively in the selection process and may be used for budgetary purposes for future bids. All Bids submitted shall become the property of the Town and may be disclosed in accordance with a request made under MFIPPA. In accordance with requirements of MFIPPA, Bidders are reminded to identify in their submission material, any specific scientific, technical, commercial, proprietary, or similar confidential information, the disclosure of which could cause them injury. Complete Bids are not to be identified as confidential. Should Bidders have any questions in this regard, please consult the Town's Clerk's Office at 905-476-4301.

65. Confidentiality

- 65.1 In the course of a Bidder's interaction with the Town, a Bidder may receive, have access to, or otherwise obtain "Confidential Information" (as defined below). As a condition of a Bidder's interaction or continued interaction, the Town requires a Bidder to agree to the following confidentiality terms and conditions, on which the Town will rely:
- a) A Bidder will not use the Confidential Information in any way or for any purpose other than as reasonably required for interaction with the Town. A Bidder will disclose the Confidential Information (or any portion thereof) only on a "need-to-know" basis to those persons who assist in the preparation of interactions, and only on the condition that all such information be retained by each of those persons as strictly confidential; and
 - b) Subject to any disclosure requirements of the law, and subparagraph (a), a Bidder will keep all Confidential Information received, have access to, or otherwise obtain, strictly confidential for a period of five (5) years after the date of this Contract, and will not, without the prior express written consent of an authorized representative of the Town, use, divulge, give, release or permit or suffer to be used, divulged, given or released, any portion of the Confidential Information to any other person, firm, corporation or other entity for any purpose whatsoever.
- 65.2 For the purposes of this Contract, "Confidential Information" means:
- a) All information, documents and materials submitted in any form by a Bidder in response to a Bid solicitation;
 - b) Any other information, documents or materials in any form relating in any way to a Bid Solicitation, including any information, documents or materials provided to the Bidder by a representative of the Town or other person working on the Bid solicitation; and
 - c) Any information, documents or materials in any form produced by the Bidder or any other person based on or developed out of any of the information, documents or materials described above.

- 65.3 For the purposes of this Contract, “Confidential Information” does NOT include:
- a) Information that is, or subsequently becomes, publicly available other than through a breach of this Contract or through a breach of a confidentiality agreement which another person has entered into concerning the Confidential Information;
 - b) Information which you already possessed before commencing to participate in a Bid Solicitation;
 - c) Information which is rightfully received from a third party without breach of any obligation of confidence to the disclosing party; and
 - d) Information, which is independently developed without the use of the Confidential Information.
- 65.4 The Confidential Information is proprietary and confidential, the disclosure of which would be contrary to the public interest and detrimental to the Town.
- 65.5 The provisions of this Contract will remain in effect, regardless of whether the Bid Solicitation proceeds or a Contract for the acquisition of deliverables is reached with a Bidder or any other party.
- 65.6 Bidders will safeguard all information to which others have granted access, against inappropriate and unauthorized access.
- 65.7 Bidders agree to report incidents of misuse or abuse of information immediately.
- 65.8 If any portion of this Contract is found to be invalid or unenforceable by law by a court of competent jurisdiction then that portion will be severed and the remaining portion will remain in full force and effect.
- 65.9 If a Bidder is found to have breached this Contract, the Town may take the benefit of all remedies available at law, including specific performance and equitable relief.
- 65.10 Bidders shall not issue a news release or other public announcement or statement in any form pertaining to details of their Bids or the selection process without the prior written approval of the Town.
- 65.11 All correspondence, documentation and information provided by the Town in any form to any Bidder in connection with, or arising out of this Bid Solicitation or the acceptance of any Bid:
- a) Remains the property of the Town;
 - b) Must be treated as confidential; and
 - c) Must not be used for any purpose other than for replying to this Bid Solicitation, and for fulfillment of any related subsequent Contract.

66. Publicity

The Town may, in its sole discretion, acknowledge the Contractor in any publicity or publication. The Contractor shall not make use of its association with the Town in any publicity or publication without the prior written consent of the Town.

67. Accessibility

- 67.1 All accessibility standards — including the accessible customer service standard — are now part of one regulation: the Integrated Accessibility Standards Regulation (O. Reg. 191/11).
- 67.2 The Town is committed to providing equal treatment to people with disabilities with respect to the use and benefit of Town's services, programs, and goods in a manner that respects their dignity and that is equitable in relation to the broader public. All Contractors with the Town must comply with all laws applicable to the performance of the Work.
- 67.3 Contractors who deal with the public or other third parties on behalf of the Town, as well as Contractors who participate in developing Town's policies, practices or procedures governing the provision of goods and services to members of the public or other third parties, must conform with the Integrated Accessibility Standards Regulation (O. Reg. 191/11), in particular Part IV.2, for Customer Service.
- 67.4 Pursuant to the above, Accessibility Standards for Customer Service, Contractors who deal with the public or other third parties on behalf of the Town, as well as Contractors who participate in developing Town policies, practices or procedures governing the provision of goods, services and construction to members of the public or other third parties shall ensure that all of its employees, agents, volunteers, or others for whom it is responsible, receive training about the provision of goods and services provided to people with disabilities. The Accessible Customer Service Training shall be provided in accordance with Part IV.2, of the Integrated Accessibility Standards Regulation for Customer Service and shall include, without limitation, a review of the purposes of the AODA and the requirements of the Customer Service Regulation, as well as instruction regarding all matters set out in the Customer Service Regulation.
- 67.5 Contractors who provide goods, services or facilities on behalf of the Town shall ensure that all of its employees, agents, volunteers, or others for whom it is responsible, receive training on the requirements of the accessibility standards referred to in the Integrated Regulation and on the Human Rights Code as it pertains to persons with disabilities.
- 67.6 The Contractor shall submit to the Town or Ministry, if requested, documentation describing its accessibility training policies, practices and procedures, and a summary of the contents of training, together with a record of the dates on which training is provided and the number of attendees. The Town reserves the right to require the Contractor, at the Contractor's expense, to amend its accessibility policies, practices and procedures if the Town deems them not to comply with the requirements of the Integrated Accessibility Standards Regulation (O. Reg. 191/11). The Contractor shall only assign those employees who have successfully completed training in accordance with such Regulations to provide services to, or on behalf of, the Town.
- 67.7 The Contractor shall ensure that any information, products, deliverables and/or communication (as defined in the Integrated Regulation) produced pursuant to the Contract shall be in conformity with World Wide Web Consortium Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and shall be provided in accessible Word, Excel, PowerPoint, PDF or other format requested by the Town.

67.8 The training shall be provided to each employee, agent, subcontractor or volunteer in the Contractor's business as soon as possible after he or she is assigned to Work on Town property or at a Town facility. The Contractor shall keep records of the training provided, including dates when the training is provided, the number of employees who received training and individual training records. The Town reserves the right to inspect the Contractor's training records. The Contractor agrees to provide the Town upon request with the training records within ten (10) business days.

68. The Personal Property Security Act

The Contractor warrants that it has the full power and legal right and the responsibility to convey title to all products/goods/inventory/equipment which shall pass to the Town in accordance with the terms of the Contract and all goods and products hereunder shall be free from all registered and unregistered liens, encumbrances, charges, security interests, mortgages, or any third party statutory claims. All transactions contemplated under the Contract shall be in the ordinary course of business of the Contractor within the meaning of the Personal Property Security Act.

69. Information and Delivery of Materials

69.1 The Contractor agrees that all information and material of any kind whatsoever acquired or prepared by or for the Contractor pursuant to the Contract or in preparation of the Bid shall, both during and following the termination of the Contract, be the sole property of the Town, including all information and material provided by the Town to the Contractor for the purposes of the Contract. Accordingly, the Contractor hereby assigns to the Town all rights (including all intellectual property rights), title and interest it may have from time to time in the Work to the Town.

69.2 Upon the request of the Town, the Contractor agrees to deliver forthwith to the Town all materials and information specified in the request that is/are the property of the Town and in the possession or under the control of the Contractor. No copy or duplicate of any such material or information delivered to the Town shall be retained by the Contractor and/or supplier team without the prior written approval of the Town. The Contractor further agrees not to destroy any material or information which is the property of the Town without the Town's prior written approval. This provision survives the expiration or termination of the Contract.

70. Intellectual Property

70.1 The Contractor shall pay all royalties and license fees required for the Work provided. The Contractor represents and warrants that it has the sole and unrestricted right, title and interest or good and sufficient power, authority and right to use any intellectual property required for the completion of the Work.

70.2 The Contractor shall, at its own expense, defend all claims, actions or proceedings against the Town based on any allegation that any Work or any part of the Work performed or the supply of any material in the performance of a Contract constitutes an infringement of any trademark, patent, copyright or other proprietary right, and it shall pay to the Town all costs, damages, charges and expenses, including its lawyers' fees on a substantial indemnity basis occasioned to the Town by reason thereof.

- 70.3 If, in any action or proceeding the Work or any part thereof is held to constitute an infringement of any trademark, patent, copyright or other proprietary right, the Contractor shall forthwith either secure for the Town the right to continue using the Work or shall at the Contractor's expense and with the Town's prior written approval, replace the infringing items with non- infringing Work or modify them so that the Work no longer infringes any such right.
- 70.4 All municipal asset information and data provided to and developed by the Contractor shall remain the property of the Town at all times. The Contractor shall provide municipal asset information (infrastructure system plans, reports, drawings, models, etc.) on a continuous basis to the Town such that records at the Town Offices are always up-to-date.
- 70.5 The Contractor agrees that all intellectual property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by the Town to the Contractor shall remain the sole property of the Town at all times.
- 70.6 The Town shall be the sole Town of any newly created intellectual property. The Contractor irrevocably assigns to and in favor of the Town and the Town accepts every right, title and interest in and to all newly created intellectual property in the Work(s), immediately following the creation thereof, for all time and irrevocably waives in favor of the Town all rights of integrity and other moral rights to all newly created intellectual property in the Work(s), immediately following the creation thereof, for all time.
- 70.7 To the extent that any of the Work(s) includes, in whole or in part, the Contractor's Intellectual Property, the Consultant shall grant to the Town a license to use that Contractor's Intellectual Property in the manner contemplated in this assignment, the total consideration for which shall be payment of the Fees to the Contractor by the Town.
- 70.8 The presumption governing the Contract shall be that the Town shall be the sole Town of any Intellectual Property in any form contained in any of the Work(s). If the Contractor's Intellectual Property forms any part of the Work(s), the Contractor shall notify the Town as such prior to the delivery of the Work(s) containing any such Contractor's Intellectual Property. In the absence of any such notice, the presumption shall remain that the Town is the sole Town of any Intellectual Property contained in the Work(s).
- 70.9 The Contractor shall not incorporate into any part of the Work(s) anything that would restrict the right of the Town or of any Client to modify, further develop or otherwise use the Work(s) in any way that the Town or the Client deems necessary, or that would prevent the Town or any Client from entering into any Contract with any party other than the Contractor for the modification, further development of or other use of the Work(s).

71. Survival of Clauses

Clauses pertaining to indemnity, liability, Township of information, use of information, warranty, confidentiality and publicity, shall survive the expiration or other termination of the Contract, in addition to any other clauses, which survive by operation of law or for which survival is implied by the clause itself. The survival period shall be a minimum period of two (2) years.

72. Force Majeure

It is understood and agreed that the Contractor shall not be held liable for any losses resulting if the fulfilment of the terms and conditions of the Contract shall be delayed or prevented by wars, acts of public enemies, fires, floods, acts of God, or for any other cause not within the control of the Contractor and which by the exercise of reasonable diligence the Contractor is unable to prevent. Should the performance of any Contract be delayed or prevented as herein set forth, the Contractor agrees to give immediate written notice and explanation of the cause and probable duration of any such delay.

73. Non-Waiver

No condoning, excusing or overlooking by the Town of any default, breach or non-observance by the Contractor at any time or times in respect of any provision herein contained shall operate as a waiver of the Town 's right hereunder in respect of any continuing or subsequent default, breach or non-observance or so as to defeat or affect in any way the rights of the Town herein in respect of any such continuing or subsequent default or breach, and no waiver shall be inferred from or implied by anything done or omitted by the Town save only an express waiver in writing. Any Work completed by the Town required by this Contract to be done by the Contractor shall not relieve the Contractor of his/her obligations to do that Work.

74. Non-Assignment

The Contractor, without the prior written consent of the Town, may not assign the Contract awarded as a result of this Solicitation. Such written consent, if granted, shall not under any circumstances relieve the Contractor of his/her liabilities and obligations under the Contract, and shall be within the sole and unfettered discretion of the Town and may be unreasonably withheld.

75. Limitation of Future Contracting

If a Contractor under the terms of this Contract, or through the performance of tasks pursuant to this Contract, is required to develop specifications or statements of Work that are to be incorporated into a future solicitation, the Contractor shall be ineligible to perform the Work described in that solicitation as a prime consultant or first-tier sub-consultant under an ensuing Town Contract. For clarity, the Contractor is prohibited from participating in any aspect of the ensuing Contract as described above.

This restriction shall remain in effect for a period of two (2) years from the completion date of this Contract. This will allow sufficient time to pass to avoid unfair competitive advantage, potential bias or conflict of interest.

76. Severability

If any provision of these Standard Terms and Conditions is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of these Standard Terms and Conditions shall remain in full force and effect.