



TOWNSHIP OF WAINFLEET

Wainfleet - findy our countyr's ide!

ARENA

CONCESSION OPERATION

INSTRUCTION TO BIDDERS

1. Tenders for the Arena and Outdoor Concession Operations will be received by Mr. Richard Nan, Manager of Operations until **2:00 p.m. on Thursday, August 24, 2017** at which time they will be publicly opened and will be referred to the appropriate Committee for study before an award is made. Tenders received after the closing date will not be considered.

INSTRUCTION TO BIDDERS

These Instructions define your obligations and limit your rights. Read carefully.

1. SUBMISSION OF BID

- (1) Every Bid shall be typewritten, printed or in legible writing (in ink) and be:
 - (a) signed by the Bidder;
 - (b) submitted in a sealed, opaque envelope; and
 - (c) marked and delivered in accordance with subsection (2).

Bids submitted by fax, e-mail, telex or other telegraphic means shall not be accepted.

- (2) A Bid shall be submitted in a sealed envelope marked with the contract number and the title of the Tender/RFP, and addressed and delivered to the Township's Clerk, at 31940 Highway 3, Wainfleet, Ontario, L0S 1V0. Bids

will be received (only at that Office) up to and including the closing time and date specified in the Tender/RFP Notice or as subsequently amended by Addendum.

- (3) Subject to subsection (4), time is of the essence with respect to the submission of Bids. It is the sole responsibility of each Bidder to make sure that its Bid is delivered to the correct address no later than the closing date and time for the Tender/RFP.
- (4) Despite subsection (3), provided no Bid has previously been opened, the Township reserves the right (in its absolute discretion) to accept a Bid **submitted after the closing time for the receipt of Bids. Only the Township's Chief Administrative Officer (CAO) may exercise this discretion.**
- (5) A Bid that is not submitted in a sealed envelope shall not be considered for the award of the contract, but the Township shall not be under any obligation to return an unsealed Bid to the Bidder, nor to notify the Bidder that the envelope was not sealed.
- (6) Bids shall be deemed to have been submitted only when actually **stamped as received by the Township's Clerk.**
- (7) It is the exclusive responsibility of each Bidder to submit a complete bid in accordance with these Instructions, the Form of Tender/RFP, the Tender/RFP Notice, the Specifications and the Special Provisions and the Description of Project, Work or Supply.
- (8) All documents prepared and work carried out by a Bidder in preparing its Bid, and all oral presentations to the Township in connection with a Bid, **shall be without cost to the Township, and neither the Township's** publication of a Request for Tender/RFP nor the submission of a Bid shall be construed to oblige the Township to award a Contract.

2. FORM OF TENDER/RFP

(1) Every Bid shall be submitted on the Township's prescribed Form of Tender/RFP, and shall,

- (a) be completed without interlineation, alteration or erasure of or with respect to:

- (i) any of the pre-printed text provided by the Township; or
 - (ii) information included on that Form by the Bidder, unless the effect thereof is clear and unambiguous as is the assent of the Bidder to that interlineation, alteration or erasure (e.g., by initialling);
- (b) include all material, services, appliances and labour, required to complete the work;
 - (c) where printed or typed, be set out in print no smaller than 10-point Times Roman; and
 - (d) bear the original signature of the Bidder (or, in the case of a Bid submitted by a corporation, an authorized signing officer of the corporation), inscribed in the space provided.
- (2) All blank spaces provided on the Form of Tender/RFP shall be filled in, including alternate, separate, additional or Factor Prices and for start and completion dates.
- (3) All words and phrases forming part of the Bid must be written out in full, and abbreviations must not be used. Where an abbreviation is used contrary to this requirement, any ambiguity or other uncertainty shall be construed against the Bidder.
- (4) So far as practical, all material included with a Bid must be enclosed in the sealed envelope containing the Bid. The Bidder bears the risk of loss where this requirement is not followed.
- (5) Except where otherwise directed, all printed material should be reduced to American standard letter size (8 inch by 11 inch) or legal size (8 inch by 14 inch) paper.

3. CONFIDENTIALITY

- (1) The Township shall make every effort to safeguard the confidentiality of each submission.
- (2) Township policy is to disclose only such information as is required by law. Please note that all submissions are subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*.

- (3) In addition, certain contractual information must be disclosed to Council, and accordingly may become part of the public record.
- (4) Bidders may mark any part of their submission as confidential except the Total Contract Price and their name. A watermark or rubber stamp imprint is suitable for this purpose. The Township will use its best efforts not to disclose any information so marked, but shall not be liable to a Bidder where information is disclosed by virtue of an order of the Privacy Commissioner or otherwise as required by law.

4. PRICES

- (1) Total Contract Prices shall be evaluated on the basis of their respective net present value, provided that the Township may make appropriate allowances for extended warranty coverage, lower maintenance cost, higher trade-in value, longer life expectancy and other factors relevant to determining the full life-time cost of the Bid. Preference may be given to a Bid that offsets cost with related savings, so as to provide for no or minimal net tax increases and maximum benefits to the Township. For the purposes of determining net present value, the discount rate and any escalation factor shall be uniformly applied to all Bids, but otherwise shall be in the discretion of the Township.
- (2) The Township shall not be required to cause prices to be read out publicly on the opening of Bids or at any other time.
- (3) Only the Bidders names and receipt of documents will be acknowledged.
- (4) Once the contract has been awarded, only the Total Contract Price on which the award of the contract is based will be disclosed. Component or Factor Prices will not be disclosed. Official notification will only be given to the Successful Bidder; however, persons who submitted a bid may obtain the Total Contract Prices for all Bidders upon request to the Manager of Operations designated as the contact person for the Tender/RFP. Where the

award of the Contract is based on a scoring method using evaluation criteria, only the total score and Total Contract Price of the Successful Bidder will be disclosed. Award information will be made available on the Township Website at: [\[http://www.wainfleet.ca/opportunities/Tender/RFPs\]](http://www.wainfleet.ca/opportunities/Tender/RFPs)

5. VARIATION IN BID PRICES

- (1) No variation in Bid Price[s] shall be permitted after the closing date and time except:
 - (a) in the instance of variation due solely to an increase or decrease in the rate of applicable taxes beyond the control of the Bidder, occurring after the time and date of submission of its Bid, in which case the variation shall alter the price of the Bid only to the extent of the tax increase or decrease; or
 - (b) where the Township exercises its discretion to correct a patent computational or other mathematical error evident on the face of the Bid.
- (2) In the event that a tax increase or decrease occurs after the submission of its Bid, the Bidder must prove to the satisfaction of the Township that the Bidder will not benefit in any way by reason of the increase.
- (3) Where Bidders are instructed to price the Project, Work or Supply on a unit or component basis, the Township shall consider only the Bid Price per unit or component for the respective materials to be supplied or items of work or services to be performed, but may at its discretion correct obvious mathematical errors on the part of the Bidder in computing:
 - (a) total prices derived from estimated quantities and their related Factor Prices;
 - (b) total quantities;
 - (c) summaries of the Factor Prices stated on the face of the bid into a Total Contract Price;
 - (d) stated percentages of amounts stated in the Bid; or
 - (a) any combination of the foregoing.

6. PRICE AND PAYMENTS

- (1) Unless expressly agreed in writing by the Township, the Total Contract Price shall be deemed to have been quoted on an all-in basis, and the Successful Bidder shall accept the Total Contract Price as full payment for furnishing all necessary labour, goods, materials, services, tools, equipment, supplies, light, power, water and other incidentals, and for performing all the work and providing all services contemplated under the Contract.
- (2) Progress payments for the work done by the Successful Bidder shall be made only where expressly agreed in writing by the Township.
- (3) A claim for a progress payment made by the Successful Bidder shall not include Goods stored but not yet delivered to the Township, nor any Service not yet performed, but may include Goods delivered to the Township but not yet built-in or installed, provided that the Township is specifically notified of this fact.
- (4) If any work or item under the Contract is included by the Successful Bidder in its Progress Claims as partially or fully completed, but it is not completed in accordance with drawings or specifications, or is not completed to the **Township's satisfaction, the Township may withhold from payment such part** or the total cost of those items until they are completed or corrected to its full satisfaction, and the Township shall notify the Successful Bidder in writing of its action and the reason for same.
- (5) The Township reserves up to 10 Business Days from the date of the receipt of the Successful Bidders invoice for checking, inspecting and confirming the receipt and performance of any Goods or the completion of any Services in accordance with the Contract Documents.
- (6) Where a contingency allowance is provided for in any of the Contract Documents, the Successful Bidder shall not be entitled to payment of the whole or any part of that amount, except to the extent that it can be shown that extra or additional work has been carried out by the Successful Bidder beyond that contemplated within the Contract Documents, and that extra **work has been approved by the Township's Project Manager or contract**

representative as set out in the Contract Documents, or in default of such a provision, the Township's Manager of Operations.

7. CONFLICT OF INTEREST

- (1) No employee of the Township shall personally sell goods or services to the Township, nor have a direct or indirect interest in a company that sells goods or services to the Township.
- (2) The Township may reject any Bid submitted, or cancel any contract awarded, in contravention of subsection (1).
- (3) Each Bidder respectively shall be deemed to have warranted that it has not employed or retained any person, other than a bona fide employee, agent or broker working for the Bidder, to solicit or secure the proposed contract, and that it has not paid or agreed to pay any person, other than a bona fide employee, agent or broker working solely for the Bidder, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award of that proposed contract, or as an inducement to be awarded that contract. Without prejudice to any of its other rights, the Township reserves the right to annul any contract or other arrangement entered into with a Bidder where there is a breach of this warranty.

8. WITHDRAWAL OF BIDS BY BIDDER

- (1) **Withdrawal of a sealed Bid after its submission to the Township's Clerk is permitted only prior to the time and date of the closing of the Tender/RFP.** A
- (2) Bidder may withdraw a Bid at any time prior to the closing date and time for the Tender/RFP by delivering a written request to that effect to the address specified for the deposit of bids, but no such request received after that closing date and time shall be effective.
- (3) A Bidder who withdraws a Bid prior to the closing time and date for the submission of Bids may submit a revised written, signed and sealed Bid at any time prior to that closing date and time, but otherwise no amendment may be made to a Bid after it has been submitted, and in particular no amendment may be made to a Bid orally, or by fax, telex, telegram, email, or otherwise than by a sealed document.

- (4) A withdrawal request shall be effective only where made in writing, on **company letterhead, and actually received by the Township's Clerk. A** faxed withdrawal may be accepted where its authenticity appears genuine **in the absolute discretion of the Township's Clerk. Faxed documents** are considered to be received only when receipt is confirmed (by fax or e-mail) by the designated Manager of Operations for the RFP.

9. EXPERTISE AND EXPERIENCE

- (1) Contractors submitting Bids and all the subcontractors they propose to use on or in connection with the Project, Work or Supply shall be actively engaged and thoroughly experienced in the lines of work required by Contract Documents and shall be able to refer to previous work of a similar nature satisfactorily performed by them.

10. BIDS OPEN FOR ACCEPTANCE & IRREVOCABLE, ETC.

- (1) Bids shall not be opened until after the date and time specified for the closing of the Tender/RFP, and so far as practicable, all Bids shall be opened at one time.
- (2) Unless otherwise provided in Special Provisions, a bid shall be irrevocable (*i.e.*, open for acceptance by the Township) for a period of 90 days following the closing date for the Tender/RFP.
- (3) Where there is a conflict between any provision included in a Bid and any provision in any of the following Contract Documents:
- (a) these Instructions;
 - (b) the standard text of the Form of Tender/RFP as prescribed by the Township;
 - (c) the Tender/RFP Notice;
 - (d) any Addendum;
 - (e) the Description of Project, Work or Supply;
 - (f) any Special Provisions, including any contract drawings, detail drawings, or shop drawings;
 - (g) the Contract for Work; and

- (h) any Specifications for the Project, Work or Supply not included within any of the foregoing,
the provision in those Contract Documents shall prevail, unless the Township otherwise expressly agrees thereto in writing.
- (4) The Township may require a successful Bidder to enter into a Contract for Work in such form and on such terms as may be approved by the Township Solicitor, but those terms shall be consistent with these Instructions, all Addenda, the Special Provisions (if any), the Tender/RFP Notice and the Description of Project, Work or Supply for the Tender/RFP, and the Specifications (if any).
- (5) In lieu of requiring a Contract for Work, the issue of a letter with the intent to purchase by the Township gives rise to a Contract between the Township and the Successful Bidder in accordance with the terms and conditions set out in these Instructions, the Description of Project, Work or Supply, the Specifications, any applicable Addenda and any other related documents.
- (6) The price of all options and alternatives shall be separately stated. Where options or alternatives are requested in the Tender/RFP Notice; an Addendum; or in the Special Provisions, the Township shall not be obliged to purchase those options or alternatives when accepting a Bid, but may at its discretion elect to purchase all, some or none of the options or alternatives offered, but the Successful Bidder shall be obliged to adhere to the Total Contract Price quoted in its Bid.

11. BIDDERS RESPONSIBILITY

- (1) The Bidder shall be responsible for examining all drawings and details, and also the Specifications and all other Contract Documents, including all cost implications relating thereto in the Total Contract Price.
- (2) Unless otherwise stated in the Description of Project, Work or Supply; the special Provisions; or an Addendum, the Successful Bidder shall be required at its own cost to:
- (a) apply for and obtain and pay for fees or charges for all Permits, (other than the Building Permit), and licences;

- (b) pay inspection fees or charges for inspections other than those stipulated to be paid out of any inspection fee allowance provided for in the Contract Documents;
 - (c) pay all applicable taxes and all other charges other than Goods and Services Tax, Provincial Sales Tax, Harmonized Tax or other applicable sales or value added taxes, imposed under the laws of Ontario and the laws of Canada applicable therein; and
 - (d) provide all materials and services necessary to complete the Project so that it is finished, serviced and ready for use and operation.
- (3) Unless otherwise expressly agreed by the Township in writing, where technical information or details form part of the Description of Project, Work or Supply; the Specifications; Tender/RFP Notice; or Special Provisions (including any quantity estimates, soil condition reports, ground water or drainage reports or geophysical data, archaeological, samples, or other documents of a similar kind or nature as may be provided together with the Contract Documents or incorporated by reference therein):
 - (a) the Township shall exercise reasonable care in the preparation of those estimates, but shall not be taken to warrant their accuracy and shall not be liable for any inaccuracy therein;
 - (b) estimates, reports, data, or details shall be deemed to have been provided only as a guide for potential Bidders;
 - (c) Bidders are required to examine carefully that information and the responsibility for verification of the information so provided shall rest with each Bidder.
- (4) Where the Project, Work or Supply is to be carried out on Township occupied or owned property, Bidders shall be responsible for visiting the job site, and no allowance shall be made by the Township for failure by the Bidder to examine carefully all conditions relating to the site or work.
- (5) Where clarification of any document, fact or opinion is required, it shall be obtained by the Bidder before submitting a Bid.

- (6) The Successful Bidder shall enter into a Contract for Work (where required by the Township) within 10 Business Days of being notified of the acceptance of its Bid.
- (7) It shall be the Contractors responsibility to coordinate, control and check work of its own forces and of all its subcontractors and to ascertain that all work is done in accordance with all Contract Documents, governing regulations and the general standards of good commercial practice and professionalism as understood in Ontario, assuring only first class workmanship, and using only proper materials and methods are suited to the function or performance intended.
- (8) The Successful Bidder shall be responsible for faithful and proper performance of all aspects of the Contract.
- (9) Neither the Township nor any Consultant shall be construed to have any contractual relationship with any of the Contractors employees, subcontractors, or material suppliers or their employees or supplier.
- (10) All persons submitting Bids and all their subcontractors, shall be held to have thoroughly examined all drawings, specifications and all other Contract Documents and to have visited and inspected the site on which the Project or Work is to be carried out, or the Supply is to be made, and to have thoroughly familiarized themselves with all pertinent conditions before delivery of their respective Bids, and no allowance shall be subsequently given by the Township for or by reason of any error or omission on the part of any Bidder or subcontractor with respect thereto. The Township shall not be liable for any costs associated with any site inspection.
- (11) A Bidder shall be deemed to have included in the Total Contract Price quoted in its Bid, the entire cost of:
 - (a) all items that the Successful Bidder is responsible for under these Instructions or any of the other Contract Documents, except where otherwise provided;
 - (b) where the Project, Work or Supply so requires, providing water, utility and sewer connections;

- (c) preparing and submitting such drawings as may be required by the Township; and
- (d) such warranty and maintenance requirements as may be specified by the Township, and in default of any such specification with respect to the Contract, a three year warranty and maintenance requirement. (12)

Without limiting the generality of any other provision of these Instructions, unless otherwise provided in the Description of Project, Work or Supply or the Special Provisions, the Contractor shall be required to provide and pay for:

- (a) all material, labour and service costs, charges for use of tools and equipment whether owned or rented, and where any work is to be carried out or services are to be rendered on property owned or occupied by the Township, all protective and safety provisions, site signs and site conveniences, together with all cranes, scaffolding and shoring, freight costs, and material-handling and storing, and all services and incidentals whether shown or specified or required by good practice;
- (b) all bonds or other accepted forms of bid, performance, and labour and material payment security, insurance, permits and inspections; all applicable taxes, workers compensation and all other applicable labour-compensation charges necessary to carry out the Project, make the Supply and complete all Work in accordance with the Contract Documents; and
- (c) all services and materials required to carry out the Project, do all of the Work and make the Supply, in accordance with all Contract Documents and all instructions given by the Township thereunder, in accordance with governing regulations and codes and in compliance with good industrial and commercial practice for first class workmanship, which in all instances, unless otherwise stipulated, shall be deemed to require work that has a finished appearance, is ready for use or use and operation, and includes the installation of all linkages,

interfaces, protocols, computer cards, computer memory, software, peripherals, housing, sheathing, insulation, and mechanical, electrical and other systems and connections required for proper functionality.

- (13) No subcontracting by the Successful Bidder shall relieve the Successful Bidder of any responsibility for the full performance of all obligations of the Successful Bidder under the Contract, but despite the approval of any subcontractor by the Township, the Successful Bidder shall be fully **responsible for every subcontractor's activities, works and acts and shall** either, in person or through an accredited agent, receive all notices, communications, orders, instructions or legal services as if the Successful Bidder were performing the subcontracted portion of the Project, Work or Supply with its own resources.

12. BID SECURITY

- (1) Unless otherwise specified in the Description of Project, Work or Supply, the Special Provisions; or an Addendum, each Bidder shall submit together with its Bid, a bid security in the form of:
- (a) a certified cheque, bank draft or money order drawn on a financial institution in Canada satisfactory to the Township; or
 - (b) a Bid Bond or an Irrevocable Letter of Credit, in the amount of 10 per cent of the offered Total Contract Price plus applicable taxes, or such other amount or percentage as may be specified in the Tender/RFP Notice or Special Provisions.
- (2) A bid security shall include such terms, and be in a form and provided by an issuer as are satisfactory to the Township in its reasonable discretion.
- (3) The term of the bid security shall be for a minimum period of 90 days after the closing date set for the Tender/RFP.
- (4) A Bid submitted without a required Bid security shall be rejected.
- (5) In the event of default or failure of the Successful Bidder to execute the contract as prescribed, or to commence the Project, Work or Supply following the issue of a purchase order or notice to proceed, the Township

shall declare the bid security forfeited and the Bidder will be held responsible for any increased costs or damages incurred by the Township.

- (6) Each Bidder that submits a Bid will be deemed to have acknowledged and agreed that the amount of the bid security required with respect to a Bid constitutes a genuine pre-estimation on the part of the Township of the damages that will be suffered by the Township as a result of a failure or refusal on the part of the Bidder to provide such performance or other security as may be contemplated in the Tender/RFP Notice, or enter into a Contract for Work, as the case may be, but the amount payable under that bid security shall not prevent the Township from recovering the excess of its provable damages over and above the amount of that bid security, whether by way of any legal proceeding or otherwise.
- (7) Where a contract is not offered to a Bidder, any bid security will be returned to the Bidder, upon the expiration of the time allowed for the acceptance of its Bid.

13. PERFORMANCE AND OTHER SECURITY

- (1) Where required in the Tender/RFP Notice, Special Provisions or an Addendum, every Bidder entering into a contract with the Township shall furnish such security as the Township may prescribe for:
 - (a) the performance of the contract (a performance bond or other performance security); and
 - (b) the payment of all necessary services and materials required to complete the Contract in a satisfactory manner (a labour and material payment bond or other payment security);in such amount as the Township may require, and the Bidder shall submit with its Bid such evidence as the Township may reasonably require of the **Bidder's ability to furnish such security.**
- (2) Where a performance security or payment security is required under subsection (1), each Bidder shall submit with its Bid an original commitment letter issued by a bank or other issuer satisfactory to the Township stating that it will provide the required security if the Bidder is awarded the contract,

and the Township reserves the right to reject any Bid that does not comply with this requirement.

- (3) A failure to provide any security described in subsection (1) shall constitute a breach of the requirements of the Bid and shall entitle the Township to claim under any bid security described in section 12.
- (4) Unless the Description of Project, Work or Supply or the Special Provisions otherwise direct, the Successful Bidder shall furnish a performance security to the Township, prior to the execution of the Contract for Work or within 15 Business Days of being notified that its Bid has been accepted (whichever is earlier), securing at least 25 per cent of the Total Contract Price set out in the Bid, or such other percentage or amount as may be provided in the Special Provisions.

14. PERFORMANCE REVIEW

- (1) **Where the Township's Manager of Operations so directs**, the Township and the Successful Bidder shall carry out a periodic performance review in accordance with this section concerning the provision of services by the Successful Bidder.
- (2) Performance under the Contract shall be assessed by reference to the following criteria:
 - (a) general responsiveness of the work relationship;
 - (b) conformity of the provision of services with the Description of Project, Work or Supply;
 - (c) general dependability of the Goods or Services supplied;
 - (d) general conformity with the reasonable expectations of the Township under the terms of the Contract in their entirety;
 - (e) turnaround time on the placement of orders (to the extent applicable);
and
 - (f) accuracy of carrying out instructions.
- (3) The respective representatives of the Township and Successful Bidder shall meet at mutually agreeable times within 10 Business Days of the end of

each consecutive six month period of the provision of services under this Agreement.

- (4) Where a performance review is conducted under subsection (3), each of the agreed aspects of the Successful Bidders performance shall be ranked by the Township at one of the following standards:
- (a) Excellent (performance well above general standard of Township suppliers).
 - (b) Good (performance above general standard of Township suppliers).
 - (c) Satisfactory (performance in accordance of general standard of Township suppliers).
 - (d) Poor (performance below the general standard of Township suppliers).
 - (e) Unacceptable (performance well below the general standard of Township suppliers).
- (5) At any performance review under this section, the Successful Bidder shall **be entitled to identify any aspect of the Township's operations that is** undermining the Successful Bidders ability to deliver at least a satisfactory level of performance with respect to some criteria of assessment, and where the Township concludes that this is in fact the case, in its sole and unfettered jurisdiction, the ranking given to the Successful Bidder with respect to that criteria of assessment shall be adjusted accordingly.
- (6) Where at a performance review, one or more criteria of assessment are ranked as satisfactory, poor or unacceptable:
- (a) the parties shall agree at the time of the conduct of the review or within 10 Business Days thereafter, on the measures to be taken by the Successful Bidder during the ensuing contract review period to improve its performance to at least a good standard; and
 - (b) within 10 Business Days of agreeing on those measures, the Successful Bidder shall confirm in writing that the measures in question have been implemented.
- (7) Where the Successful Bidder fails or refuses to implement measures as provided in subsection (6), it shall be deemed to be in default under the

Contract, and the Township may take such remedies as provided for in the Contract Documents or are otherwise available at law or in equity.

- (8) In addition to the regular performance review provided for under subsections (2) through (7), **where in the opinion of the Township's Manager of Operations**, in his or her sole and unfettered discretion, the performance of the Successful Bidder is not satisfactory, then in addition to such other rights and remedies to which the Township may be entitled to by law or under the terms of any of the Contract Documents, the Township may:
- (a) issue an oral warning to the Supplier, identifying the non-compliance with the Specifications or other grounds of unsatisfactory performance, and requiring the Successful Bidder to correct the same;
 - (b) issue a written notice, setting a time period for the Successful Bidder to correct the unsatisfactory performance, and warning that the Contract shall be liable to be terminated without further warning if the unsatisfactory performance is not corrected within the time allowed; and until the Township is satisfied that the unsatisfactory performance has been corrected, the Township may hold back from any payment an amount sufficient to rectify the unsatisfactory performance until its requirements have been met.
- (9) Where the unsatisfactory performance of a supplier is not corrected within the time allowed under subsection (8) the Township may:
- (a) apply any holdback retained under that subsection towards the correction of the unsatisfactory performance and may thereupon cancel the Contract with the Successful Bidder without further warning; and
 - (b) take that failure into account with respect to the award of any future Contract.
- (10) Nothing in subsections (8) or (9) shall restrict the right of the Township to terminate the Contract at any time under any other provision of the Contract Documents or under any rule of law, but any such right may be exercised by the Township in its absolute discretion.

15. PERMITS, LICENCES AND APPROVALS

- (1) Unless otherwise expressly agreed by the Township in writing, the Successful Bidder shall be responsible for obtaining and maintaining (at its own cost) all necessary permits, licences and approvals relating to the Project, Work or Supply.
- (2) The Successful Bidder shall ensure that all persons supplying services or materials to the Project, Work or Supply hold all valid and current licences required by law with respect to the services or materials to be supplied by them respectively.

16. TAXES

- (1) As various parts of a Project, Work or Supply may or may not be exempt from Federal or Provincial sales tax, Bidders are required to refer to the Special Provisions for details respecting payment exemptions, rebates and taxes.
- (2) All prices shall be quoted exclusive of Goods and Services Tax, Provincial Sales Tax, Harmonized Tax or other applicable sales or value added taxes, imposed under the laws of Ontario and the laws of Canada applicable therein, and the Township may adjust any price quoted contrary to this requirement.
- (3) Bidders shall expressly disclose any other applicable sales, customs or excise tax or duty, including a levy or duty imposed as a Special Import Measure pursuant to the *Special Import Measures Act*, as may be amended from time to time, to which any work or supply of services or materials may be subject that is outside the scope of subsection (2).

17. NOMINATION OF SUBCONTRACTORS

- (1) Where required in the Form of Tender/RFP; Description of Project, Work or Supply; or the Special Provisions, the Bidder shall indicate the names and addresses of all nominated subcontractors that it proposes to use:
 - (a) on the Project, Work or Supply; or
 - (b) in connection with the provision of any supply of goods or an intended fixture.

- (2) The Township reserves the right to reject any subcontractor so nominated.
- (3) No change shall be made to the list of nominated subcontractors after the closing of the Tender/RFP without the prior written approval of the **Township's Project Manager (if there is one) or the Township's Manager of Operations** in all other cases.

18. SEPARATION OF SPECIFICATIONS

- (1) The separation of the Project, Work or Supply described in the Specifications into customary or other trade divisions, sections and subsections shall not qualify the obligations of the Successful Bidder under any Contract awarded under the Tender/RFP, but shall be deemed to have been done solely for ease of reference.

19. INTERPRETATION, CLARIFICATION, AND ADDENDA

- (1) The Township reserves the right at any time prior to the award of the Contract:
 - (a) to withdraw or cancel the Tender/RFP;
 - (b) to extend the time for the submission of Bids;
 - (c) to modify these Instructions, the Tender/RFP Notice; the Form of Tender/RFP; the Specifications; the Special Provisions; or the Description of the Project, Work or Supply; or
 - (d) to change the Project or Contract Documents; by the publication of an Addendum or other notice, and the Township shall not be liable for any expense, cost, loss or damage incurred or suffered by any Bidder (or any other person) as a result of its so doing. Any Addendum or other notice within the scope of subsection (1) is sufficiently served upon any prospective Bidder if sent by fax, e-mail or prepaid ordinary mail or courier to that Bidder at its address provided when the Tender/RFP package was obtained from the Township. Where an
- (2) Addendum or notice within the scope of subsection (1) is published,
- (3) every Bid shall be deemed conclusively to have included an appropriate allowance for the change made by the Addendum or notice in the price or prices set out in the Bid.

- (4) All addenda advised under subsection (1) shall become part of the Contract Documents and shall be allowed for in determining the Total Contract Price.
- (5) Any request for clarification of these Instructions, the Tender/RFP Notice; the Form of Tender/RFP; the Description of the Project, Work or Supply; or any of the Contract Documents shall be submitted in writing in accordance with subsection (6). Any questions directed to the Township prior to Bid submission shall allow sufficient time for a written clarification to be issued by and received from the Township should it consider it necessary to issue such clarification. Ordinarily, any question submitted within 72 hours of the closing of the Tender/RFP will not be answered.
- (6) All communication from a Bidder to the Township shall be set down in writing and directed to the designated Manager of Operations in the Tender/RFP Notice (including requests for information, instructions or clarification). Written answers or clarifications shall be shared with all Bidders and issued in the form of an addendum. The Township shall not be bound by any oral:
 - (a) instruction;
 - (b) amendment or clarification of these Instructions or any of the Contract Documents;
 - (c) information; or
 - (d) advice or suggestion;**from any member of the Township's staff or Consultant to the Township** concerning this Tender/RFP or the proposed Contract to which it relates, or the Project, Work or Supply.
- (7) The submission of such questions or other queries and the failure of the Township to answer before the closing date and time for the submission of Bids shall not necessarily cause the time for the submission of Bids to be extended.
- (8) If questions or requests from a Bidder relate to a request for the approval of substitutes and the substitutes are not approved through the subsequent publication of an Addendum, it shall mean that the substitutes asked for have not been approved.

- (9) Where a Bid has been received by the Township prior to the publication of an Addendum or notice within the contemplation of subsection (1), the Township shall allow the Bidder concerned to submit a revised Bid prior to the closing date and time or to send a written acknowledgement (which may be fax) that the original Bid still stands.

20. ALTERNATE BIDS AND OPTIONAL FEATURES ETC.

- (1) Unless the Description of Project; Work or Supply; the Special Provisions; or an Addendum otherwise provide, a Bidder may submit alternate Bids.
- (2) Where alternate Bids are submitted, each alternate Bid must be submitted in a separate envelope.
- (3) Where alternate Bids are submitted, contrary to subsection (2), the **Township may reject all of them, or at the Township's election, and in its sole and unfettered discretion, it may accept one and reject the other(s).**
- (4) Where optional features or other options are requested in the Tender/RFP Notice; Description of Project, Work or Supply; the Special Provisions; or an Addendum, the availability and price of those features or other options shall be included in the appropriate place in the Tender/RFP Form for each Bid to which they relate.

21. OBSERVANCE OF LAWS, STATUTES AND REGULATIONS

In performing any Service or carrying out any Work and otherwise in performing the Contract, the Successful Bidder shall comply with all applicable statutes, law, by-laws, regulations, ordinances, notices and orders of the Federal, or Provincial government, or the Township, from time to time in effect during the currency of the Contract, and where the attention of the Successful Bidder is called to any violation thereof by the Township or Consultant, the Successful Bidder shall immediately desist from and remedy that violation.

22. INSURANCE REQUIREMENTS

- (1) Throughout the term of the Contract (including any renewal thereof), the Successful Bidder shall obtain and maintain at its own expense, including the cost of any applicable deductible, the following policies of insurance

(Note to Bidders: Be sure to refer to the Special Provisions to determine whether any further or substitute insurance requirements apply):

- (a) Commercial General Liability Insurance** (in all cases), written on IBC Form 2100 or its equivalent, including but not limited to bodily and personal injury liability, property damage, products liability, completed operations liability, owners & contractors protective liability, blanket contractual liability, premises liability, and contingent employers liability coverage, having an inclusive limit of not less than \$2,000,000 per occurrence.
- (b) Standard Form Automobile Liability Insurance** (where the Description of the Project, Work or Supply provides for or contemplates the use of a motor vehicle, including where any Good is to be delivered by the Successful Bidder to the Township, or where work or services are to be provided on property owned or occupied by the Township) that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than:

 - (i) \$1,000,000 per occurrence (subject to paragraphs (ii) and (iii));
 - (ii) \$2,000,000 per occurrence (where the Contract will involve the use of one or more automobiles or any combination of automobiles and towed vehicles having in any case a combined aggregate weight of five tonnes or more before loading); and
 - (iii) \$5,000,000 per occurrence (where the Contract relates to the transportation of an explosive substance, snow removal or road construction, or where the Contract will involve the use of one or more automobiles or any combination of automobiles and towed vehicles having in any case a combined aggregate weight of 10 tonnes or more before loading);
 - (iv) \$10,000,000 per occurrence (where the Contract involves the transport of fare paying passengers by bus);
 - (v) \$5,000,000 per occurrence (where the Contract involves the use of taxis);

for Third Party Liability, or such greater amount as the Township may from time to time request in respect of the use or operation of vehicles owned, operated or leased by the Successful Bidder for the provision of services;

- (c) **Non-Owned Automobile Liability Insurance** (in all cases) in standard form having an inclusive limit of not less than \$1,000,000 per occurrence or such greater amount as the Township may from time to time request, in respect of vehicles not owned by the Successful Bidder, that are used or operated on its behalf for the provision of services under the Contract.
- (d) **Aircraft Liability Insurance and Water-craft Liability Insurance** (where the Description of the Project, Supply or Work provides for or contemplates the use of an aircraft or water-craft) as may be applicable, with respect to any owned or non-owned aircraft or water craft as may be used directly or indirectly in connection with the Project, Work or Supply, having an inclusive limit of not less than \$5,000,000 per occurrence for Third Party Liability, or such greater amount as the Township may from time to time request including, if applicable, Passenger Liability.
- (e) **Property Installation Floater All Risks Insurance** (where the Description of Project, Work or Supply provides for or contemplates the supply and installation of fixtures, equipment, machinery, apparatus, etc., or other work such as minor renovations amounting to an improvement within the meaning of the *Construction Lien Act* only) meeting the following requirements:
 - (i) Coverage shall be for the full amount of the Total Contract Price plus the full value of any optional features or other options that the Township elects to order (but the Township may require insurance up to the amount of the replacement cost of any building in structure in, on, or upon which any Work is to be done under the Contract, where in the reasonable opinion of the

Township's Manager of Risk Management there is a sufficient risk of damage to the same).

(ii) Coverage shall apply to:

(I) all risks of direct loss or damage, but subject to any exclusions and limitations in the Special Conditions and the actual policy form;

(II) all products, labour, equipment and supplies of every nature, the property of the Township or Successful Bidder or for which the Township or Successful Bidder may have assumed responsibility (whether on site or in transit), that is to be used in or pertaining to site preparation, and the erection, fabrication, construction, reconstruction, remodelling or repair of any building, structure, other fixture or thing;

(III) the installation, testing and any subsequent use of machinery and equipment, including boilers, pressure vessels or vessels under vacuum; and

(IV) damage to the Work caused by an accident to or the explosion of any boiler or other pressure vessel or equipment forming part of the Work.

(f) **Professional Errors & Omissions Liability Insurance** (where the Description of the Project, Supply or Work provides for or contemplates the provision of professional or consulting services where there is potential that a negligent act may cause damage/loss involving physical things, which in turn may cause damage/loss or injury to property or persons, e.g., architectural or engineering services, legal services, accounting services, appraisal services, brokerage services, etc.) having no aggregate limit and an inclusive limit of not less than \$2,000,000 per claim or such greater amount as the Township may from time to time request.

- (g) **Medical Malpractice Liability Insurance** (where the Tender/RFP relates to the provision of services of a medical nature), in the name of the professional service provider, providing coverage to the extent of \$2,000,000 per claim or such greater amount as the Township may from time to time request, or alternatively, where applicable, proof of the Successful Bidders current membership in a medical professionals association that offers corresponding coverage to its members, along with proof of coverage under that program.
- (h) **Pollution Liability Insurance or Environmental Impairment Liability Insurance**, (where the Project, Work or Supply involves the transportation, storage or application of a hazardous product or substance -- including the supply or delivery of any petroleum product, paint, or toxic or noxious chemical -- the maintenance or repair of any tank or mechanical device used in the storage or distribution of that product; the removal, transportation or delivery of septic discharge; liquid waste; leachate; the supply, delivery, storage or application of pesticide, herbicide or fungicide; or the carrying on of some industrial process), as may be applicable, covering that Project, Work or Supply, having no aggregate limit and providing coverage in an amount of not less than \$2,000,000 per claim or per occurrence, or such greater amount as the Township may from time to time require, which coverage shall be maintained in force for 12 months following the termination of the Contract.
- (i) **Standard Garage Automobile Liability Insurance** (where the Project, Work or Supply involves the service, repair, towing, or storage of Township owned or leased vehicles or other vehicles required to be in its care, custody or control arising from the Contract) providing an amount of not less than \$5,000,000 Third Party Liability limit per occurrence;
- (ii) legal liability for collision and comprehensive perils insurance providing coverage to the extent of at least equal to the value of

the chassis and completed vehicle or work, as the case may be;
and

(iii) garage premises liability insurance providing coverage to at least \$2,000,000 per occurrence.

- (j) **Hook Liability Coverage** (where performance of the Contract requires the use of a hoist or crane to lift equipment or materials into place), including Transit coverage if applicable, in an amount equal to the maximum replacement cost value of the property to be lifted at any one time, in the performance of the Contract, but in no event less than \$10,000 (there shall be no restrictions in coverage for overload or sinking in soft soil).
- (k) **Abuse and Sexual Misconduct Liability Coverage**, (where the Contract relates to the provision of care and charge to minors or other persons under a disability) in an amount of not less than \$2,000,000 per occurrence.
- (l) **Comprehensive Crime Insurance**, (where performance of any aspect of the Contract entails the access by the Contractor, its employees, agents or subcontractors to funds or property of the Township under circumstances in which they will not be subject to direct supervision by Township employees, *e.g.*, in the case of custodial, cleaning, courier contracts, security, and similar service arrangements, or where the Contractor or its employees, agents or subcontractors are required to attend inside the premises of a Township customer) broad form coverage to adequately protect the Township against loss of monies, securities or other properties, including property of the Township while such property is in the Successful Bidders care, custody, and control; for dishonesty, disappearance and destruction; and to protect against incidents arising out of but not limited to theft, robbery or burglary, having a limit of not less than \$50,000 for Employee Dishonesty (Commercial Blanket Form A), Loss inside the Premises, and Loss outside the Premises.

(m) Warehousemans Legal Liability Coverage (where the Project, Work or Supply involves the storing, keeping or warehousing in its care, custody and control any Township-owned property or Goods) in an amount of not less than the total replacement value cost of the property or goods.

(n) Data Processing Insurance, (where the Project, Work or Supply involves the collection or storage of a significant amount of electronic and computerized data) in respect to data processing systems and equipment property coverage, data processing media coverage, extra expense coverage, and business interruption expense coverage in the amount of \$1,000,000 per occurrence.

- (2) The Successful Bidder shall maintain Property Insurance, as may be applicable, with respect to loss or damage (including fire, theft, burglary, *etc.*) of its own property and property in its care, custody and control, including its equipment, tools, stock, used in connection with the Contract.
- (3) All policies of insurance within the scope of subsection (1) shall:
- (a) include coverage as unnamed insured, for any architect, engineer or other Consultant employed or retained by the Township, all Subcontractors and the employees of the Successful Bidder and those persons, provided that the Township reserves the right to require the Successful Bidder to add further parties as additional unnamed insured persons (except in the case of automobile liability insurance, non-owned automobile liability insurance, professional errors & omissions liability insurance, and medical malpractice liability insurance);
 - (b) be recorded as being a primary policy and shall be in a form and issued by an insurance company satisfactory to the Township, an insurance company that is licensed to carry on business in Ontario; be maintained
 - (c) continuously during the course of carrying out the Project, Work or Supply; or for such period of time as may be required after completion of the Project, Work or Supply, as deemed necessary by the Township;

- (d) provide for a deductible amount of no greater than \$10,000;
 - (e) include the Township named as an additional insured, to the extent of the Successful Bidders obligations to the Township under the Contract Documents; (except in the case of automobile liability insurance, non-owned automobile liability insurance, professional errors & omissions liability insurance, and medical malpractice liability insurance)
 - (f) contain cross-liability and severability of interest provisions, as may be applicable;
 - (g) preclude subrogation claims against the Township and any other person insured under the policy; and
 - (h) provide that at least 20 Business Days prior written notice (15 days, in the case of automobile liability insurance, and 10 days in the event of non-payment of premiums) shall be given to the Township by the Insurer before the Insurer or Successful Bidder take any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof.
- (4) The Township reserves the right to require the Successful Bidder to purchase such additional insurance coverage as the Township may reasonably require. The Township reserves the right to request such higher limits of insurance or otherwise alter the types of coverage requirements (taking into consideration such matters as the nature of the work, contract value, industry standards, and availability of insurance) as the Township may reasonably require from time to time.
- (5) Any insurance coverage acquired under the Contract shall in no manner discharge, restrict or limit the liabilities assumed by the Successful Bidder under the Contract. The dollar limit of insurance coverage shall not be limited by the dollar amount of the Contract.
- (6) The Successful Bidder shall pay all premiums on the policies as they become due; provided that the Township may pay premiums as they become due and deduct the amount thereof from moneys due from the

Township to the Successful Bidder should the Successful Bidder fail to do so.

23. PROOF OF INSURANCE AND CLAIMS PROTOCOL

(1) The Successful Bidder shall deposit with the Township such evidence of its insurance as provided in or required under the provisions of these Instructions, an Addendum or the Special Provisions:

- (a) at the time of execution of the Contract for Work (if any); or in
- (b) any event prior to commencing the Project, Work or Supply.

Thereafter during the term of the Contract, no later than 20 Business Days prior to the renewal date of each applicable policy, the Successful Bidder **shall deposit with the Township's Clerk an original Certificate of Insurance** originally signed by an authorized insurance representative, confirming thereon relevant coverage information, including but not limited to, name and description of Township contract; name of Insurer; name of Broker; name of Insured; name of Additional Insured(s) as may be applicable; commencement and expiry dates of coverage; dollar limits of coverage; deductible levels as may be applicable; cancellation or termination **provisions; or (at the Township's election) a certified copy of the insurance** policy or policies required under section 22.

- (2) The Successful Bidder shall not do or omit to do anything that would impair or invalidate the insurance policies.
- (3) Delivery to and examination or approval by the Township of any certificates of insurance or policies of insurance or other evidence of insurance shall not relieve the Successful Bidder of any of its indemnification or insurance obligations under the Contract. The Township shall be under no duty either to ascertain the existence of or to examine such certificates of insurance or policies of insurance or to advise the Successful Bidder in the event such insurance coverage is not in compliance with the requirements set out in the Contract.
- (4) Claims reported to the Successful Bidder by a third party or by the Township shall be promptly investigated by the Successful Bidder. The Successful

Bidder shall make contact with the Claimant within 48 hours of receipt of notice of a claim. The Successful Bidder shall initiate an investigation of the claim immediately upon notice, and advise the Claimant by letter of its position regarding resolution of the claim within 20 Business Days of the notice. The Successful Bidder shall include in its letter of resolution the reasons for its position. Failing acceptance of the proposed resolution by the Claimant, the Successful Bidder agrees to report the claim to its Insurer for further review and response to the Claimant. Failure to follow this procedure shall permit the Township to investigate and resolve any claims and offset the resultant costs against any monies due, from time to time, under the Contract.

24. WSIB

- (1) Prior to the execution of the Contract for Work or before commencing the Project, Work or Supply where there is no Contract for Work, the Successful Bidder:
 - (a) shall submit to the Township an original Clearance Certificate from the Ontario Workplace Safety and Insurance Board and shall provide additional certificates with respect to such coverage as often as the Township deems necessary during the term of the Contract to ensure continued good standing with the Workplace Safety and Insurance Board; or
 - (b) furnish proof in a form satisfactory to the Township from the Workplace Safety and Insurance Board that the Successful Bidder does not require Workplace Safety and Insurance Board insurance, but in such a case if the Successful Bidder changes its status during the term of the Contract so that such coverage is required, the Successful Bidder shall immediately provide the Township with the certificate required under clause (a).

- (2) Where a substantial portion of the work to be done under the Contract is to be carried out by a subcontractor, the Township may require the Successful Bidder to furnish the same evidence as provided under subsection (1).

25. INDEMNIFICATION

- (1) The Successful Bidder shall indemnify and shall defend and save the Township, its elected officials, officers, and employees harmless from and against any claims, proceedings, fines, penalties, expenses and costs (including legal costs on a solicitor and client basis) that are incurred by, or made or instituted against, any of them or to which any of them may be liable by reason of:
 - (a) the Successful Bidder carrying out or failing to carry out any obligation to which it is subject, or exercising any right to which it is entitled, under the Contract except to the extent that the same are caused by the negligence or deliberate wrongdoing of the Township or other person entitled to indemnification under this section; or
 - (b) any patent, trademark, copyright infringement or other breach of any intellectual property right of any person, for which the Successful Bidder or any subcontractor to the Successful Bidder is responsible.
- (2) The right of indemnification granted to the Township or other person entitled to indemnification under subsection (1) shall extend to any amount paid by that person in the settlement of any claim against it, and in entering into any such settlement, that person may exercise its reasonable discretion as to the amount to be paid, but that person shall serve prior notice of any intended settlement on the Successful Bidder, at least five Business Days prior to agreeing to any such settlement.
- (3) The Township may enforce the rights of indemnity conferred on the elected officials, officers, and employees of the Township under subsection (1) on their behalf and to the same extent as if they were parties to the Contract.
- (4) The rights to indemnity provided for in this section shall be deemed to be in addition to any rights with respect to insurance in favour of the Township, its

elected officials, officers and employees provided under the Contract Documents.

- (5) The rights to indemnity provided for in this section shall survive the expiration or any termination of the Contract.

26. PATENTS AND COPYRIGHTS

- (1) The Successful Bidder shall defend, indemnify and save harmless the Township from all and every claim for damages, royalties, or fees for the infringement of any patented invention or copyright occasioned by them in connection with work done or material furnished by them under the
- (2) Contract. No black market or grey market Goods shall be supplied to the Township, and every person supplying Goods or Goods and Services to the Township shall be deemed to have warranted that they are genuine and lawfully supplied.

27. SUCCESSFUL BIDDERS RESPONSIBILITY FOR LOSSES AND DAMAGES

- (1) The Successful Bidder shall itself, and shall cause its agents and all workers and persons employed by them, or under its control, or employed by, or under the control of subcontractors, to use due care that no person(s) or property is injured or damaged in the course of performing its obligations under the Contract, and the Successful Bidder shall be solely responsible for all damages by whomsoever claimed in respect of any such injury. The
- (2) Successful Bidder shall at its own expense make such temporary arrangements as may be necessary to ensure the avoidance of any such damages or injury and to prevent the interruption of or danger to the traffic on any railway or any public or private road.
- (3) All loss or damage occasioned to the work or arising out of the nature of the work to be done, or from the normal action of the elements or from any reasonably foreseeable circumstances in the prosecution of the same, or from any normal obstruction or normal difficulties which may be encountered in the prosecution of the work having regard to the nature thereof, shall be sustained and borne by the Successful Bidder at its own expense, and all

material required to replace any defective or rejected work, or to restore any failure shall be at the expense of the Successful Bidder.

28. WARRANTIES OF THE SUCCESSFUL BIDDER

(1) The Successful Bidder shall be deemed to have expressly warranted upon the selection of its Bid as follows:

(a) The Bidder

- (i) if a corporation is a duly incorporated, organized and subsisting corporation;
- (ii) if other than a corporation, is duly registered as a business under all applicable legislation;

and as such has all requisite powers, capacities, licences and permissions under its governing legislation and the other laws applicable to it, and under the articles of incorporation or other instrument by-laws under which it is organized to:

- (iii) carry on all businesses in which the Bidder is engaged;
- (iv) enter into, exercise its rights and perform and comply with its obligations under the Contract Documents; and that all actions, conditions and things have been done, taken or fulfilled with respect thereto, that are required by law, contract or otherwise.

- (b) The Bidder and its subcontractors and the respective workforce of each are fully qualified to carry out the Work and perform the Contract and hold all requisite licences, franchises and other authorization required by law with respect thereto.
- (c) The Bidder is not a party to any agreement under the terms of which the Bidder is prohibited or restricted from entering into any of the obligations assumed, liabilities imposed, or restrictions accepted by the Bidder under the Contract Documents.
- (d) To the best of the Bidders information and belief and after making diligent inquiries:

- (i) the information concerning the business, affairs and financial and other condition of the Bidder that are contained in all documents, memoranda, records, statements made sent or given by the Bidder to the Township during the course of the negotiation of the Contract, and in its current regulatory filings, are true and accurate in all material respects; and
- (ii) the Bidder is not aware of any material facts or circumstances having a bearing upon its ability to perform its obligations under any of the Contract Documents which have not been disclosed to the Township in writing.

29. COVENANTS OF EACH BIDDER

In addition to its other obligations under the Contract Documents, the Successful Bidder shall be deemed to have expressly covenanted upon the selection of its Bid as follows:

- (a) The Bidder shall carry out all work and perform all of its obligations under the Contract Documents in a good and professional manner, according to the best standards of practice of the industry, profession or trade in which the Bidder carries on business (including any applicable standards of professional conduct).
- (b) The Bidder shall employ properly qualified and experienced workers to carry out all work required in connection with the Contract, and shall cause its subcontractors and their suppliers to do the same.
- (c) The Bidder shall use only new, first class materials, and shall cause its subcontractors and their suppliers to do the same.
- (d) The Bidder shall have an adequate workforce with proper equipment in good working condition, and shall have ready access to all materials, equipment and accessories required to perform its obligations under the Contract Documents, and shall cause its subcontractors and their suppliers to do the same.
- (e) Where the Bidder is not a resident of Ontario:
 - (i) unless it has previously done so, it shall immediately after receiving the **Township's order to commence** work, obtain from the Ontario Retail

Sales Tax Branch, a certificate showing that the Bidder has registered with that Branch, and shall submit that certificate to the owner; and (ii) it shall not commence work or order any materials or equipment for the Contract until it has registered as provided in sub-paragraph (i).

- (f) The Bidder shall ensure that all subcontractors who are employed by it in connection with the performance of the Contract, and who are not resident in Ontario, are registered with the Ontario Retail Sales Tax Branch, before permitting them to commence any work under the Contract.

30. TIME FOR PERFORMANCE AND COMPLETION

- (1) Subject to any Addendum, the occurrence of any Force Majeure or the written agreement by the Township to the contrary, the Successful Bidder shall:
 - (a) commence work or the supply of materials by the start date specified, or within the time provided in the Contract Documents, and
 - (b) finally complete that work or supply within a reasonable time thereafter or by the date specified in the Contract Documents or otherwise stipulated by the Township.
- (2) Where a Force Majeure occurs, the Township shall determine in its reasonable discretion the number of days (if any) to be allowed by reason thereof in accordance with section 50, paragraph (I). The Successful Bidder may propose a number of days to be allowed for this purpose. Where the Township rejects the proposal made by the Successful Bidder, it shall provide a written explanation for so doing,
- (3) The Township may require the Successful Bidder to prepare and submit to the Township a work or supply schedule that indicates the timing of the major activities relating to the Project, Work or Supply, and provides sufficient detail of the critical events and their interrelationship to demonstrate the same will be performed in conformity within the time provided in subsection (1).
- (4) Where the Project is not substantially performed within the time allowed under this section, or finally completed within the time allowed by the

Township, the Successful Bidder shall pay to the Township the sum per day specified in the Special Provisions as liquidated damages for each and every calendar days delay in attaining substantial performance, and it is expressly acknowledged and agreed by the Successful Bidder that:

- (a) this amount is a reasonable estimate of the actual damage that will be incurred by the Township due to any failure to complete the Project, Work or Supply within the time allowed;
- (b) the Township may deduct the amount due under this subsection from any monies that may be due or payable to the Successful Bidder, whether under this Contract or any other Agreement; and the
- (c) liquidated damages provided for in this section shall be without prejudice to any other remedy to which the Township is entitled at law or in equity.

31. QUALITY OF MATERIAL

- (1) Unless the Description of Project, Work or Supply otherwise provides, all materials supplied by the Successful Bidder shall be new and shall conform to the requirements of the Specifications but on the request of the Successful Bidder, the Township reserves the right to approve alternatives in writing prior to their supply.
- (2) Where required by the Township, the Successful Bidder shall furnish a complete written statement of the origin, composition and manufacture of all materials to be supplied by them, and shall furnish samples thereof for testing purposes, if so instructed by the Township.
- (3) **The Township's approval of changed materials shall** not be considered as waiver of objection to the work or materials at any subsequent time due to their failure to conform with the specifications.
- (4) **The Successful Bidder shall furnish for the Township's approval** such material tests, mix designs and tests of any goods or intended fixtures that are to be supplied as the Township may require.

32. DEFECTIVE WORK, MATERIALS, ETC.

- (1) The Successful Bidder shall correct or replace any defective work or material supplied by it, at its own expense, upon the direction of the Township.
- (2) Where the Successful Bidder refuses or neglects to remove any defective work or material supplied by it in accordance with a written notice by the Township, such work or material may be removed by order of the Township at the Successful Bidders expense, and in addition to any other remedies available to the Township to recover the cost and expense of such removal the Township may deduct the cost and expense of such removal from any moneys due to or to become due to the Successful Bidder on any account.
- (3) Where at any time the quality of the Project or Work carried out or the Goods or Services supplied by the Successful Bidder is not of a satisfactory standard:
 - (a) the Township may issue a verbal warning to the Successful Bidder, outlining the deficiency in supply or other aspects of performance and requiring the Successful Bidder to correct those deficiencies within such period of time as may be stated; or
 - (b) if the deficiency is not corrected within the time specified, or having been corrected, there is a further instance of deficient performance, the Township may issue a written notice to the Contractor, identifying the deficiency in performance and setting a final date or time period for its correction, and advising that if corrective steps are not taken by that date or within that time, the Township may terminate the contract and take corrective action itself.
- (4) Where a verbal warning is given under clause (3)(a) or a written notice is given under clause (3)(b), the Township may hold back until the requirements have been met such portion of any amount payable to the Successful Bidder as in the opinion of the Township is reasonably required to secure correction of the deficiency.
- (5) Where clause (3)(b) applies, the Township may deduct from any payment owing to the Successful Bidder an amount equal to the cost the Township has incurred in correcting the deficiency.

- (6) Unless the Township otherwise agrees in writing, the failure or refusal by the Successful Bidder to deliver a Good or Service within the time specified, or within a reasonable time where no time has been specified, or to promptly supply a replacement for a Good or Service within a reasonable time after being requested to do so, when that originally supplied is rejected as unsatisfactory, shall be deemed to constitute an authority for the Township to purchase on the open market to replace the Good or Service in question. In the case of any such purchase, the Successful Bidder shall reimburse the Township for the extra costs incurred by reason of that purchase. Where in the opinion of the Township the public interest so requires, the Township may require the Successful Bidder to furnish Goods or Services below the standard of those provided for in the Contract, subject to an adjustment in price to be determined by the Township.

33. MODIFICATIONS OF METHODS AND EQUIPMENT

- (1) The Successful Bidder shall make such alterations in its method, equipment and working forces, as the Township in writing directs, if at any time the method or equipment or working force are found by the Township to be unsafe or inadequate to ensure the protection, safety, or quality of the work or to ensure rate of progress sufficient in the reasonable opinion of the Township to complete the work within the time limited therefore under the Contract.

34. USE OF TOWNSHIP PROPERTY AND CHARACTER AND CONDUCT OF EMPLOYEES

- (1) Where any part of the Project, Work or Supply is to be carried out on property owned or occupied by the Township, the Successful Bidder shall: (a) use that property and require its employees and subcontractors to use that property, only for such purposes as fall fairly within the scope of the Contract Documents;

- (b) refrain from committing waste on that property and use reasonable care to avoid causing any damage to any person or thing on that property or any neighboring property;
- (c) employ only orderly, experienced and competent persons to do the work; and
- (d) comply, and cause its agents, directors, officers, employees and subcontractors to comply, with the Township's zero tolerance of violence policy.

Serious violations of the above requirements shall constitute grounds for the termination of the Contract.

- (2) The Successful Bidder shall neither bring onto nor allow the introduction or use of tobacco, alcohol or illegal narcotics or controlled substances (including marijuana, hashish and all derivatives thereof) upon any Township property.

35. ASSIGNMENT AND SUBCONTRACTING

- (1) Neither the use of one or more subcontractors to carry out part of the Project, Work or Supply nor the assignment of the whole or any part of the Contract shall relieve the Successful Bidder of its obligations and liability to the Township.

36. LIENS TO BE DISCHARGED

- (1) The Successful Bidder shall pay punctually all amounts owing to its suppliers in respect of all services and materials supplied by them with respect to the Contract, including any applicable interest, taxes, costs and other charges, and shall forthwith cause every lien preserved or perfected by any person with respect to the Contract or the subject matter of the Contract to be vacated or discharged, and as between the Successful Bidder and Township all costs relating thereto shall be paid by the Successful Bidder and shall be for its account.

37. OWNERSHIP OF DOCUMENTS; USE OF DESIGNS, ETC.

- (1) All maps, drawings, plans, specifications, computer disks and documents:

- (a) provided by the Township to a Bidder shall remain the property of the Township and shall be returned by the Bidder upon demand by the Township for their return, whether or not the Bidder submits a Bid; or
 - (b) prepared by the Bidder as part of its Bid or otherwise in connection with carrying out the Project or Works or making the Supply contemplated under the Contract shall be the property of the Township and may be disposed of by the Township as it considers fit.
- (2) Unless the Township otherwise agrees in writing, where any plan, drawing or design is provided in connection with a Tender/RFP then:
- (a) the submission of a Bid by a Bidder shall be deemed to constitute a license by that Bidder to construct one sample model of the work or project contemplated based upon that plan, drawing or design, where such a sample is required in order to make an informed decision concerning the attractiveness, functionality or other merit of the plan, drawing or design in question; and
 - (b) upon the award of the Contract to the Successful Bidder, the Successful Bidder shall be deemed to have licensed the Township to construct such number of examples of the work or project contemplated based upon that plan, drawing or design that are contemplated under the Contract Documents;

but the licence conferred under clauses (a) and (b) shall not be deemed to constitute an assignment of any patent, copyright, trade mark or other intellectual property of the Bidder.

38. DEVIATION FROM CONTRACT DOCUMENTS AND "GOOD PRACTICE"

- (1) The Successful Bidder shall not deviate from the Contract Documents without the consent of the Township in writing.
- (2) The Successful Bidder shall ensure that all its subcontractors inspect all parts, items or surfaces affecting or involving their work and inform the Successful Bidder immediately, in writing, (copy to the Township), of all deviations from drawings, specifications or accepted good practice and

standards involving or affecting their work, and not to proceed with their work if these deviations will influence or affect the appearance or quality of their work until they are corrected by the Successful Bidder, but nothing herein shall alter or derogate from the responsibility of the Successful Bidder under the Contract.

39. SUCCESSFUL BIDDERS DEFAULT AND TOWNSHIP'S REMEDIES

- (1) The provisions of this section are in addition to any other rights to which the Township is entitled by law.
- (2) The following shall constitute acts or events of default by the Successful Bidder:
 - (a) where the Successful Bidder fails or neglects to commence or to proceed with the Project, Work or Supply diligently and at a rate of progress that in the opinion of the Township, in its sole and unfettered discretion, will ensure entire completion within the time provided for in the Contract Documents;
 - (b) where the Township determines reasonably that the Successful Bidder has abandoned the work or failed to observe and perform any of the provisions of the Contract, the determination of which the Township shall be the sole judge;
 - (c) where the Successful Bidder is adjudged bankrupt or becomes insolvent, or a petition in bankruptcy is filed against the Successful Bidder, or where the Successful Bidder makes an assignment for the general benefit of creditors or applies for relief under the *Companies Creditors Arrangement Act*, or where proceedings of any type are instituted in any jurisdiction in respect of the alleged insolvency or bankruptcy of the Successful Bidder;
 - (d) where any formal or informal proceeding for the dissolution of, liquidation of, or winding up of, the affairs of the Successful Bidder is instituted by or against the Successful Bidder, or where a resolution is passed or any other act undertaken for the winding up of the Successful Bidder;

- (e) where the Successful Bidder ceases or threatens to cease to carry on its business, or where the Successful Bidder makes or agrees to make a bulk sale of its assets;
 - (f) where a receiver, manager or trustee is appointed in respect of the business or assets of the Successful Bidder, or any part of thereof, by a court of competent jurisdiction, or under an agreement;
 - (g) where the Successful Bidder defaults in payment of any indebtedness or liability to a bank or other lending institution, whether secured or not;
 - (h) where the Successful Bidder defaults in the completion of the work within the time limit under the contract or within the Township-extended time limit;
 - (i) where the Successful Bidder fails or refuses to remedy any unsatisfactory or defective work or to remove any unsatisfactory or condemned material when so ordered by the Township in writing;
 - (j) and where the Successful Bidder persists in any course in violation of any of the provisions of the Contract Documents after receiving written notice from the Township to correct that violation.
- (3) Where an act or event of default by the Successful Bidder occurs, the Township may terminate the Contract by giving written notice to that effect to the Successful Bidder and enforce any performance bond, letter of credit or other performance security provided by the Successful Bidder.
- (4) Where there is a default by the Successful Bidder under the Contract, the Township may waive that default by written notice to that effect, whether given before or after the default, and where the Township so waives the default, the position of the parties and the status of any security provided by the Successful Bidder to the Township, shall be as if the default had not occurred.
- (5) A waiver of a default shall not extend to, or be taken in any manner whatsoever to affect the rights of the Township with respect to any subsequent default whether similar or not.

- (6) The remedies provided in these Instructions are in addition to all other legal, equitable or statutory remedies to which the Township is otherwise entitled, and the taking of any one remedy shall not preclude the taking of any other remedy.

40. RESERVED PRIVILEGES OF THE TOWNSHIP

- (1) The Township shall have the following reserved privileges, which may be exercised or waived in its absolute discretion:
- (a) the Township may reject any Bid, the lowest Bid or all Bids, or may cancel the Tender/RFP Notice and require the submission of new Bids for any reason within its absolute discretion;
 - (b) in addition to considering Bid prices, when evaluating Bids and awarding the Contract, the Township may exercise reasonable commercial judgment taking into account with respect to its decision:
 - (j) the full lifetime cost implications to the Township with respect to each Bid, including life-expectancy; the inclusion or exclusion of alternate or optional equipment or configurations and the price implications thereof; training or retraining costs; length and scope of warranty coverage; and long-term maintenance requirements;
 - (ii) the need to achieve economies of scale in supply;
 - (iii) the need to diversify sources of supply;
 - (iv) compatibility with existing equipment, including battery systems and battery chargers, such compatibility to be determined by tests conducted either by the Township or by an independent **testing agency satisfactory to the Township, at the Township's sole and unfettered discretion;**
 - (v) compatibility with existing computer software and hardware, and **capability to generate reports suitable to the Township's existing reporting requirements;** such compatibility and capability to be determined by tests conducted either by the Township or by an independent testing agency satisfactory to the Township, at the **Township's sole and unfettered discretion;**

- (vi) any extraordinary or unjustified disparity between the lowest Bid and the other Bids received by the Township;
 - (vii) the amount of any trade-in allowance that is offered;
 - (viii) the need to secure timely and reliable sources of supply;
 - (ix) the need to discontinue reliance on obsolete technology and methods;
 - (x) the need to provide state-of-the-art service to the residents of the Township, or to integrate any aspect of Township operations with those of its neighbors;
 - (xi) the need to avoid the use of unproven technology and methodologies;
 - (xii) the need to minimize risk to the Township;
 - (xiii) the proximity of any service center of a Bidder to the Township;
 - (xiv) the benefit in employing suppliers who have a proven track record of successful delivery and good reputation within the business community for integrity and competence;
 - (xv) the prior record of the Bidder as a supplier to the Township;
 - (xvi) whether, in the opinion of the Township or its professional advisors, the Bidder possesses the experience, or financial, technical, personnel or other resources that may reasonably be expected to be necessary in order to carry out the obligations that the Bidder proposes to assume under the terms of its Bid, in the sole and unfettered discretion of the Township or its professional advisors; and
 - (xvii) such other considerations as would influence the decision of a reasonable and prudent purchaser in the particular circumstances of the Township at the time when the Contract is awarded;
- (c) in awarding the contract, the Township may take into account the adherence or non-adherence of a particular Bidder to the social, economic or labour relations policies of the Township;

(d) the Township may waive compliance with any minor requirement governing the submission of Bids, including (but not limited to) any requirement to:

- (i) attend any meeting;
- (ii) inspect any site or thing;

(e) the Township may:

- (i) divide the final Contract and award on an individual commodity, component or factor basis;
- (ii) divide the final Contract and award by groups of commodities, components or factors; or
- (iii) award the Contract to one or more Bidders, where each submits an identical Bid (or to require the submission of a final and best offer, in lieu thereof);

as the Township may in its sole and unfettered discretion consider to be in its best interest;

(f) where in the view of the Township, an insufficient number of Bids have been received in response to a Request for Tender/RFP, the Township may publish a further such request (on the same or revised terms from the original request);

(g) the Township may accept any Bid conditionally;

(h) where the lowest Bid price exceeds the budget approved by the Township, or where during the course of the Tender/RFP it is determined by the Township that it would not be reasonable in the circumstances for the Township, in its sole and unfettered discretion, to select its supplier solely by reference to price, the Township reserves the right to identify a shortlist of one or more potential suppliers with whom it will seek to negotiate bilaterally a contract for the Project, Work or Supply in question;

(i) where the contract is awarded to the lowest qualifying Bidder, the Township may negotiate amendments to the Contract or to the work to be done or Goods or Services or materials to be supplied under the

contract and no other Bidder shall have any right to object that its Bid would have been lower had the negotiated amendments been included in the original Request for Tender/RFP or Tender/RFP Notice.

41. OBLIGATION OF SUPPLIERS TO DEAL IN GOOD FAITH AND TO TREAT THE TOWNSHIP AS ITS MOST FAVOURED CUSTOMER

- (1) Each Bidder is required to deal with the Township in utmost good faith both with respect to the submission of its Bid and with respect to the performance of any Contract awarded by the Township upon the acceptance of that Bid.
- (2) Throughout the term of the Contract, the Successful Bidder shall treat the Township as its most favoured customer, so that:
 - (a) the Total Contract Price offered by the Successful Bidder to the Township shall be no less favourable than the corresponding price offered by the Successful Bidder to any other Customer; and
 - (b) the bundle of Goods and Services offered by the Successful Bidder to the Township at the Total Contract Price shall be at least as complete as that offered to any other Customer of the Successful Bidder at the same price;

within the 30 Business Day period immediately preceding and following the date of the submission of the Bid; and:

- (c) where during the course of any Contract awarded to the Successful Bidder under this Tender/RFP, the price for any Goods or Services to which this Tender/RFP relates is lowered below the Factor Price incorporated into the Total Contract Price in respect of that Good or Service, the Successful Bidder shall so notify the Township and that lower price shall be passed along to the Township, and the Total Contract Price payable by the Township shall be adjusted accordingly, provided that this subsection shall apply only with respect to sales or supply made by the Successful Bidder to **customers who are at arm's length to the Successful Bidder** within the meaning of the *Income Tax Act*, and where the sale or supply relates to Goods or Services of comparable quantity and quality as those sold or supplied to the Township.

- (3) Where through inadvertence, a Contract is awarded to a Bidder who has **made an unauthorized amendment to the Township's Form of Tender/RFP**, then upon the Township discovering that unauthorized amendment, the Township may:
- (a) cancel the Contract without compensation to the Bidder by giving written notice to that effect to the Bidder;
 - (b) recover from the Bidder any amount paid to the Bidder in excess of what would have been paid had that amendment not been made, and
 - (c) ban the Bidder from competing for Township contracts for a period of **up to 10 years, where in the reasonable opinion of the Township's Manager of Operations, the change was made by the Bidder as part of a deliberate attempt to deceive.**
- (4) Where in the reasonable opinion **of the Township's Manager of Operations it** is determined that:
- (a) on any one or more occasions a Bidder has:
 - (i) intimidated, harassed, or otherwise interfered with an attempt by any other prospective supplier to bid for a Township contract or to perform any Contract awarded by the Township to that supplier;
 - (ii) assaulted or committed battery against any Township employee in the performance of his or her duty; or
 - (iii) deliberately retained a known over-payment, or has knowingly failed to notify the Township of an over-payment or duplicate payment; or
 - (b) a Bidder has committed any one or more of the following acts:
 - (i) over-billing;
 - (ii) charging for items not supplied;
 - (iii) charging for items of one grade, while supplying items of an inferior grade;

- (iv) misrepresentation as to the quality or origin of Goods, their functionality or suitability for a purpose, or their performance characteristics; or
 - (v) any other form of sharp practice;
- the Township may ban the Bidder, and any person with whom the **Bidder is not at arm's length within the meaning of the *Income Tax Act* (Canada)**, from competing for Township contracts for a period of up to 10 years.

42. RECORD AND REPUTATION

- (1) At the election of the Township, whether or not a Bid or Bidder otherwise satisfies the requirements of a Tender/RFP, the Township may reject summarily any Bid received from:
 - (a) a corporation or other person which has been involved in litigation with the Township within the five (5) year period immediately preceding the date on which the Request for Tender/RFP was published;
 - (b) any person against whom the Township, has made a claim under a Bid bond, a performance bond or a warranty bond within the five (5) year period immediately preceding the date on which the Request for Tender/RFP was published;
 - (c) any corporation that is an affiliate of or successor to any person or corporation described in clauses (a) or (b); and
 - (d) any person with whom, in the opinion of the Council of the Township or its staff, there are reasonable grounds to believe that it would not be in the best interests of the Township to enter into a contract, including (without limiting the foregoing) the conviction of that person or any **person with whom that person is not at arm's length within the meaning of the *Income Tax Act* (Canada)** of an offence:
 - (i) under any taxation statute in Canada;
 - (ii) of moral turpitude, whether in Canada or elsewhere;
 - (iii) under the *Environmental Protection Act*, or the corresponding legislation of any other province or any member of the European

Union or the United States of America, where the circumstances of that conviction evidence a gross disregard of the part of that person for the environmental well-being of the communities in which it carries on business;

- (iv) relating to product liability or occupational health or safety, whether of Canada or elsewhere, where the circumstances of that conviction evidence a gross disregard on the part of that person for the health and safety of its workers or customers;
- (v) under the *Securities Act* or the corresponding legislation of any other province or any member of the European Union or the United States of America or any state thereof.

43. NON-DISCLOSURE AND NO COMMENT

- (1) No Successful Bidder shall disclose details relating to the Contract, or the Project, Work or Supply to any outside person not engaged in work relating thereto, and shall restrain its employees from giving unauthorized information with respect thereto.
- (2) After the Contract is awarded, the Successful Bidder shall refer all inquiries from all third parties who are not involved in carrying out the Contract, but that relate to the Contract or the Project, Work or Supply to **be undertaken within the scope of the Contract to the Township's**
- (3) **Clerk.** Prior to the award of the Contract, no Bidder shall contact any elected official of the Township or member of Township staff with respect to the proposed Contract, except the Manager of Operations, or other person designated for that purpose in the Tender/RFP documents.

44. REVIEW OF BIDS

- (1) At the close of the Tender/RFP, all apparently eligible Bids will be examined by the Manager of Operations to confirm that they are compliant and otherwise complete.
- (2) At its sole and unfettered discretion, the Township may clarify any aspect of any Bid received in respect of the Bid with any Bidder at any time, and may clarify any aspect of the price Bid by the Bidder; and:

- (a) the purpose of such clarification may be:
 - (i) to enable the Township to determine whether the Bid to which it relates complies with the Tender/RFP;
 - (ii) to resolve any ambiguity in the language used, or any other vague or uncertain aspect of the Bid;
- (b) no such clarification shall alter the Bid or constitute negotiation or renegotiation of the price or any aspect thereof, or the nature or quality of the goods or services to be supplied or performed as set out in the Bid at the close of the Tender/RFP, and all correspondence with a Bidder for the purposes of such clarification shall be conducted through the Manager of Operations.
- (3) **Without limiting subsection (2), the Township's right to clarify shall include** the right to request additional or missing information relating to the Goods or Services that are to be supplied or the manner in which the Project or Work is to be carried out.
- (4) The right of clarification provided under this section is within the sole, complete and unfettered discretion of the Township and is for its exclusive benefit, and may or may not be exercised by the Township at any time and in respect to any or all Bids.
- (5) The right to clarify shall *not* impose upon the Township a requirement to clarify with the Bidder any part of a Bid, and where in the opinion of the Township the Bid is ambiguous, incomplete, deficient, or otherwise not acceptable in any aspect, the Township may reject a Bid either before or after seeking a clarification under this section.
- (6) Neither the review of its submission with any Bidder, nor the seeking of clarification under this section, shall oblige the Township to enter into a Contract with that Bidder, and shall not constitute an acceptance of that Bid or any other Bid.
- (7) All clarifications under this section shall be in writing, in a form satisfactory for inclusion in the Contract and satisfactory to the Township.

- (8) Any Bidder may be required to meet with officials of the Township within 20 Business Days of being so requested to explain details of the submission, at a place specified by the Township, and transportation to and from the meeting for the Bidders representatives, as well as the hourly or per diem costs of the meeting itself for any such representative, shall be at the expense of the Bidder.

45. REJECTION OF BIDS BY TOWNSHIP

- (1) At its discretion, the Township may (but shall not be obliged to) reject any Bid that does not:
 - (a) comply with these Instructions; or
 - (b) contain in full all information required on the Form of Tender/RFP, these Instructions, the Description of Project, Work or Supply and the Special Provisions.
- (2) The Township may reject any Bid submitted by a Bidder or cancel any contract awarded to that Bidder without penalty where any information provided by the Bidder in its Bid or as part of any pre-qualification procedure is determined to be false or otherwise misleading in any material respect.

46. GUIDELINES REGARDING BID IRREGULARITIES

- (1) As a guide to prospective Bidders, but without qualifying any rights and privileges reserved to the Township, the following are indicative of the manner in which a discretion reserved by the Township is likely to be exercised with respect to irregular or non-compliant Bids:
 - (a) late Bids will not be accepted and may be returned to the Bidder;
 - (b) Bids that are not completed, or are not typewritten, printed or in legible writing (in ink) will be rejected;
 - (c) partial Bids (*i.e.*, a Bid for less than all of the items required to be included in a Bid) will be rejected, unless the Bid documents specifically permit partial Bids;
 - (d) qualified or conditional Bids (*i.e.*, Bids which are submitted subject to a caveat added to the Form of Tender/RFP or under a covering letter or

alterations to the Form of Tender/RFP) will be rejected unless the Bid documents specifically permit such a qualification or condition;

- (e) unsigned Bids will be rejected;
- (f) Bids not complying with these Instructions, the Tender/RFP Notice, an Addendum or the Special Provisions will be rejected;
- (g) Bids not completed in the proper form, or received on a document other than the original document supplied by the Township in the Bid package or a true photocopy of the original documents supplied by the Township may be rejected by the Township at its discretion;
- (h) the Township may at its discretion reject any Bid where the Form of Tender/RFP or related document contains any erasure, change, overwriting, white-out, cross-out or strike out, where the same has not been initialled by the Bidder, or where (in the absolute discretion of the Manager of Operations) the effect of that amendment is ambiguous or otherwise unclear;
- (i) where a Bidder is required to provide a Bid security and no such security is provided, or the amount of Bid security provided by a Bidder is insufficient, or the security does not name the Township correctly as the obligee, or is otherwise not in compliance with the terms and conditions of the Tender/RFP, the Bid will be rejected;
- (j) where under the terms and conditions of a Tender/RFP, a Bidder is required to provide an agreement to bond with respect to the performance of work under the contract, warranty work, or the payment of labour and material suppliers, and the Bidder provides no such agreement, or the bonding company is not licensed to carry on the business of a bonding company in the Province of Ontario, or the amount of the bond commitment is less than the amount reasonably required, the Township will reject the Bid (this provision shall apply with the necessary modifications to letters of credit);
- (k) where an Addendum is not acknowledged in the Form of Tender/RFP, the Township will reject the Bid where the Addendum has a bearing

upon the prices quoted in the Bid, unless it is clear that the Addendum **has been factored into the prices quoted, in the Township's sole and** unfettered discretion; in other cases, the Township will require the Bidder to confirm in writing that the Addendum has been received and taken into account in preparing the Bid, before the Township will consider the Bid;

but the Township shall not be liable to any Bidder or other person where it elects to exercise a discretion or reserved privilege or right in a manner different from that above indicated.

47. GOVERNING LAW

- (1) This Tender/RFP and any Contract arising therefrom shall be subject to and shall be construed in accordance with the laws of Ontario.
- (2) Unless the Township otherwise agrees in writing, any action or other legal proceeding arising under the Contract or any of the other Contract Documents (including any motion or other interlocutory proceeding) shall be brought in the Superior Court of Ontario sitting in Welland, Ontario.

48. SEVERANCE WHERE PROVISION ILLEGAL, ETC.

- (1) Where one or more provisions of any of the Contract Documents are found to be invalid, unenforceable or void by any Court or tribunal of competent jurisdiction, the remaining terms and provisions of the Contract Documents shall be deemed to be severable from the part so found and shall remain in full force and effect, but this provision shall apply only insofar as the effect of that severance is not to change the fundamental nature of the obligations assumed respectively by each of the Township and Successful Bidder respectively.

49. NON-MERGER

- (1) Except where otherwise expressly agreed, these Instructions shall not merge upon the execution of the Contract for Work, but the provisions of the Instructions shall be deemed to remain in effect throughout that Contract and warranty.

- (2) These Instructions shall define and limit the scope of any contractual or other legal rights in favour of any Bidder or subcontractor flowing from the Request for Tender/RFP or the submission or acceptance of any Bid.

50. STANDARD TERMS AND CONDITIONS

A. SAMPLES AND DEMONSTRATION

- (1) The Township may request the provision of sample of any goods or work that are to be supplied.
- (2) Any samples within the scope of subsection (1) shall be delivered to the Township no later than seven (7) Business Days after formal request is made, unless requested prior to the submission of a Bid, in which case the sample shall be delivered to the Township together with the Bid. The
- (3) Township shall not be charged for any sample provided under this provision, nor for the cost of delivering the sample to the Township.
- (4) Where not used or damaged during testing, any sample provided to the Township will, upon the Bidders written request made within twenty (20) Business Days of the award of the Contract, be returned to the Bidder at the Bidders expense.
- (5) **The Township may require a full demonstration at a place of the Township's** choosing of any unit that is to be supplied prior to awarding of the Contract, and all costs associated with that demonstration shall be for the account of the Bidder.

B. BRAND NAME

- (1) Any reference to the trade name, brand name or catalogue number of a particular manufacturer shall be understood to have been made solely for the purpose of establishing and describing general performance and quality levels of the item to be supplied, unless otherwise expressly provided in the Tender/RFP Notice; Description of Project, Work or Supply; the Special Provisions; or an Addendum.
- (2) No reference to the trade name, brand name or catalogue number of a particular manufacturer shall be construed to restrict Bidders to that

manufacturer, but Bids shall be deemed to be invited for generic no-name equals and comparable equipment of any manufacturer, unless otherwise specified.

- (3) Despite subsection (2), if an item other than the one specified is proposed, it is the Bidders responsibility to demonstrate that the proposed item meets the specifications, and the Bidder shall submit brochures and samples upon request and provide full specifications in detail concerning the item(s) proposed. The Township shall be the sole judge (in its absolute and unfettered discretion) as to whether an item proposed meets its specifications.

C. STANDARD WARRANTY

- (1) The Successful Bidder shall promptly repair or replace, at no cost to the Township, all defects in materials or workmanship of which the Successful Bidder has been properly notified within a period of three (3) years from date of completion of the Project, Work or Supply.
- (2) This warranty shall not apply where a different warranty is specified in the Special Provisions; Description of Project, Work or Supply; or an Addendum.

D. SECURITY CLEARANCE

- (1) Where the Tender/RFP involves the performance of work in secure, sensitive or similarly restricted areas, or with respect to computer data or other information that relates to matters of public security, tax records or records relating to investigations carried out with a view to prosecution under any Federal or Provincial Act or Regulation or under any Township By-law, each Bidder and its executive officers, and all employees (including supervisors) directly involved in the performance of that work must consent to a security clearance check and report thereon performed by the **Township's Police Department or other appropriate Federal, Provincial or Township security vetting agency.**
- (2) Where subsection (1) applies, any award of a contract to a Bidder will be subject to the receipt of a satisfactory security report, the sufficiency of which shall be at the sole discretion of the Township.

- (3) Where a Consent to Disclosure of Personal Information Form is included with the package of documents provided by the Township to Bidders, that Form must be completed and returned to the Township by the time stated in order to:
- (a) obtain admission to any mandatory or other site visit at any secure, sensitive or similarly restricted site; and
 - (b) permit due consideration to be given to any Bid submitted by the Bidder;
- (4) In the event that a satisfactory security clearance is denied to an applicant employee or subcontractor of the Bidder, the Township will entertain the submission of applications from alternate applicants, but subject to the same security clearance requirements.
- (5) Any significant change in the security clearance or classification of a Bidder over the life of the Contract may afford grounds for cancellation of the Contract, that decision to be at the sole discretion of the Township.

E. CONTRACT NON EXCLUSIVE

- (1) Unless otherwise expressly provided in the Tender/RFP Notice, Description of Project, Work or Supply; the Special Provisions; or an Addendum, no Contract for the supply of goods, services, the supply and installation of fixtures, or any combination thereof shall be deemed or construed to confer upon the Successful Bidder an exclusive right to supply those items, nor an exclusive obligation on the Successful Bidder to provide those items only to the Township.

F. TERM OF THE CONTRACT

- (1) Unless otherwise expressly provided in the Tender/RFP Notice; Description of Project, Work or Supply; the Special Provisions; or an Addendum:
- (a) the Contract shall be deemed to be for a term of one year only, and the Successful Bidder shall have no right to the award of a further contract, nor any preference in the award of any subsequent contract; and

- (b) the term of the Contract will commence with the issue of a purchase order, notice to proceed or the execution of the Contract for Work, as the case may be.
- (2) Where the Tender/RFP Notice; Description of Project, Work or Supply; the Special Provisions; or an Addendum provide that a Contract may be renewed at the end of its term, the following rules apply:
- (a) each renewal shall be deemed to be for a period of one year only;
 - (b) renewal shall be only on the mutual consent of the parties evidenced *in writing*, and where not so evidenced, any continuation of supply after the expiration of the term of the Contract shall be deemed to be subject to the same terms and conditions as supplies under the Contract, subject to the following provisos:
 - (i) the Township may at any time discontinue placing any further order for supply, or may terminate the relationship between the parties by written notice to that effect, but no such discontinuation or notice shall affect the obligation of
 - (I) the Township to receive delivery and pay for any items or services previously ordered; and
 - (II) the Successful Bidder to fill any order previously placed and accepted by it;
 - (ii) the Successful Bidder may at any time discontinue receiving any further order for supply, or may terminate the relationship between the parties by written notice to that effect, but no such discontinuation or notice shall affect the obligation of the Township to receive delivery and pay for any items or services previously ordered; and
 - (II) the Successful Bidder to fill any order previously placed and accepted by it;
 - (c) either party may withhold its consent to the proposed renewal of the Contract for any reason whatever within its absolute discretion;

- (d) where a price adjustment is contemplated in the Special Provisions upon the renewal of the Contract, all prices payable under the Contract during the term of the renewal shall be deemed to be adjusted to reflect the average annual increase in the Consumer Price Index as published by Statistics Canada over the twelve (12) month period immediately preceding the date of renewal; and
- (e) where more than one renewal is contemplated in the Tender/RFP Notice; Description of Project, Work or Supply; the Special Provisions; or an Addendum, each such renewal shall be subject independently to clauses (a) to (d).

G. ORIENTATION SESSION

- (1) The Township may require the Successful Bidder (and those employees of the Successful Bidder who will be employed in performing the Contract) to attend a training and orientation session to be conducted by the Township at such place in the Township as the Township may direct.
- (2) The session may last for up to one full working day, unless otherwise expressly provided in the Tender/RFP Notice; Description of Project, Work or Supply; the Special Provisions; or an Addendum.
- (3) No amount shall be payable by the Township in respect of that session.

H. EXCESSIVE CLAIMS

- (1) The Township may review and disallow an invoice, or reduce the amount of an invoice, submitted for hourly labour costs, or for material supplied, where **the Township's Manager of Operations concludes on reasonable grounds** that the amount of that invoice is excessive, taking into account the time and materials that would ordinarily be required by a competent professional or tradesman to carry out the work or project to which the invoice relates. Prior
- (2) to disallowing or reducing an invoice under subsection (1), the Township shall notify the Successful Bidder in writing of its intention to review the invoice in question, and shall allow the Successful Bidder to make

written or oral representations to the Township's Manager of Operations as to whether the amount invoiced is excessive. The Manager of Operations shall take those representations and all other relevant facts into account before reaching any conclusion under subsection (1). Any decision made by the Manager of Operations under this section is final and conclusive between the parties.

- (3) No invoice shall be disallowed under this section where the billing to which it relates is in strict accord with the terms of the Contract Documents.

I. FORCE MAJEURE

- (1) In this section, "Force Majeure" means a delay in the performance of the Services occurring other than as a result of the deliberate act or negligence of either party respectively, and which:
 - (a) could not have been reasonably foreseen; and
 - (b) was caused by an event beyond the reasonable control of each party respectively;
and for the sake of greater certainty shall include any one or more of the following:
 - (c) acts of God, the Queen or Her enemies;
 - (d) civil war; insurrections or riots;
 - (e) fires; floods; explosions; earthquakes or serious accidents;
 - (f) unusually severe weather; epidemics or quarantine restrictions;
 - (g) governmental priorities or allocation regulations or orders affecting materials, labour, equipment and facilities;
 - (h) fuel shortages or freight embargoes; or
 - (i) strikes or labour troubles causing cessation, slowdown, interruption of work or other similar events relating to a person other than the Successful Bidder (or any subcontractor) or to the Township.
- (2) In the event of the occurrence of a Force Majeure:
 - (a) the time for completing that portion of the supply of Goods or Services,

relates, which has been delayed by reason of the Force Majeure shall be extended by a period equal to the delay so caused; and

- (b) the date for the payment of any portion of the price or any costs or fees shall be adjusted accordingly, without adjustment of the price; but subject to the foregoing, each party shall be excused from performance so long as the Force Majeure persists, and shall not be considered to be in default under this section, if and to the extent that its failure of, or delay in performance is due to that Force Majeure.
- (3) Where a Force Majeure remains in effect for more than 90 days, either party may terminate the Contract upon twenty (20) Business Days written notice to the other party, provided at the time when that notice is given the Force Majeure is then continuing.
- (4) While a Force Majeure subsists which prevents the Successful Bidder from performing its obligations with respect to a Project, Work or Supply, the Township may engage another contractor or supplier to perform those obligations on an interim basis.

51. INTERPRETATION

- (1) In these Instructions:
 - (a) "Addendum" means a written addendum issued under these Instructions;
 - (b) "Bid" means a bid made by a Bidder in response to the Tender/RFP;
 - (c) "Bid Price" means any Factor Price or other component of the Total Contract Price;
 - (d) "Bidder" means any person submitting a Bid in response to a Tender/RFP Notice;
 - (e) **"black market" shall mean Goods and/or Services that are counterfeit and/or were purchased or involved transactions outside of the official economy, including, but not limited to, transactions in which applicable taxes were not paid and/or transactions dealing with or involving illegal Goods or Services;**

- (f) "Business Day" means any day other than a Saturday, Sunday, public holiday or other day on which banks in Ontario are authorized or required by law to be closed;
- (g) "Consultant" means any employee of the Township or any independent professional retained by the Township to advise it as a specialist consultant with respect to any aspect of the Tender/RFP or the Project, Work or Supply, and who is designated by the Township as the Consultant in respect of the Contract;
- (h) "Contract" means the contract arising upon the acceptance of a Bid by the Township made in response to this Tender/RFP;
- (i) "Contract Documents" means:
 - i. these Instructions;
 - ii. the Form of Tender/RFP;
 - iii. the Tender/RFP Notice;
 - iv. any Addendum;
 - v. the Description of Project, Work or Supply;
 - vi. any Special Provisions, including any contract drawings, detail drawings, or shop drawings;
 - vii. the Contract for Work;
 - viii. any Specifications for the Project, Work or Supply not included within any of the foregoing;
- (j) provided by the Township or any Consultant to the Township to the Successful Bidder, and also the Bid of the Successful Bidder to whom the contract is awarded, and any other document agreed by the parties to constitute one of the Contract Documents;
- (k) "Contract for Work" has the meaning assigned in section 10;
- (l) "Department" means an organizational unit of the Township of Wainfleet; (m) "Manager of Operations" means the person who is responsible for the direction and operational control of a Department;
- (n) "Factor Price" means any Factor Price or other component of the Total Contract Price;

- (o) "Goods" means any item of tangible personal property or computer software, and includes:
- i. deeds and instruments relating to or evidencing the title or right to such personal property, or a right to recover or receive such property;
 - ii. tickets or like evidence of right to be in attendance at a particular place at a particular time or times or of a right to transportation;
 - iii. energy, however generated;
 - iv. items of tangible personal property that are intended for installation as a fixture or otherwise for incorporation into land, a building or structure, or that are ornamental or industrial trees, grass sod, flowering plants, shrubs, soil, seed or fertilizer;
- (p) **"grey market" shall mean Goods and/or Services that were purchased, acquired or provided legally, but the channels through which they were purchased, acquired and/or provided are either unauthorized or unofficial, including, but not limited to, channels that are not authorized by the manufacturer and/or Goods imported through unofficial channels which would otherwise be either more expensive if properly imported or would be unavailable in Canada.**
- (q) "Project, Work or Supply" means all goods, services and other things of commercial value the supply, repair or installation of which are contemplated in the Tender/RFP Notice or the Description of Project, Work or Supply and all labour and other items or things incidental thereto;
- (r) "Project" includes the installation of fixtures and any type of work that is not a Service and the supply of any other thing of commercial value that is not a Good;
- (s) "Project Manager" means the person (if any) designated by the Township to manage the delivery or performance of the Project, Work or Supply to **which the Tender/RFP relates, or the Township's obligations under the Contract;**

- (t) "Services" means a service of any description whether commercial, industrial, trade, or otherwise, and includes all professional, technical and artistic services, and the transporting, acquiring, supplying, storing and otherwise dealing in Goods;
 - (u) "Successful Bidder" means the Bidder whose Bid is selected by the Township for the award of the Contract in respect of a Project or Works;
 - (v) "Supply" means the supply of a Good or Service; and
 - i. in relation to a Good, includes the sale, rental, lease or other disposition or provision of the Good or an interest therein or a right thereto, or an offer so to dispose of the Good or interest therein or a right thereto, and
 - ii. in relation to a Service, includes the sale, rental or other disposition or provision of the Service or an offer so to provide a service;
 - (w) "Tender/RFP" means the request for Tender/RFP to which these Instructions relates, and any renewal or substitute for that request for Tender/RFP or request for quotation;
 - (x) "Total Contract Price" means the fully inclusive, all-in total contract price, constituting the sum of all costs quoted by a Bidder in its Bid with respect to the Project, Work or Supply:
 - i. including the purchase price for all materials, labour costs, service costs, costs for temporary structures and facilities, utility costs, warranty costs, life cycle costs, operating and disposal costs, and all applicable taxes relating to the foregoing; but
 - ii. excluding any options or alternatives requested in the Tender/RFP Notice or other Contract Documents that the Township elects not to purchase;
 - (y) "Work" means the supply of Goods and Services.
- (2) Where in these Instructions a reference is made to the express written agreement of the Township, it shall be understood that the Township shall not be deemed or construed to have agreed to any stipulation, specification, exclusion, limitation or other term or condition set out in a Bid that deviates

from a provision set out in any of the documents set out in clause (h)(i) to (viii) inclusive, unless that deviation is expressly confirmed in the Contract for Work or in an amendment to that contract.

- (3) In these Instructions and in all of the Contract Documents, unless the context otherwise necessitates:
- (a) a word importing the masculine, feminine or neuter gender only includes members of the other genders;
 - (b) a word defined in or importing the singular number has the same meaning when used in the plural number, and *vice versa*; a
 - (c) reference to any Act, bylaw, rule or regulation or to a provision thereof shall be deemed to include a reference to any Act, bylaw, rule or regulation or provision enacted in substitution there for or amendment thereof;
 - (d) the headings to each section are inserted for convenience of reference only and do not form part of the Contract;
 - (e) all accounting terms have the meaning recognized by or ascribed to those terms by the Canadian Institute of Chartered Accountants;
 - (f) all references to time shall be deemed to be references to current time in the Township;
 - (g) any reference to an officer of the Township shall be construed to mean the person holding that office from time to time, and the designate or deputy of that person, and shall be deemed to include a reference to any person holding a successor office or the designate or deputy of that person; and
 - (h) words and abbreviations which have well-known professional, technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.



TOWNSHIP OF WAINFLEET

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ARENA INDOOR CONCESSION – 2017-2019

SCHEDULE “A”

SPECIFICATIONS:

1. The Concessionaire will operate the food concession at the Wainfleet Arena in accordance with the following dates:

October 1, 2017 to March 31, 2018 in the Arena

October 1, 2018 to March 31, 2019 in the Arena

2. The Concessionaire will supply:
 - a) all labour, small equipment not supplied by the Corporation, and goods for sale,
 - b) A list of all items to be sold including prices, shall be provided to the Manager of Operations for approval, prior to the beginning of the operating season.

Note: Tobacco products may not be sold through the Concessionaire.

3. The Concessionaire will be responsible for:
 - a) complying with all local and provincial regulations governing food handling under the Health Protection and Promotion Act,
 - b) day-to-day cleaning within the concession building,
 - c) supervision of all concession staff, so as to maintain a high standard of cleanliness, courtesy and efficiency which will convey a good impression to the public,
 - d) proper care and operation of concession equipment,

- e) Any damage caused by careless or improper use of concession equipment.

Note: No concession booth renovations are allowed unless authorized by the Manager of Operations.

Note: The concession booth will be subjected to regular inspection by Arena staff and/or Public Health Inspectors for cleanliness and compliance.

4. The Concessionaire will display, in a prominent place:

- a) prices for all items,
- b) Scheduled days and hours of operation.

Note: The following hours of operation for the Arena shall be adhered to as a minimum during the course of the concessionaries contract:

Sundays	12:30	– 7:00 p.m.	(4.5 hrs)
Mondays	5:00 p.m.	– 6:30 p.m.	(1.5 hrs)
Tuesdays	5:00 p.m.	– 7:00 p.m.	(2 hrs)
Wednesdays	5:00 p.m.	– 8:30 p.m.	(3.5 hrs)
Thursdays	5:00 p.m.	– 6:30 p.m.	(1.5 hrs)
Fridays	5:00 p.m.	– 7:00 p.m.	(2 hrs)
Saturdays	10:30 a.m.	– 1:30 p.m.	<u>(4 hrs)</u>
			20 hrs

**** Parties tendering may submit a proposal for hours of operation that varies from the above if they wish.**

5. The Corporation will:

- a) Supply equipment for the operation of the concession as described on the attached sheet.
- b) Supply hydro, gas and water.

7. The Concessionaire shall enter into an agreement with the Township.

8. The Concessionaire may have the option to extend the contract upon written request to the Township. The decision to extend will be at the sole discretion of the Township.

9. All bidders may inspect the premises prior to tender closing. An appointment may be made with the Recreational Facilities Coordinator, Mr. Jeremy Worrall, in advance by calling (905) 899-1283.

NO EXCEPTIONS

The Wainfleet Minor Hockey Association and/or the Wainfleet Figure Skating Club may offer food or drink through the course of fund raising activities or planned special events (i.e. tournaments or testing sessions) from the lobby or the Moore Room located in the Arena.

CANTEEN EQUIPMENT CURRENTLY AVAILABLE

□ □ UNITS	DESCRIPTION
1	2-Light French fry Warmer
1	Upright Freezer
1	Microwave Oven
1	Refrigerator
1	Coffee Maker
1	Perfect Fryer



TOWNSHIP OF WAINFLEET

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**ARENA INDOOR CONCESSION
TENDER FORM 2017-2019**

Tender submitted by:

Address:

_____ Postal Code: _____

Telephone No.:

Hereinafter called the "Tenderer"

I/We hereby submit this my/our tender for the operation of the Arena and Outdoor Concession as per specifications. I/We have read the attached instructions to bidders, concession agreement and specifications and hereby agree to same.

I/We have attached a certified cheque, bank draft and/or money order, or postal money order in the amount of two hundred and fifty dollars (\$250.00) as provided for in the instruction to bidders.

I/We will provide proof of liability insurance, a Certificate of Clearance from the Workplace Safety and Insurance Board of Ontario and a signed copy of the Township of Wainfleet Liability and Liability Insurance Agreement, should my/our tender be accepted.

I/We hereby tender the **MONTHLY** rental price of \$ _____ plus 13% H.S.T. for a total of twelve (12) months (**October 1, 2017 – March 31, 2019**) as provided for in the contract.

Witness

Signature

_____ Date

insured, the Township of Wainfleet in an amount not less than two million dollars (\$2,000,000.00) inclusive and to furnish a copy of such insurance or certified letter from his/her insurance company prior to commencing work on the contract.

The Concessionaire shall indemnify the Corporation from and against all liability under statutes, laws and regulations and in respect of all claims that may arise or be made against the Corporation at common law or otherwise by reason of injury or death of any person or persons, or employee or employees of the Concessionaire.

The Concessionaire, his/her agents and all workers and persons employed by him/her, or under his/her control will use due care that no person is injured and no property is damaged in the execution of the works and the Concessionaire will be solely responsible for all damages to persons or property that is owned by the Corporation, its employees or by other persons.

The Concessionaire shall be financially responsible for the repair and maintenance of the equipment provided by the Township.

The Concessionaire agrees to pay the Corporation:

Ten (12) payments of \$ _____ plus 13% H.S.T. beginning on the last day of the first month of the agreement and to be paid monthly each month thereafter listed in the Schedule.

The Concessionaire and the Corporation agree that the provisions of Schedule "A" to this Agreement form a part of this agreement as is fully incorporated herein.

Signed, sealed and delivered)	TOWNSHIP OF WAINFLEET
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TOWNSHIP OF WAINFLEET

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THE CORPORATION OF THE TOWNSHIP OF WAINFLEET

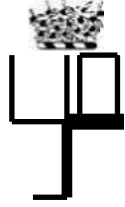
Special Provisions

The bid bond or security for this Contract will be \$250 and must be included with the bid.

WITNESS _____
(Signature)

CONTRACTOR _____

DATE _____



TOWNSHIP OF WAINFLEET

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ARENA VENDING MACHINES

2017- 2019 SCHEDULE "B"

The Concessionaire will operate a maximum of 3 vending machines at the Wainfleet Arena in accordance with the following dates:

October 1, 2017 to March 31, 2019 in the Arena

Lobby The Concessionaire will supply:

- (a) all labour, 3 vending machines, and goods for sale,
- (b) A list of all items to be sold including prices, shall be provided to the Manager of Operations for approval, prior to the beginning of the operating season.

Note: Tobacco products may not be sold through the Concessionaire.

The Concessionaire will be responsible for:

- (a) complying with all local and provincial regulations governing food handling under the Health Protection and Promotion Act,
- (b) day-to-day cleaning of the vending machines,

(c) supervision of all staff, so as to maintain a high standard of cleanliness, courtesy and efficiency which will convey a good impression to the public,

(d) proper care and operation of vending equipment,

Note: No renovations are allowed unless authorized by the Manager of Operations.

Note: The vending machines will be subjected to regular inspection by Arena staff and/or Public Health Inspectors for cleanliness and compliance.

The Concessionaire will display, in a prominent place the prices for all items,

The Concessionaire shall have exclusive letting of the sale of food and drinks in the Arena Lobby and may provide up to 3 vending machines.

The vending machines must be energy efficient and installed with an energy miser.

The Township will supply a water connection for a single vending machine.



TOWNSHIP OF WAINFLEET

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ARENA VENDING MACHINES

TENDER FORM 2017-2019

Tender submitted by:

Address:

Postal Code:

Telephone No.:

Hereinafter called the "Tenderer"

I/We hereby submit this my/our tender for the operation of the Arena and Outdoor Concession as per specifications. I/We have read the attached instructions to bidders, concession agreement and specifications and hereby agree to same.

I/We have attached a certified cheque, bank draft and/or money order, or postal money order in the amount of two hundred and fifty dollars (\$250.00) as provided for in the instruction to bidders.

I/We will provide proof of liability insurance, a Certificate of Clearance from the Workplace Safety and Insurance Board of Ontario and a signed copy of the Township of Wainfleet Liability and Liability Insurance Agreement, should my/our tender be accepted.

I/We hereby tender the **MONTHLY** rental price of \$ _____ plus 13% H.S.T. for a total of eighteen (18) months (**October 1, 2017 – March 31, 2019**) as provided for in the contract.

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I/We hereby tender the percentage of sales of _____ % of the sales of all vending machines and will provide the township with the inventory log monthly for a total of (18) months (**October 1, 2017 – March 31, 2019**) as provided for in the contract.

Witness

Signature

Date

Provided the Concessionaire has performed all the conditions of this agreement, this agreement may be renewed for one (2) additional year term at the option of the Township. To exercise the options renewal, the Concessionaire shall notify the Corporation in writing no later than **June 1, 2019**.

The Concessionaire shall acquire, at the Concessionaire's own expense, all permits or licences necessary for the operation of the concession.

The Concessionaire agrees to obtain and keep in force during the entire term of the agreement, comprehensive liability and property insurance which will include, as an insured, the Township of Wainfleet in an amount not less than two million dollars (\$2,000,000.00) inclusive and to furnish a copy of such insurance or certified letter from his/her insurance company prior to commencing work on the contract.

The Concessionaire shall indemnify the Corporation from and against all liability under statutes, laws and regulations and in respect of all claims that may arise or be made against the Corporation at common law or otherwise by reason of injury or death of any person or persons, or employee or employees of the Concessionaire.

The Concessionaire, his/her agents and all workers and persons employed by him/her, or under his/her control will use due care that no person is injured and no property is damaged in the execution of the works and the Concessionaire will be solely responsible for all damages to persons or property that is owned by the Corporation, its employees or by other persons.

The Concessionaire shall be financially responsible for the repair and maintenance of the equipment provided by the Township.

The Concessionaire agrees to pay the Corporation:

Payments of \$ _____ plus 13% H.S.T. beginning on the last day of the first month of the agreement and to be paid monthly each month thereafter listed in the Schedule.

The Concessionaire and the Corporation agree that the provisions of Schedule "B" to this Agreement form a part of this agreement as is fully incorporated herein.

Signed, sealed and delivered

TOWNSHIP OF WAINFLEET

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ARENA OUTDOOR CONCESSION – 2017-2019

SCHEDULE “C”

SPECIFICATIONS:

The Concessionaire will operate the food concession at the Wainfleet Arena outdoor concession in accordance with the following dates:

May 1st thru to August 31st 2018

May 1st thru to August 31st 2019

The Concessionaire will supply:

- (a) all labour, small equipment not supplied by the Corporation, and goods for sale,
- (b) A list of all items to be sold including prices, shall be provided to the Manager of Operations for approval, prior to the beginning of the operating season.

Note: Tobacco products may not be sold through the Concessionaire.

The Concessionaire will be responsible for:

- (c) complying with all local and provincial regulations governing food handling under the Health Protection and Promotion Act,
- (d) day-to-day cleaning within the concession building,

- (e) supervision of all concession staff, so as to maintain a high standard of cleanliness, courtesy and efficiency which will convey a good impression to the public,
- (f) proper care and operation of concession equipment,
- (g) Any damage caused by careless or improper use of concession equipment.

Note: No concession booth renovations are allowed unless authorized by the Manager of Operations.

Note: The concession booth will be subjected to regular inspection by Arena staff and/or Public Health Inspectors for cleanliness and compliance.

The Concessionaire will display, in a prominent place:

prices for all items, Scheduled days and hours of operation.

The outdoor concession shall be open during all hours and dates for the Baseball leagues as well as soccer leagues. These schedules will be provided by the organizations prior to their season.

**** Parties tendering may submit a proposal for hours of operation that varies from the above if they wish.**

The Corporation will:

Supply equipment for the operation of the concession as described on the attached sheet.

Supply hydro, gas and water.

The Concessionaire shall have exclusive letting of the role of food and drinks in the outdoor concession.

The Concessionaire shall enter into an agreement with the Municipality.

The Concessionaire may have the option to extend the contract upon written request to the Municipality. Submission shall be received by **June 1, 2019** the decision to extend will be at the sole discretion of the Municipality.

All bidders may inspect the premises prior to tender closing. An appointment may be made with the Recreation Facilities Coordinator, Mr. Jeremy Worrall, in advance by calling (905) 899-1283.

NO EXCEPTIONS

The Wainfleet Minor Soccer Association and/or the Wainfleet Baseball Clubs may offer food or drink through the course of fund raising activities or planned special events (i.e. tournaments or testing sessions) These dates will be provided in advance of the event.



TOWNSHIP OF WAINFLEET

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ARENA OUTDOOR CONCESSION

TENDER FORM 2017-2019

Tender submitted by:

Address:

_____ Postal Code:

Telephone No.:

Hereinafter called the "Tenderer"

I/We hereby submit this my/our tender for the operation of the Arena and Outdoor Concession as per specifications. I/We have read the attached instructions to bidders, concession agreement and specifications and hereby agree to same.

I/We have attached a certified cheque, bank draft and/or money order, or postal money order in the amount of two hundred and fifty dollars (\$250.00) as provided for in the instruction to bidders.

I/We will provide proof of liability insurance, a Certificate of Clearance from the Workplace Safety and Insurance Board of Ontario and a signed copy of the Township of Wainfleet Liability and Liability Insurance Agreement, should my/our tender be accepted.

I/We hereby tender the **MONTHLY** rental price of \$ _____ plus 13% H.S.T. for a total of Eight (8) months (**May 1st 2018 to August 31st -2019**) as provided for in the contract.

Witness

Signature

Date

The Corporation grants the Concessionaire permission to operate the Arena Indoor Concession at the Wainfleet Arena within the conditions set out in Schedule "C" from **May 1 to August 31st 2018 and 2019**. The concession is to be open to the public accordingly to a timetable prescribed by the Manager of Operations.

Provided the Concessionaire has performed all the conditions of this agreement, this agreement may be renewed for one (2) additional year term at the option of the Township. To exercise the options renewal, the Concessionaire shall notify the Corporation in writing no later than **June 1, 2019**.

The Concessionaire shall acquire, at the Concessionaire's own expense, all permits or licences necessary for the operation of the concession.

The Concessionaire agrees to obtain and keep in force during the entire term of the agreement, comprehensive liability and property insurance which will include, as an insured, the Township of Wainfleet in an amount not less than two million dollars (\$2,000,000.00) inclusive and to furnish a copy of such insurance or certified letter from his/her insurance company prior to commencing work on the contract.

The Concessionaire shall indemnify the Corporation from and against all liability under statutes, laws and regulations and in respect of all claims that may arise or be made against the Corporation at common law or otherwise by reason of injury or death of any person or persons, or employee or employees of the Concessionaire.

The Concessionaire, his/her agents and all workers and persons employed by him/her, or under his/her control will use due care that no person is injured and no property is damaged in the execution of the works and the Concessionaire will be solely responsible for all damages to persons or property that is owned by the Corporation, its employees or by other persons.

The Concessionaire shall be financially responsible for the repair and maintenance of the equipment provided by the Township.

The Concessionaire agrees to pay the Corporation:

Eight (8) payments of \$ _____ plus 13% H.S.T. beginning on the last day of the first month of the agreement and to be paid monthly each month thereafter listed in the Schedule.

The Concessionaire and the Corporation agree that the provisions of Schedule "C" to this Agreement form a part of this agreement as is fully incorporated herein.

Signed, sealed and delivered

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TOWNSHIP OF WAINFLEET

CONCESSIONAIRE