



**THE CORPORATION OF THE CITY OF VAUGHAN**

**REQUEST FOR TENDER - (RFT)**

**COVER PAGE**

<b>RFT / BID NO:</b>	<b>T23-454</b>
<b>RFT / BID NAME:</b>	<b>RENOVATION OF MEN'S CHANGE ROOM</b>
<b>CLOSING TIME:</b>	<b>3:00:00 p.m. LOCAL TIME on September 20, 2023</b>
<b>DEADLINE FOR QUESTIONS:</b>	<b>3:00:00 p.m. LOCAL TIME on September 11, 2023</b>
<b>IS A SITE MEETING BEING OFFERED?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  <b>IS THE SITE MEETING MANDATORY?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date: September 7, 2023  Time: 2:00 PM EST  Location: Maple Community Centre 10190 Keele St, Maple, ON L6A 1R7  Other Details: Meet at front entrance
<b>Procurement Services Department representative for this RFT ("PR"):</b>	Name: Maaz Khan Title: Procurement Category Specialist  Email address: maaz.khan@vaughan.ca

**BIDS WILL ONLY BE SUBMITTED ONLINE USING THE CITY'S ONLINE BIDDING SYSTEM  
at <https://vaughan.bidsandtenders.ca>**

**Bidders who require accommodations due to a disability should contact the PR or call the  
Procurement Services main line at 905-832-8555.**

**Late Bids will not be accepted. The lowest or any Bid will not necessarily be awarded  
a Contract.**

## KEY DETAILS

### 1. Prequalification

Must Bidder be prequalified in order to submit a Bid?

- ☒ Yes, under prequalification RFPQ # 22-416
- ☐ No

### 2. Key Personnel

Applicable to project?

- ☐ Yes
- ☒ No

Applicable Prequalification: RFPQ # [Click or tap here to enter text.](#)

If any of the individuals proposed by the Bidder for Key Personnel within its' response to the above-mentioned prequalification differ from the Key Personnel being proposed within this tender, the City may, in its sole and absolute discretion:

- a) rescind the award to the Bidder;
- b) proceed with the award to the Bidder; or
- c) before taking either action above, request additional information from the Bidder on any or all of the individuals who differ from those proposed in the Bidder's response to the prequalification, or request that the Bidder propose different individuals for any or all of the individuals who differ from those proposed in the Bidder's response to the prequalification. The Bidder shall provide any requested additional information or propose different individuals within five (5) business days of the City making a request.

### 3. City's RFT Consultant

If the City has appointed a third-party Architect or Engineer or Contract Administrator or other third party to assist with this Bid opportunity and/or any resulting Contract, details are as follows:

Company/Person Name: Organica Studio + Inc.

Role: ARCHITECTURE & INTERIOR DESIGN

#### 4. Bid Bond

Required?

☒ Yes, in amount of: 10% of the Bid Price

☐ No

#### 5. Contract Security and Holdbacks

##### Agreement to Bond

Required?

☒ Yes

☐ No

##### Performance Bond

Required?

☒ Yes, in amount of: 50% of the Bid Price

☐ No

Must Performance Bond be renewable on an annual basis?

☒ Yes

☐ No

##### Labour & Material Bond

Required?

☒ Yes, in amount of: 50% of the Bid Price

☐ No

Must L&M Bond be renewable on an annual basis?

☒ Yes

☐ No

### **Irrevocable Letter of Credit**

If Bidder's Bid Price is less than \$500,000, an Irrevocable Letter Of Credit equalling the aggregate dollar value of both Bonds may be provided in lieu of a Performance Bond and Labour & Material Bond.

### **Holdback**

Unless expressly permitted elsewhere in this RFT:

- a. City does not intend to make payment of the accrued holdback on an *annual* basis as described in section 26.1 of the Construction Act.
- b. City does not intend to make payment of the accrued holdback on a phased basis (at completion of phases of an improvement) as described in section 26.2 of the Construction Act.
- c. City will be retaining holdback in the form of funds only, not in any of the forms of holdback described in section 22(4) of the Construction Act.

## **6. Liquidated Damages**

Applicable to Work?

- ☒ Yes, in an amount of: \$200.00 per Calendar Day.
- ☐ No

## **7. List of Appendices**

Contract Change Order Form  
City Invoice Cover Sheet  
Appendix A – Terms of Reference  
Appendix B - Drawings and Specifications

Note: City issued Drawings and Specifications would take precedence in the event of conflict or inconsistency with any OPSS or OPSD.

## 8. Contractor Insurance Requirements

✕ As outlined in Document 2

☐ Additional Insured, if any:

Click or tap here to enter text.

☐ Boiler and Machinery Insurance

- The Contractor shall provide and maintain during the term of the contract Boiler & Machinery Insurance and shall have limits of not less than the replacement value of the permanent or temporary boilers and pressure vessels, and other insurable objects. Insurance coverage should include the testing and commissioning of objects.
- Coverage shall not be less than the insurance provided by a comprehensive boiler and machinery policy.
- The deductible is not to exceed Five Thousand (\$5,000) or as agreed to by the Owner.

☐ Other, if any:

Click or tap here to enter text.

## 9. Other:

In the event of conflict between the provisions in this RFT and the provisions in the Bidding System Terms of Use and/or the Vendor Guide to the Bidding System, the terms in the RFT shall prevail.

**End of Key Details**

## TABLE OF CONTENTS

COVER PAGE .....	1
TABLE OF CONTENTS .....	6
DOCUMENT 1 INSTRUCTIONS TO BIDDERS .....	9
1. DEFINITIONS .....	9
3. E-SUBMISSIONS .....	10
4. SUBMITTING A QUESTION .....	13
5. BLACKOUT PERIOD .....	13
6. ADDENDA .....	13
7. ERRORS AND OMISSIONS .....	14
8. CONFIDENTIALITY .....	14
9. NON-COLLUSION .....	15
10. ANTI-LOBBYING .....	15
11. EXAMINATION OF SITE .....	15
12. MANDATORY MEETINGS .....	15
13. BIDDERS COST .....	16
14. REFERENCES .....	16
15. SUBCONTRACTORS .....	16
16. CONFLICT OF INTEREST .....	17
17. JOINT VENTURE .....	17
18. BID FORM AND PRICING .....	18
19. UNBALANCED BIDS .....	18
20. PRICE COMPONENTS .....	18
21. EMPLOYMENT AND LABOUR LEGISLATION .....	19
22. SCHEDULE OF ITEMS AND UNIT PRICES .....	19
23. PROVISIONAL ITEMS AND QUANTITIES .....	19
24. DIGITAL BID BOND .....	20
25. DIGITAL AGREEMENT TO BOND .....	21
26. OWNERSHIP OF AND USE OF BID ONCE SUBMITTED .....	22
27. AMENDING A BID .....	22
28. WITHDRAWING A BID .....	22
29. IRREVOCABILITY .....	23
30. LATE BIDS .....	23
31. BID CHECKING .....	23

32.	CLARIFICATIONS/CORRECTIONS.....	23
33.	VERIFICATION .....	23
34.	ACCURACY .....	23
35.	LITIGATION .....	23
36.	APPROVALS .....	24
37.	FREEDOM OF INFORMATION.....	24
38.	UNOFFICIAL TENDER RESULTS .....	25
39.	DIGITAL CONTRACT SECURITY (BONDS OR IRREVOCABLE LETTER OF CREDIT REQUIRED AT TIME OF AGREEMENT SIGNING) .....	25
40.	NOTIFICATION OF AWARD, EXECUTION OF AGREEMENT AND PROVISION OF REQUIRED DOCUMENTATION .....	27
41.	DISQUALIFYING EVENTS .....	28
42.	ADDITIONAL RESERVATION OF RIGHTS .....	31
43.	APPLICABLE LAWS, ATTORNMENT .....	32
44.	LIMITATION OF LIABILITY .....	33
45.	INTERPRETATION OF RFT, SEVERABILITY AND DEBRIEFINGS .....	33
46.	BID DISPUTES .....	34
47.	BIDDER'S STATEMENT OF UNDERSTANDING .....	36
	DOCUMENT 2 CITY GENERAL PROVISIONS, RE CONSTRUCTION WORK.....	37
1.	SET-OFF.....	37
2.	RIGHT TO AUDIT AND RETENTION OF RECORDS .....	37
3.	CANCELLATION.....	37
4.	EVALUATION OF PERFORMANCE .....	37
5.	WORKPLACE SAFETY AND INSURANCE BOARD (WSIB).....	38
6.	PAYMENT OF WORKERS.....	38
7.	EXAMINATION OF SITE.....	39
8.	LAWS AND REGULATIONS AND HEADINGS .....	39
9.	ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005 .....	39
10.	OCCUPATIONAL HEALTH AND SAFETY .....	40
11.	SAFETY STANDARDS .....	41
12.	NON-WAIVER.....	42
13.	NON-ASSIGNMENT .....	42
14.	PROGRESS REPORTS AND VERIFICATION.....	42
15.	INVOICING AND PAYMENT PROCEDURE .....	43
16.	ENVIRONMENTAL CONSIDERATIONS.....	46
17.	AGREEMENTS IN WRITING .....	47

18.	DATE OF COMMENCEMENT.....	47
19.	TIME FOR COMPLETION.....	47
20.	EMERGENCY RESPONSE AND TELEPHONE NUMBER .....	48
21.	MEETINGS .....	48
22.	HOURS OF WORK .....	49
23.	CONTRACTOR RESPONSIBILITIES.....	49
24.	ALTERATIONS AND AMENDMENTS.....	49
25.	INSPECTION AND TESTING.....	50
26.	GUARANTEED MAINTENANCE AND WARRANTY .....	50
27.	UTILITIES .....	51
28.	SURVEY LAYOUT .....	52
29.	SURVEYOR'S STAKES, GEODETIC BENCHMARKS AND MONUMENTS .....	52
30.	TRAFFIC CONTROL, AND PEDESTRIAN AND VEHICULAR ACCESS.....	52
31.	DUST AND MUD CONTROL.....	53
32.	HAUL ROADS.....	53
33.	PRIVATE DRIVEWAYS.....	54
34.	RESTRICTION OF USE OF HYDRANTS.....	54
35.	RESTORATION .....	54
36.	SITE DRAINAGE.....	54
37.	DEWATERING EXCAVATIONS.....	54
38.	LIQUIDATED DAMAGES .....	55
39.	EXCAVATED AND EXCESS SOIL.....	55
40.	DISPUTE RESOLUTION.....	58
41.	ADJUDICATION.....	59
42.	GENERAL INDEMNITY.....	60
43.	INSURANCE (POLICIES/COVERAGE REQUIREMENTS) .....	61
44.	INSURANCE (GENERAL REQUIREMENTS) .....	62
45.	THIRD PARTY CLAIMS HANDLING .....	64
DOCUMENT 3	CITY SUPPLEMENTALS .....	66
DOCUMENT 4	CITY STANDARD WORK AGREEMENT – CONSTRUCTION.....	67
DOCUMENT 5	PREVIEW ONLINE BIDDING SYSTEM SCHEDULES.....	76



**1. DEFINITIONS**

- a. **“Addenda”** means a document made available by the City's Procurement Services Department which amends or clarifies a Bid Document.
- b. **“Bid”** and **“Bid submission”** means a submission by a Bidder in response to the applicable City issued Request for Tender.
- c. **“Bid Documents”** is defined in section 2 below.
- d. **“Bidder”** means the entity submitting a Bid in response to this RFT.
- e. **“Bid Price”** means the Subtotal Contract Amount from ‘Schedule of Prices’ as submitted by Bidder.
- f. **“Bidding System”** means the web site/system used by the City to make Bid Documents available and receive Bids (<https://vaughanbidsandtenders.ca>).
- g. **“City”** and **“Owner”** means The Corporation of the City of Vaughan.
- h. **“Closing Time”** is identified on the Cover Page of this RFT and is subject to change by Addenda. **“Local Time”** refers to the official time in the City of Toronto.
- i. **“Conflict of Interest”** is described in section 16 below.
- j. **“Contract”** and **“Contract Documents”** are defined in section 2 below.
- k. **“Contract Security”** is defined in the section 39 below entitled “Contract Security”.
- l. **“Contractor”** means the successful Bidder(s) (if any) who has entered into an Agreement with the City to perform the Work.
- m. **“Joint Venture”** means a business arrangement of two or more legal entities proposed for this Request for Tender, and for the subsequent Contract, if applicable.
- n. **“Request for Tender”** or **“RFT”** means the RFT named and numbered on the Cover Page and includes all Bid Documents.
- o. **“Responsive Bidder”** means a Bidder that has complied in all material respects with the requirements of this RFT.
- p. **“Successful Bidder”** and **“successful Bidder”** means a Bidder who the City has sent (or Owner intends to send) a ‘Notification of Award’ pursuant to this RFT to enter into an Agreement to perform the Work.

- q. **“Work”** means all goods and services to be provided by a Contractor under and pursuant to the Contract.
- r. **“Working Day”** means Monday through Friday inclusive but excluding Saturday and Sunday and any recognized statutory holiday in the City of Vaughan.

## 2. GOVERNING TERMS AND CONDITIONS

- 2.1 **“Bid Documents”** are listed in the RFT Table of Contents.
- 2.2 The **“Contract”** is comprised of the Agreement and all Contract Documents.
  - (a) **“Agreement”** means the City Standard Work Agreement – Construction, which must be signed by a successful Bidder who receives a Notification of Award from City.
  - (b) All Bid Documents form part of the Contract, and are referred to as / become **“Contract Documents”** once the Agreement is executed.
- 2.3 Implied terms are disclaimed from this RFT.
- 2.4 The provisions in each Document are in addition to and supplement the provisions in the other Documents. Conflicts between provisions shall be resolved in accordance with the applicable governing Order of Precedence, to the extent of the conflict.
- 2.5 The headings within the RFT and any Contract Document are for convenience and reference only and shall not affect or be used to interpret the provisions therein.

## 3. E-SUBMISSIONS

- 3.1 The City will ONLY accept Bids uploaded electronically to the City’s Bidding System. Bidders who require accommodations due to a disability should contact the Procurement Services main line at 905-832-8555. If you have problems uploading your Bid, please contact the City’s Procurement Services Department.
- 3.2 The City’s Bidding System Terms of Use Agreement forms part of this RFT.
- 3.3 Bids submitted and/or received by any other method shall be rejected, unless the City has instructed otherwise by published Addendum or a special exception has been granted by the City’s Director of Procurement Services.
- 3.4 A Bid will only be considered to have been submitted once it has been received by the City in its Bidding System. The time the Bid is received shall be determined by the City’s Bidding System web clock.
- 3.5 The Bidding System will send a confirmation email to the Bidder advising that its Bid was submitted successfully. If you do not receive a confirmation email, contact the City’s Procurement Services Dept.
- 3.6 Bidders should not consider their Bid to have been submitted until they have received the confirmation e-mail (oral confirmation will not suffice).

- 3.7 Bidders are cautioned that the time the Bid is received is based on when the Bid is RECEIVED by the Bidding System, not when a Bid is sent for transmission by a Bidder and not when Bidder system indicates Bidder uploaded/sent/transmitted the Bid, as Bid transmission can be delayed in an “Internet Traffic Jam” due to file transfer size, transmission speed, etc. Accordingly, the City recommends that Bidders allow sufficient time to upload their Bid and attachment(s) (if applicable) and to resolve any issues that may arise.
- 3.8 Bids must be received by the Bidding System before the stipulated closing time. Late Bids will not be accepted by the Bidding System.
- 3.9 To ensure receipt of the latest information (and updates via email) regarding this procurement opportunity, or if a Bidder has obtained the RFT from a third party, the onus is on the Bidder to create a Bidding System Vendor account and register as a ‘Plan Taker’ for this RFT at the at <https://vaughan.bidsandtenders.ca>.
- 3.10 All Bids are subject to the terms and conditions of this RFT and by submitting a Bid, Bidders agree to the terms and conditions herein.
- 3.11 Company Contacts - Regarding having multiple company contacts on the online Vendor account:
- (a) Do not invite any additional contacts that you do not want to have access to view, edit, submit and/or withdraw or who may be in direct competition for example (a company may have two divisions that could compete for the same Bid opportunity).
  - (b) It is recommended that when creating or updating a Bidding System Vendor account to add additional company contacts to create their own login to the Bidding System. This will permit your invited contacts that have created their own login to manage (register, submit, edit and withdraw) Bids which your company is a Registered Plan Taker for.
  - (c) Vendor contacts may: act on vendor’s behalf, receive Addendum notifications from the Bidding System, submit Bids electronically through the Bidding System, withdraw and/or edit and/or acknowledge Addendum/Addenda, on behalf of vendor.
  - (d) If you are an invited company contact it is required that you create your login from the link contained in the email invitation. Do NOT create a separate vendor account.

### 3.12 Uploading Documents into the Bidding System

To upload a document:

- (a) Click on the “Browse” button to locate the file/folder on your computer or network
- (b) Click on the “Upload” button.

After the file/folder has been successfully uploaded, a link to the document will appear on the screen, along with the date and time that it was uploaded.

If you need to remove an uploaded document, click on the “Remove” button next to the document name.

Documents being uploaded should:

1. be in Adobe pdf format or other format requested by the City; and
2. NOT have a security password.

It is the Bidder’s sole responsibly to ensure that their uploaded document(s):

1. are not defective, corrupted or blank; and
2. can be opened and viewed by the City.

The City may reject or disqualify any Bid that contains documents that cannot be opened and verified by the City.

Bidders may only upload one (1) file/folder for each required document.

The maximum single file/folder upload size is 500 MB.

To reduce the size of a single file/folder, or to combine multiple files into a single folder for upload, Bidders should compress (zip) their file(s)/folder(s) as described below.

### 3.13 **Compressing Zip Folders / Files**

To compress (zip) a single file or folder:

- (a) Locate the file/folder that you wish to compress (zip)
  - then right-click on the file/folder
  - select "Send to"
  - then click on "Compressed (zipped) folder".
- (b) new compressed (zipped) folder will be created in the same location as the original file.
- (c) To rename the compressed (zipped) folder, right-click on it, click on “Rename” and enter the new name.
- (d) To compress (zip) multiple files into a single folder:
  1. Locate and select the files/folders that you wish to combine
  2. With all of the files selected, right-click, select “Send to”, then click on “Compressed (zipped) folder”.
- (e) A new compressed (zipped) folder will be created in the same location as the original files.
- (f) To rename the compressed (zipped) folder, right-click on it, click on “Rename” and enter the new name.

- (g) If you are uploading a compressed (zipped) folder containing more than one (1) document, please ensure that each document is named appropriately.

#### **4. SUBMITTING A QUESTION**

- 4.1 Bidders are responsible for seeking clarification of any matter that they consider unclear before submitting a Bid. The City is not responsible for any misunderstanding of this RFT on the part of the Bidder.
- 4.2 Bidders may submit questions through the City's Bidding System using the "Submit a Question" link associated with the RFT prior to the deadline for questions.
- 4.3 If any Bidder requires an accommodation due to a disability, requests should be directed to the City's PR referenced above.
- 4.4 The City shall not be responsible for responding to questions that are posed by any other method.

#### **5. BLACKOUT PERIOD**

- 5.1 Between the date this RFT is posted and the date it is cancelled or an Agreement has been fully executed (whichever is earlier), Bidders shall not discuss this RFT with any City employee or Councillor or Evaluation Committee member (if applicable) except as permitted or contemplated by this RFT.

#### **6. ADDENDA**

- 6.1 The City may issue Addenda from time-to-time during this procurement process, amending or clarifying any Bid Document.
- 6.2 All Addenda will be posted on the Bidding System. Addenda form part of the RFT.
- 6.3 Bid Documents may only be changed by Addenda posted online on the Bidding System. It is the Bidder's sole responsibility to check the Bidding System for Addendum(s) prior to submitting their Bid.
- 6.4 No oral interpretation or clarification provided to a Bidder will be effective to modify any provisions of the Bid Documents.
- 6.5 Any additional information and/or changes to the Bid Documents will be issued in the form an Addendum.
- 6.6 The City will notify Bidders of the issuance of Addenda via e-mail; however, it is the Bidder's responsibility to ensure that it has downloaded all Addenda prior to submitting its Bid. Bidders should check the Bidding System prior to submitting their Bid and up until the Bid closing time and date in the event additional Addendums are issued.
- 6.7 The City will not be liable for any misdirected notices of Addenda resulting from a Bidders failure to update its contact information in the Bidding System and/or Bidders failing to check for Addenda prior to submitting their Bid.
- 6.8 Bidders shall check a box for each Addendum/Addenda and any applicable attachments that have been issued, before a Bidder can successfully submit their Bid.

- 6.9 Bids that do not contain evidence of receipt of all Addenda will be deemed to be “incomplete” and will not be accepted in the Bidding System.
- 6.10 In the event that an Addendum is issued after a Bidder has submitted its Bid, the Bidding System will change the status of the Bid to “incomplete” and the Bidder will be required to acknowledge the Addendum and resubmit its Bid prior to the bid closing date and time.
- 6.11 For greater certainty, if a Bidder submits its Bid prior to the bid closing time and an Addendum/Addenda is later issued by the Owner, the Bidding System shall
- WITHDRAW the Bid submission and change the Bid submission to an INCOMPLETE STATUS (NOT accepted by the Owner) and the Withdrawn Bid can be viewed by the Bidder in their “MY BIDS” section of the Bidding System. The Bidder is solely responsible to:
- (a) make any required adjustments to their Bid; and
  - (b) acknowledge the Addendum/Addenda; and
  - (c) ensure the re-submitted bid is RECEIVED by the Bidding System no later than 3:00:00 p.m. LOCAL TIME (15:00:00 hours) local time, on the Bid closing date.

## **7. ERRORS AND OMISSIONS**

- 7.1 Subject to Section 47 (i) the City shall not be held liable for any errors or omissions in any part of this RFT.
- 7.2 While the City has used considerable effort to ensure an accurate representation of information in this RFT, the information contained in the RFT is supplied solely as a guideline for Bidders. The information is not guaranteed or warranted to be accurate by the City, nor is it necessarily comprehensive or exhaustive.
- 7.3 Nothing in the RFT is intended to relieve the Bidders from forming their own opinions and conclusions with respect to the matters addressed in the RFT.

## **8. CONFIDENTIALITY**

- 8.1 Bidders shall not disclose any Bid Document to any third party without the prior express written consent of the City or as permitted in subsection (8.2) directly below.
- 8.2 Bidders may only disclose the Bid Documents to its employees and consultants and potential subcontractors on a need-to-know basis who have agreed in writing to maintain such in confidence and only use for the limited purposes of helping Bidder consider or prepare a Bid.
- 8.3 Bidders shall not communicate any matters concerning the contents of this RFT to any member of the public or any news medium, whether the press or radio or television, without the prior consent of the PR.
- 8.4 The City reserves the right to disqualify from the RFT process a Bidder who in the City's opinion has breached this requirement for confidentiality.

**9. NON-COLLUSION**

- 9.1 A Bidder shall not discuss or communicate about the preparation of their Bid with the contractors currently performing the Work or with any other Bidder without the prior consent of the City.
- 9.2 Each Bidder shall ensure that its participation in this RFT process is conducted without collusion or fraud.
- 9.3 Bidders, by submitting their Bid, declare that the Bid is not made in connection with any other Bidder submitting an offer for the same Work and is, in all respects, fair and without collusion or fraud.

**10. ANTI-LOBBYING**

- 10.1 Any attempt on the Bidder's part to improperly influence the evaluation and selection process may result in disqualification of the Bidder.

**11. EXAMINATION OF SITE**

- 11.1 Bidders are required to satisfy themselves by personal visitation and examination of each site for the Work and of the existing conditions which may be encountered on or adjacent to the site, including without limitation, all underground/overhead utilities locations, surface and sub-surface conditions, existing structures on or adjacent to the sites, access routes and other conditions which may affect performance of the Work.
- 11.2 The submission of a Bid shall be deemed proof that the Bidder has satisfied itself as to all the provisions of the Bid Documents and of all the conditions which may be encountered at each Work site, except any condition that may not be reasonably inferred from any geotechnical evidence provided to the Bidders or observable on a proper visual inspection or any other matter which may affect performance of the Work.

**12. MANDATORY MEETINGS**

- 12.1 Lateness, at the sole discretion of the Procurement Representative, and/or failure to attend a mandatory meeting shall result in Bid disqualification and/or rejection.
- 12.2 All Bidders must sign in on the official meeting attendance sheet provided by the Procurement Division.
- 12.3 A representative attending the mandatory meeting on behalf of a Bidder must indicate the Bidder's name on the sign in sheet.
- 12.4 Bidders who have not signed in prior to the commencement of the meeting will be considered late and will be required to leave resulting in disqualification from the RFT process.
- 12.5 At mandatory Work site meetings, each Bidder shall examine the surroundings and adjacent public and private properties for existing conditions including, but not limited to, the rights and interests of other parties that may be interfered with during completion of the Work. No Bidder shall claim, at any time after the Closing Deadline that there was any misunderstanding about the terms and conditions of the Contract relating to site conditions. No adjustment to the schedule or to the Contract will be made for

difficulties encountered during completion of the Work due to conditions, features and peculiarities of the site that were evident at the time of the Closing Deadline.

- 12.6 Any new information or changes provided at the site meeting will be summarized and circulated electronically to all attendees after the meeting.

### **13. BIDDERS COST**

- 13.1 Subject to Section 47(i), in no event shall the City have any liability for costs incurred by Bidder to prepare its Bid.

- 13.2 For certainty, the City is not liable to pay such costs and expenses or to reimburse or compensate Bidders, or persons connected with the Bidder, under any circumstances, including the rejection of any or all Bids, the cancellation of the RFT, changes to the RFT schedule, issuance of Addenda, or the failure to enter into an Agreement with any Bidder.

### **14. REFERENCES**

- 14.1 References (if required) shall be submitted as part of your Bid using the Bidding System.

### **15. SUBCONTRACTORS**

- 15.1 Bidders shall ensure that no Subcontractor selected and proposed is also a Bidder in this competitive bid process. For greater clarity, Bidders shall not subcontract to each other for the same project.
- 15.2 Bidders shall ensure that all Subcontractors selected and proposed have experience in the subcontracted Work described and that they shall execute their Work with competence and within the required time frame.
- 15.3 Bidders shall ensure that all Subcontractors included in a Bid shall be actively engaged in Work of the type described and shall be able to show proof upon request by the Owner of previous Work of similar nature performed by them.
- 15.4 Bidders shall not show "Own Forces" in their list of Subcontractors, except where the Bidder's intent is to employ the Bidder's own qualified on-staff personnel to perform such work.
- 15.5 Bidders shall not indicate "TBD" (To Be Determined) or "TBA" (To Be Announced) or similar wording and shall not indicate multiple choices of Subcontractor names for any Subcontractor category in their list of Subcontractors. One Subcontractor name shall be indicated for each Subcontractor category.
- 15.6 Bidders shall list in their list of Subcontractors, all of the Subcontractors who shall perform work under the Contract.
- 15.7 No names, either of Subcontractors or "Own Forces" may be changed after submission of the list of the Subcontractors unless prior written approval is received from the Owner. Such approval shall only be considered after receipt by the Owner of a written request for the change by the Bidder or Contractor with a full explanation of the reasons for the requested change with no consequences to Owner.



- 15.8 The Owner reserves the right to reject a proposed Subcontractor for reasonable cause. Upon such rejection, the Bidder shall be required to propose an alternate Subcontractor without resulting change to the Bid.

## **16. CONFLICT OF INTEREST**

- 16.1 In order to protect the integrity of the procurement process, Bidders are advised that Owner may reject a Bid in the following circumstances:
- a. if the Bidder, any of its subcontractors, any of their respective employees or former employees was involved in any manner in the preparation of this RFT;
  - b. if the Bidder, any of its subcontractors, any of their respective employees or former employees had access to information related to this RFT that was not available to other Bidders and that would, in Owner's opinion, give the Bidder an unfair advantage.
- 16.2 The experience acquired by a Bidder who is providing or has previously provided the goods and/or services described in this RFT (or similar goods and/or services) will not, in itself, be considered by Owner as conferring an unfair advantage or creating a conflict of interest. This Bidder remains however subject to the criteria established above.
- 16.3 By submitting a Bid, the Bidder represents that (except as may be disclosed in the Bid Form) it does not consider itself to be in conflict of interest nor to have an unfair advantage. The Bidder acknowledges that it is within Owner's sole discretion to determine whether a conflict of interest or unfair advantage exists.
- 16.4 The City may, in its sole discretion waive any and all actual, potential, or perceived conflicts of interest, on such terms and conditions the City, in its sole discretion, considers to be required to satisfy itself that any actual, potential or perceived conflict of interest has been appropriately managed, mitigated and minimized. In this regard, the City may require the Bidder to implement measures or take other steps to manage or mitigate the impact of any actual, potential or perceived conflict of interest.

## **17. JOINT VENTURE**

- 17.1 If a Joint Venture is proposed as a Bidder, the Bidder should state in its Bid Submission the joint venture arrangements that form the basis on which the Joint Venture plans to carry out its duties and obligations under this Request for Tender and the Contract.
- 17.2 The Joint Venture shall not change its Joint Venture composition during the validity of this Request for Tender and the Contract.
- 17.3 One of the Joint Venture participants should be nominated as being in charge of the Joint Venture at all times and will be known as the "Participant in Charge". The Participant in Charge shall be authorized by the other Joint Venture participants to act for, on behalf of, and bind, the other Joint Venture participants, and receive

instructions, and incur liabilities, for and on behalf of any, and all, Joint Venture participants.

17.4 All Joint Venture participants shall be jointly, and severally, responsible and liable during this Request for Tender process and Contract for the compliance with, and discharge of, any and all duties and obligations arising out, and in connection with, the Request for Tender and Contract.

17.5 Each Joint Venture participant should demonstrate its authorization of the Participant in Charge by submitting with the Bid Submission a power of attorney signed by a legally authorized representative of the Joint Venture participant, including confirming each Joint Venture participant's commitment to the Joint Venture and acceptance of the Joint Venture arrangements described in the Bid Submission, and confirming each Joint Venture participant's agreement to be liable, jointly and severally, for all duties and obligations arising out, and in connection with, the Request for Tender and Contract.

## **18. BID FORM AND PRICING**

18.1 The Bid Form available on the Bidding System is to be properly completed and submitted, including the fields available to input unit prices, Bid price, provisional item pricing etc.

18.2 All Bid prices submitted shall be in Canadian dollars (CAD) excluding H.S.T.

## **19. UNBALANCED BIDS**

19.1 For the purpose of this provision, "unbalanced" means the price submitted, whether it be the Bid Price or a price for an item, part, section or division, does not reflect reasonable, anticipated costs for the required labour, equipment and materials, plus a reasonable proportionate share of the Bidder's anticipated overhead and profit.

19.2 If the City receives a Bid from a Bidder with a price that is abnormally lower than the prices in other submitted Bids or is otherwise determined by the City to be "unbalanced", the City may verify with the Bidder that the Bidder satisfies the conditions for participation and the Bidder is capable of fulfilling the terms of the Contract. If the City determined that they are not, then the Bid will be deemed non-compliant and rejected

## **20. PRICE COMPONENTS**

### **20.1 Taxes**

- (a) The Owner is subject to the payment of Provincial sales taxes and Federal taxes (including G.S.T. / H.S.T. excise and customs duties) imposed by the Provincial and Federal Governments.
- (b) Should there be any approved variation in any tax or duty imposed by the Province of Ontario or the Government of Canada which becomes directly applicable to the goods/services to be purchased or provided during the term of the Contract, the Bidder and the Owner mutually agree that the Bid Price will be adjusted proportionately to reflect any such variation.

- (c) The onus is on the Bidder to bring to the Owner's attention any such variations and positions published by the Canada Revenue Agency which are relevant to any variances.
- (d) The Bidder shall not include HST in its unit cost(s) or lump sum cost(s), but shall include all other taxes and duties, as well as any reduction in the Contractor's operating costs due to rebating of any sales taxes. The Bidder agrees that all work performed under the Contract will be subject to HST only.

## 20.2 Transportation and Delivery Charges

- (a) Prices submitted by Bidder within the Bid Documents shall be net prices including transportation and delivery charges fully prepaid by the Bidder.
- (b) For certainty, in furtherance of the provisions in (19.1) directly above, G.S.T / H.S.T. or other taxes or duties which would be payable by Bidder on transportation costs shall not be included in the Bid Price or unit costs where the Bidder can receive input tax credits or refunds.

## 21. EMPLOYMENT AND LABOUR LEGISLATION

- 21.1 In submitting its Bid, Bidder represents that it has considered the Making Ontario Open for Business Act, 2018, and any impacts of this and other applicable legislation have been reflected in its Bid Price and any applicable unit prices. Bidders are advised that the City will not entertain requests to change submitted bid prices based on changes to the minimum wage or other legislative amendments made under any statute. It is the Bidder's obligation to operate accordance with all applicable law at all times.

## 22. SCHEDULE OF ITEMS AND UNIT PRICES

- 22.1 Bidders also understand and accept that any quantities shown provided by Owner within the Bid Documents are approximate estimates only and are subject to increase, decrease or deletion entirely if found not to be required.

## 23. PROVISIONAL ITEMS AND QUANTITIES

- 23.1 Items listed in the RFT as "*Provisional Items*" may or may not be required for completion of the Work.
- 23.2 If a Contract were awarded, the necessity for and/or actual quantities of these items will be determined by the Owner as the Work progresses.
- 23.3 Should any of these items be required, the Contractor will be compensated on the basis of the unit prices(s) quoted.
- 23.4 In the event that any or all of these items are found not to be required, the Contractor shall not claim extra payment for loss of anticipated profits or impact costs in relation thereto.

**24. DIGITAL BID BOND**

- 24.1 Bid Bonds, among other things, provide security for the execution and delivery of the Contract and the provision of the required bonds, insurance and other documents required to be provided by a successful Bidder.
- 24.2 This section applies when provision of a digital Bid Bond is an RFT submission requirement.
- 24.3 To be considered valid, the Bid Bond shall be:
- (a) submitted at time of Bid submission;
  - (b) in the amount of 10% of the Bid Price;
  - (c) made payable to 'The Corporation of the City of Vaughan'.
  - (d) in an acceptable, digital format;
  - (e) from a recognized guarantee or surety company acceptable to the City and authorized by law to do business in the Province of Ontario;
  - (f) Verifiable/Enforceable – The bond shall include assurances that the document was duly executed by the parties identified and that it is enforceable in law (this requires the use of a third-party digital service provider);
  - (g) Digitally Executed - the bond must contain digital signatures and digital seals (**A SCANNED COPY OF A PAPER BOND IS NOT AN ACCEPTABLE DIGITAL BOND**); and
  - (h) in a form and content otherwise acceptable to the City, acting reasonably, such as the City Standard Form of Bid Bond or CCDC 220. The City Standard Form can be found on the City's website under 'Procurement Services – Vendor Information';
  - (i) and shall also include a method of authentication that confirms 'Integrity of Content' – The bond shall include assurances that the document received is the true document executed and the content has not been changed or altered (all instructions for accessing authentication shall be included with the uploaded bonds).
- 24.4 Failure to provide a compliant digital Bid Bond shall result in Bid rejection and/or disqualification.
- 24.5 If you receive your digital 'Bid Bond' and 'Undertaking to Bond' (or equivalent documents) in one .pdf document you should upload the complete document in both the Bid Bond field and the Undertaking to Bond field on the Bonding tab. DO NOT split the document into two separate documents.
- 24.6 The Bidder and its Surety Company should refer to the e-bonding information on the Surety Association of Canada's website which includes:

- (a) A Checklist of Industry Requirements for e-Bonding Solutions which sets out the requirements for digital bonds.
- (b) A list of third parties that provide on-line surety digital bond services such as Mobile Bonds or Xenex Enterprises. The City does not endorse or promote any third party digital service provider.

## 25. DIGITAL AGREEMENT TO BOND

25.1 If stated as an RFT submission requirement, Bid submissions must also include (at time of submission) a digital Agreement to Bond or Undertaking to Bond or Consent of Surety ("**Agreement to Bond**") issued by a surety licensed in the Province of Ontario which states the Bidder has:

- (a) the bonding capacity for a Performance Bond in the required amount; and
- (b) the bonding capacity for a Labour and Material Payment Bond in the required amount.

25.2 The Agreement to Bond must be:

- (a) for the benefit of the City;
- (b) in an acceptable, digital format;
- (c) from a recognized guarantee or surety company acceptable to the City and authorized by law to do business in the Province of Ontario;
- (d) Verifiable/Enforceable – The bond shall include assurances that the document was duly executed by the parties identified and that it is enforceable in law (this requires the use of a third party digital service provider);
- (e) Digitally Executed - The bond must contain digital signatures and digital seals (a scanned copy of a paper bond is not an acceptable digital bond);
- (f) in the form and with content acceptable to the City, acting reasonably. The City Standard Undertaking to Bond Form can be found on the City's website under 'Procurement Services – Vendor Information'; and also
- (g) include a method of authentication that confirms 'Integrity of Content' – The bond shall include assurances that the document received is the true document executed and the content has not been changed or altered. All instructions for accessing authentication shall be included with the uploaded bonds.

25.3 A Bid submission that is not accompanied by a valid **digital** Agreement to Bond shall be disqualified and/or rejected.

25.4 If you receive your digital 'Bid Bond' and 'Agreement to Bond' in one .pdf document you should upload the complete document in both the Bid Bond field and the Undertaking to Bond field on the Bonding tab. DO NOT split the document into two separate documents.

25.5 The Bidder and its Surety Company should refer to the e-bonding information on the Surety Association of Canada's website which includes:

- (a) A Checklist of Industry Requirements for e-Bonding Solutions which sets out the requirements for digital bonds.
- (b) A list of third parties that provide on-line surety digital bond services such as Mobile Bonds or Xenex Enterprises. The City does not endorse or promote any third party digital service provider.

## **26. OWNERSHIP OF AND USE OF BID ONCE SUBMITTED**

26.1 Bids become City property once received.

26.2 City may disclose any Bid and other information provided by a Bidder under this RFT process to the Evaluation Committee, City Council and otherwise in any of the following circumstances:

- (a) as reasonably required to facilitate this RFT process;
- (b) in accordance with its ordinary business practices; and/or
- (c) as may be required in relation to access to information requests under applicable privacy legislation.

## **27. AMENDING A BID**

27.1 In the event that a Bidder wishes to revise its Bid after it has been submitted, the Bidder must withdraw its Bid, make the necessary changes, and resubmit its Bid, prior to the closing time.

27.2 To withdraw then amend a Bid which has already been submitted:

1. Goto the 'My Bids' page on the Bidding System
2. Click on 'Manage My Submissions' beside the applicable bid opportunity
3. Click on "Edit or Withdraw my Submission"
4. Click on "Edit Submission" (*\*by clicking the 'Edit Submission' tab you are withdrawing your submission and will not have a registered submission with the City\**)

27.3 The Bidder is solely responsible to ensure the re-submitted bid is RECEIVED by the Bidding System no later than 3:00:00 p.m. LOCAL TIME (15:00:00 hours) local time, on the bid closing date.

## **28. WITHDRAWING A BID**

28.1 To withdraw a Bid which has been submitted:

1. Goto the 'My Bids' page on the Bidding System
2. Click on 'Manage My Submissions' beside the applicable bid opportunity
3. Click on "Edit or Withdraw my Submission"

4. Click on "Withdraw Submission" (*\*by clicking the 'Withdraw Submission' tab you are withdrawing your submission and will not have a registered submission with the City\**)

28.2 Bids may only be withdrawn prior to the Closing Time.

## **29. IRREVOCABILITY**

29.1 Unless properly withdrawn, Bids are irrevocable for sixty (60) Working Days, starting on the RFT Closing Deadline

29.2 By submission of a Bid, the Bidder agrees that, should the City issue a Notification of Award to the Bidder within the sixty (60) Working Days from RFT Closing Deadline, the Bidder will enter into a Contract with the City for the completion of the Work within seven (7) Working Days from the Notification of Award date, failing which, the City may (without notice or liability) enter into a Contract with another Bidder.

## **30. LATE BIDS**

30.1 Late Bids will not be accepted.

## **31. BID CHECKING**

31.1 City reserves the right to reject or disqualify a Bid at any time if it notices a non-compliance not detected by the Bidding System.

31.2 Where there is an obvious error in the extended price the unit price stipulated shall govern and shall be calculated accordingly with the estimate quantity.

31.3 Where there is an obvious calculation error in the addition of individual lump sum prices into a subtotal price, the Owner may make the appropriate mathematical correction to the subtotal price and/or subtotal contract price, as the case may be, so that the calculation is correct.

## **32. CLARIFICATIONS/CORRECTIONS**

32.1 City reserves the right to seek clarification from Bidders about any aspect of their Bid.

## **33. VERIFICATION**

33.1 The City may, if deemed necessary, verify any information provided in any Bid.

## **34. ACCURACY**

34.1 It is clearly understood that if there is any evidence of misleading or false information having been given, the City may, in its sole discretion, disqualify the Bid or terminate any resulting Contract.

## **35. LITIGATION**

35.1 If a Bidder (including any related or affiliated entity and any principal thereof) is engaged in Unresolved Litigation with the City:

- (a) City may reject the Bidder's Bid;
- (b) City may disqualify Bidder from this procurement process at any time; and
- (c) City further reserves the right to not award a Contract to such a Bidder.

35.2 As used above, "Unresolved Litigation" means any unresolved dispute between the City and any other party adverse in interest, including third party and cross-claims, where either a legal proceeding has been commenced for an injunction, a mandatory order, a declaration or the recovery of money or payment of damages or other amounts.

35.3 Further, if a Bidder (including any related or affiliated entity and any principal thereof):

- (a) is the subject of legal proceedings in respect of Vaughan's Property Standards By-law or Zoning By-laws; or
- (b) has been convicted of being in violation of any City Vaughan's Property Standards By-law or Zoning By-law and the contravention remains,

the City reserves the right, at its election and in its sole and absolute discretion, to reject the Bidder's Bid or disqualify the Bidder at any time.

### 36. APPROVALS

36.1 Bidders acknowledge that Contract award may be subject to the City securing budget approval, certain permits, authorizations, licenses, easements, land lease agreements, cost sharing agreements and/or other third party or City Council approvals and arrangements ("**Approval(s)**").

36.2 In the event, and to the extent, any such Approval(s) is/are not obtained in order to permit Contract award or commencement/continuation of the Work, the Owner reserves the right to:

- (a) not award a Contract and cancel this RFT;
- (b) award a Contract in whole or in part, subject the right of the Owner to cancel all or part of the Contract at any time after award in the event any required Approval(s) cannot be obtained or maintained; and/or
- (c) delay the consideration of the award of the Contract until such time as the required Approvals have been obtained.

### 37. FREEDOM OF INFORMATION

37.1 In accordance with the *Municipal Freedom of Information and Protection of Privacy Act* ("**MFIPPA**"), any personal information Bidders provide in submitting a Bid is collected under the authority of the Municipal Act (Ontario) and will be used exclusively in the Bid review process.



- 37.2 All Bids and associated documentation submitted become the property of the Owner upon receipt.
- 37.3 Pursuant to MFIPPA, the Owner may be required to disclose any such information in response to an access request.
- 37.4 To assist Owner in responding to an access request, Bidders are advised to identify in their Bids any specific scientific, technical, commercial, proprietary, or similar confidential information, and explain why the disclosure of such information would cause them harm.
- 37.5 Complete Bids are not to be identified as confidential.

### **38. UNOFFICIAL TENDER RESULTS**

- 38.1 Unofficial tender results may be posted on Bidding System website after the Closing Time.
- 38.2 All Bids received are unofficial until they have been reviewed by the City for compliance; therefore, the lowest Bid listed on the Bidding System website may not be the lowest Responsive Bid for the purpose of awarding a Contract.

### **39. DIGITAL CONTRACT SECURITY (BONDS OR IRREVOCABLE LETTER OF CREDIT REQUIRED AT TIME OF AGREEMENT SIGNING)**

- 39.1 Between Notification of Award and Agreement execution, a successful Bidder must provide City with the required 'Contract Security'.
- 39.2 Contract Security shall be kept in force throughout the duration of the Contract including any guarantee, warranty or maintenance period of the Contract and/or until the Contract is deemed complete by the Owner in a satisfactory manner, as determined by the Owner.
- 39.3 All bonds shall be:
- (a) issued by an insurer licensed under the Insurance Act to write surety and fidelity insurance;
  - (b) verifiable and enforceable - All bonds shall include assurances that the document was duly executed by the parties identified and that it is enforceable in law (this requires the use of a third-party electronic signature service provider);
  - (c) digitally executed - All bonds shall be electronically signed and sealed and must include a method of authentication that confirms the 'integrity of content' of the bond. All bonds shall include assurances that the document received is the true document executed and the content has not been changed or altered. Instructions for accessing authentication shall be included with the uploaded bonds (**Note: A SCANNED COPY OF A PAPER BOND IS NOT AN ACCEPTABLE DIGITAL BOND.**);
  - (d) for the required amounts (i.e. proper % of Bid Price);
  - (e) for the benefit of the City;

- (f) renewable (as/if required);
- (g) be in good standing and in full force and effect until the fulfilment of the Contract including the entire term of the Contract including renewals and extensions and the warranty period;
- (h) on the required/allowable Form (e.g. complies with any applicable *Construction Act (Ontario)* Form requirements);
- (i) and, with respect to Labour and Material Bonds, extend protection to subcontractors and persons supplying labour or materials to the improvement.

39.4 If you receive your digital 'Performance Bond' and 'Labour & Material Bond' in one .pdf document you should upload the complete document as the Performance Bond and Labour & Material Bond within the contract module of the City's Bidding System. DO NOT split the document into two separate documents.

39.5 The Bidder and its Surety Company should refer to the e-bonding information on the Surety Association of Canada's website which includes:

- (a) a Checklist of Industry Requirements for e-Bonding Solutions setting out requirements for electronic bonds; and,
- (b) a list of third parties that provide on-line surety electronic bond services. The City does not endorse or promote any particular third-party digital service provider.

39.6 Irrevocable Letters of Credit must:

- (a) be printed on letterhead from the issuing financial institution;
- (b) be denominated in Canadian dollars equaling the aggregate dollar value of the Performance Bond and Labour & Material Bond;
- (c) include an automatic renewal provision where the Agreement is to be in place for more than one year;
- (d) indicate that the City will be given 30 days' notice by registered mail if the counterparty does not intend to renew;
- (e) conform with the City Standard Form of Irrevocable Letter of Credit. Any deviation from the standard format will be subject to review by the City and may be refused for non-compliance. The City Standard Form of Irrevocable Letter of Credit can be found on the City's website under 'Procurement Services – Vendor Information';
- (f) be fully, properly and duly executed by the parties identified and enforceable at law;
- (g) be for the benefit of the City; and
- (h) unless otherwise directed by the City, letters of credit conforming to the intent of the standard format requirements outlined in the City Standard Form of

Irrevocable Letter of Credit will only be accepted by the City from Schedule I and II banks.

- Schedule I Banks: domestic banks authorized under Schedule I of the Bank Act to accept deposits.
- Schedule II Banks: foreign bank subsidiaries authorized under Schedule II of the Bank Act to accept deposits. Foreign bank subsidiaries are controlled by eligible foreign institutions.

39.7 *Additional Note Regarding Letters of Credit* - A letter of guarantee or confirmation may be requested from time to time as evidence of capacity to secure a letter of credit. However, at no time shall a letter of guarantee or confirmation serve as an acceptable alternative to a letter of credit. Letters of guarantee or confirmation must indicate that the financial institution is willing to provide a letter of credit in a format and within a time period deemed acceptable to the City.

#### **40. NOTIFICATION OF AWARD, EXECUTION OF AGREEMENT AND PROVISION OF REQUIRED DOCUMENTATION**

40.1 The award of the Contract is subject to the receipt of sufficient funding and appropriate staff and Council approvals.

40.2 An offer to enter into a Contract will be made in writing and only in writing - successful Bidder(s), if any, will be notified by Owner in writing via a "Notification of Award".

40.3 The successful Bidder(s), if any, shall execute the Agreement by way of digital signature, within Seven (7) Working Days of the date on the Notification of Award, or longer period allowed by the Director.

40.4 There shall not be a binding Contract for the Work unless and until the City and the successful Bidder have executed the Agreement.

40.5 Further, the following documents shall be submitted by a successful Bidder prior to Agreement execution:

- (a) a completed and signed and otherwise valid City Standard Certificate of Insurance. The City Standard Certificate can be found on the City's website under 'Procurement Services – Vendor Information';
- (b) the Contract Security (and the name and contract information of the responsible representative at the Surety for purposes of communication);
- (c) a current copy of its Workplace Safety and Insurance Certificate of Clearance;
- (d) proof of registration/enrolment with COR™; ISO 45001:2018; CSA Z45001:19; or OHSAS 18001:2007. The City will accept proof of full certification in lieu of registration/enrolment;
- (e) if applicable, a list of the individuals the Bidder proposes for the Key Personnel positions identified in its response to a prequalification process. If any of the proposed Key Personnel are different from those proposed in the Bidder's response to the prequalification process, the Bidder shall identify the reason for the change; and

- (f) a successful Bidder with business categories including: Fence Installers, Landscapers, Pavers, Pool Installers and Renovators must obtain a Vaughan Business License, in accordance with the City of Vaughan By-Law 315-2005 & 016-2017, by completing a Business License Application, available on the City's Licensing Portal.
- 40.6 Further, Contractors who have independent Operator Status under the Worker's Safety Insurance Board Act shall submit a complete Independent Operator Status Questionnaire upon being awarded the Contract.
- 40.7 Should a successful Bidder either: attempt to withdraw their Bid, or fail to or refuse to execute the Agreement and/or provide required documentation within the stated deadlines:
- (a) the successful Bidders' Bid Bond may (at Owner's discretion) be forfeited and applied for use by the Owner;
  - (b) Owner may award the Contract to the next lowest Responsive Bidder;
  - (c) the defaulting successful Bidder shall be liable for the difference between its Bid Price and the Bid Price of the next Responsive Bidder, and any other damages and expenses and losses Owner may incur as a result of such breach by successful Bidder; and
  - (d) the defaulting successful Bidder may (at Owner's discretion) be barred from bidding on future Requests for Tenders.
- 40.8 The Owner may grant additional time to fulfill the necessary requirements, if in the opinion of the Owner, the extension does not compromise the interests of the Owner.

#### **41. DISQUALIFYING EVENTS**

41.1 City shall:

- (a) disqualify a Bid which does not include a valid digital Bid Bond and/or Agreement to Bond (a scanned copy of a paper bond is not an acceptable digital Bond);
- (b) disqualify a Bidder who has engaged in bid rigging, price-fixing, collusion or other statutory offences in connection with this procurement process or any other City procurement process initiated within 5 years of the Closing Date;
- (c) disqualify a Bidder that is named as a Subcontractor on another Bid within this competitive bid process;
- (d) disqualify a Bidder that names another Bidder as a Subcontractor within this competitive bid process;
- (e) disqualify a Bidder who submits conditions, options, variations or contingent statements to the terms set out in the RFT including the Bid Form and City Standard Agreement (where applicable) as part of its Bid;
- (f) disqualify a Bidder which does not meet any Mandatory Submission Requirements outlined in this RFT; and

- (g) disqualify a Bidder who does not attend a Mandatory Site Meeting, if applicable.

41.2 City may, in its sole discretion:

- (a) reject or disqualify any Bid pursuant to the 'Litigation' and/or 'Confidentiality' clauses above;
- (b) request that a Bidder submit a recent copy of its NEER or CAD-7 Statement regarding Safety Performance and disqualify the Bidder if it fails to provide before the deadline stated in the request;
- (c) disqualify a Bid if the Bidder does not (at time of Bid submission) have appropriate licenses, consents or approvals to perform the Work and is not likely to obtain such in a timely manner (as determined by the City in its sole discretion);
- (d) disqualify a Bidder who is the subject of legal proceedings by the City in respect of the City's Property Standards or Zoning By-laws;
- (e) disqualify a Bidder that has been convicted of being in violation of any City Vaughan's Property Standards By-law or Zoning By-law and the contravention remains;
- (f) disqualify or not award a contract to a Bidder of who has contravened the provisions in the section entitled "Blackout Period";
- (g) disqualify a Bidder who at any time has brought frivolous or vexatious litigation proceedings against the Owner ("litigation proceedings" shall mean all court proceedings and any other alternative dispute resolution processes, including arbitration, adjudication or any bid protest procedures under any applicable trade agreements.
- (h) disqualify a Bidder as allowed by law;
- (i) disqualify a bidder who was convicted, within the last five (5) years, of serious crimes or other serious offences, including bid-rigging, price-fixing or collusion, fraud or other statutory offenses;
- (j) disqualify a Bidder who, in connection with this procurement process, has engaged in professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Bidder, such as:
  - inappropriate offers of gifts to City employees or Council,
  - inappropriate lobbying of or communications with City employees or Council, or
  - given false declarations including making misrepresentations in its Bid or failing to disclose conflicts of interest;
- (k) not award a Contract to a Bidder which City, acting reasonably, feels will not able to meet Work specifications and performance standards and/or would be unduly hard to manage from a contract management/administration perspective;

- (l) disqualify a Bidder who, at the time of Bid submission, is under Suspension pursuant to the City's Vendor Performance Evaluation Procedure;
  - (m) not award a Contract to a Bidder who received a Final Performance Evaluation Report Overall Rating of 'Marginal' or 'Unacceptable' on three or more previous contracts with City;
  - (n) disqualify, or not award an Agreement, to any Bidder who has a Conflict of Interest (as determined by the City in its sole discretion);
  - (o) disqualify a Bidder who submits conditions, options, variations or contingent statements to the terms set out in the RFT including the Bid Form and City Standard Agreement (where applicable) after receiving Notification of Award;
  - (p) in its sole discretion, reject or disqualify any Bid that does not or is not expected to comply with all applicable environmental legislation (including statutes, regulations and by-laws), codes, protocols, orders, directives, guidance documents, best practices, and restrictions in force at the time of the proposed Work, if applicable to the proposed Work; and
- and
- (q) disqualify a Bidder as allowed by law,

all notwithstanding any custom of the trade to the contrary or anything contained in the Bid Documents.

40.3 Further, Owner reserves the right to consider the following during the evaluation of Bids and when making determinations regarding Contract award:

- (a) Bid Price;
- (b) information provided in/with the Bid itself;
- (c) feedback from Bidder's references;
- (d) information received in response to enquiries made by the Owner of third parties in relation to the reputation, reliability, experience, financial stability, credit / credit rating, technical proficiency and capabilities of the Bidder;
- (e) the manner in which the Bidder and its key personnel provide(d) services to the City and others;
- (f) the experience and qualification of the Bidder's senior management, project management and/or other employees who would be engaged to perform the Work;
- (g) Bidder's safety records;
- (h) qualifications and experience and service record of any subcontractors proposed to be engaged by Bidder;

- (i) equipment proposed by Bidder to perform the Work;
- (j) advice and opinion of Owner's consultant's and/or agents;
- (k) Bidder past and current performance working with Owner's consultants and/or agents;
- (l) Bidder's (and/or its employees who would be involved in performing the Work) prior and current experience performing services for City;
- (m) lead times; and
- (n) completion history (including extended completion dates),

all notwithstanding any custom of the trade to the contrary or anything contained in the Bid Documents.

#### **42. ADDITIONAL RESERVATION OF RIGHTS**

42.1 To the extent permitted by law, and without limiting and notwithstanding any other provisions above, City reserves the right at any time in its sole discretion to:

- (a) cancel this RFT at any time;
- (b) invalidate this RFT and issue a replacement RFT for the same or similar Work or portion thereof;
- (c) cancel this RFT if any required approvals (e.g. from Council or regulatory authorities or government bodies) and/or funds are not obtained or maintained;
- (d) cancel this RFT if all Bid Prices exceed the City's allocated or estimated budget for the Work;
- (e) alter the RFT schedule, bid call process or procedures or objectives, or any other aspect of this RFT;
- (f) amend this RFT by posting Addendums at any time;
- (g) accept or reject all or part of any Bid;
- (h) request written clarification or the submission of supplementary written information in relation to the clarification request from any Bidder and incorporate a Bidder's response to that request for clarification into the Bid;
- (i) accept or not award a Contract to a Bidder who has submitted an unbalanced bid or whose bid contains price irregularities;
- (j) (not used);
- (k) waive any minor compliance irregularities or informalities, requirements, discrepancies, errors, omissions, or any other defects or deficiencies or any other forms of non-compliance with the Bid Documents in relation to any Bid if doing so would be in the best interest of the City;

- (l) contact and consider references;
- (m) not award the Contract to any Bidder who does not (if requested by City) furnish evidence, satisfactory to the City, that it has experience in performing the type of Work proposed and that it has sufficient capital and equipment to enable it to successfully complete the Work in a timely manner;
- (n) award a Contract to any Responsive Bidder;
- (o) not award any Contract to any Responsive Bidder, even if only one Responsive Bid was received;
- (p) not select the lowest Bidder for Contract award (1) even if it is the only Bid received or (2) if selecting another Bid would be in the best interests of the City, as determined by the City in its sole discretion;
- (q) award a Contract in its entirety or in part, to one or more Bidders;
- (r) in the event that the Bid price submitted by lowest Responsive Bidder exceeds the Owner's budget for all of the Work, the Owner reserves the right to (where in the opinion of the Owner it is possible to do so) award part of the Work to that Bidder; and
- (s) prohibit a Bidder from participating in this procurement process based on inappropriate conduct in a prior procurement process, and such inappropriate conduct shall include but not be limited to (1) submissions containing misrepresentations or any other inaccurate, misleading or incomplete information, or (2) the refusal of the respondent to honor its price or other commitments made in its submission or to comply with any conditions of award such as executing the City's form of Contract,

all notwithstanding any custom of the trade to the contrary or anything contained in the Bid Documents

#### **43. APPLICABLE LAWS, ATTORNMENT**

43.1 This RFT shall be governed and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and applicable City By-Laws and Policies. To the extent the City is also subject to the Canadian Free Trade Agreement and the Comprehensive Economic and Trade Agreement, Chapter 19 Government Procurement, it is its intention that the procurement process conducted under this RFT be consistent with these requirements, where applicable.

43.2 The Bidder agrees that,

- (a) any action or proceeding relating to this RFT process shall be brought in any court of competent jurisdiction in the Province of Ontario and for that purpose the Bidder irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court;
- (b) it irrevocably waives any right to and shall not oppose any Ontario action or proceeding relating to this RFT Process on any jurisdictional basis, including forum non conveniens; and



- (c) it shall not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from an Ontario court as contemplated by this section.

#### 44. LIMITATION OF LIABILITY

44.1 Subject to Section 47(i) with respect to the Bidder, the Bidder acknowledges and agrees that the City shall have no liability to the Bidder or its sub-contractors in respect of the conduct of the procurement process relating to this RFT by the City, whether in contract or tort otherwise, and including without limitation, for costs that the Bidder or its sub-contractors incur with respect to the procurement process. The limitation of liability shall apply whether or not based on an allegation, whether in whole or in part, true or not, that the City conducted an unfair procurement process, or in the event the Bidder experiences any technical issues accessing the RFT or filling its Bid.

For further clarity, and without limitation, such limitation of liability also applies with respect to:

- owner exercising its rights and privileges as outlined in this RFT;
- owner's failure to accept or reject the bid submitted by the Bidder;
- the acceptance or rejection of any Bid;
- the manner in which this RFT process was conducted;
- City's award of or failure to award a Contract;
- acts and/or omissions of City or its Councillors or consultants related to this RFT process; and
- any matter arising out of or directly or indirectly related to the issuance of this RFT, evaluation of Bids or compliancy determinations or other City decisions

(collectively the "**RFT matters**").

44.2 Bidder absolutely waives and releases any right, or cause of action against the City and its agents, consultants, Mayor, Councillors and employees whether such right or cause of action arises in contract, negligence, or otherwise, including without limitation claims for loss of revenue, profit, or business opportunity.

Bidder acknowledges and agrees that, to the extent permitted by CFTA and CETA, it will not have or initiate any claims against the City or its agents, consultants, Mayor, Councillors and employees, including claims for incidental, exemplary, special, indirect, special or consequential damages, or any loss of revenue, profit, or business opportunity, even if it had advised the City of the possibility of such damages, and regardless of whether arising in tort (including negligence), contract, or other legal theory.

#### 45. INTERPRETATION OF RFT, SEVERABILITY AND DEBRIEFINGS

- 45.1 Should any provision in this Document 1 or any other Bid Document be or become invalid, ineffective or unenforceable in whole or in part, the validity, effectiveness and enforceability of the remaining provisions shall not be affected thereby. Any such invalid, ineffective or unenforceable provision shall be deemed replaced by such valid, effective and enforceable provision which comes closest to the economic intent and the purpose of such invalid, ineffective or unenforceable provision as regards subject-matter, amount, time, place and extent.
- 45.2 The City will promptly inform participating Bidders of its contract award and procurement process decisions, and, on the request of a Bidder, will do so in writing. Subject to not disclosing Bidder information that might prejudice fair competition between Bidders and other reasonable restrictions, the City will, on request, provide an unsuccessful Bidder with an explanation of the reasons why its Bid was not selected and the relative advantages of the Successful Bidder's Bid. The City will provide unsuccessful Bidders, until 15 business days following notification of the Agreement award date, a right to request a debriefing).

#### 46. BID DISPUTES

- 46.1 Bid disputes shall be governed by and (to the extent permitted by CFTA and CETA) finally resolved in accordance with the City's Corporate Procurement Policy (PS-003). To the extent permitted by law, the RFT process may continue while the bid dispute notice is being reviewed pursuant to PS-003. As used in this RFT, "**CFTA**" means the *Canada Free Trade Agreement (2017)* and "**CETA**" means the *Canada – European Union (EU) Comprehensive and Economic Trade Agreement*.
- 46.2 As used below, "**Challenge**" means (i) a claim by a Bidder that City has breached one or more provisions of CFTA or CETA, as applicable; or (ii) if the Bidder does not have a right to challenge directly a breach of CFTA or CETA under the laws of Ontario, a claim by Bidder that City has failed to comply with its obligations to implement CFTA or CETA.
- 46.3 Each Bidder shall be allowed a sufficient period of time to prepare and submit a Challenge, which shall be 15 days from the time when the basis of the Challenge became known or reasonably should have become known to the Bidder. Challenges shall be addressed to the City's Director of Procurement Services and clearly and specifically outline Bidder's concerns and claims and reference applicable provisions of the CFTA and/or CETA.
- 46.4 The Bidder and the City shall seek to resolve the Challenge through consultations and otherwise in accordance with City's PS-003. The Bidder may appeal any City decisions regarding the Bidder's Challenge pursuant to the following subsection (e). The RFT process may proceed, and a Contract may be awarded, during the appeal process.
- 46.5 Pending the establishment or designation of at least one impartial administrative or judicial authority by the Province of Ontario that is independent of its procuring entities to receive and review an applicable Challenge by a Bidder (and which the City elects to use for the purposes of this RFP), all disputes arising out of or in connection with this RFT, or in respect of any legal relationship associated with or derived from this RFT, may be finally resolved, at the City's election, by arbitration under the Arbitration Rules of the ADR Institute of Canada, Inc. The Seat of Arbitration will be Toronto, Ontario before a single arbitrator. The language of the arbitration will be English. For

clarity, Bidder and the City can mutually agree to alternative rules and an alternative body to arbitrate the dispute.

46.6 The decision of a review body under (e) immediately above shall be subject to judicial review unless the review is conducted in accordance with the following:

- (a) The review body has procedures that provide that The City shall respond in writing to the challenge and disclose all relevant documents to the review body;
- (b) the participants to the proceedings ("**participants**") shall have the right to be heard prior to a decision of the review body being made on the challenge;
- (c) the participants shall have the right to be represented and accompanied;
- (d) the participants shall have access to all proceedings;
- (e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and
- (f) the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.

46.7 Any rapid interim measures adopted or maintained by City to preserve the Bidder's opportunity to participate in the procurement may result in suspension of the procurement process.

46.8 Such measures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing.

46.9 IN NO EVENT SHALL THE CITY'S LIABILITY TO THE BIDDER AND THE AGGREGATE AMOUNT OF COSTS AND DAMAGES RECOVERABLE AGAINST THE CITY RELATING TO OR ARISING FROM THIS RFT PROCESS OR ANY RFT MATTER EXCEED THE LESSER OF: (I) THE COSTS FOR THE PREPARATION OF THE BID; AND (II) THE COSTS RELATING TO THE CHALLENGE, IF A REVIEW BODY DETERMINES THAT THERE HAS BEEN A BREACH OR A FAILURE AS REFERRED TO IN PARAGRAPH 45(b). FOR CLARITY, TO THE EXTENT PERMITTED UNDER CETA AND CFTA, SUCH COSTS AND DAMAGES SHALL BE LIMITED TO ACTUAL, DIRECT COSTS REASONABLY INCURRED BY BIDDER IN THE CIRCUMSTANCES, AND SHALL NOT EXCEED COSTS WHICH A COMMERCIALY REASONABLE PARTY WOULD INCUR GIVEN THE ACTUAL REVENUES AND PROFITS THAT COULD REASONABLY BE EXPECTED IN THE CONTEXT OF THE SPECIFIC PROCUREMENT.

46.10A failure by the City to fulfill its obligations under this Section 47 shall not, to the extent permitted by CFTA and CETA, incur for the City a liability to Bidder that exceeds a costs and/or damages award in excess of the amount described in subsection 47 (i) above for the actual loss or damages suffered as a result of failure to perform its obligations under this Section 47, if any.

- 46.11 For greater clarity, further, a final determination that the City was permitted to take such actions as it did with respect to a Bidder's Bid, any RFT Matter or City's performance under this RFT, shall be consistent with a determination that no costs or damages award of any sort whatsoever should be made against the City.

**47. BIDDER'S STATEMENT OF UNDERSTANDING**

- 47.1 It is understood that the Bidders have carefully examined and understand all of provisions in the Bid Documents and have carefully considered the Work to be performed under the Contract if awarded.
- 47.2 The Bidder also confirms that, for the Bid Price, Bidders offers to furnish all labour, machinery, tools, apparatus and other means of implementation, and any other materials to complete the Work in strict accordance with the Contract (if awarded).
- 47.3 By Submitting a Bid, Bidder confirms that it has had, or has had the opportunity to obtain, independent legal advice in connection with Bidder's RFT review and Bid preparation, and has read this RFT in its entirety, understands its contents and is submitting its Bid freely and voluntarily (without duress or undue influence from any party) with full capacity and authority to do so.

**END OF DOCUMENT 1**

**1. SET-OFF**

Subject to applicable laws, the Contractor hereby agrees that any monies owing by the Owner to the Contractor may at any time be set-off against monies owing to the Owner by the Contractor.

**2. RIGHT TO AUDIT AND RETENTION OF RECORDS**

2.1 At any time during business hours and as often as the Owner may deem necessary, there shall be made available to the Owner for examination the Contractors records with respect to the Work and its applicable bid therefore.

2.2 Contractor shall permit the Owner to audit, examine, and make copies, excerpts or transcripts from such records, and to make audits of data relating to the Work and its applicable bid therefore.

2.3 Contractor shall maintain and retain all records and other documents related to the Work and its applicable bid therefore for a period of three (3) years from the date of final payment (or longer as required by law), except in cases where unresolved audit questions require a longer period of time for resolution, as determined by the Owner.

**3. CANCELLATION**

3.1 In the event Owner is unable to obtain or maintain required Approval(s), it may cancel all or any portion of the Contract with written notice, without any liability except for paying for Work properly performed up to the date of Contract termination/expiration.

3.2 The Contract may be cancelled by the Owner upon non-performance of the Contract terms; however, in doing so, the Owner does not waive its right to rely upon any obligations or commitments agreed to by the Contractor as part of its Bid documentation, including without limiting the generality of the foregoing, liability for the difference between its Bid and next acceptable contractor's Bid submission.

3.3 Where there is a question of non-performance, payment in whole or in part may be withheld at the discretion of the Owner. This action shall not prevent the Owner from taking early payment discounts otherwise applicable.

3.4 If the Work is incomplete the Owner reserves the right to draw from the Contract Security to complete the said Work to the Owner's specifications.

3.5 Disqualification - The Owner reserves the right to remove from future eligibility to submit bids to the Owner any contractor which is in breach of its contractual obligations to Owner.

**4. EVALUATION OF PERFORMANCE**

4.1 During and/or upon completion of the Contract, the Owner may complete evaluation(s) of the Contractors' performance.

4.2 A copy of evaluation(s) may be given to the Contractor.

4.3 The evaluation shall be placed on file with the Owner and may be considered by Owner when making future decisions regarding Contract extensions and renewals, contract

award and procurement–related decisions. For ease of reference, the performance evaluation forms can be found on the City’s website under ‘Procurement Services – Vendor Information’

- 4.4 This information may be made available to persons requesting Owner references for the Contract and also may be reviewed and may form part of the Owner’s criteria when awarding future contracts.
- 4.5 By agreeing to undertake the Work, the Contractor hereby authorizes the maintenance and release of this information.

## 5. **WORKPLACE SAFETY AND INSURANCE BOARD (WSIB)**

- 5.1 The Contractor shall submit to the Owner, at the following times:

- (a) Between Notification of Award and Agreement signing
- (b) Prior to the issuance of the Contractor's last payment of each year
- (c) Prior to issue of the Certificate of Substantial Performance
- (d) Prior to the expiration of the Warranty Period
- (e) at any other time when requested by City (acting reasonably) to do so

a statement from the Workers' Safety Insurance Board (“**Clearance Certificate**”) that all of the assessments the Contractor or any sub-Contractor is liable to pay under the Workplace Safety and Insurance Board Act (“**WSIB Act**”) or successor legislation have been paid.

- 5.2 A Clearance Certificate shall be resubmitted as necessary to ensure that the City has a current Clearance Certificate on file for the duration of this Contract, including maintenance period.
- 5.3 A copy, fax or scan of the Clearance Certificate shall only be acceptable if it is clear, readable, legible including the effective date and authorized signature in the stamp portion on the right hand side of the form. Otherwise, an original certificate shall be submitted.
- 5.4 Payments will not be issued to the Contractor for any work performed on this Contract unless a Workplace Safety & Insurance Board Clearance Certificate is current and indicates that the Contractors account with the Board is in good standing.
- 5.5 The Contractor shall not conduct any work with the City (construction or maintenance related), unless they are holding a current W.S.I.B. clearance certificate.
- 5.6 Contractors who have independent Operator Status under the WSIB Act shall submit a complete Independent Operator Status Questionnaire upon being awarded the Contract.

## 6. **PAYMENT OF WORKERS**

- 6.1 The City's Fair Wage Policy applies to and becomes a condition of the Contract for construction projects with a minimum prime contract value of \$500,000.00. If applicable, the Contractor and all Subcontractors shall be subject to the City's Fair Wage Policy and shall comply with the City's Fair Wage Policy in the delivery or performance or both of any Work for the City. Where applicable, the Contractor shall be fully responsible to ensure that all Subcontractors under this Contract comply with the City's Fair Wage Policy and the Contractor agrees that all workers employed by the Contractor and its Subcontractors to perform the Work in this Contract shall be compensated in accordance with the City's Fair Wage Policy and the Fair Wage Schedule found on the City's website.

## **7. EXAMINATION OF SITE**

- 7.1 No claims may be made by Contractor based on the assertion by Contractor that it was uninformed as to any of the conditions affecting the site or the provisions or conditions intended to be covered by the Contract (claims for additional costs will be considered by the Owner, if the Owner has identified incorrectly the location of utilities).
- 7.2 Contractor shall accept sole responsibility for any error or neglect on his part in respect to the foregoing.
- 7.3 No after claim will be allowed or entertained for any labour, equipment or material that may be required for the proper execution and completion of the Work, due to Contractor's failure to abide by applicable laws or the Examination of Site provisions within any Bid or Contract Documents.

## **8. LAWS AND REGULATIONS AND HEADINGS**

- 8.1 The Contractor shall comply with all applicable statutes, laws, by-laws, regulations, ordinances and orders whether Federal, Provincial, Municipal or otherwise, at any time in effect during the currency of this Contract, and all rules and requirements of the police and fire departments, or other governmental authorities, if required.
- 8.2 The Contractor shall obtain and pay for all necessary permits and licenses (unless otherwise agreed by the Parties in writing) and shall not do or suffer to be done anything in violation of any such laws, ordinances, rules or requirements.
- 8.3 If the attention of the Contractor is called to any such violation on its part, or of any person employed or engaged by the Contractor, they shall immediately desist from and correct such violation.
- 8.4 References in the Contract Documents to legislation means the legislation as it may be amended or replaced or superceded from time-to-time.
- 8.5 The division of the Contract Documents into articles, sections, subsections and schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of the Document. The articles, section, subsection and schedule headings in a Contract Document are not intended to be full or precise descriptions of the text to which they refer and should not be considered part of the Contract Document.

## **9. ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005**

- 9.1 Ontario's first accessibility standard, Ontario Regulation 429/07, "Accessibility Standards for Customer Service", came into effect on January 1, 2008.
- 9.2 The standard states what businesses and other organizations in Ontario, including The Corporation of the City of Vaughan must do to make the provision of their goods and services more accessible to people with disabilities. You can review Ontario Regulation 429/07 at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca).
- 9.3 Pursuant to the requirements of Ontario Regulation 429/07, all employees, agents, volunteers and others who deal with members of the public or other third parties on the City's behalf or who participate in developing the City's policies, practices and procedures governing the provision of goods and services to members of the public or other third parties must receive training about the provision of goods and services to persons with disabilities. This training must include a review of the purposes of the Act and the requirements of Ontario Regulation 429/07 as well as instruction about the following:
- (a) How to interact and communicate with persons with various types of disability;
  - (b) How to interact with persons with disabilities who use an assistive device or
  - (c) require the assistance of a guide dog or other service animal or the assistance of a support person;
  - (d) How to use equipment or devices available on the City's premises or otherwise provided by the City that may help with the provision of goods or services to a person with a disability; and
  - (e) What to do if a person with a particular type of disability is having difficulty accessing the City's goods or services.

## **10. OCCUPATIONAL HEALTH AND SAFETY**

- 10.1 The following requirements and conditions shall be adhered to by Contractor and subcontractors:
- (a) Contractors acknowledge that they have regularly read and understood the Occupational Health and Safety Act R.S.O. 1990, C. 0.1 ("OHSA") and regulations, made under that statute;
  - (b) the Contractor shall comply with all health and safety requirements established by the OHSA and its Regulations;
  - (c) the Contractor shall participate in a pre-construction meeting to verify expectations in the area of health and safety before the start of any Work;
  - (d) the Contractor shall allow access to the Work site on demand to representatives of the Owner provided that they are in full compliance of OHSA and its Regulations;
  - (e) the Owner will take all action necessary to support the Contractor's health and safety efforts and to ensure that the Owner-owned and controlled environments in the vicinity of the project are free from hazards;



- (f) the Contractor shall ensure that all Work locations are properly accessible by emergency service vehicles (e.g. police, ambulance, fire) throughout the duration of the Contract;
- (g) the Contractor acknowledges and agrees that any breach or breaches of health and safety requirements, whether by the Contractor or any of its subcontractors can be considered a breach of Contract;
- (h) the Contractor acknowledges and agrees that any damages or fines that may be assessed against the Owner by reason of a breach or breaches of OHSA by the Contractor or any of its subcontractors will entitle the Owner to set-off the damages so assessed against any monies that the Owner may from time to time owe the Contractor under the Contract or any other contract whatsoever;
- (i) the Contractor shall provide a list of all controlled hazardous materials or products containing hazardous materials, all physical agents or devices or equipment producing or emitting physical agent(s) and any substance, compound, product or physical agent that is deemed to be or contains a designated substance in accordance with the Workplace Hazardous Materials Information System (WHMIS) 2015 as defined under OHSA and shall provide appropriate Material Health and Safety Data Sheets for these substances used for the performance of the required Work, all prior to the performance of said Work;
- (j) the Contractor shall ensure that the requirements of the OHSA and associated regulations are complied with where hazardous materials, physical agents and/or designated substances are used in the performance of the required Work and ensure all employees are given required training and support;
- (k) the Contractor shall have a clearly defined Safety Plan/Rescue Plan for its workers involved in hazardous activities. This Plan shall include, but not be limited to, procedures for entering a confined space on the Work site;
- (l) the Contractor agrees at all times to comply with Occupational Health and Safety Standards in the workplace and further agrees to adhere to Health and Safety Standards set out in applicable statutes and regulations and to comply with written Health and Safety Policies of the Owner; and
- (m) By executing this Contract, the Contractor unequivocally acknowledges that they are the "Constructor" within the meaning of The Occupational Health & Safety Act and Regulations for Construction projects.

## **11. SAFETY STANDARDS**

11.1 It is the responsibility of the Contractor to work in a safe and orderly manner so as not to constitute any safety hazards. The following standards are some of the standards which must be complied with by the Contractor and any subcontractors when performing the Work:

- (a) the Contractor will be responsible for the placement of appropriate physical barriers between the work area, public and staff occupied areas;
- (b) the Contractor shall control and maintain pedestrian and vehicular traffic as required and in accordance with current Traffic Control Manuals;

- (c) when operating equipment in a School Zone or Playground appropriate physical barriers and personnel shall be in place to ensure the safety of the public;
- (d) no loose clothing shall be worn in the vicinity of moving or rotating equipment;
- (e) the Contractor shall not operate or tamper with Owner's equipment unless given express permission to do so;
- (f) good housekeeping standards are to be maintained in the work areas, debris and material are not to be allowed to accumulate;
- (g) keep extension cords and hoses off the floor and out of traffic aisles and highlight any tripping, slipping, or bump hazards by using cones, hazard tape or other means appropriate to the situation;
- (h) the Contractor shall have and use a "Lock, Tag and Try" procedure that, as a minimum, meets the requirements of the Regulations made under OHSA;
- (i) the Contractor is responsible for ensuring that all reasonable precautions for the protection and safety of workers in addition to those listed above are maintained;
- (j) the Contractor shall provide written notice to the Owner in advance of the need to close any exit or emergency exit, electrical system etc. that may affect a potential evacuation of an Owner's workplace or facility; and,
- (k) the Contractor and the Owner shall communicate through a designated channel/liaison person at all times to avoid any confusion or misunderstanding.

## **12. NON-WAIVER**

12.1 No condoning, excusing or overlooking by the Owner of any default, breach or non-observance by the Contractor at any time or times in respect of any contractual provision shall operate as a waiver of the Owner's right hereunder in respect of any continuing or subsequent default, breach or non-observance or so as to defeat or affect in any way the rights of the Owner herein in respect of any such continuing or subsequent default or breach.

12.2 No waiver shall be inferred from or implied by anything done or omitted by the Owner save only for an express waiver in writing.

12.3 Any work completed by the Owner required by this agreement to be done by the Contractor, after reasonable notice, shall not relieve the Contractor of its obligations to do that work or to reimburse the Owner for its actual cost to the Owner of having done it, including an allowance for normal overheads.

## **13. NON-ASSIGNMENT**

Neither the Contract nor any work to be performed under the Contract or any part hereof may be assigned by the Contractor without the prior written consent of the Owner. Such written consent however shall not under any circumstances relieve the Contractor of its liabilities and obligations under the Contract and the granting of such consent shall be within the sole and unfettered discretion of the Owner.

## **14. PROGRESS REPORTS AND VERIFICATION**

### **14.1 Progress Reports**

Monthly progress reports shall be submitted by the Contractor in a format acceptable to the Owner and include, but are not limited to the following information:

- (a) work progress in the form of a Gantt Chart showing the baseline schedule and the percentage completion to date of each task/activity and the overall percentage progress of the Contract;
- (b) areas where progress are on or ahead of schedule and areas where progress are behind schedule;
- (c) measures taken/proposed to be taken, where necessary, to bring the work progress back on schedule;
- (d) any claims for extension of time due to unforeseen circumstances or extra payment due to changes in contractual obligation during the previous payment period; and
- (e) payment may be deferred, at the Owner's option, until the progress reports are submitted to the Owner's representative.

14.2 The Contractor shall, upon request by the Owner's representative, attend on site to measure and agree upon the quantities of the Work performed. Should the Contractor fail to meet the request within two (2) weeks' time, the Owner's representative shall measure the quantities of the completed Work in the absence of the Contractor and those quantities shall be deemed to be accepted and agreed by the Contractor as the quantities of Work performed by the Contractor for that part of the Contract.

14.3 Ten percent (10%) hold back on each progress payment will be held in accordance with the Construction Act, R.S.O. 1990, c. C.30 ("**Construction Act**")

## **15. INVOICING AND PAYMENT PROCEDURE**

15.1 The Owner shall pay the Contractor only in accordance procedure set out in articles 15.2 to 15.19 below.

15.2 Subject to paragraph 15.3, below, after the last day of each payment period, which is the last day of each month, the Contractor shall submit a Draft Proper Invoice, as hereinafter defined, to the Owner, for an amount proportionate to the amount of the Contract, of work performed and products delivered to the project premises as of the last day of the payment period.

15.3 Notwithstanding paragraph 15.2 above, the Contractor shall not submit a Draft Proper Invoice between December 24 and January 2.

15.4 A Draft Proper Invoice ("**Draft Proper Invoice**") means a preliminary invoice submitted by the Contractor to the Owner that includes:

- (a) Owner's Invoice Cover Sheet;
- (b) the invoice number;
- (c) the Contractor's name and address;

- (d) the date on which the Draft Proper Invoice is submitted to Owner, and the period during which the services or materials for which payment is being applied for were supplied;
  - (e) information identifying the authority, whether in contract or otherwise, under which the services or materials were supplied;
  - (f) a description, including quantity where appropriate, of the services or materials that were supplied during the payment period;
  - (g) the amount payable for the works, services or materials that were supplied during the payment period, and the payment terms;
  - (h) the name, title, telephone number and mailing address of the person to whom payment is to be sent;
  - (i) the *Contractor's* HST number, and
  - (j) evidence reasonably required by the Owner to establish the value and delivery of products for which payment is claimed in the Draft Proper Invoice, and which have been delivered to the project premises, but have not yet been incorporated into the work.
- 15.5 The Owner will evaluate the Draft Proper Invoice and, based upon its observations, may, in its sole discretion provide comments to the Contractor in relation to the Draft Proper Invoice.
- 15.6 Subject to paragraph 15.7, below, on or after the tenth calendar day following submission of a Draft Proper Invoice, the Contractor shall submit a Proper Invoice, as hereinafter defined, to the Owner.
- 15.7 Notwithstanding paragraph 15.6, above, the Contractor shall not submit a Proper Invoice to the Owner between November 22 and January 2.
- 15.8 A Proper Invoice ("**Proper Invoice**") means an invoice submitted by the Contractor to the Owner on or after the tenth calendar day following submission by the Contractor of a Draft Proper Invoice, and includes:
- (a) a fully and properly completed Owner's Invoice Cover Sheet;
  - (b) the invoice number;
  - (c) the Contractor's name and address;
  - (d) the date on which the Proper Invoice is submitted to Owner and the period during which the services or materials for which payment is being applied were supplied;
  - (e) information identifying the authority, whether in contract or otherwise, under which the services or materials were supplied;
  - (f) a description, including quantity where appropriate, of the services or materials that were supplied during the payment period;

- (g) the amount payable for the services or materials that were supplied during the payment period, and the payment terms;
  - (h) the name, title, telephone number and mailing address of the person to whom payment is to be sent;
  - (i) the Contractor's H.S.T number;
  - (j) evidence reasonably required by the Owner to establish the value and delivery of products for which payment is claimed in the Proper Invoice, and which have been delivered to the project premises, but have not yet been incorporated into the Work;
  - (k) a Statutory Declaration on an original CCDC Document 9A-2001, attesting to the truth of the statements made therein, and, if requested by the Owner, a Statutory Declaration from any Subcontractor, as may be identified by the Owner, and,
  - (l) a copy of the Draft Proper Invoice submitted for the relevant payment period.
- 15.9 Any invoice submitted by the Contractor before the tenth (10<sup>th</sup>) calendar day following the Owner's receipt of a Draft Proper Invoice shall not constitute a Proper Invoice within the meaning of the Construction Act.
- 15.10 A Proper Invoice may be revised by the Contractor after it has been given to the Owner, provided that the Owner agrees in advance to the revision and the Proper Invoice continues to meet the definition of a Proper Invoice after it has been revised.
- 15.11 Subject to the giving of a notice of non-payment under paragraph 15.12, below, the Owner shall make payment to the Contractor in accordance with this Section 15 no later than 28 calendar days after receiving the Proper Invoice. The *Contractor* shall be deemed to have been paid on the day that the Contractor is advised by the Owner, or its representative, in writing, that payment is available to be picked up by or delivered to the Contractor.
- 15.12 In the event that the Owner intends to pay the Contractor an amount that is less than that set out in the Proper Invoice, the Owner shall, no later than 14 calendar days after receiving the Proper Invoice from the Contractor, give to the Contractor a notice of non-payment, in the form and manner prescribed in the Construction Act, specifying the amount of the Proper Invoice that is not being paid and detailing the reasons for non-payment.
- 15.13 Ten percent (10%) hold back on each progress payment will be held in accordance with the Construction Act. City will retain holdback in the form of funds and will not accept any of the forms listed in section 22(4) of the Construction Act.
- 15.14 No later than the twentieth day following the completion of the Work, the Contractor shall:
- (a) submit an application for payment of the holdback amount;
  - (b) submit a CCDC 9A 'Statutory Declaration' to state that all accounts for labour, subcontracts, productions, construction equipment and other indebtedness which may have been incurred by the Contractor in the performance of the Work, and for which the Owner might in any way be held responsible have been paid in full,

except for amounts properly retained as holdback or as an identified amount in dispute and, if requested by the Owner, a Statutory Declaration from any subcontractor, as may be identified by the Owner, on an original form of CCDC Document 9B-2001 Statutory Declaration of Progress Payment Distribution by Subcontractor;

- (c) submit a statement that the Contractor has not received any written notices of a lien; and
- (d) submit a Workplace Safety & Insurance Board Clearance Certificate.

15.15 Subject to the publication by the Owner of a notice of non-payment under paragraph 15.16 below, the Owner shall make payment to the Contractor of the holdback amount following the expiration of the holdback period stipulated in the *Construction Act*.

15.16 In the event that the Owner intends to pay the Contractor an amount that is less than that set out in the Contractor's application for payment of the holdback, the Owner shall, no later than 20 calendar days before the expiration of the holdback period stipulated in the *Construction Act*, publish a notice in the form prescribed in the *Construction Act*, specifying the amount of the holdback that the Owner refuses to pay and notify the Contractor of the publication of the notice;

15.17 The submission of a Proper Invoice is hereby made a condition precedent to the right of the Contractor to be paid or to maintain any action for such money or for any part thereof.

15.18 The Contractor shall provide invoices and time sheets from all subtrades whose work is included in the Proper Invoice when requested by the Owner.

15.19 The Owner shall not be liable or compelled to pay for any extras or additional work not included in this Contract except only in the manner and as provided for herein.

15.20 The Owner shall not be liable or compelled to grant or issue any certificate or approve any invoice or estimate for Work rejected or condemned by the Owner or to pay any money therefore until the Work so rejected or condemned has been replaced by new material and workmanship to the written satisfaction of the Owner and it is hereby expressly provided that the granting of any certificate or approval of any estimate or invoice, or the payment of any monies thereunder shall not be construed as an acceptance of any bad or defective work or material, to which the same relates or as an admission or liability to pay any money in respect thereof and shall not in any manner lessen the liability of the Contractor to replace such work or material, although the condition of the same may not have been known to or discovered by the Owner at the time such certificate was granted, invoice or estimate was approved, or monies were paid thereon.

## **16. ENVIRONMENTAL CONSIDERATIONS**

16.1 The Contractor shall comply with all applicable environmental legislation (including statutes, regulations and by-laws), codes, protocols, orders, directives, guidance documents, best practices, and restrictions in force until completion of the Work. If such restrictions change after Contract signing, any resulting increase in cost shall be borne by the Owner.

**17. AGREEMENTS IN WRITING**

- 17.1 In all cases of misunderstanding and disputes, verbal arrangements will not be considered.
- 17.2 The Contractor must produce written authority in support of its contentions and shall advance no claim in the absence of such written authority, or use, or attempt to use any conversation with any parties against the Owner or in prosecuting any claim against the Owner.

**18. DATE OF COMMENCEMENT**

- 18.1 The Contractor shall commence the Work within seven (7) Working Days of receiving written Notification of Award of the Contract (unless a later date is allowed by Owner or earlier date is agreed upon by the parties), but not prior to submission of any required documents and contractual documents between Owner and Contractor have been finalized and fully executed (the "Date of Commencement").
- 18.2 Should the Contractor find that they will be unable to commence the Work as specified, they shall submit to the Owner in writing a request for extension of time and in its request shall show just cause why, in its opinion, the extension of time should be granted.
- 18.3 Upon receipt of such written request, the Owner's representative may, at its own discretion, if in its opinion such written request does not conflict with the best interests of the Owner, grant the required extension in full or any portion thereof, thereby fixing a new date from which the charging of Working Days shall be calculated,
- or
- if in the opinion of the Owner, the Contractor has failed to show cause acceptable to the Owner or should such cause be not in the best interest of the Owner, any request for extension of time may be denied.
- 18.4 In any event, the decision of the Owner in this matter shall be final and binding.

**19. TIME FOR COMPLETION**

- 19.1 The Contractor shall complete the Work by the date of completion specified in the Contract or within the allowed number of consecutive Working Days from the date of commencement, whichever is specified in the Contract.
- 19.2 The Contractor is deemed to have thoroughly understood the requirements for completing the Work within the specified time for completion and allowed for any additional and/or augmented daylight shifts in its Bid should it be in its opinion that there may not be sufficient time for completion by working a normal number of hours each day or week on a single daylight shift basis. Any additional costs occasioned by compliance with these provisions will be considered to be included in the prices bid and no additional compensation will be allowed.
- 19.3 All Work required in the Contract, including all final cleanup shall be completed by the date of acceptance of the Work or within the Working Days stipulated in the Contract.
- 19.4 If the Contractor is delayed in the completion of the Work by any one or more of:

- (a) any negligent act of the Owner or any Owner employee;
- (b) other utility Contractors such as - telephone, cable, gas, hydro contractors unless otherwise stated; other than delay caused by timing of Contractor's request for work to be done by the utilities;
- (c) any cause beyond the reasonable control of the Contractor or by acts of God or of the public enemy acts of the Province or of any foreign state, fire, flood, epidemics, quarantine restrictions, embargoes or delays of suppliers due to such causes;

then the time for completion shall be extended in writing at any time on such terms and for such period as shall be determined by the Owner and notwithstanding such extensions, time shall continue to be deemed of the essence of this Contract.

19.5 An application by the Contractor for an extension of time once the Work has been commenced shall be made to the Owner in writing within *Five (5) Working Days* of the occurrence of the incidence causing the delay. In the event such application is approved by the Owner, and as a condition thereof, all bonds or other surety furnished to the Owner by the Contractor shall be amended where necessary at the expense of the Contractor to provide coverage to the date of any extension of time granted and the Contractor shall furnish the Owner with evidence of such amendment by the Surety. Where such extension is caused through the negligence of the Owner, however, any cost to extend such bonds or other surety, shall be for the account of the Owner.

19.6 If the time for completion of the Contract is affected by additional Work, the Owner will increase the number of Working Days established in the original contract to compensate for such work.

## **20. EMERGENCY RESPONSE AND TELEPHONE NUMBER**

- 20.1 The Contractor's representatives will be called to rectify any emergency situations that arise after hours.
- 20.2 If the Contractor's representatives cannot be reached, City and/or Region crews will be called out to rectify the situation, and the cost of the work will be deducted from the Contractors payment certificates.
- 20.3 It is the Contractor's responsibility to provide the City with the required contact information. Any revisions in the information must be forwarded in writing as soon as possible.

## **21. MEETINGS**

- 21.1 The Contractor's representative(s), as requested by the Owner, shall attend all meetings required prior to and or during the project. This shall include all pre-construction and regular project meetings and emergency meetings.
- 21.2 Prior to commencement of Work, the Contractor shall attend a pre-construction meeting with the Owner's representatives to establish site protocols, emergency contacts etc. The Contractor shall prepare and submit at the pre-construction meeting, a detailed construction schedule in the form of a Gantt Chart showing the



tasks/activities start and completion dates, milestones and critical activities to meet the specified Completion Date. Such schedule shall be reviewed by the Owner's representative and, when accepted, shall form the baseline for monthly tracking of the Work progress.

- 21.3 The Contractor's representative(s) attending meetings shall be thoroughly versed and knowledgeable with respect to the proposed topics of discussion and shall have the authority to make the necessary decisions and commitments with respect to matters agreed upon at the meetings.

## **22. HOURS OF WORK**

- 22.1 The hours of work shall be adhered to by the Contractor, and shall be 0700 hours (7:00 a.m.LOCAL TIME) to 1900 hours (7:00 p.m.LOCAL TIME).
- 22.2 The Contractor shall not carry on its Work under the Contract on a day other than a Working Day, without permission in writing from the Owner, except in case of emergency whereby retrospective approval is required. The Contractor acknowledges that its Bid has been based on this normal working day and hour's requirements.
- 22.3 Should the Contractor wish to carry on its operations on a day other than a Working Day, that is a holiday or outside the regular hours of work, on which the Owner's employees are not required to work, written application for approval shall be made at least forty eight hours (48 hrs) in advance of such event. Such permission may or may not be granted at the discretion of the Owner and no claim for extension of time may be made should permission not be granted. If the Contractor is granted permission by the Owner under this section to perform Work during a day other than a normal working day or outside the regular hours of work, the Owner may recover from the Contractor, all cost incurred with the granting of the request, including but not limited to the overtime payment of Owner's inspection staff.
- 22.4 The Contractor may be required to work outside the regular hours of work or Working Day to expedite and/or complete activities in order to preserve and maintain traffic flow on any road and/or to maintain services to the residents and businesses. Such Work, when directed by the Owner, shall be performed by the Contractor, at no additional cost to the Owner.

## **23. CONTRACTOR RESPONSIBILITIES**

The Contractor shall be responsible for all damages, losses, or expenses caused by it, its employees, agents, sub-Contractors, any persons employed by it, or under its control: (1) arising from the execution of the Work; (2) by reason of the existence, location, condition of any materials, plant or machinery used thereon or therein; or (3) which may happen by reason of their failure or the failure of those for whom they are responsible, to do or perform any or all of the several acts or things required to be done by them under the Contract. The Contractor agrees to indemnify and hold the Owner harmless from any such damages, losses, or expenses, administrative costs and claims by third parties, including any legal costs incurred by the Owner in connection therewith on a full indemnity basis.

## **24. ALTERATIONS AND AMENDMENTS**

- 24.1 Owner shall have the right at any time to order changes in the Work in accordance with the provisions in the Contract. Any such change shall be made pursuant to a Contract

Change Order Form executed by Contractor and Owner prior to Contractor undertaking work pursuant to this Change Order.

24.2 Except as stated in the Contract Change Order, the Work shall remain unaltered and the rights and obligations of the Parties shall remain unaltered and in full force and effect.

24.3 Each Contract Change Order shall set out the change in Work.

24.4 Each Contract Change Order, unless otherwise specified, shall be deemed to incorporate the terms and conditions of the Contract and shall be deemed to be part thereof.

## **25. INSPECTION AND TESTING**

25.1 Quality assurance and quality control inspections and/or testing of the Work may be carried out by the Owner or the Owner's consultant to determine whether or not they meet Contractual requirements.

25.2 Any testing/inspection undertaken by the Owner on the Work performed by the Contractor, unless specified otherwise, are for the sole purpose of the Owner, and the Owner has no obligations to provide the testing/inspection results to the Contractor. The Contractor may choose to undertake their own testing independently to satisfy themselves.

25.3 Any material or workmanship which fails in any way to meet Contractual requirements is subject to rejection or at the discretion of the Owner, to be purchased on an adjusted price basis. The decision of the Owner shall be final.

25.4 The Owner reserves the right to recover all cost from the Contractor associated with the inspection or testing of any Work that does not meet the Owner's specification. Should the owner decide to exercise this option, the cost can be deducted from any monies due to the Contractor.

25.5 The Contractor shall give minimum 48 hours notice to schedule any operation that will require either inspection, testing or measurements by the Owner.

## **26. GUARANTEED MAINTENANCE AND WARRANTY**

26.1 Upon completion of the Work, the Contractor shall maintain the Work for a warranty period of Twenty-four (24) Months after the date the Work is substantially performed, as determined by Owner or its Consultant, acting reasonably.

26.2 The Contractor shall correct any imperfections due to material or workmanship. The decision of the Owner/or Consultant, if any, both acting reasonably, as to the nature and cause of any imperfections and the necessity for the type of repair shall be final. If the Contractor fails to comply with the direction from the Owner/or Consultant with five (5) Working Days (or immediately in the case of an emergency as determined by Owner), the Owner may proceed under the Performance Bond or if it is holding a Letter of Credit, Cash or Certified Cheque, it may draw upon it and complete the required work at the Contractor's expense.

26.3 The warranty given pursuant to this section shall not limit extended warranties on any items of equipment or material called for elsewhere in the Contract.

- 26.4 The Contractor shall, before final payment is applied for, to the extent permitted by the manufacturer and supplier, assign to the Owner the benefit of any warranty by any manufacturers or suppliers in addition to the warranty mentioned above.
- 26.5 The Owner shall be entitled to deduct and withhold from each progress payment an amount, as specified in the chart below, of the Contract price, to secure the Contractor's performance under the Contract Documents, including, without limitation, correction of deficiencies and warranty performance (the "**Warranty Security**"). The Warranty Security will be held and administered by the Owner and is in addition to the statutory holdbacks required to be retained by the Owner under the Construction Act.

The Contract price shall form the basis for the following Warranty Security:

Contract price	Warranty Security (withheld from each progress payment)	Warranty Security Aggregate Maximum Amount
\$0 - \$4,999,999.99	2.5%	2.5%
\$5,000,000.00 to \$9,999,999.99	2.0%	2.0%
Greater than \$10,000,000.00	1.5%	1.5%

In addition to other remedies available to the Owner under the Contract Documents or otherwise at law, the Owner may set off against the Warranty Security as compensation: (a) for any costs incurred as a consequence of the Contractor's failure to meet the agreed upon schedule, (b) any costs incurred in addressing any lien claims and (c) any other costs arising out of the Contractor's non-performance of its contractual obligations.

The Warranty Security, net of claims by the Owner, shall be paid to the Contractor at the expiry of the Warranty Period.

## 27. UTILITIES

- 27.1 The utilities information shown the drawings have been obtained either through desktop exercises, input from the utility owners, and/or sub-surface investigations. The Owner does not warrant the completeness or correctness of the information provided. The Contractor shall verify the completeness and correctness of utilities information in the field, and shall exercise the necessary care in work operations, to take such other precautions as may be necessary to safeguard the utilities from damages and to repair any utilities damaged during work at no cost to the Owner. The Contractor shall notify any discrepancy of utility information to the Owner forthwith.

- 27.2 The Contractor shall request and obtain locates from Ontario One Call prior to any excavation. All excavations near the vicinity of any underground electrical utility shall be conducted in accordance with Utility owner's policy/standards.
- 27.3 The Contractor shall be unequivocally be responsible for all costs associated with adhering to the associated guidelines regardless of the work required.
- 27.4 The Contractor shall at all times have a copy of the utility locate information on site and be made available upon request.

## **28. SURVEY LAYOUT**

- 28.1 The Contractor shall be responsible for survey layout.
- 28.2 The Owner shall at any time during construction have the right to check the construction layout for accuracy. If any time during the progress of the Work any error shall appear or arise in the positions, levels, dimensions or alignment of any part of the Work, the Contractor shall, at his own expense, rectify such error to the satisfaction of the Owner. The checking of the setting out of any line or level by the Owner shall not in any way relieve the Contractor of its responsibility for the correctness of the Work.
- 28.3 The Contractor shall supply the Owner with a copy of all necessary information to enable it to use the Contractor's field layout. All information, both on work sheets and on stakes, shall be neat and legible.

## **29. SURVEYOR'S STAKES, GEODETIC BENCHMARKS AND MONUMENTS**

- 29.1 When under the Contract the area in which the Work is being constructed has been surveyed and stakes have been placed or monuments set for construction of legal boundaries, it shall be the duty of the Contractor and its employees to ascertain the location of these stakes and/or monuments and to protect them.
- 29.2 Any legal stakes or monuments denoting lot or street limits which may become moved or disturbed by the Contractor's operations, which were not identified to be impacted by the Work, must be reset and their location again certified by an Ontario Land Surveyor and at the Contractor's expense. Should the Contractor fail to have these stakes reset promptly, the Owner may hire an Ontario Land Surveyor to do so. All costs in connection therewith shall be paid by the Contractor to the Owner before the final payment is made under this Contract or in the alternative, said cost may be deducted from the Contractor's progress payments.

## **30. TRAFFIC CONTROL, AND PEDESTRIAN AND VEHICULAR ACCESS**

- 30.1 The safe control of traffic through the term while the Work is being performed shall be the responsibility of the Contractor.
- 30.2 Prior to commencement of the Work, the Contractor shall prepare and submit to the Owner a traffic management plan for acceptance by the Owner demonstrating how pedestrian and vehicular traffic is maintained/controlled in a safe and orderly manner and in accordance with the Occupational Health and Safety Act & Regulations and the relevant Ontario Traffic Manuals

30.3 Unless advised otherwise, a minimum of One (1) lane of traffic, including driveway and pedestrian access must be maintained and controlled at all times during construction. Work shall be undertaken in a logical manner to minimize disruption.

30.4 The Contractor shall:

- (a) Provide a minimum of 48 hours advance written notice to residents and businesses, if their driveway access is being prevented by construction. The Contractor shall ensure that the area residents and patrons are able to park their vehicles on their driveway/business parking lot whenever possible. If driveway access must be temporarily closed, the Contractor shall coordinate with the Owner, to inform the affected residents/businesses of the duration of the closure.
- (b) If a concrete curb has been replaced and/or sub-drain installed, Contractor shall ensure that vehicular access to properties shall be restored within 48 hours after completion thereof.
- (c) Make commercially reasonable efforts to keep roads free of mud, dust, debris, potholes etc. caused by the Work.
- (d) Maintain at all times, safe pedestrian and vehicular access to properties, businesses and residences for the duration of the Contract.
- (e) Maintain unimpeded, pedestrian access from all transit bus stop, bus shelters and pads to the transit vehicles within the limits of this contract unless advised otherwise.
- (f) Provide adequate number of qualified flag persons to direct traffic during construction in accordance with the procedure outlined in the "Guidelines for Training Traffic Control persons" issued by the Infrastructure Health & Safety Association
- (g) Supply, install, maintain, and remove temporary construction notice signs, detour signs, and flexible TC-54 barrels that comply with O.T.M. for the management of vehicular and pedestrian traffic during the works without additional cost.

### **31. DUST AND MUD CONTROL**

Close control must be employed to keep dust from forming and blowing. The materials and application are to conform to OPSS 506. It is the Contractor responsibility to control dust at their own expense, to the satisfaction of the City of Vaughan.

Where conditions are such that mud is tracked onto existing pavement, or onto adjacent streets, the Contractor will require to clean all fouled pavements daily as directed by and to the satisfaction of the City of Vaughan. The cost of all such cleaning measures shall be borne by the Contractor.

### **32. HAUL ROADS**

32.1 The Contractor shall only use the haul roads allowed/identified in the Contract (if any), for access to the Work site.

32.2 If any public road to be used as a haul road is damaged by construction traffic, the Contractor shall perform such work on the haul road, as necessary to provide safe passage and control of traffic thereon and shall on completion of the hauling operation, place such material and perform such work as ordered by the Owner to restore the road to its original condition without delay.

32.3 The Contractor shall consider access for the delivery of materials, equipment and the movement of such equipment in the preparation of bid prices for the Work. No claim or request by the Contractor for additional monies in this regard will be considered.

### **33. PRIVATE DRIVEWAYS**

The Contractor shall at no time use any private driveway for the purpose of turning or storing of any trucks, cars, equipment or any vehicles used by its employees or sub-Contractors' employees.

### **34. RESTRICTION OF USE OF HYDRANTS**

The Contractor shall not make use of or interfere with any hydrant without the approval of the Owner, who in granting such approval, may charge such fee and make such regulations, as it deems necessary to safeguard the Owner's interest.

### **35. RESTORATION**

The Contractor shall restore all features damaged or destroyed during performance of the Work at its cost, to the satisfaction of the Owner.

### **36. SITE DRAINAGE**

The Contractor shall be responsible for maintaining good site drainage throughout the duration of the Contract.

### **37. DEWATERING EXCAVATIONS**

37.1 All underground service and structure shall be constructed under a dry condition. The Contractor shall make all provisions necessary to prevent flow of water into the excavation and shall provide and keep in operation on each section of the work when and where necessary, dewatering systems of sufficient capacity to keep the bottom of the excavation of trench dry and free from water at all times until the section of work has been completed. He/She shall provide for the disposal of the water removed from the excavation so that it will not be injurious to public health, private property or to any operation of the work completed or under construction by the Contractor or others.

37.2 The Contractor shall apply for and obtain any permits required prior to implementation of the dewatering operation and at no extra cost to the Owner.

37.3 The Contractor shall also provide drawings of any dewatering system it proposes to use for review and approval by the Owner.

37.4 The Contractor shall take all necessary precautions to prevent damage to any work during and after construction, and will be responsible for the repair thereof.

37.5 The Contractor shall be solely responsible for all the cost of installation, operation, maintenance and removal of the dewatering system necessary to accomplish the work.

**38. LIQUIDATED DAMAGES**

38.1 The *Contractor* recognizes and agrees that the *Owner* will suffer financial loss if the *Work* is not completed within the time specified in the *Contract*. The *Contractor* also recognizes the delays, expenses and difficulties involved in proving the actual loss suffered by the *Owner* if the *Work* is not completed on time. Accordingly, instead of requiring any such proof, the *Contractor* agrees that as liquidated damages for delay (but not as a penalty) the *Contractor* shall pay to the *Owner*, as liquidated damages, an amount per day, as designated in the *Contract Documents* for each and every day's delay from the specified time for the completion of the *Work* until actual completion of the *Work*, and it is further expressly acknowledged and agreed by the *Contractor* that:

(A) *THIS AMOUNT IS A REASONABLE ESTIMATE OF THE ACTUAL DAMAGE THAT WILL BE INCURRED BY THE OWNER DUE TO ANY FAILURE TO COMPLETE THE WORK WITHIN THE TIME REQUIRED BY THIS CONTRACT;*

(B) *THE OWNER MAY DEDUCT THE AMOUNT DUE UNDER THIS SECTION FROM ANY MONIES THAT MAY BE DUE OR PAYABLE TO THE CONTRACTOR, WHETHER UNDER THIS CONTRACT OR ANY OTHER AGREEMENT;*

(C) *THE OWNER MAY INVOICE THE CONTRACTOR FOR LIQUIDATED DAMAGES OWING, AND THE CONTRACTOR SHALL PAY SUCH INVOICES WITHIN 30 DAYS OF RECEIPT; AND,*

(D) *THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION SHALL BE WITHOUT PREJUDICE TO ANY OTHER REMEDY TO WHICH THE OWNER MAY BE ENTITLED AT LAW OR IN EQUITY.*

**39. EXCAVATED AND EXCESS SOIL**

39.1 The Contractor shall manage, reuse, process, transport, and/or deposit excavated material that is "excavated soil" as that term is referred to in Ontario Regulation 406/19 (On-Site and Excess Soil Management) ("Excavated Soil") and/or "excess soil" as that term is defined in Ontario Regulation 406/19 ("Excess Soil") in accordance with the Environmental Protection Act, R.S.O. 1990, c. E.19, Ontario Regulation 406/19, Regulation 347 (General – Waste Management), Ontario Regulation 351/12 (Registrations under Part II.2 of the Act – Waste Management Systems), the Rules for Soil Management and Excess Soil Quality Standards, and the Beneficial Reuse Assessment Tool, where applicable, and all as amended (collectively, "Ontario's Excess Soil and Waste Laws").

39.2 In accordance with paragraph 39.1 above and for clarity, when managing, reusing, processing, transporting and/or depositing Excavated Soil and/or Excess Soil arising from the site of the Work (or arranging for any of the foregoing to be completed by others), the Contractor shall:

- (a) ensure that Excavated Soil and/or Excess Soil arising from the Work is lawfully transported to and then reused or disposed of with consideration to the quantity of the soil, the quality of the soil, the intended receiving site (if not reused at the site of the Work), and the presence or absence of debris or deleterious materials, all in accordance with Ontario's Excess Soil and Waste Laws;

- (b) implement a record-keeping system to document and track information about the Excess Soil transported to an intended receiving site (if not reused at the site of the Work), including the quantity and quality of the Excess Soil, in accordance with Ontario's Excess Soil and Waste Laws;
- (c) generate all required records within the deadlines stipulated by Ontario's Excess Soil and Waste Laws, maintain its records in an organized manner for a minimum of seven (7) years, and provide these records to the City upon request;
- (d) in advance of the Work, prepare and implement a procedure in compliance with section 23 of Ontario Regulation 406/19 that will apply in the event that during the Work the Contractor and/or others make an observation that suggests that soil being excavated may be affected by the "discharge" of a "contaminant" as those terms are defined in Ontario's Excess Soil and Waste Laws;
- (e) engage a Qualified Person as defined in Ontario Regulation 406/19 to complete and/or update an assessment of past uses, sampling and analysis plan, soil characterization report and/or excess soil destination assessment report, if required by Ontario's Excess Soil and Waste Laws; and
- (f) consider the requirement to file and update specified notices on the Registry as defined in Ontario Regulation 406/19, if required by Ontario's Excess Soil and Waste Laws, and shall coordinate the filing and updating of any required notices with the City.

39.3 In accordance with paragraph 39.1 above and for clarity, when the Work includes receiving, managing, storing, processing and/or depositing for reuse Excess Soil at the site where the Work is being completed that originated from another property (or arranging for any of the foregoing to be completed by others), the Contractor shall:

- (a) ensure that all such Excess Soil is lawfully transported to and then managed, stored, processed, and/or deposited for reuse at the site where the Work is being completed with consideration to the quantity of the soil, the quality of the soil, and the presence or absence of debris or deleterious materials, all in accordance with Ontario's Excess Soil and Waste Laws;
- (b) implement a record-keeping system to document and track information about Excess Soil lawfully managed, stored, processed and/or deposited for reuse at the site where the Work is being completed, including the quantity and quality of the Excess Soil, pursuant to Ontario's Excess Soil and Waste Laws;
- (c) generate all required records within the deadlines stipulated by Ontario's Excess Soil and Waste Laws, maintain its records in an organized manner for a minimum of seven (7) years, and provide these records to the City upon request;
- (d) engage a Qualified Person as defined in Ontario Regulation 406/19 to complete and/or update an assessment of past uses, sampling and analysis plan, soil characterization report and/or excess soil destination assessment report, if required by Ontario's Excess Soil and Waste Laws;
- (e) consider the requirement to file and update specified notices on the Registry as defined in Ontario Regulation 406/19, if required by Ontario's Excess Soil and



Waste Laws, and shall coordinate the filing and updating of any required notices with the City;

- (f) complete the receiving, managing, storing, processing and/or depositing for reuse of Excess Soil at the site where the Work is being completed that originated from another property (or arranging for any of the foregoing to be completed by others) under the supervision of a Qualified Person as defined in Ontario Regulation 406/19 engaged by the Contractor;
- (g) require the Contractor's Qualified Person as defined in Ontario Regulation 406/19 to issue a letter to the City providing a summary of soil testing results about the Excess Soil proposed to be received, managed, stored, processed and/or deposited for reuse at the site where the Work is being completed and a professional opinion regarding the suitability of the Excess Soil for the intended purpose(s) at the site where the Work is being completed; and
- (h) based on the foregoing, obtain the City's prior written approval of the Excess Soil proposed to be received, managed, stored, processed and/or deposited for reuse at the site where the Work is being completed.

39.4 In addition to compliance with Ontario's Excess Soil and Waste Laws as required by paragraphs 39.1, 39.2 and 39.3 above, where the Work includes excavation and off-site transportation for reuse and/or disposal of Excess Soil (or arranging for any of the foregoing to be completed by others), the Contractor shall:

- (i) ensure that the excavation and off-site transportation of the Excess Soil is completed under the supervision of a Qualified Person as defined in Ontario Regulation 406/19 engaged by the Contractor;
- (j) provide to the City the name, address, current permits, approvals and sampling requirements of all proposed receiving facilities for the Excess Soil arising from the Work;
- (k) require the Contractor's Qualified Person as defined in Ontario Regulation 406/19 to issue a letter to any proposed receiving facility for the Excess Soil providing a summary of soil testing results about the Excess Soil and a professional opinion regarding the suitability of the Excess Soil for off-site reuse or disposal at the intended receiving facility;
- (l) provide a copy of the Contractor's Qualified Person's letter required by paragraph 39.4(c) to the City; and
- (m) based on the foregoing, obtain the City's prior written approval of the Contractor's choice of all proposed receiving facilities (whether for reuse or for disposal) for the Excess Soil arising from the Work.

39.5 If no soil analysis data is provided by the City within this Contract, the Contractor shall be responsible for conducting any sampling and testing as may be necessary to comply with all applicable laws including Ontario's Excess Soil and Waste Laws and this Contract. Any costs associated with undertaking such sampling and testing shall be included in the Contractor's bid and any additional costs shall be borne by the Contractor and not chargeable to or reimbursable by the City.

- 39.6 The Contractor shall comply with all City by-laws, including site alteration and/or fill by-law(s), as amended or as enacted in the future, and any additional prescribed earthworks best practices required by the City.

#### **40. DISPUTE RESOLUTION**

- 40.1 In the event of a dispute between the Contractor and the Owner concerning any aspect of the Contract which cannot be resolved by the operational representatives of the parties in a timely manner, the following provisions apply (unless dispute resolution is covered in an 'Industry Document' (e.g. CCDC or OPSS) as amended by City supplementary conditions, which form part of the Contract, or, a party has referred the dispute to adjudication pursuant to Section 41 (Adjudication), below.
- 40.2 As soon as either party gives written notice of a dispute to the other party then the Contractor's project manager and the Owner's project manager, or their authorized representatives, shall meet within 8 days and attempt to negotiate a resolution.
- 40.3 If this meeting does not resolve the dispute then the parties shall, within a further 8 days have a further meeting of the CEO of the Contractor (or functional equivalent) and the responsible Deputy City Manager, or designate, for the Owner.
- 40.4 If the dispute is still not resolved at the meeting then the parties will jointly select a mediator from the roster of mediators at ADR Chambers to mediate the dispute and they will then have a further meeting to mediate the dispute within 15 days from the failure of the CEO level meeting to resolve matters.
- 40.5 If the parties cannot themselves agree on a mediator, one will be appointed by ADR Chambers from its roster of mediators.
- 40.6 If mediation does not resolve the dispute then the parties agree that:
- (a) for a dispute where under \$150,000.00 is at issue they will jointly select an arbitrator, and where the parties do not agree on the choice within 10 days, then ADR Chambers shall appoint a single arbitrator from its roster. In either event the arbitration will be conducted within a total of 45 days from the failure of the mediation to resolve the dispute and the provisions of the *Arbitration Act, 1991* will apply to the arbitration. The decision of the Arbitrator is to be released within 30 days of the conduct of the arbitration. The parties shall share payment of the fees and disbursements of the arbitrator equally.
  - (b) for a dispute involving \$150,000.00 or more then, if each agrees to proceed by arbitration, the parties shall either: (a) jointly select a single arbitrator or (b) if they cannot agree on a single arbitrator then each shall, within 10 days, select an arbitrator and these nominees shall, within a further 5 days, jointly select a third arbitrator to Chair a panel of three arbitrators. The arbitration shall be conducted pursuant to the *Arbitration Act, 1991* and held within 90 days from the failure of the mediation to resolve the dispute or within such further reasonable time as is allowed by the arbitrator(s), on motion. The decision of the arbitrator(s) is to be released within 30 days of the conduct of the arbitration. The parties shall share payment of the fees and disbursements of the arbitrator(s) equally.
- 40.7 If one party does not co-operate or participate in either the negotiation phase or the mediation phase, then, after giving 7 days written notice to them of the default in co-

operation, the other party is then free, if the amount in dispute is less than \$150,000.00, to proceed to the arbitration stage before a single arbitrator, selected by ADR Chambers. The resulting arbitration may be held without the opposite party being present, if they choose not to participate in it, and the decision of the arbitrator shall be as fully final, valid and binding on the parties as if the opposite party had been fully participating in it.

- 40.8 Any party is free to waive any of the above dispute resolution steps that take place prior to arbitration, by giving to the other party a written election to waive that particular step or to proceed right to the stage of arbitration, for amounts in dispute under \$150,000.00, or proceed right to the stage of arbitration (if on consent) or court action, for amounts in dispute of \$150,000.00 or more.
- 40.9 Regardless of the provisions of section 45 of the Arbitration Act, 1991, where the amount in dispute is under \$150,000.00, there shall be no appeal whatever, even on a question of law, from the decision of the arbitrator in any arbitration conducted under this dispute resolution regime.
- 40.10 If either party does not agree to arbitrate a dispute over \$150,000.00 then the parties shall be free to commence whatever court action they wish in order to resolve the dispute.
- 40.11 Nothing in this section shall apply to prevent a party from seeking and obtaining injunctive relief or equitable relief.

#### 41. ADJUDICATION

- 41.1 Subject to the notice requirements in paragraph 41.6, below, if either party wishes to refer a dispute to adjudication in accordance with Part II.1 of the Construction Act, such party shall give to the other party notice in writing of an adjudication, setting out:
- (a) the names and addresses of the parties;
  - (b) the nature, and a brief description of the dispute, including details respecting how and when it arose;
  - (c) the nature of the redress sought;
  - (d) the names of three (3) adjudicators that the referring party nominates to adjudicate the dispute, each of whom must be listed in the registry established by the Authorized Nominating Authority established under the *Act* (the “**Authority**”); and
  - (e) the date that any required notice was given in accordance with paragraph 41.6, below.
- 41.2 Notice in writing of an adjudication given by the Contractor to the Owner shall be delivered to the Office of the City Clerk.
- 41.3 The party giving notice in writing of an adjudication in accordance with paragraph 41.1 above shall, on the same day, provide a copy of the notice to the Authority in electronic format.

- 41.4 By no later than the third calendar day following receipt of notice in writing of an adjudication, the responding party shall give notice in writing to the referring party stating either that (i) the responding party accepts one of the referring party's nominees or (ii) none of the referring party's nominees are acceptable. If the responding party accepts one of the referring party's nominees, the referring party shall notify the nominee of such appointment on the day that notice in writing of the acceptance is received from the responding party, and shall request the nominee's prompt consent to conduct the adjudication. If none of the referring party's nominees are acceptable to the responding party, the parties may discuss the appointment of another mutually agreeable adjudicator. In the event that the parties have not selected a mutually agreeable adjudicator by the close of business on the third calendar day following the giving of notice in writing of an adjudication, the referring party shall, by the next calendar day, request that the Authority appoint an adjudicator.
- 41.5 If, by the close of business on the fourth calendar day following the giving of the notice in writing of an adjudication, the parties' agreed-upon adjudicator, if any, has not consented to conduct the adjudication, the referring party shall immediately request that the Authority appoint an adjudicator.
- 41.6 With the exception of disputes that arise as a result of a notice of non-payment given by the Owner under paragraph 15.12 or 15.16, above, it is a pre-condition to either party giving notice in writing of an adjudication that at least 30 calendar days prior to giving notice in writing of an adjudication, the party giving notice in writing of an adjudication shall have given notice in writing of a dispute, which notice shall set out the nature, and a brief description, of the dispute.
- 41.7 No later than five (5) calendar days after an adjudicator agrees, or is appointed, to conduct the adjudication, the party who gave notice in writing of an adjudication shall provide to the adjudicator a copy of the notice in writing of an adjudication, and shall provide to the responding party and the adjudicator a copy of the Contract and any documents that the party intends to rely upon during the adjudication.
- 41.8 Subject to the provisions of the Construction Act, a party who received notice in writing of an adjudication shall provide to the adjudicator and to the referring party any documents that it intends to rely upon at the adjudication within 20 calendar days of receiving the documents referred to in paragraph 41.7, above.
- 41.9 The adjudicator shall make a determination of the matter that is the subject of the adjudication no later than 30 calendar days after receiving the documents referred to in paragraph 41.7, above.
- 41.10 Subject to the consent of the adjudicator, each party shall, if requested by the other party, agree to extend the timeline referred to in paragraph 41.8, above, to 30 calendar days, and the timeline referred to in paragraph 41.9, above, to 40 calendar days, or such other reasonable extensions as either party may request.
- 41.11 Neither party may deliver notice in writing of an adjudication in accordance with this section or Part II.1 of the *Act* after completion of the Work.

## **42. GENERAL INDEMNITY**

- 42.1 The Contractor shall indemnify, hold harmless and defend the City, the Consultant, the Regional Municipality of York and their respective directors, officers, council members,

partners, agents and employees from and against all claims, demands, losses, costs (including all legal costs), damages, actions, suits or proceedings that arise directly or indirectly out of, or are attributable to, the Contractor's performance of, or failure to perform, the Contract or out of the condition of the Work, the Place of the Work, adjoining lands or highways used in connection with the performance of the Work, including any act or omission of the Contractor or its agents, any Subcontractors, employees, workers or other persons for whom the Contractor is in law responsible.

42.2 This indemnification shall include any legal costs incurred by the City on a substantial indemnity basis, including those incurred to defend any criminal or quasi-criminal prosecutions against the City resulting from the actions of the Contractor.

42.3 As used in the Contract Documents:

(a) **"Place of Work"** and **"place of work"** means the designated site or location where the Work will be performed / construction will take place;

and

(b) A **"Subcontractor"** (and **"subcontractor"** and **"Sub-contractor"** and **"sub-contractor"**) is a person, firm or corporation having a direct contract with the Contractor to perform a part or parts of the Work, or to supply products worked to a special design according to the Contract Documents, but does not include one who merely supplies products not so worked. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and neuter in gender.

#### **43. INSURANCE (POLICIES/COVERAGE REQUIREMENTS)**

43.1 Without restricting Contractor's indemnification and claims handling obligations, the Contractor shall obtain, maintain, pay the premium(s) and any deductibles and provide evidence of insurance coverage listed in this section unless otherwise stipulated.

43.2 Commercial General Liability Insurance:

(a) Commercial General Liability (CGL) insurance shall include as an Additional Insured, the City, the Consultant, and the Regional Municipality of York, with limits of not less than \$5,000,000.00 inclusive per occurrence for bodily and personal injury, death, and damage to property including loss of use thereof.

(b) Should this policy contain a General Aggregate, the minimum acceptable General Aggregate shall be \$10,000,000.00.

(c) The CGL insurance will include Cross Liability and Severability of Interest Clauses, Products and Completed Operations coverage (24 months), Owner's & Contractor's Protective and a Standard Non-Owned Automobile endorsement including standard contractual liability coverage

(d) The City shall accept in place of the above-mentioned insurance coverage, limits of \$2,000,000.00 inclusive per occurrence in primary CGL insurance and \$3,000,000.00 in Excess Liability or Umbrella Liability insurance with aggregates for each policy to provide the minimum coverages and limits as noted above.

**43.3 Automobile Liability Insurance:**

- (a) Automobile liability insurance in respect of licensed vehicles shall have limits of not less than \$5,000,000.00 inclusive per occurrence for bodily injury, death, and damage to property.
- (b) Coverage shall be in the form of a Standard owner's form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned and/or leased or operated by or on behalf of the Contractor.

**43.4 Contractor's Equipment Insurance:**

- (a) All Risks Contractors' Equipment coverage, insuring the full amount of the Contractor's equipment, including all owned, non-owned and mobile equipment.

**43.5 Property Insurance:**

- (a) Installation Floater insurance insuring not less than the sum of the amount of the Estimated Contract Price and the full value of products that are specified to be provided by the City for incorporation into the Work.
- (b) This coverage shall be maintained from the commencement of the Work until substantial performance of the Work has been attained, as set out in the Certificate of Substantial Performance of the Work.

**43.6 Pollution Liability Insurance:**

- (a) Sudden & Accidental Pollution Liability insurance is required with limits of not less than \$2,000,000.00 with The Corporation of the City of Vaughan added as an Additional Insured.
- (b) This policy shall be maintained from the commencement of the Work until substantial performance of the Work has been attained, as set out in the Certificate of Substantial Performance of the Work.
- (c) The form of pollution liability insurance may be an occurrence or claims-made form. Should the policy be on a claims-made form, the Contractor must provide a two-year extended reporting period.

**43.7 Professional Liability Insurance:**

- (a) The Contractor is responsible to require Professional Liability Insurance coverage from any subconsultants providing a professional service in connection with the contract such as architects, planners and engineers of at least Two Million Dollars (\$2,000,000.00). Such insurance shall be kept in force during the construction of each of the improvements and the Owner reserves the right to require such insurance to be kept in force for five (5) additional one (1) year terms following the date of total completion of each of the improvements.

**44. INSURANCE (GENERAL REQUIREMENTS)**

- 44.1 Without restricting the generality of any contractual indemnity provisions, the Contractor shall obtain, maintain, pay the premium(s) and any deductibles and provide evidence of required insurance coverage. The Contractor shall be entirely responsible for the cost of any deductible or Self Insured Retention Policy (SIR) amounts that form part of its insurance policy.
- 44.2 The forms of these insurance policies shall in all respects be satisfactory to the City's Insurance and Risk Manager and shall be maintained continuously from the commencement of the Work until the Work has been completed to the satisfaction of the City.
- 44.3 The insurance shall be taken out with insurance companies licensed to transact business in the Province of Ontario and who are not otherwise excluded by the City's Insurance and Risk Manager.
- 44.4 The policies shown above shall be endorsed to provide the Owner with not less than thirty (30) days written notice of expiry, cancellation, change or amendment restricting coverage such that the requirements in the Contract are no longer met.
- 44.5 However, if for any reason the insurer, on behalf of the Contractor, cannot endorse their policies to provide the Owner with not less than thirty (30) days written notice of change or amendment restricting coverage, the responsibility thereof shall automatically transfer to the Contractor and becomes the Contractor's strict obligation to deliver to the Owner by registered mail with not less than thirty (30) days written notice of change or amendment restricting coverage.
- 44.6 The Contractor shall provide the City with proof of insurance, by submitting an original Certificate of Insurance on the City's standard "Certificate of Insurance" form, or documentation approved by the Insurance and Risk Manager, upon execution and delivery of the Contract, prior to commencement of the Work and thereafter upon request by the City. In lieu of an original Certificate of Insurance, the City may accept an electronic copy provided it is e-mailed or faxed by the Contractor's insurance broker directly to the City. These certificates should be submitted to the attention of the project manager with the project/bid number indicated.
- 44.7 The Contractor shall submit certificates of insurance and continuity of coverage to the City on an annual basis, or such other greater frequency as may be requested by the City, for all applicable insurance coverages required. These certificates should be submitted to the attention of the project manager with the Project/BID number indicated.
- 44.8 The Contractor shall not commence work under the Contract until such time as evidence of insurance, on the Owner's Certificate of Insurance form has been completed and filed with and approved by the Owner.
- 44.9 If required by the Owner, the Contractor shall provide certified true copy(s) of the policy(s) certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the Work.
- 44.10 If the Contractor fails to maintain insurance as required by the Contract the Owner shall have the right to provide and maintain such insurance and give evidence to the Contractor and (if applicable) the City's consultant and The Regional Municipality of

York. The Contractor shall pay the cost thereof to Owner on demand or the Owner may deduct the cost from the amount which is due to or may become due to the Contractor.

44.11 The Owner reserves the right to request such higher limits of insurance or other types of policies appropriate to work as the Owner may reasonably require.

44.12 All policies shall apply as primary and not as excess of any insurance available to the Owner.

44.13 If requested the Contractor shall provide the Owner with a letter from their insurance provider confirming the Contractor's ability to meet the insurance requirements as set out in the Contract.

44.14 All policies of insurance shall contain provisions for settling joint loss disputes amongst property.

44.15 It is the Contractor's responsibility to ensure that any Subcontractors employed must have proof of active insurance policies providing the following coverages the Contractor as Additional Insured where applicable:

- (a) Commercial General Liability
- (b) Automobile Insurance

44.16 The Contractor shall obtain current Certificate of Clearances indicating a Subcontractor's good standing and/or letter for the following:

- (a) WSIB or Equivalent Employer's Liability Insurance

#### **45. THIRD PARTY CLAIMS HANDLING**

45.1 The Contractor shall respond to, and deal with, all indemnifiable third-party claims in a prompt, courteous and efficient manner.

45.2 The Contractor shall contact all third-party claimants and acknowledge receipt of all third-party claims in writing within 7 Working Days upon being notified in writing of the third-party claim.

45.3 The Contractor shall immediately, upon receipt of any third-party claim, provide the City's Office of the City Clerk, Insurance Risk Management Section with notice of the third-party claim.

45.4 The Contractor shall also provide the City's Office of the City Clerk, Insurance Risk Management Section with copies of all correspondence between the Contractor or its agents and the third-party claimant.

45.5 The Contractor shall not advise the third-party claimant that the City is responsible for their claim.

45.6 If, in the sole discretion of the City's Office of the City Clerk, Insurance Risk Management Section, acting reasonably, a claim is not being dealt with in a manner consistent with the provisions of this Contract, which includes, without limiting the generality of the foregoing:

- (a) failure of the Contractor to acknowledge receipt of the third-party claim in the manner set out above; and



- (b) failure to resolve the third-party claim to the satisfaction of the City within 90 Days of the receipt of the third-party claim,

the City reserves the right to appoint an insurance adjuster or other person to settle any third-party claims arising from this Contract.

- 45.7 Any money paid by the City in satisfaction of any third-party claim determined to be the Contractor's responsibility, plus all adjuster costs and other associated costs and administrative costs incurred by the City, shall be deducted from monies owing to the Contractor by the City.

**END OF DOCUMENT 2**

Not applicable for this RFT.

**END OF DOCUMENT 3**

**THE CORPORATION OF THE CITY OF VAUGHAN STANDARD WORK AGREEMENT**  
(as may be amended from time-to-time, the “**Agreement**”)

Effective Date: \_\_\_\_\_

Between:

The Corporation of the City of Vaughan (the “**City**”)

And

\_\_\_\_\_ (“**Contractor**”)

(each a “**Party**” and collectively a “**Party**”)

With respect to Request for Tender No. \_\_\_\_\_:

\_\_\_\_\_  
(the “**RFT**”)

In an amount of:

\_\_\_\_\_, excluding HST.

**Whereas:**

- A.** The City issued the RFT;
- B.** The Contractor submitted a Bid in response to the RFT (the “**Bid**”); and
- C.** The City has selected the Contractor to perform the Work outlined in the RFT, and Contractor agrees to perform such Work and perform/provide the provisional items as/if needed by the City, all in accordance with the Contract Documents.

**Now therefore**, the Parties agree as follows:

- 1. Capitalized terms not defined within the body of this Agreement have the meanings provided in the RFT.
- 2. For certainty, the following requirements and associated documents are read into and deemed to form part of this Agreement:
  - Contractor’s Bid
  - Any required Performance Bond and Labour & Material Bond
  - Insurance Coverages (including limits) and Certificates required by the RFT
  - The RFT and any addenda
  - All Contract Documents (as defined in the RFT)
- 3. Order of Precedence. In the event an ‘industry contract’ (e.g. CCDC or OPSS terms and conditions) forms part of the Contract, the Order of Precedence provided therein or in Supplements/amendments thereto shall govern. Failing which, in the event the terms in

any of the following documents conflict, the order of precedence with respect to the conflict shall be as follows:

- a) Authorized and duly signed Change Order, if any
- b) Duly executed City Agreement
- c) Addenda to the Request for Tender, if any
- d) Appendix A: Terms of Reference
- e) Construction Specifications, if any
- f) Contract Drawings and Reports, if any
- g) Document 3: City Supplementals
- h) Document 2: City General Provisions re Construction Work
- i) Document 1: Instructions to Bidders
- j) Working Drawings
- k) Bid submission document(s) from Contractor

4. The Contractor does hereby covenant and agree with the Owner in the manner following namely:

- (a) to execute and perform the whole of the Work with due expedition and in a thoroughly professional manner in strict accordance with the provisions of the Contract Documents and thereafter to maintain the same as therein provided, and that in the execution and performance of the Work the Contractor will carry out, perform, observe, fulfill and abide by all the covenants, agreements, stipulations, provisions and conditions mentioned and contained in the Contract Documents to be carried out, performed, observed and fulfilled by the Contractor to the same extent and as fully as if each of them was set out and specifically repeated herein.
- (b) to indemnify and keep indemnified and save harmless the Owner and each of its officers, employees, servants and agents from and against all actions, suits, claims, executions and demands (collectively “**Actions**”) which may be brought against or made upon the Owner, its officers, servants and agents, and from all loss, costs, charges, damages, liens and expenses (collectively “**Losses**”) which may be paid, sustained or incurred by the Owner, its officers, servants and agents by reason of or on account, or in consequence of the execution and performance of the Work or of the non-execution or imperfect execution thereof or of the supply and non-supply of plant or material therefore (collectively the “**Indemnified Matters**”).
- (c) to pay to the Owner on demand:
  - (i) all Losses which may be paid, sustained or incurred by the Owner or any of its officers, servants or agents in consequence of any Actions related to any Indemnified Matter; and
  - (ii) any monies paid or payable by the Owner or any of its officers, servants or agents in settlement or in discharge thereof or on account thereof

and that in default of such payment, pay to the Owner:

1. all such Losses and any monies so paid or payable by the Owner, its officers, servants or agents;
  2. any monies payable by the Contractor under this or any other Contract;
  3. any monies which may be recovered from the Contractor or a surety under any Contract Security; and
  4. any monies paid into any court of competent jurisdiction or elsewhere in trust for the City.
5. The Contractor hereby authorizes and empowers the Owner or its solicitor for the time being, to defend, settle or compromise any such Actions as the Owner or its solicitor may deem expedient, and also hereby agrees to ratify and confirm all the acts of the Owners or its solicitor and shall pay on demand the reasonable costs of defending, settling or compromising any such Actions as the Owner may deem it expedient to defend, settle or compromise and that in default of such payment the same may be deducted from any monies payable by the Owner to the Contractor on any account whatsoever. Provided, however, that the Contractor may at the expense of the Contractor, subject to the consent of the Owner take charge of and conduct in the name of the Owner, the defense to any such action, claim or suit. The Owner covenants with the Contractor that if the Work, including all authorized extras in connection therewith, shall be duly and properly executed as aforesaid and if the Contractor shall carry out, perform, observe, fulfill, keep and abide by all the covenants, agreements, stipulations, provisions, terms and conditions of the Contract Documents, the Owner will (subject to the terms and conditions of the Contract Documents) pay the Contractor therefore the sums calculated in accordance with the actual measured quantities and unit prices mentioned in the Bid and for such extra Work at the rates or unit prices mentioned in the Bid (which are to apply to all extras of the character specified in the schedule of rates or unit prices forming part of the Bid).

Such payments to be made subject to deductions in relation to holdbacks and liquidated damages referred to in the Contract Documents.

The Owner shall pay the Contractor only in accordance with the following procedure:

- (a) subject to paragraph 5(b), below, after the last day of each payment period, which is the last day of each month, the Contractor shall submit a Draft Proper Invoice, as hereinafter defined, to the Owner, for an amount proportionate to the amount of the Contract, of work performed and products delivered to the project premises as of the last day of the payment period;
- (b) notwithstanding paragraph 5(a), above, the Contractor shall not submit a Draft Proper Invoice between December 24 and January 2;
- (c) a Draft Proper Invoice ("**Draft Proper Invoice**") means a preliminary invoice submitted by the Contractor to the Owner that includes:
  - a) Owner's Cover Page;
  - (i) the invoice number;
  - (ii) the Contractor's name and address;
  - (iii) the date on which the Draft Proper Invoice is submitted to Owner, and the period during which the services or materials for which payment is being applied for were supplied;
  - (iv) information identifying the authority, whether in contract or

- (v) otherwise, under which the services or materials were supplied; a description, including quantity where appropriate, of the services or materials that were supplied during the payment period;
  - (vi) the amount payable for the works, services or materials that were supplied during the payment period, and the payment terms;
  - (vii) invoices and time sheets from all subtrades whose work is included in the Draft Proper Invoice; and
  - (viii) evidence reasonably required by the Owner to establish the value and delivery of products for which payment is claimed in the Draft Proper Invoice, and which have been delivered to the project premises, but have not yet been incorporated into the work.
- (d) the Owner will evaluate the Draft Proper Invoice and, based upon its observations, may, in its sole discretion provide comments to the Contractor in relation to the Draft Proper Invoice;
- (e) subject to paragraph 5(f), below, on or after the tenth calendar day following submission of a Draft Proper Invoice, the Contractor shall submit a Proper Invoice, as hereinafter defined, to the Owner;
- (f) notwithstanding paragraph 5(e), above, the Contractor shall not submit a Proper Invoice to the Owner between November 22 and January 2;
- (g) a Proper Invoice ("**Proper Invoice**") means an invoice submitted by the Contractor to the Owner on or after the tenth calendar day following submission by the Contractor of a Draft Proper Invoice, and includes:
  - (i) properly completed Owner's Cover Page;
  - (ii) the invoice number;
  - (iii) the Contractor's name and address;
  - (iv) the date on which the Proper Invoice is submitted to Owner and the period during which the services or materials for which payment is being applied were supplied;
  - (v) information identifying the authority, whether in contract or otherwise, under which the services or materials were supplied;
  - (vi) a description, including quantity where appropriate, of the services or materials that were supplied during the payment period;
  - (vii) the amount payable for the services or materials that were supplied during the payment period, and the payment terms;
  - (viii) the name, title, telephone number and mailing address of the person to whom payment is to be sent;
  - (ix) the Contractor's H.S.T number;
  - (x) invoices and time sheets from all subtrades whose work is included in the Proper Invoice, which were not included in the Draft Proper Invoice;
  - (xi) evidence reasonably required by the Owner to establish the value and delivery of products for which payment is claimed in the Proper Invoice, and which have been delivered to the project premises, but have not yet been incorporated into the Work.

- (h) any invoice submitted by the Contractor before the tenth (10<sup>th</sup>) calendar day following the Owner's receipt of a Draft Proper Invoice shall not constitute a Proper Invoice within the meaning of the Construction Act;
- (i) a Proper Invoice may be revised by the Contractor after it has been given to the Owner, provided that the Owner agrees in advance to the revision and the Proper Invoice continues to meet the definition of a Proper Invoice after it has been revised;
- (j) subject to the giving of a notice of non-payment under paragraph 5(k), below, the Owner shall make payment to the Contractor in accordance with this paragraph 5 no later than 28 calendar days after receiving the Proper Invoice. The Contractor shall be deemed to have been paid on the day that the Contractor is advised by the Owner, or its representative, in writing, that payment is available to be picked up by the Contractor.
- (k) in the event that the Owner intends to pay the Contractor an amount that is less than that set out in the Proper Invoice, the Owner shall, no later than 14 calendar days after receiving the Proper Invoice from the Contractor, give to the Contractor a notice of non-payment, in the form and manner prescribed in the Construction Act, specifying the amount of the Proper Invoice that is not being paid and detailing the reasons for non-payment;
- (l) no later than the twentieth day following the completion of the Work, the Contractor shall:
  - a) submit an application for payment of the holdback amount;
  - b) submit a CCDC 9A 'Statutory Declaration' to state that all accounts for labour, subcontracts, productions, construction equipment and other indebtedness which may have been incurred by the Contractor in the performance of the Work, and for which the Owner might in any way be held responsible have been paid in full, except for amounts properly retained as holdback or as an identified amount in dispute and, if requested by the Owner, a Statutory Declaration from any subcontractor, as may be identified by the Owner, on an original form of CCDC Document 9B-2001 Statutory Declaration of Progress Payment Distribution by Subcontractor;
  - c) submit a statement that the Contractor has not received any written notices of a lien; and
  - d) submit a Workplace Safety & Insurance Board Clearance Certificate.
- (m) subject to the publication by the Owner of a notice of non-payment under paragraph 5(n) below, the Owner shall make payment to the Contractor of the holdback amount following the expiration of the holdback period stipulated in the Construction Act;
- (n) in the event that the Owner intends to pay the Contractor an amount that is less than that set out in the Contractor's application for payment of the holdback, the Owner shall, no later than twenty (20) calendar days before the expiration of the holdback period stipulated in the Construction Act, publish a notice in the form

prescribed in the Construction Act, specifying the amount of the holdback that the Owner refuses to pay and notify the Contractor of the publication of the notice;

- (o) the submission of a Proper Invoice is hereby made a condition precedent to the right of the Contractor to be paid or to maintain any action for such money or for any part thereof;
- (p) the Owner shall not be liable or compelled to pay for any extras or additional work not included in this Contract except only in the manner and as provided for herein;
- (q) the Owner shall not be liable or compelled to grant or issue any certificate or approve any invoice or estimate for Work rejected or condemned by the Owner or to pay any money therefore until the Work so rejected or condemned has been replaced by new material and workmanship to the written satisfaction of the Owner and it is hereby expressly provided that the granting of any certificate or approval of any estimate or invoice, or the payment of any monies thereunder shall not be construed as an acceptance of any bad or defective work or material, to which the same relates or as an admission or liability to pay any money in respect thereof and shall not in any manner lessen the liability of the Contractor to replace such work or material, although the condition of the same may not have been known to or discovered by the Owner at the time such certificate was granted, invoice or estimate was approved, or monies were paid thereon.

#### 6. Adjudication

- a. Subject to the notice requirements in paragraph 6(f), below, if either party wishes to refer a dispute to adjudication in accordance with Part II.1 of the Construction Act, such party shall give to the other party notice in writing of an adjudication, setting out:
  - a) the names and addresses of the parties;
  - b) the nature, and a brief description of the dispute, including details respecting how and when it arose;
  - c) the nature of the redress sought;
  - d) the names of three (3) adjudicators that the referring party nominates to adjudicate the dispute, each of whom must be listed in the registry established by the Authorized Nominating Authority established under the Construction Act (the “Authority”); and
  - e) the date that any required notice was given in accordance with paragraph 6(f), below.
- b. Notice in writing of an adjudication given by the Contractor to the Owner shall be delivered to the office of the City Clerk.
- c. The party giving notice in writing of an adjudication in accordance with paragraph 6(a) above shall, on the same day, provide a copy of the notice to the Authority in electronic format.



- d. By no later than the third calendar day following receipt of notice in writing of an adjudication, the responding party shall give notice in writing to the referring party stating either that (i) the responding party accepts one of the referring party's nominees or (ii) none of the referring party's nominees are acceptable. If the responding party accepts one of the referring party's nominees, the referring party shall notify the nominee of such appointment on the day that notice in writing of the acceptance is received from the responding party, and shall request the nominee's prompt consent to conduct the adjudication. If none of the referring party's nominees are acceptable to the responding party, the parties may discuss the appointment of another mutually agreeable adjudicator. In the event that the parties have not selected a mutually agreeable adjudicator by the close of business on the third calendar day following the giving of notice in writing of an adjudication, the referring party shall, by the next calendar day, request that the Authority appoint an adjudicator.
- e. If, by the close of business on the fourth calendar day following the giving of the notice in writing of an adjudication, the parties' agreed-upon adjudicator, if any, has not consented to conduct the adjudication, the referring party shall immediately request that the Authority appoint an adjudicator.
- f. With the exception of disputes that arise as a result of a notice of non-payment given by the Owner under paragraph 5(k) or 5(n), above, it is a pre-condition to either party giving notice in writing of an adjudication that at least 30 calendar days prior to giving notice in writing of an adjudication, the party giving notice in writing of an adjudication shall have given notice in writing of a dispute, which notice shall set out the nature, and a brief description, of the dispute.
- g. No later than five (5) calendar days after an adjudicator agrees, or is appointed, to conduct the adjudication, the party who gave notice in writing of an adjudication shall provide to the adjudicator a copy of the notice in writing of an adjudication, and shall provide to the responding party and the adjudicator a copy of the Contract and any documents that the party intends to rely upon during the adjudication.
- h. Subject to the provisions of the Construction Act, a party who received notice in writing of an adjudication shall provide to the adjudicator and to the referring party any documents that it intends to rely upon at the adjudication within twenty (20) calendar days of receiving the documents referred to in paragraph 6(g), above.
- i. The adjudicator shall make a determination of the matter that is the subject of the adjudication no later than thirty (30) calendar days after receiving the documents referred to in paragraph 6(g), above.
- j. Subject to the consent of the adjudicator, each party shall, if requested by the other party, agree to extend the timeline referred to in paragraph 6(h), above, to 30 calendar days, and the timeline referred to in paragraph 6(i), above, to forty (40) calendar days, or such other reasonable extensions as either party may request.

- k. Neither party may deliver notice in writing of an adjudication in accordance with this section or Part II.1 of the Construction Act after completion of the Work.

7. Miscellaneous.

- a. The duties and obligations imposed by the Contract and the rights and remedies available thereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.
- b. Time shall be of the essence.
- c. The laws of the Province of Ontario shall govern the interpretation of the Contract.
- d. This Contract is drawn in English at the request of all parties hereto; ce marché est rédigé en anglais à la demande de toutes les parties.
- e. Subject to all applicable laws and to the provisions of the Contract Documents, this Agreement shall enure to the benefit of, and be binding upon, the parties hereto, their respective heirs, legal representatives, successors and assigns.
- f. Each provision of the Contract shall be valid and enforceable to the fullest extent permitted by law. If any provision of the Contract or the application thereof to any person or circumstance is determined to be invalid or unenforceable to any extent the remainder of the Contract or the application of such provision to any other person or circumstance shall not be affected thereby, and the parties shall negotiate in good faith to amend the Contract to implement the provisions set forth.
- g. The Contract represents the entire agreement between the Contractor and the City and supersedes any previous agreements, negotiations and understandings. There are no agreements, representations, warranties, terms, conditions or commitments regarding the subject matter of this agreement except as expressed in the Contract.

*[remainder of page intentionally blank]*

This Agreement shall be executed by way of digital signature and delivered by electronic transmission, and when so executed and delivered, will be deemed an original.

**IN WITNESS THEREOF**, the parties hereto have executed this Agreement as of the date written below.

**Contractor Name:** \_\_\_\_\_

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

*I have authority to bind the Contractor*

**The Corporation of the City of Vaughan**

Signature: \_\_\_\_\_

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

Title: Director of Procurement Services

Date of Signature: \_\_\_\_\_

*I have authority to bind the Corporation*

Please find below a preview only of certain schedules (collectively, "Schedules") that will need to be completed online only through the Bidding System by Bidders as part of their Bid submission.

The Bidder acknowledges that the preview below is provided as a courtesy only (to assist the Bidder in determining the size and scope of the project, etc.) and shall not be relied upon in any way.

Please note that the Schedules shown below are subject to change/addition/deletion by addendum(s) issued by the Owner. Following the issuance of each addendum, such changes may be reflected in the electronic Schedules to be completed but will not be reflected in this document. It is the Bidder's responsibility to review all addendums and ensure that their Bid is submitted based on the current requirements.

For greater certainty, the Bidder shall submit their Bid by completing all Schedules and fields in the online Bidding System. Any Bid submitted on the basis of the preview Schedules below may in the Owner's sole discretion, be disqualified and rejected on the basis of being incomplete.

# **T23-454 - RENOVATION OF MEN'S CHANGE ROOM**

Opening Date: September 1, 2023 3:00 PM

Closing Date: September 20, 2023 3:00 PM

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Schedule of Prices

When inputting your unit price(s), the total field(s) will automatically calculate

Red asterisk (\*) within the table denotes a “MANDATORY” line item. This would need to be completed in order to successfully submit your bid.

The first table is a Summary Table which provides your Sub-Total for each pricing table and also indicates whether or not the table is mandatory or not. Asterisk’s within the table denotes a “MANDATORY” line item.

If the line item and /or table is “NON-MANDATORY” and you are not bidding on it, leave the table and /or line item blank. Do not enter a \$0.00 dollar value unless you are prepared to provide the line item at zero dollars to the Owner.

If a table is “NON-MANDATORY” and you are bidding on it, you must bid on all line items with an asterisk.

If there are multiple tables, you must click the “EDIT PRICING” button inside the Summary Table to display the applicable Pricing Table that you wish to bid on.

When all of the required fields have been completed, click “Save My Bid” button.

As each pricing table is filled in, a subtotal will be automatically generated and a green check mark will appear when the table has been completed.

All prices submitted shall be in Canadian funds.

Prices shall exclude Harmonized Sales Tax ("HST"), but shall include all other taxes and duties, as well as any reduction in the Contractor's operating costs due to rebating of any sales taxes.

All work performed under the Contract will be subject to HST only.

The Bidder hereby bids and offers to enter into the Contract referred to and to supply and do all or any part of the Work, at the unit prices, and/or lump sums, hereinafter stated.

The Bidder also understand and accepts that the quantities shown in the Bid Documents are approximate estimates only and are subject to increase, decrease or deletion entirely if found not to be required.

Pricing Schedule

Description	Lump Sum *	Total
T23-454 RENOVATION OF MEN'S CHANGE ROOM		
Subtotal:		

Summary Table

Bid Form	Amount
Pricing Schedule	
Subtotal Contract Amount:	

Bid Questions

Please provide your registered HST Number.

Please provide your remittance address.

Is this bid being submitted as a Joint Venture or Consortium? (YES or NO)

If YES to the above, please list all firms participating in the Joint Venture or Consortium. If NO to the above, please indicate N/A NOTE: The legal entity submitting this Bid shall be deemed the "Participant in Charge", in accordance with the Bid Document.

Provide Company Full Legal Name (if different than the name on the bid submission)

Disclosure

If Bidder agrees with all listed items in the "Disclosure" section below, click on the box "We will not be submitting for Disclosure". A confirm message will appear. Click on the "yes" button to confirm that Bidder does not have any item to disclose.

Otherwise, if Bidder disagrees with one or more of the listed items in "Disclosure" section, Bidder shall complete and provide specific details of disclosure indicate in below section:

☐ We will not be submitting for Disclosure

Description	Response *	Specify details of Disclosure *
<div>The Bidder acknowledges that, except for any matters specifically disclosed by the Bidder in the Bidder's Bid with respect to the following matters (hereafter called the "Disclosure"):</div> <div>(a) The Bidder is not currently the subject of legal proceedings by the City of Vaughan in respect of Vaughan's Property Standards By-law or Zoning By-laws.</div> <div>(b) The Bidder has not been convicted by a court of such a matter set out in (a) above where the contravention remains.</div> <div>(c) The Bidder is not a named party in litigation, judicial or arbitral proceedings against or by the City with respect to any other procurement, contract or business transaction.</div> <div>The Bidder agrees that its Disclosure, if any, shall provide specific details of the Disclosure. The Bidder further agrees that the Owner shall be entitled at its sole discretion to reject this Bid as a result of any Disclosure.</div>	<div>Select A Value</div>	

## Privacy & Information

All Bids are subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act, RSO 1990, c M.56 ("MFIPPA"). In accordance with MFIPPA, the personal information provided by Bidders in response to this Request for Tender is being collected under the authority of the Municipal Act, 2001, SO 2001, c 25 and will be used exclusively in the selection process.


All Bids submitted shall become the property of the City.

In accordance with the requirements of MFIPPA, Bidders shall identify in their Bid any specific scientific, technical, commercial, proprietary, or similar confidential information, the disclosure of which could cause them injury. Complete Bids shall not be identified as confidential.

If Bidder does not have any specific scientific, technical, commercial, proprietary, or similar confidential information, the disclosure of which could cause them injury to declare, click on the box "We will not be submitting for Privacy & Information" button. A confirm message will appear. Click on the "yes" button to confirm that Bidder does not have any confidential information to disclose.

Otherwise, Bidder shall complete and provide specific details of confidential information in the section below:

☐ We will not be submitting for Privacy & Information

Question	Response *	If Yes, Please specify *
Does your Bid include any specific scientific, technical, commercial, proprietary, or similar confidential information, the disclosure of which could cause you injury?	Select A Value 	
If Yes, Please identify the specific scientific, technical, commercial, proprietary, or similar confidential information, the disclosure of which could cause you injury to the right hand field.		

## List subcontractors

☐ By clicking here I confirm that there are no Subcontractor(s) / Subconsultant(s) and the Bidder / Proponent shall perform the project with their **"OWN FORCES"**.

Type of Work	Sub-Contractor	Contact Name	Contact Number	Contact e-mail

## Documents

It is your responsibility to make sure the uploaded file(s) is/are not defective or corrupted and are able to be opened and viewed by the Owner. If the attached file(s) cannot be opened or viewed, your Bid may be rejected.



## **BONDING UPLOAD SECTION**

### **Gentle Reminder:**

**The Bid Bond and / or Agreement to Bond must contain digital signature(s) digital seal(s). A scanned copy of a paper bond is not an acceptable digital bond.**

**A Bid submission that is not accompanied by a valid Bid Bond and / or Agreement to Bond shall be disqualified and / or rejected.**

Bid submissions must include a digital Bid Bond, in the amount outlined in the Bid Document, as security for the execution and delivery of the Contract and the provision of the required bonds, insurance and other documents required to be provided by a successful Bidder.

Bid submissions must also include a digital Agreement to Bond or digital Undertaking to Bond or digital Consent of Surety ("Agreement to Bond") issued by a surety licensed in the Province of Ontario which states the Bidder has the required bonding in accordance with the Bid Document.

- Bid Bond \* (mandatory)
- Agreement to Bind \* (mandatory)

## **Declarations & Addenda**

### **BIDDER DECLARATIONS**

- 1.** The Bidder, by submitting this Bid offers to enter into a contract with The Corporation of the City of Vaughan (the "City") to perform the Work described in the Bid Documents, do and fulfill everything indicated in the Contract, and complete the Work strictly in accordance with the Contract Documents within the timelines specified therein at the unit and lump sum prices submitted in the Schedule of Prices.
- 2.** The Bidder acknowledges that if this Bid is accepted, the Schedule of Prices will be form part of the Contract.
- 3.** The Bidder acknowledges that the quantities included in the Schedule of Prices are an estimate of the City's requirements and there is no guarantee that the full quantities of products or work will be required or purchased. The Bidder agrees that in the event that Contract requirements exceed the estimates, payment for those item(s) exceeding the estimates will be made at the tendered price(s) for the item(s).
- 4.** The Bidder confirms that all prices submitted are in Canadian funds.
- 5.** The Bidder confirms that it's prices exclude Harmonized Sales Tax ("HST"), but include all other taxes and duties, as well as any reduction in the Contractor's operating costs due to rebating of any sales taxes. The Bidder agrees that all work performed under the Contract will be subject to HST only.
- 6.** The Bidder agrees that this Bid shall remain open for acceptance, and that the prices will remain firm and unchanged, for the irrevocability period specified in the Bid Documents and the City may at, any time within this period, accept this Bid regardless of whether any other Bid has been previously accepted or not.
- 7.** The Bidder acknowledges that if its Bid is accepted and the Bidder fails to properly execute and return the Agreement, or fails to deliver the bonds, proof of insurance and all other documents required to be delivered to the City upon execution of the Contract, as outlined in the Notification of Award, or if the Bidder purports to improperly withdraws its Bid, the City may, at its option, consider that the Bidder has abandoned its Bid and the acceptance by the City shall be null and void and the City may exercise its rights as outline in the Bid Documents and for certainty:
  - (a)** the City may retain the proceeds of the bid deposit as liquidated damages, if applicable; and
  - (b)** the Bidder shall immediately pay to the City the difference between the amount of the Bidder's Bid and any other Bid that the City accepts if the other Bid is for a greater amount and any costs that the City incurs by reason of recalling the Bids; and
  - (c)** in addition, the Bidder shall indemnify and hold harmless the City, its Council members, employees, successors and assigns, from and against all actions, claims, demands, losses, costs, damages, suits or proceedings whatsoever which may be brought against or made upon the City and against all losses, liabilities, judgments, claims, suits, demands or expenses which the City may sustain, suffer or be put to resulting from, or arising out of, the undersigned's unauthorized withdrawal of its Bid or failure to execute the Agreement.
- 8.** The Bidder agrees that if this Bid is accepted, and the Bidder is non-resident in Ontario or Canada, it shall obtain a GST/HST Registration Number prior to commencement of the Work.
- 9.** The Bidder confirms that it has the necessary experience, skill and expertise required to fulfill the obligations, duties, liabilities and responsibilities of the Contractor under the Contract.
- 10.** The Bidder declares that no person, firm or organization, other than the Bidder, has any interest in this Bid or in the proposed contract for which this Bid is submitted.
- 11.** The Bidder declares that this Bid is made without any connection to, comparison of figures against, arrangement with, or knowledge of, any other corporation, firm or person submitting a Bid and is in all respects fair and without collusion or fraud.
- 12.** The Bidder agrees that no member of City Council, or officer or employee of the City is, will be, or has become, interested directly or indirectly, as a contracting party, partner, stockholder, surety or otherwise, in the performance of the Contract, or in any portion of the profit thereof, or any supplies to be used therein, or in any of the monies to be derived therefrom.

**13.** The Bidder confirms that it has examined the location where the Work will be performed, and the Bid Documents, and is fully informed as to the nature of the Work and conditions relating to its performance.

**14.** The Bidder acknowledges that any reports made available by the City were compiled for the use of the City and no responsibility will be assumed by the City for the correctness or completeness of the reports.

**15.** The Bidder agrees to comply with the Occupational Health and Safety Act, RSO 1990, c O.1 and Regulations and all other applicable laws when performing the Work if awarded a Contract.

**16.** The Bidder declares and confirms that it is not engaged in Unresolved Litigation with the City as of the date of submission of this Bid, or has declared such in its Bid.

**17.** The Bidder acknowledges that if selected for Award of this project, the Bidder will provide the City with proof of registration (or complete certification) with COR (TM); ISO45001:2018; CSA Z45001:19; or OHSAS18001:2007, if applicable.

**18.** If the Bidder is an incorporated company, the Bidder represents to the City that:

**(a)** the Bidder is a corporation validly subsisting under the laws of the jurisdiction in which it was incorporated and has full corporate power and capacity to submit this Bid and enter into an Agreement arising from this Bid; and

**(b)** all necessary corporate action has been taken by the Bidder to authorize the execution and delivery of this Bid.

### **Disclosures (Legal and Conflicts of Interest)**

**19.** The Bidder represents that, except for any "**Matters**" specifically disclosed:

**(a)** The Bidder is not currently the subject of legal proceedings by the City of Vaughan in respect of Vaughan's Property Standards By-law or Zoning By-laws.

**(b)** The Bidder has not been convicted by a court of such a matter set out in (a) above where the contravention remains.

**(c)** The Bidder is not a named party in litigation, judicial or arbitral proceedings against or by the City with respect to any other procurement, contract or business transaction.

**(d)** There is no Conflict of Interest with respect to Bidder participating in this procurement process or providing goods or services if awarded a contract hereunder.

The Bidder agrees that the Owner shall be entitled at its sole discretion to reject this Bid as a result of any Matter disclosed above / below or otherwise in existence at time of Bid, and for Bidder's failure to make full, honest, accurate disclosures (if any) at time of Bid submission.

### **20. Privacy and Information**

**(a)** All Bids are subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act, RSO 1990, cM.56 ("MFIPPA").

**(b)** In accordance with MFIPPA, the personal information provided by Bidders in response to this Request for Tender is being collected under the authority of the Municipal Act, 2001, SO 2001, c 25 and will be used exclusively in the selection process.

**(c)** All Bids submitted shall become the property of the City.

**(d)** In accordance with the requirements of MFIPPA, Bidders shall identify in their Bid any specific scientific, technical, commercial, proprietary, or similar confidential information, the disclosure of which could cause them injury. Complete Bids shall not be identified as confidential.

**(e)** Should you have any questions in this regard, please contact the City's Access and Privacy Officer in the Office of the City Clerk at 905-832-8585 extension 8987.

### **21. Acknowledgement of Receipt of Addenda**

**(a)** The Bidder shall acknowledge receipt of addenda by checking the boxes in the "I have reviewed the below addendum and attachments (if applicable)" column below.

(b) Bids that do not contain evidence of receipt of all addenda will be deemed to be "INCOMPLETE" and will not be accepted in the Bidding system website.

(c) The Bidder acknowledges and agrees that the addenda listed below form part of the Bid Documents.

## 22. Bid Irrevocable Period

(a) Unless properly withdrawn, Bids are irrevocable for sixty (60) Working Days, starting on the RFQ Closing Deadline

(b) By submission of a Bid, the Bidder agrees that, should the City issue a Notification of Award to the Bidder within the sixty (60) Working Days from RFQ Closing Deadline, the Bidder will enter into a Contract with the City for the completion of the Work within seven (7) Working Days from the Notification of Award date, failing which, the City may (without notice or liability) enter into a Contract with another Bidder.

☐ The Bidder agrees to be bound by all terms and conditions contained in the Bid Documents, and the person named below has the authority to submit this Bid on behalf of the Bidder and has the authority to bind the Bidder.

The Bidder / Proponent shall declare any potential conflict of interest that could arise from bidding on this bid. Do you have a potential conflict of interest? ☒ **Yes** ☐ **No**

The Bidder / Proponent acknowledges and agrees that the addendum/addenda below form part of the Bid / Proposal Document.

Please check the box in the column "**I have reviewed this addendum**" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
There have not been any addenda issued for this bid.		