



## **CITY OF HAMILTON**

### **REQUEST FOR QUOTATIONS – CONSTRUCTION**

**Whitehern NHS – Kitchenette**

**Closes: February 4<sup>th</sup>, 2025**

**Heritage Resource Management Section  
Tourism and Culture Department**

# **Request for Quotations – Construction**

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Hamilton

## **REQUEST FOR QUOTATIONS - CONSTRUCTION**

### **Whitehern NHS - Kitchenette**

#### **Instructions to All Bidders**

**Notice to prospective bidders: The Instructions set out herein define your obligations and limit your rights. Failure to follow the instructions may result in the disqualification of your Bid. Read carefully.**

#### **1. Communication**

All questions related to this Request for Quotations - Construction (RFQ) or for clarification of completing the Form of Quotation - Construction are to be directed to:

Jarrett Zacharko  
Planning & Economic Development/ Tourism and Culture/ Heritage Resource  
Management  
Tel: 905-379-7371  
E-mail: Jarrett.zacharko@hamilton.ca

#### **2. Accommodations for Bidders with Disabilities**

In accordance with the Ontario Human Rights Code, Ontarians with Disabilities Act, 2001 (ODA) and Accessibility for Ontarians with Disabilities Act, 2005 (AODA), the City will accommodate for a disability, ensuring full and equitable participation throughout the bid process.

If a bidder requires this RFQ in a different format to accommodate a disability, the bidder must contact the contact person named above as soon as possible and in any event prior to the closing time. The RFQ in the different format will be issued only to the requesting bidder and all addenda will be issued in such different format only to the requesting bidder.

#### **3. Request for Quotations – Construction Not Binding**

The process described in this RFQ is not intended to create and shall not create a formal legally binding bidding process and as such, shall not give rise to any legally binding “Contract A” based tendering law duties or give any of the parties a cause of action against the other. However, a binding Contract shall come into effect upon award of the RFQ to the Successful Bidder.

#### **4. Definitions**

Capitalized words and phrases used in this Request for Quotations - Construction shall have the following meanings, unless expressly stated otherwise:

- (a) “Base Bid Price” means the amount stated in the Form of Quotation - Construction by the bidder, for the Work and includes all Provisional Items and Provisional Prices (if any);
- (b) “Bid” means a submission made by a bidder in response to the Request for Quotations – Construction;
- (c) “City” means the City of Hamilton, and where an authority or discretion is conferred upon the City under the Request for Quotations - Construction, means the appropriate official of the City as designated or appointed under its governing by-laws, resolutions or policies from time to time;
- (d) “Contract” means the agreement by purchase order issued by the City, to perform the Work, including the supply and delivery of all labour, goods, services, equipment and incidentals necessary for the proper and satisfactory execution of the Work, and the fulfillment of all other contractual obligations and undertakings, all in accordance with the Request for Quotations - Construction;
- (e) “Contract Price” means the Base Bid Price, as adjusted in accordance with the provisions of the Contract Documents;
- (f) “Consultant” means the architect, engineer or entity licensed to practice in the Province of Ontario that is engaged by the City, or where none is engaged by the City, then shall mean the City;
- (g) “Contract Documents” shall mean those documents set out in section 1 of the General Contract Terms and Conditions to the RFQ;
- (h) “Contractor” shall have the same meaning as Successful Bidder;
- (i) “General Manager” means the City’s General Manager or designate of the relevant department requesting the Work;
- (j) “Lump Sum Price” means an all inclusive one price that applies to a single item, or specific service as set out on the Form of Quotation- Construction;
- (k) “Owner” means the City or the person or entity identified as such in the RFQ, Contract or Contract Documents. The term Owner means Owner or the Owner’s authorized agent or representative as designated by the City, but does not include the Successful Bidder;
- (l) “Provisional Item” means Work or a portion of Work the City may wish to have performed but which may be removed, at no additional cost to the City from the scope of the Work at any time. Where such item is removed, the City will deduct the relevant Provisional Price from the Base Bid Price after the award of the Contract;
- (m) “Provisional Price” means the amount stipulated by the bidder for a Provisional Item which is to be included in the Base Bid Price;
- (n) “Request for Quotations – Construction” or “RFQ” shall mean the Request for Quotations – Construction of which these instructions form a part;
- (o) “Specifications” means all written or printed requirements and standards forming part of the Request for Quotations - Construction and pertaining to the method and the manner of performing the Work or service, to the scope of Work and to the quality of a good to be furnished under the Contract;
- (p) “Successful Bidder” means the bidder to whom the City has awarded the Contract;
- (q) “Unit Price” means any component price as set out on the Form of Quotation – Construction;
- (r) “Value Added Taxes” means such sum as shall be levied upon the Base Bid Price by the Federal or Provincial or Territorial Government and is computed as a percentage of the Base Bid Price and includes the Goods and Services Tax, the

Ontario Retail Sales Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on the bidder by the tax legislation; and

- (s) “Work” means the whole of the Work, the supply and delivery of a good, the delivery and performance of any services, the total construction and related services, material, matters and things required to be completed, supplied, mentioned or referred to in performing or executing the Work in full in accordance with the requirements set out in the Contract Documents and the Specifications.

## **5. Bid Submissions**

Bids are to be submitted via email to the attention of the City Contact named in section 1 of the Instructions to Bidders.

Bids are requested by end of day **February 4<sup>th</sup>, 2025**. Despite the closing date and time for this RFQ, the City reserves the right; to receive a Bid submitted after the closing date should a sufficient number of Bids not be received on or before the closing date.

## **6. Confidentiality**

- (a) A bidder should be aware that all information submitted is being collected under the authority of the *Municipal Act, 2001*, and may be used in the City’s review of Bids and in the Contract that is entered into with the Successful Bidder.
- (b) All such information is also subject to collection in accordance with the Municipal Freedom of Information and Protection of Privacy Act (“MFIPPA”) and Personal Health Information Protection Act (“PHIPA”) and City policies and procedures related to the collection and administration of such records. For greater particularity and direction regarding how issues of confidentiality will be handled and may affect a bidder’s rights, the bidder should reference the City’s policies related to Freedom of Information on the City’s website under the Office of the City Clerk at hamilton.ca.
- (c) After the award of the RFQ, the City will make available upon request, the award information for each compliant Bid received.

## **7. Conflict of Interest**

The City may reject any Bid submitted where a bidder is in contravention of the City’s Procurement Policy with respect to conflict of interest.

## **8. Time Open For Acceptance**

- (a) A Bid shall be irrevocable (i.e. open for acceptance by the City of Hamilton) for a period of 60 calendar days after the date of the submission of the Bid. The City may, at any time within the above 60 calendar day period, accept a Bid whether or not any other Bid had been previously accepted.
- (b) The City reserves the right at any time prior to the award of the RFQ;
  - (i) to withdraw or cancel the RFQ;

- (ii) to extend the time for the submission of Bids; or
- (iii) to modify the RFQ;

by the issuance of an addendum or other notice, and the City shall not be liable for any expense, cost, loss or damage incurred or suffered by any bidder (or any other person) as a result of its so doing.

## **9. Price**

- (a) Where the bidder is instructed to price the Work on a stipulated price basis only, no corrections to the Base Bid Price shall be made by the City. Only extensions, subtotals or totals shall be corrected, where required to be submitted on the Form of Quotation - Construction. No modification to individual prices, either Unit Price or Lump Sum Price, shall be made by the City.
- (b) The Base Bid Price must be quoted on an all-in basis and include the provision and delivery of all necessary labour, goods, materials, warranty and maintenance requirements, services, tools, equipment, supplies, utilities, levies and duties and other incidentals, and for performing all the Work and providing all services contemplated under the Contract.
- (c) The Base Bid Price must be quoted exclusive of Value Added Taxes.

## **10. Award of the Contract**

Subject to the City's reserved rights and privileges set out in this RFQ, the City intends to award the Contract resulting from this RFQ to the compliant Bid with the lowest Base Bid Price.

## **11. Reserved Privileges of the City**

The City shall have the following reserved privileges, which may be exercised or waived in its absolute discretion:

- (a) the City may reject any Bid, the lowest Bid or all Bids, or may cancel the RFQ and require the submission of new Bids;
- (b) where in the view of the City, an insufficient number of Bids have been received in response to this RFQ, the City may publish a further such request (on the same or revised terms from the original request);
- (c) the City reserves the ability to exercise the rights, privileges and authority contained in the Procurement Policy and procedures thereunder with respect to the RFQ. The City of Hamilton Procurement Policy can be found at:

<https://www.hamilton.ca/build-invest-grow/buying-selling-city/bids-and-tenders/procurement-policy-by-law>

## **12. Review of Bids by City**

At its discretion, the City may not consider any Bid that does not substantially comply with the stated requirements of the RFQ. Where a minimum of three Bids are not received, the City reserves the right to request the bidder(s) to correct any deficiency contained in their Bid(s).

### **13. Bidder's Responsibilities**

- (a) The Contract shall only be between the City and the Successful Bidder. Neither the City nor its Consultant shall be construed to have any contractual relationship with the Successful Bidder's employees, subcontractors or material suppliers, or their respective employees or suppliers.
- (b) Each bidder shall be responsible for:
  - (i) ensuring that it has conducted a thorough inspection of the site, has investigated and examined the Request for Quotations - Construction and any other document made available to the bidder by the City and has delivered to the City any request for information in respect of all questions arising out of the foregoing inspections, investigations and examinations in respect to the site;
  - (ii) reviewing all drawings, reports, tests and other documents with respect to site, subsurface or otherwise concealed physical conditions which have been provided or made available to the bidder by the City in relation to the Request for Quotations - Construction and shall be responsible for any site, subsurface or otherwise concealed physical condition set out in or inferable from any such report; and
  - (iii) ensuring that they have conducted a sufficient and appropriate scope of inquiry into the manner, method(s) and magnitude of the Work that is proposed in the Request for Quotations - Construction such that they have established a clear and full understanding of the Work being undertaken and are able to fully appreciate the consequences of that Work in preparing their Bid.
- (c) The cost of any Work which results from encountering any condition that is described in or properly inferable from the information referred to in subsection (b) above shall be included in the bidder's Base Bid Price.

### **14. Notice to Proceed and Start Date**

- (a) The City may issue a written notice to proceed to the Successful Bidder.
- (b) Work shall commence on the start date specified in the notice to proceed, unless otherwise agreed by the Successful Bidder and the City.

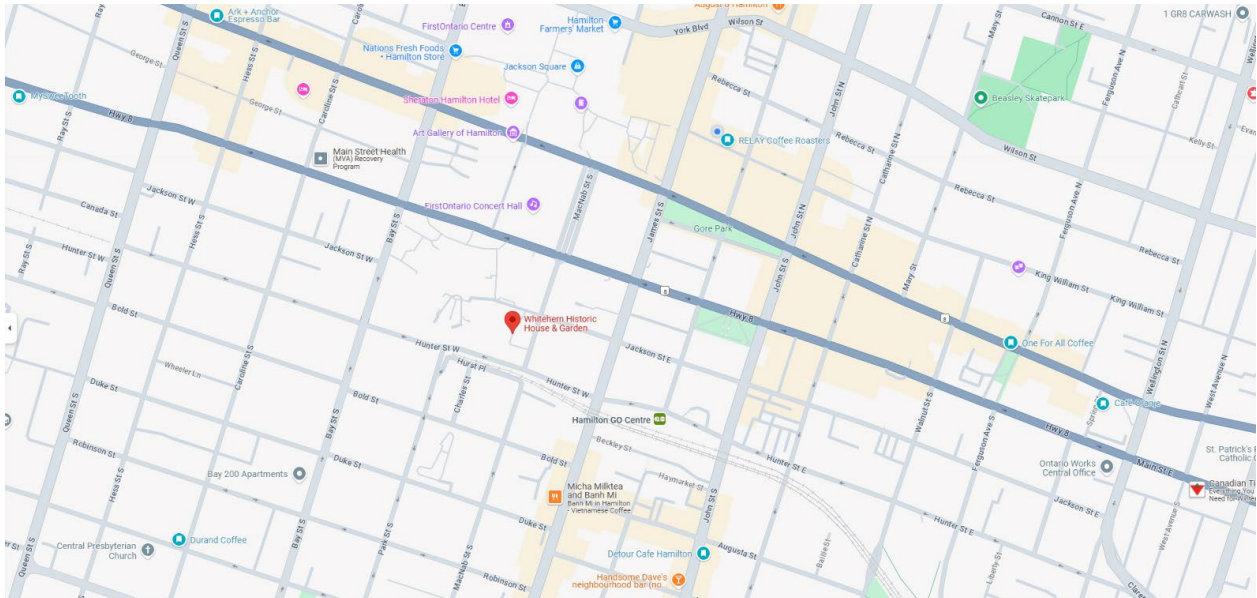
### **15. Optional Site Meeting**

**Location:** 41 Jackson St W, Hamilton, ON L8P 1L3 – **meet in courtyard by stables**

**Date:** January 24<sup>th</sup>, 2025 @ 10:00AM



## MAP LOCATION OF WHITEHERN HISTORIC HOUSE AND GARDEN



### 16. Proposed Timeline (Change to match your particular RFQ)

Event	Anticipated Date
RFQ closing date	February 4 <sup>th</sup> , 2025
Anticipated award date	February 5 <sup>th</sup> , 2025
Commencement of Work	<b>Upon receipt of purchase order (3-4 weeks after award)</b>

### 17. Policies, Regulations and Guidelines

The Successful Bidder shall be aware of and adhere to all of the applicable laws, and City policies set out on the City of Hamilton website at: [hamilton.ca](https://www.hamilton.ca)

### 18. Addenda and Clarification of the Request for Quotations - Construction

- (a) The City may notify prospective bidders of any Addendum by any method it deems appropriate, including email, telephone, fax, courier, hand-delivery or by personal delivery. The need for additional notification and the method(s) to be used shall be in the absolute discretion of the City and notification shall be to the co-ordinates provided by the bidder to the City at the time it obtained the Request for Quotations - Construction from the City.
- (b) It is the sole responsibility of each bidder to ensure that it has received any and all addenda issued by the City. Bidders shall confirm in the Form of Quotation - Construction that they have received, examined and provided for all addenda issued under the Request for Quotations - Construction. Bidders may in writing, seek confirmation of the number of addenda issued under the Request for Quotations - Construction from the City Contact as identified in Item 1.

## **19. Governing Law**

- (a) The City shall not be liable, in any way to the bidder for any delays, or costs associated with delays, in the RFQ process.
- (b) The RFQ process shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

## **20. Specified Products**

Specified product by name, trade or company is regarded as the standard of quality required by the Specifications. **No alternates or substitutes will be considered prior to the award of the Contract.** After the award of the Contract, should the Successful Bidder want the City to approve an alternate or substitute for a specified product, the Successful Bidder shall make such request in writing to the City, which the City may consider, in its sole discretion. No alternate nor substitution for a specified product required by the Specifications shall be made by the Successful Bidder without the prior written approval of the City.

## **21. DECLARATION OF BIDDER COMPLIANCE WITH CITY BY-LAWS**

Should the bidder's declaration in its Form of Quotation – Construction that it is in compliance with all City of Hamilton by-laws be untrue or incorrect, the City shall be entitled at its sole discretion to reject the bidder's Bid.

## FORM OF QUOTATION - CONSTRUCTION

**To:** Jarrett Zacharko  
Planning & Economic Development/ Tourism & Culture/ HRM  
(the "City")

### Whitehern NHS - Kitchenette

Business structure of bidder (check one):

- ☐ corporation – specify where incorporated: \_\_\_\_\_
- ☐ partnership
- ☐ sole proprietorship
- ☐ other – specify: \_\_\_\_\_

Registered business name of bidder (if applicable): \_\_\_\_\_

The City of Hamilton reserves the right to verify the business name and structure of the bidder, whether or not this section is completed, to ensure that the bidder is an existing legal entity. If the bidder is not an existing legal entity, the Bid will be rejected.

**Legal Name of bidder:** \_\_\_\_\_

(this name must exactly match the name on all documentation required of the Successful Bidder eg; insurance certificate, WSIB certificate)

**Business Address:** \_\_\_\_\_

(include street, city, province and postal code)

**Head Office Address:** \_\_\_\_\_

(if different than above, include street, city, province and postal code)

**GST/HST Registration Number:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Fax Number:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

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

## 1. **Submission of Bid**

I/We the undersigned bidder, having examined the locality and site of the Work as well as all the Request for Quotations - Construction Documents, hereby submits a Bid and offers to furnish all material, labour, service, equipment, scaffolding and all incidentals, and to render all services and pay all applicable taxes (other than any Value Added Taxes) and all other charges as specified and/or as necessary for performance and completion of the above referred to Work, all in full accordance with the Request for Quotations - Construction Documents provided to the bidder by the City (receipt of which is hereby acknowledged) for the Base Bid Price of the following:

**Base Bid Price**                      \$ \_\_\_\_\_  
(in figures)

- **Canadian funds**
- **Not including Value Added Taxes**

## 2. **Addenda**

I/We have made any necessary inquiries with respect to addenda issued by the City and have ensured that I/we have received, examined and provided for all addenda to the Request for Quotations - Construction in this Bid.

## 3. **Commencement and Contract**

If awarded the contract, I/we, the bidder, acknowledge and agree:

- (a) to provide all necessary documents required as set forth prior to the commencement of the Work;
- (b) that a binding contract shall come into being upon the award of this Request for Quotations – Construction to the Successful Bidder;
- (c) that the Work must be conducted in a safe manner. Accordingly, I/we confirm that I/we and all subcontractors used on the Work for the City will comply with all applicable laws, regulations and by-laws of Canada, the Province of Ontario and the City of Hamilton, including but not limited to the *Occupational Health and Safety Act*, and all applicable regulations thereunder. Further, without limiting any of the foregoing, I/we confirm that I/we have both a written occupational health and safety policy and program to implement that policy, and that all of our employees, subcontractors and any other persons performing the Work are appropriately trained, licensed and certified, as required to perform the Work;
- (d) that this Bid is irrevocable and is to continue open to acceptance by the City for a period of 60 calendar days after the date of Bid submission.

## 4. **No Collusion / Conflict of Interest**

I/we hereby declare that no person, firm or corporation other than me/us has any interest in this Bid or in the proposed Contract(s) for which this Bid is made. I/we further declare that this Bid is made without any connection to, comparison of figures, arrangements with or knowledge of, any other corporation, firm or persons making a Bid for the same Work and is in all respects fair and without fraud or collusion.

I/we declare that no member of the City of Hamilton, and no officer, employee or agent of the City of Hamilton has or will have an interest indirectly or directly as a contracting party, partner, shareholder, surety or otherwise in the performance of the Contract(s), or in the supply, Work or business to which they relate or in any portion of the profits thereof, or in any of the monies to be derived there from.

## **5. Interpretation**

I/we confirm that I/we have received no oral information, instruction or advice from any officer, employee, agent or consultant of the City which changes the content of this Request for Quotations - Construction and all addenda thereto.

I/we acknowledge and agree that I/we have not assumed that any information concerning our operations, business or personnel or any other information required to be provided by me/us when submitting our Bid is known to the City, regardless of whether such information may be actually previously known to the City or not. Further, I/we acknowledge and agree that all information to be provided by me/us is to be complete and full and in such detail as required.

## **6. Accessibility for Ontarians with Disabilities Act, 2005**

I/We confirm that I/we and all subcontractors used on the Work for the City will comply with all applicable accessibility laws, regulations and by-laws of Canada, the Province of Ontario and the City of Hamilton, including but not limited to the Ontarians with Disabilities Act, 2001 (ODA), the Accessibility for Ontarians with Disabilities Act, 2005 (AODA), Ontario Regulation 429/07 (Accessibility Standards for Customer Service) and Ontario Regulation 191/11 (Integrated Accessibility Standards), throughout the term of the Contract. Without limiting the generality of the foregoing, I/we shall provide to the City, prior to commencing Work, a Statement of Acknowledgement that I/we have read and understand the City's AODA Integrated Accessibility Standards and Customer Service Standard Handbook (the "Handbook"), that I/we have provided the training required by the Handbook, and that I/we will comply with the requirements of the Handbook and applicable accessibility laws, regulations and by-laws.

See City of Hamilton's AODA Integrated Accessibility Standards and Customer Service Standard Handbook at: <https://www.hamilton.ca/people-programs/equity-diversity-inclusion/accessibility-services/accessibility-guidelines-policies#policies-procedures>

## **7. Compliance with City of Hamilton By-Laws**

I/We declare that I/we are in compliance with all municipal by-laws as they pertain to the City of Hamilton in respect of the operation of my/our business and in respect of the Work described in the Request for Quotations - Construction. I/We understand and agree that if this statement is untrue or incorrect, the City of Hamilton shall be entitled at its sole discretion to reject this Bid, or if such untruth or incorrectness comes to light after this Bid is accepted, to terminate or refuse to enter into, as applicable, any Contract and to pursue any other legal recourse the City deems appropriate, and that such untruth or incorrectness shall be a default under the Contract.

## **8. Procurement Policy**

In submitting a Bid in response to the RFQ, I/we agree and acknowledge that I/we have read and will be bound by the terms and conditions of the City's Procurement Policy. I/We understand that the City's Procurement Policy can be viewed on the City's website at: <https://www.hamilton.ca/build-invest-grow/buying-selling-city/bids-and-tenders/procurement-policy-by-law>

per:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name and title)

I have the authority to bind the Bidder

## GENERAL CONTRACT TERMS AND CONDITIONS

In addition to any other terms and conditions contained elsewhere in this RFQ, the following terms and conditions form part of any Contract(s) entered into between the Owner and any Successful Bidder(s) (the “Contractor”) and are deemed to be incorporated into any purchase order(s) issued in connection with this RFQ.

### 1. Contract Documents

The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.

The intent of the Contract Documents is to include the labour, products and services necessary for the performance of the Work in accordance with these documents.

The Contract Documents consist of the award letter, Contractor’s Bid, Contract, these General Contract Terms and Conditions, any Supplementary Contract Terms and Conditions, other documents, or parts thereof, contained in the Specifications which have application during performance of the Contract, the Specifications, shop drawings, schedules, and such other documents as may be identified as Contract Documents, and including amendments thereto made in accordance with provisions of the Contract.

### 2. Document Priority

The order of priority of documents, from highest to lowest, shall be

- change orders and/or change directives
- the Contract between the Owner and the Contractor
- the Form of Quotation as approved and accepted by the Owner
- Addenda, as issued
- Supplementary Contract Terms and Conditions
- the General Contract Terms and Conditions
- Instruction to Bidders
- the Specifications
- Drawings

### 3. Compliance with Laws

The Contractor will be required to comply with all federal, provincial and municipal laws and regulations in providing the goods and services including, without limitation, the *Occupational Health and Safety Act* and the *Workplace Safety and Insurance Act, 1997*, or any successor legislation, as applicable, and to provide to the Owner, upon request, periodic reports confirming such compliance.

The Contractor shall apply and pay for necessary permits or licences required for execution of the Work. **The owner will apply and pay for the building and heritage permits.**

The Contract shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

The Contractor shall comply with all municipal by-laws as they pertain to the City of Hamilton in respect of the operation of the Contractor’s business and the Work. Further,

the Contractor shall, at all times that the Contract is in effect and upon request of the Owner, provide proof of compliance satisfactory to the Owner, at the Contractor's own cost. If the Contractor fails to do any of the foregoing, the Contractor shall be considered to be in default of the Contract the Owner shall be entitled at its sole discretion to terminate the Contract and to pursue any other legal recourse the Owner deems appropriate.

#### **4. Non-Exclusivity**

The awarding of a contract to a Contractor shall not be a guarantee of exclusivity.

#### **5. Confidentiality**

The Contractor shall treat as confidential all information of any kind which comes to the attention of the Contractor in the course of providing the goods and services and shall not disseminate such information for any reason without the express written permission of the Owner.

#### **6. Conflict of Interest**

The Contractor shall disclose to the Owner, in writing, without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest, including the retention of any subcontractor or supplier that is directly or indirectly affiliated with or related to the Contractor.

The Contractor covenants and agrees that it will not hire or retain the services of any employee or previous employee of the Owner where to do so constitutes a breach by such employee or previous employee of the Owner's conflict of interest policy, as it may be amended from time to time.

A breach of this section by the Contractor, any of the subcontractors, or any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall entitle the Owner to terminate the Contract, in addition to any other rights and remedies that the Owner has in the Contract, in law, or in equity.

#### **7. Indemnification**

- (1) The Successful Bidder shall indemnify, defend, and hold the City, including its elected officials, officers, employees, agents, affiliates and representatives (collectively referred to as the "Indemnified Party") harmless against any and all claims, demands, costs (including legal costs on a substantial indemnity basis), penalties, fines, fees, royalties, damages (including indirect, special, remote, and/or consequential damages) and causes of action, including, without limitation, proprietary or personal injury (including death) that arise from, either directly or indirectly, or relate to,
  - (a) the Successful Bidder, its officials, directors, officers, employees, agents, affiliates, partners (general or limited), joint venturers, contractors, Subcontractors, and other representatives (collectively referred to as the "Indemnifying Party"), under this Contract,
    - (i) negligently carrying out any obligation to which it is subject,



- (ii) failing to carry out any obligation to which it is subject,
  - (iii) negligently exercising any right to which it is entitled, or,
  - (iv) exercising any right to which it is entitled in a manner which is inconsistent with the terms and conditions of this Contract,
- or any combination thereof, except to the extent that the same are caused by the negligence or deliberate wrong-doing of the Indemnified Party, or
- (b) any patent, trademark, copyright infringement or other breach of any intellectual property right of any person, for which the Indemnifying Party is responsible.
- (2) The City shall notify the Successful Bidder upon receipt of any such claim or demand that it receives. No settlement shall be made nor consent to judgment given without prior written approval of the Successful Bidder and its insurers, which approval shall not be unreasonably withheld.
  - (3) The rights to indemnity contained herein shall survive the early termination or expiry of this Contract.
  - (4) The City may enforce the rights of indemnity conferred on any Indemnified Party under subsection (1) on their behalf and to the same extent as if they were parties to this Contract.
  - (5) The rights to indemnity provided for in this section shall be deemed to be in addition to any rights with respect to insurance in favour of the Indemnified Party provided in this Contract.

## **8. Rights and Remedies**

Except as expressly provided in the Contract Documents, the duties and obligations imposed by the Contract Documents 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.

No action or failure to act by the Owner or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **9. Protection of Work and Property**

The Contractor shall take all reasonable precautions necessary to protect the Work and the Owner's property (including property adjacent to the place of the work) from damage during performance of the contract and shall make good any damage to the Work or to Owner property caused by the Contractor or any of its subcontractors.

## **10. Use of Premises (Place of the Work)**

The Contractor shall confine construction machinery and equipment, the storage of products, and the operations of workers to the place of the work and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by regulatory requirements, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with products or construction machinery and equipment.

#### **11. Temporary Facilities and Controls**

- a) Operations considered by the Owner to generate vibrations, noise or safety concerns include, but are not limited to, the following: jack hammering; shotblasting; sandblasting; cutting and coring of concrete; and use of powder actuated fasteners.
- b) The Contractor shall do the following when work generating vibration, noise or safety concerns may affect user or user operations: coordinate with the Owner representative; schedule and coordinate hours of work with the Owner; and stop operations generating vibration, noise or safety concerns when instructed verbally or in writing by the Owner. The Contractor shall not resume such operations until authorized by the Owner.

#### **12. Project Meetings**

- a) Prior to the start of any work, a pre-construction meeting shall be held by the Owner and the Contractor to examine and discuss the Work of the Contract.
- b) The Contractors shall schedule regular construction progress meetings, at the site, every two weeks for the duration of the Contract, or as otherwise directed by the Owner.

#### **13. Cleaning**

The Contractor shall keep site free from unsightly or hazardous accumulations of waste material and shall leave site in a neat and tidy condition at completion of Work.

#### **14. Waste Management**

The Contractor shall ensure that Work is completed in an environmentally friendly manner using best practices that mitigate harmful environmental impacts. Waste materials resulting from the Contractor's activities under this contract must be disposed of as per provincially regulated recycling programs should they apply.

#### **15. No Assignment**

The Contractor shall not assign any part of the Contract nor any interest therein without the prior written consent of the Owner, which consent shall not be unreasonably withheld.

#### **16. Subcontractors**

The Contractor shall be solely responsible for the payment of every subcontractor employed, engaged, or retained by it for the purpose of assisting it in the performance of its obligations under the contract. The Contractor shall coordinate the provision of the goods and services by its subcontractors in a manner acceptable to the Owner, and ensure that they comply with all the relevant requirements of the Contract.

The Contractor shall be liable to the Owner for all costs or damages arising from acts, omissions, negligence or willful misconduct of its subcontractors.

### **17. Personnel and Performance**

The Contractor must make available appropriately skilled workers, consultants or subcontractors, as appropriate, and must be able to provide the necessary materials, tools, machinery and supplies to fulfill its obligations under the Contract.

The Contractor shall be responsible for its own staff resources and for the staff resources of any subcontractors and third-party service providers.

The Contractor will ensure that its personnel (including those of approved subcontractors), when using any Owner buildings, premises, equipment, hardware or software shall comply with all security policies, regulations or directives relating to those buildings, premises, equipment, hardware or software.

Personnel assigned by the Contractor to provide the goods and services (including those of approved subcontractors) may, in the sole discretion of the Owner, be required to sign non-disclosure agreement(s) satisfactory to the Owner.

### **18. Supervision**

The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the place of the work while the Work is being performed.

The superintendent shall be satisfactory to the Owner and shall not be changed except for good reason and only then after consultation with the Owner.

The superintendent shall be the Contractor's representative at the place of the work and shall have authority to act on behalf of the Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor.

### **19. Independent Contractor**

The relationship of the Owner and the Contractor is one of owner and independent contractor and not one of employer-employee. Neither is there any intention to create a partnership, joint venture or joint enterprise between the Contractor and the Owner.

### **20. Warranties and Covenants**

The Contractor represents, warrants and covenants to the Owner (and acknowledges that the Owner is relying thereon) that any deliverable resulting from or to be supplied or developed under the Contract will be in accordance with the Owner's functional and technical requirements in the Specifications (as set out in the RFQ) and, if applicable, will function or otherwise perform in accordance with such requirements.

### **21. Defective Work**

Defective work is work that has been rejected by the Owner or the Consultant as failing to conform to the Contract Documents. The Contractor shall promptly correct defective work, as required to conform to the Contract Documents, with no change in Contract Price.

## **22. Reporting of Conflicts, Errors and Discrepancies**

If, during the performance of the Work, the Contractor finds a conflict, error or discrepancy in the Contract Documents, the Contractor shall so report to the Owner in writing at once and, before proceeding with the Work affected thereby, shall obtain a written interpretation or clarification from the Owner.

## **23. Warranty**

Neither the final payment, nor any provisions in the Contract Document shall relieve the Contractor from responsibility for faulty materials or workmanship which appear within a period of one year from the date of acceptance of the Work, or such other warranty periods as may be specified for parts of the Work, and the Contractor shall remedy any defect due thereto and pay for any damage to other work resulting therefrom which appear within such warranty periods.

The Contractor will be responsible for extended warranty periods on equipment and materials as outlined in the Specifications. Warranties shall be provided for all-inclusive replacement including all costs for labour and materials upon failure.

Any extended warranties required beyond the one year warranty period shall be as specified in the Contract Documents. Extended warranties shall be issued by the warrantor to the benefit of the Owner. The Contractor's responsibilities with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor.

## **24. Changes in the Work**

The Owner, without invalidating the Contract, may make changes in the Work consisting of additions, deletions or other modifications, the Contract Price and Contract time being adjusted if required. Changes in the Work shall be authorized by written order from the Owner, such as change orders and change directives.

The Contractor is not entitled to any compensation for loss or loss of anticipated profit as a result of the deletion of any major item or major part of an item.

## **25. Valuation of Changes**

In cases of extra work to be paid for under section 24 the Contractor shall keep and present in such form as the Owner may direct, a correct account of the actual cost of labour, materials, and equipment, together with vouchers. The Owner shall certify as to the amount due the Contractor.

On extra work authorized by the Owner, and to be paid for under section 24, the allowance for overhead and profit shall be based on the following schedule:

The cost to the Owner shall be the actual cost of the extra work plus a percentage covering overhead and profit, after all credits included in the change resulting from the extra work have been deducted. An allowance covering overhead and profit shall be calculated as follows:

- (1) 10% on Work performed by the Contractor's own forces,
- (2) 5% on Work performed by subcontractors, and
- (3) 5% on products supplied by suppliers.

No other overhead charges will be permitted.

If a change results in a decrease in cost, the amount of credit to be given to the Owner by the Contractor shall be the amount of the actual decrease without overhead and profit.

If a change involves both extras and credits and results in an increase in cost, overhead and profit shall be allowed on the increase only.

The Contractor shall include in its proposal for change a statement as to the effect the proposed change will have on the Contract time.

## **26. Contingency Allowance**

The Contractor shall have no right to draw upon any contingency allowance for payment unless specifically authorized to do so by way of change order.

In the absence of a contingency allowance being shown on the Contract Documents, the Contractor is not to assume that there is one in place. The disclosure of any contingency allowances is at the discretion of the Owner.

## **27. Contract Time**

Time and all time limits stated in the Contract Documents are of the essence of the Contract. Contractor shall perform work expeditiously and with adequate forces to complete Work of the Contract within time specified in the contract.

## **28. Construction Schedule**

The Contractor shall:

- a) prior to the first application for payment, prepare and submit to the Owner for its review and acceptance, a construction schedule that indicates the timing of the activities of the Work and provides sufficient detail of the critical events and their inter-relationship to demonstrate the Work will be performed in conformity with the Contract Time and in accordance with the Contract Documents. The Contractor shall employ construction scheduling software, where required by the Specifications, that permits the progress of the Work to be monitored in relation to the critical path established in the schedule. The Contractor shall provide the schedule and any successor or revised schedules in both electronic format and paper copy. Once accepted by the Owner and the Consultant, the construction schedule submitted by the Contractor shall become the baseline construction schedule;
- b) provide the expertise and resources, such resources including manpower and equipment, as are necessary to maintain progress under the accepted baseline construction schedule or any successor or revised schedule accepted by the Owner; and
- c) monitor the progress of the Work on a weekly basis relative to the baseline construction schedule, or any successor or revised schedule accepted by the Owner, update the schedule on a monthly basis and advise the Owner in writing of any variation from the baseline or slippage in the schedule.

## **29. Ownership of Project Documentation**

All information, data, plans, specifications, reports, estimates, summaries, photographs and all other documentation prepared by the Contractor in the connection with the provision of the goods and services under the Contract, whether they be in draft or final format, shall be the property of the Owner.

### **30. Submittals**

Prior to the start of work, the Contractor shall submit a schedule indicating scheduled start and completion dates for each construction activity. The Contractor shall also submit three copies of shop drawings and product data required by the Contract Documents and for such other items as the Owner may reasonably request. The Contractor shall not proceed with work until the related submission has been reviewed and accepted by the Owner and the Consultant (if applicable).

### **31. Shop Drawings**

As the Work progresses, the Contractor shall keep a complete and accurate record of all changes or deviations from the Contract Documents and shop drawings, indicating the Work as actually installed. At the completion of the Work, the Contractor shall certify by endorsement thereof, that each of the revised prints of the Drawings and Specifications are complete and accurate. Prior to the Contractor's application for final payment, the record Drawings and Specifications, arranged in proper order, indexed and endorsed, and in the following form, shall be delivered to the Owner, namely:

- a) one complete set of reproducible final versions of the As-Built Drawings; and
- b) the final version of the As-Built Drawings stored on AutoCAD (latest version).

### **32. Contract Close-Out**

- a) The Contractor shall submit project record drawings indicating deviations from Contract Documents resulting from changed site conditions and changes ordered by the Owner.
- b) The Contractor shall submit three copies of operation and maintenance data required by the Contract Documents and for such other items as the Owner may reasonably request.
- c) The Contractor shall leave maintenance materials required by the Contract Documents where directed by the Owner and shall clearly label all items.

### **33. Termination Provisions**

Upon giving the Contractor not less than 30 days' prior written notice, the Owner may, at any time and without cause, cancel the Contract, in whole or in part. In the event of such cancellation, the Owner shall not incur any liability to the Contractor apart from the payment for the goods, material, articles, equipment, work or services that have been satisfactorily delivered or performed by the Contractor at the time of cancellation.

Failure of the Contractor to perform its obligations under the Contract shall entitle the Owner to terminate the Contract upon 10 calendar days' written notice to the Contractor if a breach which is remediable is not rectified in that time. In the event of such termination, the Owner shall not incur any liability to the Contractor apart from the payment for the goods, material, articles, equipment, work or services that have been satisfactorily delivered or performed by the Contractor at the time of termination.

All rights and remedies of the Owner for any breach of the Contractor's obligations under the contract shall be cumulative and not exclusive or mutually exclusive

alternatives and may be exercised singularly, jointly or in combination and shall not be deemed to be in exclusion of any other rights or remedies available to the Owner under the contract or otherwise at law.

No delay or omission by the Owner in exercising any right or remedy shall operate as a waiver of them or of any other right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy.

### **34. Application for Progress Payment**

Applications for payment shall be made in writing to the Owner to the email address given by the Owner for this purpose at the commencement of the Contract.

The Contractor must provide with each application after the first, a Statutory Declaration (latest CCDC 9A form), certifying that all accounts for all subcontract, construction machinery and equipment, materials, products, labour and other indebtedness which may have been incurred by the Contractor and for which the Owner might in any way be held responsible have been paid in full or will be paid with the proceeds from such application for payment, except for amounts properly retained as holdback or as an identified amount in dispute.

After the first application for payment and with each subsequent application for payment the Contractor shall submit evidence of compliance with the applicable worker's compensation legislation at the place of the work, including payments due thereunder.

Each application for payment shall meet the requirements of a "proper invoice" as defined in the *Construction Act* if the Contractor includes the following:

- a statement of work performed and values, which statement shall include the Contract number, project name and purchase order number;
- breakdown of approved change orders and percentage completed of each;
- a Statutory Declaration as required above; and
- any other requirement that the *Construction Act* prescribes for a proper invoice.

Subject to the *Construction Act* and all other applicable laws, the Owner will pay to the Contractor ninety percent (90%) of the amount shown on such certificates, less previous payments, less the amount of any liens or any written notice of a lien of which the Owner has notice.

All progress payments are not conclusive as to the value or quality of Work performed, and are subject to reopening and readjustment, until and including the date that the Owner releases the holdback for finishing work under the *Construction Act*.

The Contractor shall not submit an application for payment between the period of December 14 to January 4, inclusive, in any year. The Contractor shall not submit an application for payment during any other reasonable period which the Owner advises the Contractor in writing due to downtime for payment system upgrades.

Notice of non-payment by the Owner shall be made to the Contractor to the email address set out on the Form of Quotation – Construction.

The determination of a matter by an adjudicator under the *Construction Act* may be submitted to the courts at any time.

### **35. Final Payment**

Applications for progress payments shall be made in writing to the Owner to the email address given by the Owner for this purpose at the commencement of the Contract.

When the Contractor considers that the Work is completed, the Contractor shall submit an application for final payment. The Contractor's application for final payment shall be accompanied by any documents or materials not yet delivered pursuant to the Contract Documents. The Work shall be deemed not to be performed until all of the aforementioned documents have been delivered.

Application for final payment shall meet the requirements of a "proper invoice" as set out in section 34.

Prior to the release of the holdback for finishing work under the *Construction Act*, the Contractor shall submit: Contractor's written request for release of the holdback, including a statement that no written notices of lien have been received by it; a Statutory Declaration (latest CCDC 9A form); and a final Workplace Safety & Insurance Board Clearance Certificate.

Notice of non-payment by the Owner shall be made to the Contractor to the email address set out on the Form of Quotation – Construction.

### **36. Payment by EFT**

The term "EFT" refers to electronic funds transfer and may also include the payment information transfer.

- a) All payments by the Owner under the Contract shall be made by EFT as a direct deposit to a Canadian chartered bank, save and except where:
  - .1 the funds payable under the terms of the Contract are only payable in a single lump sum and not payable by installments or progress payments or otherwise than a single lump sum payment; or
  - .2 the Owner is unable to release one or more payments by EFT, in which case the Contractor agrees to either:
    - (1) accept payment by cheque or some other mutually agreeable method of payment; or
    - (2) request the Owner to extend payment due dates until such time as the Owner makes payment by EFT, subject to paragraph (c).
- b) Mandatory Submission of the Contractor's EFT Information
  - .1 The Contractor is required to provide the Owner with the information required for the Owner to make payment by EFT. A purchase order may not be issued to the Contractor without this requisite information.
  - .2 In the event that the EFT information changes, the Contractor shall be responsible for providing forthwith the updated information to the Owner.
  - .3 Where the Contractor provides changes to the EFT information more than once in a calendar year, the Contractor shall also pay any fee approved by the Council of the City of Hamilton for each additional change.
- c) Suspension of Payment
  - .1 The Owner is not required to make any payment under the Contract until its designated officer has received the correct EFT payment information from the



Contractor. Until receipt of the correct EFT information, any invoice or contract payment request shall be deemed not to be a proper invoice or valid request for the purpose of payment under the Contract. No interest or any other manner of claim whatsoever for delayed or non-payment shall be permitted as a result of incorrect EFT information or improper delivery of EFT payment information.

- .2 If the EFT information changes after submission of correct EFT information, the Owner shall have 30 calendar days within which to update the changed EFT information after its receipt by the designated officer to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by the Owner's payment office. If such suspension would result in a late payment under any payment terms of the Contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

d) Liability for Uncompleted or Erroneous Transfers

- .1 If an uncompleted or erroneous transfer occurs because the Owner used the Contractor's EFT information incorrectly, the Owner remains responsible for making a correct payment.
- .2 If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 calendar days of the Owner's release of the EFT payment transaction instruction, and
- .3 Funds are no longer under the control of the Owner's payment office, the Owner is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
- .4 If the funds remain under the control of the Owner's payment office, the Owner shall not make payment and the provisions of paragraph (c) shall apply.

e) EFT and Timely Payment

A payment shall be deemed to have been made in a timely manner in accordance with the payment terms of the Contract if, in the Owner's EFT payment transaction instruction released to its bank, the date specified for settlement of the payment is on or before the last date for due payment under the terms of the Contract, provided the specified payment date is a valid date when the Owner's bank is open for business.

f) Liability for Change of EFT Information by Financial Agent

The Owner is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.

### **37. Construction Liens**

(a) In the event that a construction lien arising from the performance of the work is claimed, the Contractor shall, if requested, undertake the Owner's defence of any subsequent lawsuit commenced in respect of the lien at the Contractor's sole expense.

(b) Without limiting any of the foregoing, the Contractor shall indemnify the Owner for all costs (including, without limitation, legal fees on a solicitor and client basis) it may incur in connection with the claim for lien or subsequent lawsuit brought in connection with the lien, or in connection with any other claim or lawsuit brought against the Owner by any person that provided services or materials to the project lands which constituted a part of the work.

(c) This section does not apply to construction liens claimed by the Contractor.

### **38. Occupational Health and Safety**

- a) The Contractor shall comply with all federal, provincial or municipal occupational health and safety legislative requirements, including, and without limitation, the Occupational Health and Safety Act, R.S.O., 1990 c.0.1 and all regulations thereunder, as amended from time to time (collectively the "OHSA").
- b) Nothing in this section shall be construed as making the Owner the "employer" (as defined in the OHSA) of any workers employed or engaged by the Contractor for the Work, either instead of or jointly with the Contractor.
- c) The Contractor agrees that it will ensure that all subcontractors engaged by it are qualified to perform the Work and that the employees of subcontractors are trained in the health and safety hazards expected to be encountered in the Work.
- d) The Contractor acknowledges and represents that:
  - i) The workers employed to carry out the Work have been provided with training in the hazards of the Work to be performed and possess the knowledge and skills to allow them to work safely;
  - ii) The Contractor has provided, and will provide during the course of the agreement, all necessary personal protective equipment for the protection of workers;
  - iii) The Contractor's supervisory employees are competent, as defined in the OHSA, and will carry out their duties in a diligent and responsible manner with due consideration for the health and safety of workers;
  - iv) The Contractor has in place an occupational health and safety policy in accordance with the OHSA; and
  - v) The Contractor has a process in place to ensure that health and safety issues are identified and addressed and a process in place for reporting work-related injuries and illnesses.
- e) The Contractor shall provide, at the request of the General Manager or designate, the following as proof of the representations made in paragraph d(i) and d(iv):
  - i) documentation regarding the training programs provided or to be provided during the Work (i.e. types of training, frequency of training and re-training); and
  - ii) the occupational health and safety policy.
- f) The Contractor shall immediately advise the General Manager or designate in the event of any of the following:
  - i) A critical injury that arises out of Work that is the subject of the Contract;

- ii) An order(s) is issued to the Contractor by the Ministry of Labour arising out of the Work that is the subject of this agreement;
- iii) A charge is laid or a conviction is entered arising out of the Work that is the subject of the Contract, including but not limited to a charge or conviction under the OHSA, the Criminal Code, R.S.C 1985, c. C-46, as amended and the Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sched. A, as amended.
- iv) The Contractor shall be responsible for any delay in the progress of the Work as a result of any violation or alleged violation of any federal, provincial or municipal health and safety requirement by the Contractor, it being understood that no such delay shall be a force majeure or uncontrollable circumstance for the purposes of extending the time for performance of the Work or entitling the Contractor to additional compensation, and the Contractor shall take all necessary steps to avoid delay in the final completion of the Work without additional cost to the Owner.
- g) The Contractor shall be solely responsible for construction safety at the place of the work and for compliance with the rules, regulations, and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work.

### **39. Toxic and Hazardous Substances**

- a) If the Contractor:
  - .1 encounters toxic or hazardous substances at the place of the work, or
  - .2 has reasonable grounds to believe that toxic or hazardous substances are present at the place of work, which were not brought to the place of work by the Contractor or anyone whom the Contractor is responsible and which were not disclosed by the Owner, the Contractor shall
  - .3 take all necessary steps, including stopping the Work, to ensure that no person's exposure exceeds any applicable time weighted levels prescribed by applicable law, and
  - .4 immediately report the situation to the Owner and the Consultant.
- b) If the Owner and Contractor do not agree on the existence, significance of, or whether the toxic or hazardous substances were brought onto the place of the work by the Contractor or anyone for whom the Contractor is responsible, or whether any toxic or hazardous substances or materials already at the place of the work (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the Contractor or anyone for whom the Contractor is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the Owner or others, the Owner shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the Owner and the Contractor.
- c) If the Owner and Contractor agree or if the expert referred to in paragraph (b)

determines that the toxic or hazardous substances were brought onto the place of the work by the Contractor or anyone for whom the Contractor is responsible OR that any toxic or hazardous substances or materials already at the place of the work (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the Contractor or anyone for whom the Contractor is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the Owner or others, the Contractor shall promptly at the Contractor's own expense:

- .1 take all necessary steps, in accordance with applicable legislation in force at the place of the work, to safely remove and dispose the toxic or hazardous substances;
- .2 make good any damage to the work, the Owner's property or property adjacent to the place of the work;
- .3 reimburse the Owner for reasonable costs incurred under paragraph (a) and as a result of the delay; and
- .4 indemnify the Owner as required by this Contract.

#### **40. Workplace Safety and Insurance Board**

- a) The Contractor shall be in good standing with the Workplace Safety and Insurance Board ("WSIB") throughout the term of the Contract. If requested by the General Manager or designate, the Contractor shall produce certificates issued by the WSIB to the effect that they have paid in full their assessment based on a true statement of the amount of payrolls. If the Contractor is exempt from WSIB coverage, the Contractor shall provide evidence of such exemption satisfactory to the General Manager or designate;  
and
- b) The Contractor shall provide such evidence prior to commencing the Work, subsequently with each application for progress payment, and at any time during the term of the Contract when requested by the General Manager or designate.

#### **41. Ontarians with Disabilities Act, 2001 (ODA) and the Accessibility for Ontarians with Disabilities Act, 2005 (AODA)**

The Successful Bidder shall ensure that all of its employees, agents, volunteers and any subcontractors comply with all applicable accessibility laws, regulations and by-laws, including but not limited to the Ontarians with Disabilities Act, 2001 (ODA), the Accessibility for Ontarians with Disabilities Act, 2005 (AODA), Ontario Regulation 429/07 (Accessibility Standards for Customer Service) and Ontario Regulation 191/11 (Integrated Accessibility Standards), during the term of the Contract.

Without limiting the generality of the foregoing, the Successful Bidder shall ensure that all of its employees, agents, volunteers and any subcontractors who, as part of the Contract:

- (a) deal with members of the public or other third parties, or
- (b) participate in developing policies, practices and procedures governing the provision of goods or services to members of the public or other third parties,

receive training about the provision of its goods or services to persons with disabilities. The Successful Bidder shall ensure that such training includes, without limitation, a review of the purposes of the AODA and the requirements of Ontario Regulation 429/07.

Prior to commencing Work, the Successful Bidder shall provide a Statement of Acknowledgement to the City that it has read and understands the City's AODA Integrated Accessibility Standards and Customer Service Standard Handbook; that it has provided the training required by said Handbook; and that it will comply with the requirements of said Handbook and applicable accessibility laws, regulations and by-laws.

The City reserves the right to inspect the Successful Bidder's training records relating to Ontario Regulation 429/07 and Ontario Regulation 191/11, which must describe its training policy and summarize the training, including to whom the training has been given and when the training was given. The City also reserves the right to require the Successful Bidder to amend its training policies, practices and procedures if the City deems the training is not compliant with the requirements of Ontario Regulation 429/07 and Ontario Regulation 191/11.

See City of Hamilton's AODA Integrated Accessibility Standards and Customer Service Standard Handbook at:

<https://www.hamilton.ca/people-programs/equity-diversity-inclusion/accessibility-services/accessibility-guidelines-policies#policies-procedures>

## **42. Set-off**

- (a) The parties agree that the Owner has the contractual right to set-off against any amounts owing by the Owner to the Contractor under this Contract, any amount owed to the Owner by the Contractor, whether such amount arises from this Contract or under any other contract between the Owner and the Contractor, irrespective of whether or not those contracts are related or arise at equity or law. This right of set-off shall be subject to the Construction Act, as applicable.
- (b) The costs to the Owner of sending or publishing any notice or document required by the Construction Act shall constitute damages to the Owner and may be retained by the Owner in accordance with its set-off rights.

## **43. Notices**

All notices, requests, demands and other communications under the Contract shall be in writing and shall be deemed to have been given:

- (a) on the day of delivery when delivered by hand;
- (b) if transmitted by facsimile or email (during the transmission of which no indication of failure of receipt is communicated to the sender), on the day of sending if sent during regular business hours (Monday to Friday, 8:30 a.m. to 4:30 p.m.), or on the next business day if sent after normal business hours or if sent on a day when the administrative offices of the Owner are closed; or

- (c) on the fifth business day after posting, if sent, during normal postal conditions, by registered or certified mail to the party for which it is intended and addressed as follows:

to the Contractor at the address set out on the Form of Quotation - Construction

to the Owner at the address given by the Owner at the commencement of the Contract.

Each party may change any such address by giving five days' prior written notice of such change to the other party in the manner prescribed above.

## SUPPLEMENTARY CONTRACT TERMS AND CONDITIONS

In addition to any other terms and conditions contained elsewhere in this RFQ, the following terms and conditions form part of any contract(s) entered into between the Owner and any Successful Bidder(s) (the “Contractor”) and are deemed to be incorporated into any purchase order(s) issued in connection with this RFQ.

### 1. Insurance

Throughout the term of the Contract the Contractor shall obtain and maintain at its own expense, including the cost of any applicable deductible, the following policies of insurance:

- a) Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily and personal injury liability, property damage, products liability, completed operations liability, owners & contractors protective liability, blanket contractual liability, premises liability, broad form property damage, employer's liability and voluntary compensation and contingent employer's liability coverage, having an inclusive limit of not less than \$5,000,000 per occurrence. If a policy has an aggregate limit, the amount of the aggregate shall be double the required per occurrence limit. Coverage shall be included for injury/loss/damage, due to pollution arising from “hostile fires”. The policy shall be endorsed to include the City of Hamilton as additional insured; and
- b) Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than) \$2,000,000 per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Contractor for the provision of services.
- (c) Non-Owned Automobile Liability Insurance in standard form having an inclusive limit of not less than \$2,000,000 per occurrence in respect of vehicles not owned by the Contractor, that are used or operated on its behalf for the provision of services under the Contract;

The Contractor shall deliver to the Owner certificates of insurance originally signed by authorized insurance representatives, or, if required by the Owner, certified copies of such policies at the time of execution of the Contract or in any event prior to commencing the Work, and thereafter during the term of the Contract no later than 20 business days prior to the renewal date of each applicable policy. Such policies shall also require at least 30 days' written prior notice of any change to or amendment, cancellation, expiration or termination of the coverage under such policies to be given to the Owner.

Certificate Holder will be addressed as the City of Hamilton, and certificates shall be mailed to City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5 Attention: **Heritage Project Specialist, Tourism and Culture, Planning and Economic Development.**

### 2. Construction Schedule

The Work under this Contract must be substantially performed by **September 1<sup>st</sup>, 2025**

Due to the time constraints regarding the Work, the Contractor shall maintain rigorous control of all elements of the Work for which the deadlines are indicated in the Contract Documents.

## **SPECIFICATIONS**

Please find attached the following documents pertaining to this Request for Quotation:

1. Kitchenette Specifications Full.docx
2. Kitchenette AME Permit – Tender.pdf