



**Cochrane District
Services Board**

**Conseil des services
du district de Cochrane**

REQUEST FOR PROPOSAL (RFP)

**Provision of Services and Supports at the Temporary
Encampment Complex (H.O.P.E)**

Closes: 2:00 pm (EST) Friday June 6, 2025

***** EMAIL BID SUBMISSIONS ONLY *****

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COMMUNICATIONS NOTICE

All questions related to this Request for Proposal (RFP) or for clarification on completing the Form of Bid shall be submitted via email.

The CDSB reserves the right to extend the deadline for questions if required regarding this RFP.

Written answers or clarifications to issues of substance shall be shared with all Bidders and issued as part of the RFP in the form of an Addendum. **All Bidders are advised that any Addenda issued will only be sent via email to Bidders that have registered with the CDSB by emailing:**

communications@CDSB.care

It is the sole responsibility of each Bidder to check with CDSB for any and all Addenda that have been issued for this Request` for Proposal.

Request for Proposal (RFP)

Cochrane District Services Board

Project Title: H.O.P.E Site Operations and Support Services

Project Location: Encampment Location at OGDEN MCP8291 TC603 PCL
18708SEC Vacant land off of Pine Street, Roll Number: 627010060213000000

PART I – PROJECT

A. PURPOSE OF THE RFP

The Cochrane District Services Board, (hereinafter referred to as “CDSB”), is issuing this Request for Proposal, (hereinafter referred to as “RFP”), to select a qualified service provider(s) to provide the client and operating services and supports at the new Pine Street Encampment location/ Shelter expansion site in Timmins, Ontario, (hereinafter referred to as the “Contract”, “Work” or “Project”). The CDSB and the City of Timmins desire innovative, cost-effective, culturally reflective, and sustainable solutions.

Through this RFP, the Cochrane District Services Board (CDSB) is seeking proposals from qualified organizations to support the site operations of an encampment location at the specified vacant land off of Pine Street. This project aims to provide essential services and ensure the safety and well-being of individuals residing in the encampment. Selection will be based on the material submitted, interviews and presentations (as deemed necessary) and will take into consideration the evaluation criteria and weighting as outlined in section E of this RFP document.

B. PLANNING ANTECEDENTS TO THE PROJECT

Timmins is served by one co-ed emergency shelter, which has continued to experience growing occupancy pressures since its operation began in 2019. Currently, the shelter operates with 63 available beds, operated in a congregate or group setting. Throughout the winter months occupancy ranged from 77% - 111%, with a continued trend of increased demand. In partnership with the City of Timmins and other service partners, the emergency shelter is the identified Cold Weather Alert location for those in need.

Through the CDSB, the Cochrane District System of Care (SoC) operates the Cochrane District By-Name List, a list that provides a real-time snapshot of homelessness across the District, based on individuals who register and consent. As of February 28th, 2025, there were 409 individuals actively experiencing homelessness in the Cochrane District, with 69% of those individuals residing in

Timmins. Within Timmins, 71% of those experiencing homelessness are experiencing chronic homelessness. This project aligns with the CDSB 2023 OrgCode report: An Updated Plan and Investment Strategy for Homelessness Prevention Program Funding in the Cochrane DSSAB which speaks to rapidly requiring 40 units in the City of Timmins.

In early 2025, at the direction of the City of Timmins, a business case and application were submitted to the Ministry of Municipal Affairs and Housing by CDSB for the H.O.P.E. (Housing, Outreach, Protection, and Engagement) Temporary Shelter and Encampment Restoration Initiative. In partnership with the City of Timmins, the business case outlined the development of a minimum 40-unit temporary shelter facility, providing accessible, safe shelter spaces through prefabricated and/or modular housing options. The application was successful and, as a collaborative partner, the City of Timmins has approved the allocation of a city-owned property as a site for the Project. These proposed units will offer an immediate solution to the growing demand for homeless accommodations in Timmins, creating a safe, dignified, and culturally appropriate alternative to living in encampments.

C. SCOPE OF SERVICES

Although only one option will be selected for the operation of the site, bidders may devise a service and support proposal for any one or more options outlined below, with each proposal detailing specifics related to operational strategies as well as the supports and services for client including but not limited to health, wellness, onsite safety, site access safety, cultural integration, services delivered, community relations, and metrics for success. Additional supporting information shall be attached as an appendix and address each option bid.

- **Option 1:** Site Security, Assignment of Rooms, and Outreach on site
- **Option 2:** Site Security, Assignment of Rooms, Outreach on site, and Access to Partnering Services (off or onsite)
- **Option 3:** Site Security, Assignment of rooms, Outreach on site, Access to Partnering Services (off and onsite), with full homeless shelter support, including the provision of meals
- **Option 4:** No bid at this time - please provide the rationale

Note: The selected option, or no option at all, will be at the discretion of the CDSB Board, together with the support of the City of Timmins.

D. SCOPE OF WORK

The selected organization will be responsible for the following tasks for the option(s) bid and awarded (Clarify or add details as needed under each section):

1. **Site Management and Operations:** Oversee daily operations.
 - 1.1. **Safety and Security Onsite:** What measures will be implemented to ensure the safety of clients, staff, contract personnel, and surveillance systems? How will the service provider support safety onsite, including but not limited to safety from snow removal, addressing/removal of ice, site inspections, maintaining clear exits, and safety from wildlife, vigilantes, or visitors that pose a threat to the client or others? Describe the relationship to community relations.
 - 1.2. **Safety and Security to and from the Site:** What measures will ensure the safety of clients, staff, and contract personnel to safely access the site location and leave the site location, given its distance from the downtown core? Ideas might include, for example, the provision of a down-town drop-in and shuttle service to the Pine Street location. How will the service provider assist clients in safely accessing the site? What service ensures safe travel from the city core to the Pine Street location? What support will be offered to those who choose not to use the service to access the location? Will an outreach vehicle/ shuttle be required to support this work?
 - 1.3. **Sanitation and Hygiene:** Outline the proposed process and provision of providing regular checks and cleaning of sanitation facilities and public spaces (inside and throughout the grounds), which may include providing portable toilets, sharp collection and disposal, handwashing stations, and waste disposal services, including household garbage and arranging for filling of potable water supply/ pumping and removal of collected wastewater, maintenance of potable water lines, wastewater systems.
 - 1.4. **Community Relations:** Describe how you will develop and strengthen community relations through various engagement opportunities. The bidder may, for example, outline how they might facilitate community meetings and outreach programs and describe efforts to communicate with and hear from neighbours to address residents' needs and concerns. What efforts will be made to support effective neighbourhood liaison and communication efforts? What outcomes are expected because of these efforts? Ideas might include but are not limited to, a website, pamphlets, check-ins with City/CDSB (communications plan), social media, visibility efforts (outreach), bulletins, office locations and hours, group communications, newsletters, and strategies for enhancing relationships.
 - 1.5. **Compliance:** Describe how you will ensure adherence to all relevant regulations and standards. Bidders will outline details related to how compliance will be met and the process to ensure continued compliance with funders, Ministries, shelter standards, laws, regulations, and public accountability processes. Further, describe how you, as a service provider, would ensure privacy related to clients?
 - 1.6. **Sustainability:** Describe your plans for the sustainability of the project, outlining goals and plans to source and secure funding. Outline contributions in kind, other contributors, and

resources that will be leveraged for the long-term sustainability of the project, reduction in operating costs, or contributing factors. Outline the process for the engagement, development, and sharing of a 3-year strategic operating plan that supports continuous improvement of the site's operations and management.

- 1.7. **Staffing:** Describe the proposed staffing structure per option bid, including a brief position description, roles, responsibilities, and the number of each role to support the work.
2. **Service Delivery:** What services and supports will be provided at the Pine Street location and/or combined with other locations offered as part of each option bid? This section must also address:
 - 2.1. **Cultural Integration:** What cultural integration support and service will be offered to clients at the site and/or at an offsite location? Details might include but are not limited to, traditional services, cultural services (such as smudging), wrap-around services, land-based healing opportunities, training and learning opportunities, and developing comfort through engagement and opportunities. What partnerships, roles, and positions will support this work?
 - 2.2. **Health Services:** How will the bidder coordinate with local health providers to offer medical services, mental health support, and substance abuse counselling? Provide details on how the service will support the health and wellness of clients using the space/property. Outline details related to accessible onsite or offsite facilities/supports for medical treatment and safety measures that will be established to support this work. Discuss partnering agencies providing health support and what roles and positions will support this work. Identify any specific onsite space requirements required as well as the details related to how your operations will support a harm reduction mindset integrated as part of the operations and service delivery.
 - 2.3. **Service Delivery Specifics:** Describe service delivery details reflecting trauma-informed and Person-centered services, including specifics related to your service delivery model and the Strategic Operating Plan. How will the service provider and partner agencies remain informed through continuous learning and utilize that learning to enhance the service delivery model? How will new knowledge feed into service delivery? Outline strategies to support client stabilization and wellness as a critical and core element of service delivery.
 - 2.4. **Partnerships:** describe core partnerships supporting the service delivery, clarifying roles and responsibilities embedded as part of the option and project bid. Clarify referral processes, services, supports, in-kind contributions, communication strategies, continuous improvement processes, other areas of focus related to partnership enhancements, and other details related to onsite services through established partnerships
3. **Metrics of Success:** How will success for site management/ operations and service delivery be measured? What are the expected outcomes, and by which timeline over the three-year period? What is your plan for measuring qualitative and quantitative metrics to assess client

experience, satisfaction, and service delivery success, including the following: Number of People served, number of clients served, demographics, length of stay, sources of entry, diversion to other services, challenges faced, and successes achieved? Outline plans for monthly, quarterly and annual reporting (provide templates if available) and how the reporting will inform process/ improvements.

4. **Other:** Bidders may specify and outline additional aspects unique to their bid that provide services and support to clients, CDSB, or the community.

E. PROPOSAL REQUIREMENTS AND EVALUATION CRITERIA WEIGHTING:

Interested organizations must submit a proposal **for each option (1-3 – with Option 4 being no other details other than rationale for not bidding)** that includes the following:

1. **Executive Summary (10%):** Brief overview of the bidding organization and qualifications and how the organization's values and vision align with the CDSB values and vision.
Our Vision: To further develop a District service environment that is responsive to community needs and which values the individuality of its residents
Our Values: Respect – Communication – Growth – Collaboration
2. **Project Plan (40%):** Detailed plan outlining how the organization will execute the scope of work for each service scope option being bid using the categories outlined in Section D above. The plan should also include, for example, timelines for staffing, training, and setting up and operating the site. Outline how service delivery might evolve over time. The phased approach to service delivery (if applicable).
 - 2.1. **Letters of Partnership:** Letters of commitment from partnering agencies who are committed to supporting the bidder with services for any one or more options bid. Letters of partnership must include the details around the services and supports the partner is providing. Cost for such services **MUST** be reflected in the bidder's submission for each option being bid.
 - 2.2. **Governance structure(s):** Outline the governance structure used to support the successful site options by option, including who will have oversight and ultimately be accountable for the site's successful operations. Outline the governance structure for partnering relationships as well.
3. **Budget (30%):** A comprehensive three-year operating budget for the project, including all anticipated costs over time, broken down by line item and detailing the expenses.
4. **Experience/ References (10%):** Description of relevant experience in managing similar projects. Resumes for critical staff leading and working on the project. Contact information for at least three references from previous projects.

- 4.1. **Letters of support:** Letters of support from other agencies that align with and value your approach to service for those options bid. These are those organizations who serve clients who may benefit from the services the bidder (and partners) propose to provide.
5. **Benchmark outcomes (10%):** Metrics for measuring success by option bid, with a timeline for achievement.
6. **Building, structural, and infrastructure need considerations:** These details should be outlined by option. This includes specific needs (asks) as part of the project consideration.

Provide sufficient detail for the Evaluation Committee to understand and rate the value of the effort expended.

F. SUBMISSION DETAILS:

Proposals must be submitted electronically to communications@cdsb.care by May 30 at 2:00pm noting HOPE Bid Option # for each option bid. Late submissions will not be considered.

G. CONTRACT TERM:

The term of the bid is for up to three years with a renew option for up to two additional 1-2 year terms upon the mutual agreement of the parties.

Termination: 90-day termination period.

H. CONTACT INFORMATION:

For any questions or further information, please contact: Kaileigh Russell, Communications Manager, communications@cdsb.care, 705-268-7722 ext. 244

I. PROJECT SCHEDULE

Event	Expected Completion Date
Issuance of RFP (this document)	May 20th, 2025
Deadline for receiving questions on RFP	2:00 p.m. May 30, 2025

General Terms & Conditions

Deadline for issuance of Addenda	2:00 pm June 04, 2025
Closing date for RFP	2:00 p.m. June 06, 2025
Presentations/Interviews (If applicable) / Negotiations	June 19-30, 2025
Selection of successful bidder(s) conditional on the approval of CBSD Board and COT	July 15, 2025

PART II – EVALUATION OF SUBMISSIONS

J. RFP SUBMISSION REQUIREMENTS

Proponents are required to submit their responses to this RFP as follows:

- (a) Submissions must be received electronically through the designated email address
- (b) Responses submitted by fax or mail will be rejected.

Responses must be submitted as outlined in Section I: Project Schedule. Proposals submitted after the required dates and times will not be considered. Proponents are solely responsible for ensuring that responses are submitted as required. Delays caused for any reason will not be grounds for an extension of the submission deadline.

K. RFP TECHNICAL RESPONSE FORMAT AND CONTENTS

1. SITE MEETING

No site meetings will be required or available.

2. GENERAL REQUIREMENTS

Proponents' responses should not exceed 20 pages, per option bid, not including the title page, table of contents, forms and appendices. Please use Arial 12 font.

Forms and curricula vitae of proposed members of the Project Team should be included in appendices.

- 2.1. All information provided in your response should contain sufficient detail that clearly expresses the respondent's capabilities, competency, qualifications and ability to effectively deliver the goods and services required to successfully complete the project.
- 2.2. The detail and clarity of the response will be considered indicative of the respondent's expertise and competence.
- 2.3. To assure a uniform review and evaluation process, and to obtain the maximum degree of comparability, responses are to be presented in the order of the items listed under Mandatory Requirements and Specific Requirements.

3. MANDATORY REQUIREMENTS

Respondents are required to submit the following as an appendix:

- 3.1. Confirmation that the respondent is in current good standing with WSIB;
- 3.2. Confirmation that the respondent is in compliance with current AODA legislation;
- 3.3. Confirmation that the respondent is able to acquire and maintain in place project professional liability insurance in an amount not less than five million dollars (\$5,000,000.00);

- 3.4. Form 1: Mandatory Requirements Checklist;
- 3.5. Form 2: Signature Page (signed page for submission of the Proposals);
- 3.6. Form 3: References & Letters of Support

Failure to submit the documents listed and/or in the format required will result in the respondent's submission being rejected without further notification.

L. RFP RESPONSE FORMAT AND CONTENTS

The Proposal is a Fixed Fee Contract and the amount shall be stated in Canadian funds and shall include all applicable charges. HST shall be extra.

The Submission must include:

- (a) A title page that includes the legal name of the respondent, address, telephone and fax numbers, e-mail address, the name of the primary contact and date of the RFP response;
- (b) A table of contents that clearly cross-references the information contained in the response;
- (c) Proponents should provide a full breakdown of fees based on principal tasks for each of the phases identified in the scope of services identified by the CDSB in this RFP.
- (d) Further, proponents should provide a breakdown of fees by task, hours and personnel involved based on hourly rates for each team member.

The CDSB requires a lump sum Proposal Fee by year of service from the Proponents responding to this RFP for all fees, services and disbursements in accordance with the requirements of the RFP. Disbursements to the successful Proponent may include travel, photocopying, printing, courier and mail cost, long distance charges, as an example. The CDSB will not reimburse the successful Proponent for disbursements for alcohol or entertaining expenses.

Proponents are encouraged to provide as much information as possible in terms of the breakout of fees and disbursements.

The Harmonized Sales Tax (HST) should be identified separately (as applicable) within the overall lump sum fee.

M. EVALUATION OF SUBMISSIONS

Weighting shall be **as outlined in Section E** above.

The CDSB may also consider and rely on information submitted in the Proponent's Response to the RFP.

The CDSB may request clarification to determine a respondent's understanding of the RFP requirement criteria and reassess the respondent's response to the RFP.

The CDSB, in its sole discretion, may adjust the evaluation score or ranking of RFP responses as an outcome of any requested clarifications. The CDSB reserves the right to limit clarification to any number of proponents that have submitted RFP submissions as determined by the CDSB. Final assignment of a contract shall be at the discretion of the CDSB Board, together with the City of Timmins, with the potential that no assignment of a contract may be issued.

PART III – TERMS AND CONDITIONS

1. DEFINITIONS

In this Contract, unless the context clearly otherwise requires, the following words have the following meanings:

- 1.1. **“Addendum”** means an item of additional material added to a document, typically in order to correct, clarify, or supplement data.
- 1.2. **“Affiliate”** means, with respect to any Person, any other Person that controls or is controlled by or is under common control with the referent Person and, for the purposes of this definition, **“control”** of a person means the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.
- 1.3. **“Applicable Law”** means any applicable domestic or foreign law including any statute, subordinate legislation or treaty, and any applicable guideline, directive, rule, standard, requirement, policy, order, judgment, injunction, award or decree of a Governmental Authority having the force of law.
- 1.4. **“Authorized Agent”** has the meaning in Section 5.
- 1.5. **“Bid”** means a project proposal submitted by a Bidder in response to the RFP.
- 1.6. **“Bidder”** refers to an organization and its representatives responsible for submitting a bid for the RFP.
- 1.7. **“Bid Price”** means any Unit Price or other component of the Total Contract Price.
- 1.8. **“Business Day”** means any day other than Saturday, Sunday or a statutory holiday in Ontario Canada.
- 1.9. **“Change Order”** means a Change Order issued pursuant to Section 24.
- 1.10. **“Claims”** means all losses, damages, expenses, liabilities (whether accrued, actual, contingent, latent or otherwise), claims and demands of whatever nature or kind including all reasonable legal fees and disbursements.
- 1.11. **“Confidential Information”** means any information obtained by the Contractor from or in connection with supplying the Services hereunder.
- 1.12. **“Contractor”** means the person undertaking the execution of the Work under the term of the Contract, and pending execution of the Contract includes a Successful Bidder, within the meaning of the Instructions to Bidders.
- 1.13. **“Contract Documents”** means all of the following documents, and in the event of a conflict between them, each shall enjoy priority against the others (subject to any express term or condition to the contrary) in accordance with the following successive order:
 - (a) any Addendum;
 - (b) any Special Provisions;
 - (c) the General Conditions;

- (d) the Specifications, with any supplemental specifications taking priority over the standard specifications, if any;
- (e) these Instructions;
- (f) the standard form text of the Form of Bid as prescribed by the CDSB in Section 53;

provided by the CDSB or any consultant to the CDSB to the Successful Bidder, and also the Bid of the Successful Bidder to whom the contract is awarded, and any other document agreed by the parties to constitute one of the Contract Documents.

- 1.14. **“Default”** means any act or event of default as contemplated in the Bid documents; and without restricting or limiting the rights and privileges of the CDSB to any broader interpretation, any default of or in respect of a term, covenant, warranty, condition or provision of the Contract, or a liability caused, by an officer, director, partner, employee, Sub-Contractor or agent (or an officer, director, partner or employee of a Sub-Contractor or agent) of the Successful Bidder shall constitute a default by the Successful Bidder;
- 1.15. **“Force Majeure Event”** means any cause beyond a party’s reasonable control, including change in law or regulation, action or inaction of civil or military authority, interference by third parties, inability to obtain any license, permit or other third-party authorization that may be required, unusually severe weather, fire, explosion, flood, insurrection, riot, labour dispute, epidemics, pandemics, delay in transportation and acts of God, but not including lack of funds.
- 1.16. **“Form of Bid”** means the bid form relating to the Project or Works, as the case may be, and for the sake of greater certainty includes the Bid Form, Form of Bid – Schedule of Quantities and Prices, and Schedule of Prices per Appendix: 3: Pricing / Form of Bid;
- 1.17. **“Goods”** means any item of tangible personal property or computer software, and includes
 - (a) deeds and instruments relating to or evidencing the title or right to such personal property, or a right to recover or receive such property;
 - (b) tickets or like evidence of right to be in attendance at a particular place at a particular time or times or of a right to transportation;
 - (c) energy, however generated;
 - (d) items of tangible personal property that are intended for installation as a fixture or otherwise for incorporation into land, a building or structure, or that are ornamental or industrial trees, grass sod, flowering plants, shrubs, soil, seed or fertilizer.
- 1.18. **“Governmental Authority”** means any domestic or foreign legislative, executive, judicial or administrative body or person having or purporting to have jurisdiction in the relevant circumstances.
- 1.19. **“Indemnified Party”** has the meaning in Section 30.1.
- 1.20. **“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 Bid.
- 1.21. **“Person”** means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust,

trustee, executor, administrator or other legal personal representatives, regulatory body or agency, government or governmental agency, authority or entity however designated or constituted.

- 1.22. **“Premises”** means the location at which the Services are to be provided, as set out in Part 1, Section D (Service Delivery) “relevant site considerations” of the RFP.
- 1.23. **“Project”** means the supply and delivery of Goods, the delivery and performance of any Services and the completion of the Work in whole or in part as contemplated in the RFP.
- 1.24. **“Project Manager - CDSB”** means the person designated by the CDSB to manage the delivery or performance of the Project, Work or Supply to which the RFP relates, or the CDSB’s obligations under the Contract.
- 1.25. **“Purchasing Manager”** means the CDSB’s Procurement Coordinator or the Director of Finance.
- 1.26. **“Representatives”** has the meaning in Section 6.1.
- 1.27. **“Services”** means a service of any description required in order to complete the Project, whether commercial, industrial, trade, or otherwise, and includes all professional, technical and artistic services, and the transporting, acquiring, supplying, storing and otherwise dealing in Goods; specifically the services contracted for herein to be supplied by the Contractor to Owner as set out in this RFP and the submitted bid documents.
- 1.28. **“Specifications”** means all written or printed descriptions or instructions pertaining to the method and the manner of performing the Work, to the Scope of Work and to the quality of materials to be furnished under the Contract.
- 1.29. **“Sub-Contractor or Sub-Trade”** is a person or entity having a direct Contract with the Successful Bidder to perform a part or parts of the Services or to supply Goods and/or Services with respect to the Project, upon the prior approval of the CDSB.
- 1.30. **“Staff Member”** means all of the individuals used by the Contractor to supply the Services.
- 1.31. **“Successful Bidder”** means the Bidder whose Bid is selected by the CDSB for the award of the Contract in respect of a Project or Works.
 - (a) in relation to a Good, includes the sale, rental, lease or other disposition or provision of the Good or an interest therein or a right thereto, or an offer so to dispose of the Good or interest therein or a right thereto; and
 - (b) in relation to a Service, includes the sale, rental or other disposition or provision of the Service or an offer so to provide a service;
- 1.32. **“Supply”** means the supply of a Good or Service, and
 - (a) In relation to a Good, includes the sale, rental, lease or other disposition or provision of the Good or an interest therein or a right thereto, or an offer so to dispose of the Good or interest therein or a right thereto; and
 - (b) in relation to a Service, includes the sale, rental or other disposition or provision of the Service or an offer so to provide a service.

- 1.33. **“Tender”** means the request for proposal to which these instructions relates, and any renewal or substitute that request for qualifications.
- 1.34. **“Total Contract Price”** means the fully inclusive, all-in total contract price, constituting the sum of all costs quoted by a Bidder in its Bid with respect to the Project, Work or Supply,
- (a) including the purchase price for all materials, labour costs, service costs, costs for temporary structures and facilities, utility costs, warranty costs, life cycle costs, operating and disposal costs; but
 - (b) excluding any options or alternatives requested in the Tender Notice or other Contract Documents that the CDSB elects not to purchase;
 - (c) and excluding Value Added Taxes or other applicable sales or value added taxes, imposed under the Laws of Ontario and the Laws of Canada applicable therein.
- 1.35. **“Unit Price”** means any Unit Price or other component of the Total Contract Price.
- 1.36. **“Value Added Taxes”** means such sum as shall be levied upon the Total Contract Price by the Federal or Provincial or Territorial Government and is computed as a percentage of the Total Contract 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;
- (a) including the purchase price for all materials, labour costs, service costs, costs for temporary structures and facilities, utility costs, warranty costs, life cycle costs, operating and disposal costs; but
 - (b) excluding any options or alternatives requested in the Tender Notice or other Contract Documents that the CDSB elects not to purchase;
 - (c) and excluding Value Added Taxes or other applicable sales or value added taxes, imposed under the Laws of Ontario and the Laws of Canada applicable therein.
- 1.37. **“Term”** is defined in Section 50.
- 1.38. **“Warranty Period”** means the period commencing upon the date hereof and terminating 24 months after completion of the Services provided hereunder.

2. INTERPRETATION

The following rules of interpretation apply to this Contract unless the context clearly otherwise requires:

- 2.1. headings are for convenience only and do not affect the interpretation of this Contract;
- 2.2. the singular includes the plural and conversely;
- 2.3. a gender includes all genders;
- 2.4. if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

- 2.5. the meaning of general words is not limited by specific examples introduced by “includes”, “including”, “for example” or similar expressions;
- 2.6. where a party comprises two or more persons, the obligations of the party are joint and several;
- 2.7. unless otherwise specifically indicated, a reference to a “Section”, “paragraph” or “Schedule” is a reference to a section, paragraph or schedule of these General Terms and Conditions;
- 2.8. a reference to “writing” includes facsimile transmission and any means of reproducing words in a tangible and permanently visible form;
- 2.9. a reference to a party to this Contract or another agreement or document includes the party’s successors and permitted substitutes or assigns (and, if applicable, the party’s legal personal representatives);
- 2.10. a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinated legislation or regulation issued under, that legislation or legislative provision; and
- 2.11. a reference to “\$”, “CAD” or “dollars” is to the lawful currency of Canada.

3. COMPLIANCE WITH APPLICABLE LAW

- 3.1. The Contractor shall comply with all Applicable Law and, without restricting the generality of the foregoing, the requirements of legislation on, inter alia, employment insurance, insurance, workers’ compensation and any relevant legislation regarding occupational health and safety, permitting, anticorruption, the privacy of and access to personal information and environmental protection.
- 3.2. The Contractor shall have supervision and direction of all its Staff Members, representatives, agents and subcontractors and shall cause those for whom it is legally responsible to comply with all safety, health, environment, security policies, rules, regulations and guidelines in effect at the Premises and shall bear the responsibility and liability for non-compliance therewith.
- 3.3. For greater certainty, the Contractor agrees to incorporate in its agreements and dealings with its subcontractors and to bind all subcontractors by, the terms of this Contract, as far as is applicable to the services to be provided by each subcontractor.
- 3.4. The Contractor will obtain all necessary permits and/or licenses and give all necessary notifications for the performance of the Services.
- 3.5. The Contractor will notify Owner in advance of any hazardous materials that it intends to bring onto the Premises and will provide Owner with the appropriate Material Safety Data Sheets for such materials.
- 3.6. The Contractor must be registered for the Harmonized Sales Tax (“HST”) in Canada pursuant to *the Excise Tax Act* (Canada) and provide to the Owner its tax number issued by the Receiver General for Canada.
- 3.7. The Contractor must be registered with the Workplace Safety and Insurance Board (“WSIB”) in Ontario and provide its WSIB number and a WSIB clearance certificate which provides evidence to Owner that the Contractor is registered with the WSIB and has an account in good standing.

- 3.8. The Contractor does not engage in or support any form of forced or child labor and human trafficking and workers are employed voluntarily, and in compliance with applicable laws and international standards, including, without limitation, An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff (Act) (Canada).

4. GOVERNING LAW

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

5. STAFF / HUMAN RESOURCES / ORGANIZATION

- 5.1. The Contractor is an independent contractor and shall not be an agent, employee, joint venturer, partner, or servant of Owner.
- 5.2. The Services shall be carried out at the offices of the Contractor, except for activities that need to be performed at the Premises.
- 5.3. Each party shall appoint a qualified person (the “**Authorized Agent**”) to whom the other party may issue directives and who is authorized to receive and carry out instructions. The Authorized Agent shall have the authority to bind the party for which it is the Authorized Agent, and each party shall be entitled to rely upon the decisions and communications of the Authorized Agent.
- 5.4. The Contractor shall supply Owner with an organizational flow chart indicating how it intends to organize and supervise each task making up the Services.
- 5.5. The Contractor shall provide Owner with a list of the Staff Members who are assigned to provide the Services and shall have an obligation to update such list to maintain accuracy at all times. Such listing shall indicate the name, experience, qualifications and base fee structure of each Staff Member.
- 5.6. Subject to Applicable Law, during the Term of this Contract, each party to this Contract undertakes not to solicit or recruit a person employed by the other party unless authorized in writing between the Parties.
- 5.7. The Contractor shall promptly remove any Staff Member from providing the Services upon written notice from the Owner’s Authorized Agent.
- 5.8. No Staff Member shall be deemed to become an employee of Owner by reason only of the Contract.
- 5.9. The Staff Members shall be qualified to execute the Services.

6. PROPERTY OF DOCUMENTS

- 6.1. Any plans, technical data sheets, drawings, technical specifications, reports and copies thereof, as well as all models and documents in digital or hard copy format or in any media prepared by the Contractor, its officers, associates, successors and permitted assigns, representatives, agents, employees, and those of its Affiliates, suppliers or subcontractors and any other person for which it is legally liable (hereinafter, its “**Representatives**”), or supplied by Owner during the performance of the Services, shall become and remain the exclusive property of Owner, and shall be returned to Owner upon termination of this Contract.
- 6.2. The Contractor shall provide Owner with both a hard copy and an electronic document of all documents in such format as Owner may reasonably request.
- 6.3. The Contractor, if required by Applicable Law and subject to the provisions of Section 6 hereof, shall have the right to retain a copy of such documents for its own files.

7. INTERPRETATION, INFORMATION EXCHANGE BETWEEN PARTIES

- 7.1. In the event of an error or omission discovered by the Contractor with respect to, or doubt as to the interpretation of, any information or other document supplied by Owner or its Representatives the Contractor shall notify in writing the Owner Authorized Agent before undertaking or continuing any work which may be affected thereby, and the Contractor shall comply with written directives issued by the Owner Authorized Agent.
- 7.2. In the event the Contractor is delayed in the execution of the work resulting from a delay in receiving documents or information of any type from Owner or its Representatives, the Contractor shall, after 5 consecutive Business Days of such delay, notify the Owner Authorized Agent in writing. Owner will not be liable to pay any additional costs to complete the work associated with any delay unless proper notice has been given in accordance with this section.
- 7.3. The contractual documents which constitute this Contract shall be construed as a whole, and in light of the intention sought to be achieved by such whole rather than by interpretation of any special provision whatsoever.
- 7.4. The contractual documents which constitute this Contract are complementary to each other and any obligation stipulated in any one of them shall be binding to the same extent as if it appeared in all the documents.
- 7.5. The policies, norms and standards of Owner and of the Premises apply to the specifications or drawings unless otherwise stipulated.
- 7.6. This Contract does not refer to all the parts nor does it indicate all the details of the Services. However, the intent of the Contract is that all the requisite elements for the full performance and carrying out of the Services shall be supplied, that all the services, software, programming, materials, equipment and other items used in the carrying out of the Services and the manpower and subcontractors (where applicable) shall be of the highest quality and that the Services be completed in all their particulars.
- 7.7. The Contract (and all its constituent parts) shall be executed in duplicate and, following the execution thereof, a complete set of all documents constituting the Contract shall be returned to the Contractor.

- 7.8. Where the Contract requires that software, programming, equipment, materials or other items be supplied by a third party as part of the performance of the Services, the Contractor shall procure such items as agent for Owner, and such procurement shall be subject to Owner's general terms and conditions for purchase orders or Owner's standard terms for supply of goods, which documents shall be supplied to the Contractor upon request.
- 7.9. Where manufacturing, pre-assembly, assembly, installation and/or construction work are required, the list of such work shall appear in the invitation to tender of Owner and as a schedule to the bid by the Contractor.

8. CONFIDENTIALITY

- 8.1. The Contractor shall not disclose to any Person any Confidential Information unless:
 - (a) the Confidential Information was, at the time of the disclosure, publicly available;
 - (b) Owner has given its prior written consent to the disclosure of the Confidential Information;
 - (c) subject to Section 8.2 the disclosure of the Confidential Information is required for the Contractor to comply with any law or requirement of any Governmental Authority; or
 - (d) the disclosure of the Confidential Information is essential to enable the Contractor to perform its obligations under this Contract and such disclosure is made with prior notice to Owner and to a Person who has agreed in writing to treat the information as confidential.
- 8.2. The Contractor shall not disclose any Confidential Information pursuant to Section 8.1.c until after the Contractor shall have given Owner notice of such requirement and an opportunity to oppose such disclosure. The Contractor shall cooperate with and provide reasonable assistance to Owner in opposing such disclosure if requested to do so.
- 8.3. Neither Contractor nor its subcontractors, suppliers, Representatives or agents shall photograph or film anything whatsoever upon the Premises without prior written authorization from Owner and, in such case, the Contractor shall immediately forward a copy thereof to Owner. Contractor shall take all necessary steps to ensure that its subcontractors, suppliers, Representatives and Agents are informed of and comply with this section.
- 8.4. Bidders may mark any part of their submission as confidential except the Total Contract Price and their name. A watermark or rubber stamp imprint is suitable for this purpose. The CDSB will use its best efforts not to disclose any information so marked but shall not be liable to a Bidder where information is disclosed by virtue of an order of the Privacy Commissioner or otherwise as required by law.
- 8.5. The CDSB shall make every effort to safeguard the confidentiality of each Bid and material submitted in connection with a Bid.
- 8.6. CDSB policy is to disclose only such information as is required by law. Please note that all submissions are subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) and Personal Health Information Protection Act (PHIPA).
- 8.7. In addition, certain contractual information must be disclosed to the Board and accordingly may become part of the public record.

9. CONFLICT OF INTEREST

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

10. INTELLECTUAL PROPERTY

- 10.1. The Contractor acknowledges that Owner shall be the exclusive owner of all intellectual property rights, including but not limited to patent or copyright, with respect to inventions, improvements, software, programming, design, plans, specifications, information, documents, concepts, methods, products, processes, models, photographs, videos, technical data sheets, sketches, drawings, graphic representations, computer hardware, computer software, computer programs, computer generated designs, and other data, information and material and other documents (collectively, the “**Work Product**”) prepared by the Contractor and its Representatives in the course of delivery of the Services, and all such Work Product shall become the property of Owner which the Owner may use in any manner and so often as it wishes, without any other payment other than those payments expressly required by the Contract.
- 10.2. The Contractor shall ensure compliance with any intellectual property rights, including without limitation any copyright, patent, license, industrial design, model, trademark or other right pertaining to any writing, photograph, material or any other thing which it or its Representatives shall use, supply or produce for the delivery of the Services.
- 10.3. The Contractor shall ensure that none of its Services, instruments of service or the use of the end product of such Services or instruments of service will constitute or result in any infringement or violation of any industrial or intellectual property right including, without limitation, any patent, copyright or industrial design protection or any law related thereto.
- 10.4. The Contractor shall be liable for any actual or alleged infringement of the rights referred to in this Section 10 and shall indemnify and save harmless the Indemnified Parties (as defined in Section 29.1) with respect to any Claims which Owner may incur by reason of the assertion by any Person that the supply by the Contractor for use or other application by Owner of all or any portion of the Services provided by the Contractor or instruments of service furnished under this Contract infringes any industrial or intellectual property rights, or law relating thereto, and shall take up its defense in any suit, action or claim alleging such infringement, in accordance with the terms in Section 29.2.

11. REPORTING

The Contractor shall make such reports to Owner concerning the progress, status or scheduling of the Services or the performance thereof, as and at such times as Owner may from time to time require. The Contractor is responsible to submit all reports required under relevant provincial and/or federal funding models.

12. PROCEDURES

- 12.1. The Contractor shall comply at all times with the procedures of Owner, communicated to the Contractor, including policies, instructions, forms, documents or models to be used for the performance of the Services.
- 12.2. While on the Premises, the Contractor shall ensure that neither it nor any Staff Member, or subcontractor shall, through its or their acts or omissions, do, or permit any act or thing which contravenes any safety rules or regulations or directions applicable to the Premises, whether established by Owner, by a Governmental Authority or act in a manner that which is reasonably likely to endanger the health or safety of any Person or the environment; and in any event, the Contractor shall take such precautions and do such things as are, in the reasonable opinion of Owner, necessary to ensure the safety of natural persons or the environment on or adjacent to the Premises or to comply with such rules or regulations.

13. VEHICLES AND OTHER ITEMS

The Contractor shall supply and be liable for all vehicles required for the performance of the Services. The Contractor shall cause such vehicles and other items required of it for the performance of the Services to be insured, at its sole expense, in accordance with Section 17, and Owner shall assume no liability in this respect and Contractor shall indemnify and hold harmless the Indemnified Parties from such any liability by the Contractor, its Staff Members, and subcontractors, except and only to the extent such liability directly results from the gross negligence or willful misconduct of the Indemnified Parties

14. RIGHT OF VISIT AND INSPECTION

Owner shall be entitled to visit and inspect the work premises of the Contractor or of its relevant representatives, agents, subcontractors and Affiliates at any time during the Term, with the Contractors prior consent (which consent shall not be unreasonably withheld, conditions or delayed), at Owner's sole cost and expense and provided that such visit is effected in a way as to minimally interfere with the business of the Contractor.

15. DISCLOSURE OF INTERESTS

The Contractor and its Staff Members shall not have any monetary interest, or direct or indirect influence that is contrary to the interests of Owner in any of the subcontracts, software, programming, materials, equipment, items or services which may be used in the performance of the Services, except for the fees paid to the Contractor pursuant to this Contract. In the event of any such contrary influence or interest, the Contractor shall forthwith disclose the same to Owner and shall promptly comply with Owner's instructions to mitigate or eliminate such contrary influence or interest.

16. PRESS RELEASES, ADVERTISING

The Contractor shall not use the name, trademark, logo of the Owner or its affiliates, or any variant thereof in any advertisement or publication whatsoever, including social media, press releases and announcements with respect to this Contract and the Services, without the prior written consent of Owner, such consent not to be unreasonably withheld.

17. INSURANCE

17.1. Unless otherwise agreed to in writing, the Contractor shall take out and maintain, at its expense, the following insurance coverage:

- (a) Comprehensive general liability insurance, including completed operations liability for losses occurring within 12 months after the Contractor shall have completed providing the Services, against claims which may arise from operations under the Contract including claims for bodily injury, death and damage to property with a combined single limit of not less than \$5,000,000 per occurrence. Such insurance shall be primary only with respect to the liability arising out of the operations of the Contractor and any other valid and collectible insurance carried by Owner shall be specific excess and not contributing therewith. Such insurance will include employers liability coverage, a cross liability and a severability of interests clause, Owner shall be included as an additional insured;
 - i) The successful bidder may also be required to provide comprehensive liability insurance covering the City of Timmins regarding the property identified for this project.
- (b) Automobile liability insurance in respect of licensed vehicles owned, leased or operated in connection with the Services that are used at the Premises. Such insurance shall have a minimum limit of \$5,000,000 automobile liability and such other limits as prescribed by the laws of Ontario and any automobile physical damage insurers shall waive subrogation in favour of Owner;
- (c) When required, transit insurance and insurance against “**All Risks**” of physical damage on any equipment or property to be delivered by the Contractor until Owner receives such equipment or property;
- (d) “All Risks” physical damage insurance coverage for physical damage to its owned, non-owned and/or leased tools, equipment and temporary structures and any equipment supplied by Owner and in the care, custody and control of the Contractor for replacement cost with deductibles of not more than \$250,000 (which deductible shall be for the account of the Contractor);

- (e) The Contractor's insurers shall waive all rights of subrogation against Owner and its permitted subcontractors for any loss, damage, claim or otherwise, arising from or in connection with this Contract; and
 - (f) All insurance required under any applicable workers' compensation or occupational health and safety legislation.
- 17.2. Owner's insurers shall waive all rights of subrogation against the Contractor and its permitted subcontractors for any loss, damage, claim or otherwise, arising from or in connection with this Contract only in such instances where Owner has requested that the Contractor provide services on an emergency basis such that the Contractor did not have a reasonable amount of time in which to plan and execute such services.
- 17.3. The Contractor shall provide to Owner, prior to commencing the Services, certificates of insurance to the satisfaction of Owner for all coverages noted in this Section 17, showing the Contractor and Owner, where required, as insured parties and showing required waivers of subrogation and coverages. With respect to workers' compensation in Ontario, such certificates must include a clearance certificate to indicate that the Contractor is registered and in good standing with the WSIB. All certificates will show that all insurers shall give Owner 30 days prior written notice of cancellation, non-renewal or material amendment affecting any above-noted required coverage or reduction of insurance below the limits noted above. Should the Contractor fail to provide said certificates of insurance as and when required by Owner, Owner shall be entitled, at its discretion, to terminate this Contract in accordance with Section 33.4 hereof, or to withhold any payment owing to the Contractor until such time as the Contractor provides the required certificates of insurance, in addition to any other recourse available to Owner under the Contract or Applicable Law. The various insurance certificates delivered to Owner by the Contractor shall remain in effect throughout the duration of the Contract.

18. PAYMENT OF INVOICES

- 18.1. The Contractor shall submit to Owner and the Owner's Accounting Department a proper invoice indicating the amount to be paid in respect of the Services provided during the preceding month (the "Fees"), plus applicable HST, as well as the amount invoiced to date since the beginning of the performance of the Services. Such invoiced amount shall also include relevant change order expenses, in accordance with Section 24. Subject to verification by Owner that:
- (a) said Services have been performed, and expenses incurred, in a satisfactory manner, pursuant to the terms of this Contract,
 - (b) And all third parties providing services have been paid in full, Owner shall effect payment within 60 days following receipt of the invoice.

19. ELECTRONIC FUNDS TRANSFER

- 19.1. In this section, the term "EFT" refers to electronic funds transfer and may also include the payment information transfer. All payments made by EFT shall only be made as a direct deposit to a Canadian chartered bank.

19.1.1. Method of Payment

- (a) All payments by the CDSB under this RFP shall be made by electronic funds transfer (EFT) save and except where:
 - I. the CDSB is unable to release one or more payments by EFT, in which case the Successful Bidder agrees to either:
 - II. accept payment by cheque or some other mutually agreeable method of payment; or
 - III. request the CDSB to extend payment due dates until such time as the CDSB makes payment by EFT, subject to subsection (c) Suspension of Payment.

19.1.2. Mandatory Submission of Successful Bidder's EFT Information

- (a) The Successful Bidder is required to provide the CDSB with the information required for the CDSB to make payment by EFT. A purchase order may not be issued to the Successful Bidder without this requisite information.
- (b) In the event that the EFT information changes, the Successful Bidder shall be responsible for providing forthwith the updated information to the CDSB.

19.1.3. Suspension of Payment

- (a) The CDSB is not required to make any payment under this RFP until its designated officer has received the correct EFT payment information from the Successful Bidder. 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 this 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.
- (b) If the EFT information changes after submission of correct EFT information, the CDSB shall have thirty (30) 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 Successful Bidder may request that no further payments be made until the updated EFT information is implemented by the CDSB's payment office. If such suspension would result in a late payment under any payment terms of this Contract, the Successful Bidder's request for suspension shall extend the due date for payment by the number of days of the suspension.

19.1.4. Liability for Uncompleted or Erroneous Transfers

- (a) If an uncompleted or erroneous transfer occurs because the CDSB used the Successful Bidder's EFT information incorrectly, the CDSB remains responsible for making a correct payment.
- (b) If an uncompleted or erroneous transfer occurs because the Successful Bidder's EFT information was incorrect, or was revised within thirty (30) days of CDSB's release of the EFT payment transaction instruction, and
- (c) funds are no longer under the control of the CDSB's payment office, the CDSB is deemed to have made payment and the Successful Bidder is responsible for recovery of any erroneously directed funds; or

- (d) If the funds remain under the control of the CDSB's payment office, the CDSB shall not make payment and the provisions of subsection (c) Suspension of Payment shall apply.

19.1.5. EFT and Timely Payment

- (a) 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 CDSB'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 CDSB's bank is open for business.

19.1.6. Liability for change of EFT Information by Financial Agent

- (a) The CDSB is not liable for errors resulting from changes to EFT information provided by the Successful Bidder's financial agent.

20. NON-DISCLOSURE AND NO COMMENT

- 20.1. The Successful Bidder shall not disclose, distribute, publish or issue any information, details or document concerning any aspect of this Contract, the Contract Documents, the Project and Services to a third party except:
- 20.2. where prior written authorization or consent of the CDSB has been provided by the CDSB, which consent may be unreasonably withheld by the CDSB in its unfettered discretion; or
 - (a) where such disclosure, distribution, publication or issuance is necessary to perform the Services, is only to a person directly engaged in performing Services or work under the Contract and is only to the extent required for the Services or work to be performed; or
 - (b) is required to be disclosed by Law.
- 20.3. The Successful Bidder shall restrain its employees and subcontractors from giving unauthorized information or otherwise contravening this section.
- 20.4. After the Contract is awarded, the Successful Bidder shall refer all inquiries from all third parties not involved in carrying out the Contract that relate to the Contract or the Project, Work or Supply to be undertaken within the scope of the Contract to the CDSB's Project Manager.

21. GOVERNMENT DEDUCTIONS

- 21.1. Other than the taxes required to be paid by Owner as set out in Section 18.1 above, the Contractor is responsible to pay all federal, provincial and municipal taxes, levies, duties and assessments relating to the provision of the Services by the Contractor, including income taxes, sales taxes, goods and services taxes and business taxes of every nature and kind, whether arising in Canada or elsewhere (in this Article referred to as the "Taxes") and to provide proof of collection and remittance of the same and the filing of related returns and reports as may be requested by Owner.
- 21.2. The Contractor shall be responsible to make any and all payroll deductions and withholdings required by law (including but not limited to all deductions required under the Income Tax Act (Canada), the Employment Insurance Act (Canada) and the Canada Pension Plan) (collectively, the "Source

Deductions") due in connection with the provision of the Services by the Contractor, and to provide proof of collection and remittance of the same and the filing of related returns and reports as may be requested by Owner.

- 21.3. Owner shall not be responsible or liable to deduct (but may withhold an amount in respect of such amounts if it believes same is required by law) from the Fees payable to the Contractor, nor shall Owner be responsible to make any employer remittance on account of, the Taxes, the Source Deductions or any other like deduction or withholding that may be required of employers from time to time, all of which the Contractor will be solely liable for.
- 21.4. The Contractor shall covenant and agree to indemnify and save harmless Indemnified Parties from and against any and all assessments or reassessments (a "**Reassessment**") made by any taxing authority against Owner to the extent that the reassessment relates to the Taxes or Source Deductions. Owner shall be entitled to set-off and abate any amounts owing by the Contractor pursuant to this indemnity against any amounts owing by Owner to the Contractor howsoever arising including the Fees payable by Owner to the Contractor. For greater certainty, this indemnity and right of setoff and abatement shall survive the termination of the contract and shall ensure to the benefit of Owner's successors and assigns and shall be binding upon the Contractor's heirs, administrators, successors and assigns.
- 21.5. The Contractor will remit to the Canada Revenue Agency any HST collected from Owner pursuant to Section 18.1 of this Contract.
- 21.6. Owner shall withhold 10% of the Fees paid to the Contractor hereunder, which will be released to the Contractor upon publication and notification of Substantial Performance, as per the Ontario Construction Act.
- 21.7. Notwithstanding Section 18.1, Owner shall be entitled to deduct from the Fees paid to the Contractor hereunder the amounts required to be withheld by Owner pursuant to Section 105 of the Income Tax Regulations (Canada). The Contractor hereby covenants and agrees that it will remit any amount deducted and withheld in accordance with Section 105 of the Income Tax Regulations (Canada) to the Canada Revenue Agency.

22. MONITORING OF COST BILLINGS

- 22.1. The aggregate invoiced amount for the Services shall, under no circumstances, exceed the amount stipulated pursuant to this Contract (the "**Contract Price**"), except with the consent of Owner in the form of a fully executed Change Order signed by both parties. When the aggregate invoiced amount for the Services performed hereunder reaches 80% of the Contract Price, the Contractor shall supply Owner with a final written estimate of the costs to be incurred in order to complete the Services.
- 22.2. Unless otherwise stipulated in the Special Provisions, all prices bid, including any Unit Prices, must be in stated in Canadian funds.
- 22.3. All Bids shall be opened following the closing date and time of the Request for Proposal.
- 22.4. Following the electronic opening, the Bids shall be reviewed further to determine compliance with the RFP.
- 22.5. Total Contract Prices shall be evaluated on the basis of their respective net present value, provided that the CDSB may make appropriate allowances for extended warranty coverage, lower maintenance cost,

higher trade-in value, longer life expectancy and other factors relevant to determining the full life- time cost of the Bid. Preference may be given to a Bid that offsets cost with related savings, so as to provide for no or minimal net tax increases and maximum benefits to CDSB. For the purposes of determining net present value, the discount rate and any escalation factor shall be uniformly applied to all Bids, but otherwise shall be in the discretion of the CDSB.

- 22.6. Once the Contract has been awarded, only the Total Contract Price on which the award of the Contract is based will be disclosed. Official notification will only be given to the Successful Bidder.

23. VARIATIONS IN BID PRICES

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

24. CHANGE ORDERS

- 24.1. At any time, the Owner may make changes without invalidating this Contract, by Change Order subject to the limitations of this Section. All Changes shall be carried out under the terms and conditions of this Contract.
- 24.2. The Contractor shall proceed promptly with any change authorized by a Change Order unless otherwise provided in the Change Order.
- 24.3. The time for completion or the Services Schedule shall not be accelerated or extended by reason of changes unless otherwise specified in a Change Order.
- 24.4. Contractor shall not perform any change without a prior Change Order, or Instruction to Proceed relating to such change. Changes performed by Contractor without a prior Change Order or Instruction to

Proceed shall be at the Contractor's sole risk, cost, and expense and the Owner shall not be liable for any claim for compensation or any revision of the Services Schedule in respect thereof by Contractor or any subcontractor.

- 24.5. No course of conduct or dealing between the parties, no express or implied acceptance of alterations or additions to the Services and no claims that Owner has been unjustly enriched by any alteration or addition to the Services, whether in fact there is any such unjust enrichment or not, shall be the basis of a claim for additional compensation under this Contract or a claim for any revision of the Services Schedule. Claims by Contractor for an adjustment to the Contract Price or to the Services Schedule shall be barred unless there has been strict compliance with this Section.
- 24.6. Upon delivery of a duly executed copy of a Change Order in accordance with this Section, this Contract shall be deemed to be amended to incorporate the Change Order.
- 24.7. Where a Change Order requires an adjustment to the Contract Price for the costs or savings properly attributable to implement the Change Order, the adjustment will be valued by one (or a combination) of the following methods:
 - (a) Agreed lump sum price
 - (b) At the applicable unit rate or force account (time and materials) rate identified in this agreement
 - (c) Any other price agreed to between Owner and Contractor
- 24.8. A Change Order, must be a written instrument executed by the Owner's Authorized Agent and the Contractor's Authorized Agent, which includes without limitation their agreement regarding:
 - (a) The scope of the change;
 - (b) the amount or method of adjustment to the Contract Price and progress payments, if any;
 - (c) the extent of the effect on the Services Schedule, if any; and
 - (d) the extent of the effect of the guarantees, warranties or other obligations of Contractor, if any.

25. HOLDBACK

- 25.1. In the event any error, omission or defect attributable to the Contractor or its subcontractor is discovered, Owner shall promptly notify the Contractor in writing. If the Contractor does not rectify the error within 10 Business Days after such notification, Owner may, acting reasonably, withhold from any payments due an amount necessary for the purposes of compensating Owner for the harm suffered as a result of such error, omission or defect, up to the aggregate of the sums due to the Contractor. Owner may continue to withhold such amounts until such time as the error, omission or defect has been rectified.
- 25.2. Withholding of any sums hereunder shall in no way deprive Owner of any other remedies provided under this Contract or Applicable Law and will not represent a settlement thereof.

26. ADDITIONAL SERVICES

- 26.1. The Contractor shall not invoice Owner for any services performed or supplied by the Contractor in addition to or other than the Services (“**Additional Services**”) unless and until such Additional Services have been authorized in writing by the Owner’s Authorized Agent. Where such Additional Services have not been authorized, any and all costs of such Additional Services shall be borne entirely by the Contractor. Where the Additional Services have been authorized in writing by Owner, such Additional Services will be Services.
- 26.2. Notwithstanding that such Additional Services will be considered Services under this Contract, separate records, including daily time records, which shall be subject to audit and approval by Owner, shall be kept of the cost of such Additional Services, and all invoices for reimbursement for such Additional Services shall be supported by certified payrolls, receipted bills and such other documents as Owner may reasonably require.

27. EXPENSES

- 27.1. Owner shall pay the reasonable expenses in respect of travel, accommodations, living and other expenses necessarily incurred by the Contractor in the performance of the Services. The estimated expenses shall be included in the RFP bid and the actual expenses shall be paid at cost and shall be supported by copies of original invoices.
- 27.2. Notwithstanding the provision of Section 27.1, costs and expenses incurred by the Contractor in respect of printing, duplication, photocopying services, mailing, telephone, computer services, and meetings with other expert advisers which are required for the proper performance of this Contract shall be borne exclusively by the Contractor.

28. BOOKS AND RECORDS

- 28.1. The Contractor shall keep books and records listing all expenses of any kind whatsoever arising from or relating to this Contract. The books and records of the Contractor shall be kept in accordance with generally acceptable accounting principles (“GAAP”) from time to time approved by the Canadian Institute of Chartered Accountants (or, if the Contractor is resident in a jurisdiction outside of Canada, the equivalent body in such jurisdiction), or any successor institute, applicable as at the date on which such calculation or action is made or taken or required to be made or taken, and the accounts with respect to the Services shall be kept separate from all other work performed by the Contractor.
- 28.2. The Contractor shall keep books and records for a period of at least 7 years following final payment by Owner in respect of the Services.
- 28.3. Owner and its Authorized Agent shall be entitled, with prior written notice and at Owner’s sole cost and expense, to access such books and records, as well as any supporting or accounting documents relating thereto and shall be entitled to take copies of such books and records.

29. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 29.1. The Contractor represents, warrants and covenants as follows, acknowledging that Owner is relying thereupon:
- (a) that it shall exercise the standard of skill, care and diligence required by customarily accepted practices and procedures normally provided in the performance of comparable services as the time the Services are provided;
 - (b) the Services are and shall be performed in accordance with the terms and conditions of the Contract, in a good and workmanlike fashion, and in accordance with currently accepted professional standards and practices for services of a similar nature;
 - (c) that any machinery, equipment, device, structure, software or any other thing produced by the Contractor as part of the Services for use by Owner is (or will be, when delivered) in good working order, free from defects due to faulty design, materials and workmanship, of merchantable quality, and suitable for its usual purpose and use;
 - (d) that it is (or will be) the author of all the plans, drawings, technical data sheets, technical specifications, software, programming, reports, studies and other documents used by it in the planning for and performance of the Services (the “**Plans**”);
 - (e) that all Plans are (or will be) in compliance with the specifications set out in this Contract and Applicable Law; and
 - (f) that none of the Plans materially infringe (or will materially infringe) any Canadian copyright, trademark or intellectual property right.
- 29.2. The Contractor agrees that it shall, at its sole expense, correct any defects in the provision of Services which do not comply with the terms and conditions of the Contract, provided the Contractor is notified of such defect promptly and, in any event, prior to the end of the Warranty Period.
- 29.3. Should the Plans not be in compliance with the representations, warranties and covenants set out in Subsection (1), Owner may, without prejudice to Owner’s rights to other remedies under this Contract or Applicable Law, refuse such Plans until the Contractor has rectified any non-compliance, at the Contractor’s sole cost and expense.

30. INDEMNIFICATION

- 30.1. To the maximum extent permitted by law and subject to Section 30.3, the Contractor shall indemnify and save harmless Owner, its Affiliates and its and their respective directors, officers, employees, agents, successors and assigns (collectively, the “**Indemnified Parties**” and, each, an “**Indemnified Party**”) against liability for all Claims arising out of bodily injury or death to any Person (including personal injury to a Staff Member), or loss or damage to property of any Person occurring before the end of the Warranty Period, which directly or indirectly results from or arises out of any act or omission of the Contractor or its Representatives.
- 30.2. Promptly after the assertion by any third party of any claim, demand or notice thereof (a “**Third Party Proceeding**”) against any Indemnified Party that results or may result in the incurrence by such Indemnified Party of any Claims to which such Indemnified Party would be entitled to indemnification

hereunder, such Indemnified Party will promptly notify the Contractor of such Third Party Proceeding. Such notice will also specify with reasonable detail (to the extent the information is reasonably available) the factual basis for the Third Party Proceeding, the amount claimed by the third party, or if such amount is not then determinable, a reasonable estimate of the likely amount of the claim by the third party. The failure to promptly provide such notice will not relieve the Contractor of any obligation to indemnify the Indemnified Party, except to the extent such failure materially prejudices the Contractor. Thereupon, the Contractor will have the right, upon written notice (the **"Defence Notice"**) to the Indemnified Party within 30 days after receipt by the Contractor of notice of the Third Party Proceeding (or sooner if such Third Party Proceeding so requires) to conduct, at its own expense, the defence against the Third Party Proceeding in its own name or, if necessary, in the name of the Indemnified Party. The Defence Notice will specify the counsel the Contractor will appoint to defend such Third Party Proceeding (the **"Defence Counsel"**), and the Indemnified Party will have the right to approve the Defence Counsel, which approval will not be unreasonably withheld. Any Indemnified Party will have the right to employ separate counsel in any Third Party Proceeding and/or to participate in the defence thereof, but the fees and expenses of such counsel will not be included as part of any Claims incurred by the Indemnified Party unless (i) the Contractor failed to give the Defence Notice, (ii) such Indemnified Party has received an opinion of counsel, reasonably acceptable to the Contractor, to the effect that the interests of the Indemnified Party and the Contractor with respect to the Third Party Proceeding are sufficiently adverse to prohibit the representation by the same counsel of both parties under applicable ethical rules, or (iii) the employment of such counsel at the expense of the Contractor has been specifically authorized by the Contractor. The party conducting the defence of any Third Party Proceeding will keep the other party apprised of all significant developments and will not enter into any settlement, compromise or consent to judgment with respect to such Third Party Proceeding unless the Contractor and the Indemnified Party consent, which consent will not be unreasonably withheld.

- 30.3. The Contractor shall not be required to indemnify an Indemnified Party in respect of any Claim to the extent that the Indemnified Party actually and fully recovers in respect of such Claim as an additional insured under any insurance policy.
- 30.4. The provisions of this Section shall apply to any actions of subcontractors of assignees of the Contractor and the Contractor agrees to indemnify and save the Indemnified Parties harmless pursuant to this Section for any damages or injuries caused by such subcontractor or assignee.
- 30.5. The Contractor shall not be liable to Owner or the Indemnified Parties for special, indirect or consequential damages resulting from or arising out of these terms and conditions including, without limitation, loss of profit, loss of production, loss of contract, loss of use, business interruption or any other special or indirect loss suffered or incurred by Owner howsoever the same may be caused. Owner shall not be liable to the Contractor for special, indirect or consequential damages resulting from or arising out of these terms and conditions including, without limitation, loss of profit, loss of production, loss of contract, loss of use, business interruption or any other special or indirect loss suffered or incurred by the Contractor howsoever the same may be caused.

31. FORCE MAJEURE

- 31.1. Upon the occurrence of a Force Majeure Event, the party suffering the Force Majeure Event (the **"Affected Party"**) shall immediately give the other party written notice containing each of the following:

- (a) full particulars of the Force Majeure Event including its nature and likely duration;
 - (b) which obligations the Force Majeure Event has prevented or delayed; and
 - (c) the nature and extent of the effects of the Force Majeure Event on those obligations.
- 31.2. Provided that the Force Majeure Event is not caused by or contributed to by the Affected Party, the obligations of the Affected Party shall be suspended to the extent affected by the Force Majeure Event from the date the Affected Party provides notice pursuant to Section 31.1 until cessation of the Force Majeure Event.
- 31.3. Notwithstanding Section 31.2, the Affected Party shall, at all times a Force Majeure Event has occurred and is continuing, use its best efforts to reduce the effect of such Force Majeure Event upon its obligations under this Contract and report to the other party in writing (on a weekly basis unless the other party requests a longer period between reports) of the steps taken by it to reduce the effect of such Force Majeure Event.
- 31.4. Immediately upon the cessation of the Force Majeure Event, the Affected Party shall:
- (a) provide written notice to the other party of the cessation of the Force Majeure Event; and
 - (b) resume performance of the obligations suspended as a result of the Force Majeure Event.

32. SUSPENSION

- 32.1. Owner shall be entitled, at any time, to suspend the performance of the Services, in whole or in part. Such suspension shall be exercised upon written notice by Owner to the Contractor specifying, *inter alia*, the effective date of the suspension and its scope and duration, if it is known at such time. The Contractor shall then cease the performance of the Services in accordance with the instructions of Owner. As a result, all activities and all expenses in connection with the Contract shall be suspended. Should, in Contractor's opinion, certain activities or expenses, be required to be reasonably maintained or completed, the Contractor shall notify Owner thereof in writing in order to obtain its prior authorization. The Contractor shall be entitled to all reasonable costs, expenses and fees as provided by the Contract in effecting the suspension, in undertaking the activities authorized by Owner during the suspension period and in re-commencement of the Services, which were suspended, provided such expenses are verifiable by Owner. The Contractor shall also be entitled to a stand-by charge during the period of suspension, which shall be sufficient to compensate the Contractor for keeping the Staff Members and equipment in a stand-by status.
- 32.2. The Contractor may suspend its performance of the Services if Owner fails to make payments when due to the Contractor under this Contract that are not in dispute and such failure continues for 10 Business Days after provision of notice thereof.

33. TERMINATION AND DEFAULT

- 33.1. This Contract shall terminate at the end of the Term.
- 33.2. The Contractor may not terminate this Contract, except in accordance with Section 33.3 hereof.

- 33.3. Each of the Contractor and Owner may terminate this Contract if the other party:
- (a) becomes insolvent, declares bankruptcy, assigns all of its property or files a proposal in bankruptcy, upon giving written notice to the other; or
 - (b) is an Affected Party for a continuous period of 60 or more days or non-continuous periods of 60 days in the aggregate in any 90 day period, upon giving the Affected Party 10 Business Days prior written notice.

In such instances, the Contract will terminate on the date for termination set out in such notice.

- 33.4. In the event that the Contractor is not in compliance with the provisions of the Contract or with the instructions or directives of Owner's Authorized Agent, including where the Contractor:
- (a) delays in commencing the Services or fails to perform diligently all or any part of the Services to the satisfaction of Owner's Authorized Agent, and Owner has given written notice to the Contractor requiring it to cease such default or delay, and such default or delay has not been cured within 10 Business Days following the receipt of such notice;
 - (b) interrupts or slows down the pace of the Services as a result of, or during, any disagreement or actual or potential litigation pertaining directly or indirectly to the Services;
 - (c) fails to complete the Services, in whole or in part, within the Term as may from time-to-time be adjusted; or
 - (d) in any other manner, defaults in the compliance with, or performance of, any of the provisions of the Contract, Owner may terminate the Contract, in whole or in part, upon 10 Business Days written notice.
- 33.5. Where the Contractor has designated a specific individual for the performance of Services and that individual ceases or is unable to act, the Contractor shall immediately notify Owner. Owner shall have the right, at its entire discretion, to terminate the Contract immediately or to enable the Contractor to continue such Contract by appointing another qualified individual, reasonably acceptable to Owner.
- 33.6. Except as otherwise provided in Sections 33.3 and 33.4, Owner may terminate this Contract at any time, in its sole discretion and without cause, without liability upon prior written notice of at least 30 days.
- 33.7. Where the Contract is terminated pursuant to this Section, the Contractor shall immediately take steps to cease providing the Services. The Contractor shall be entitled to payments for Services performed but not yet paid for by Owner, less any amounts owing by the Contractor to Owner pursuant to this Contract or for any other reason. Additionally, if this Contract is terminated pursuant to Section 33.6, Owner shall also pay for reasonable demobilization costs incurred by the Contractor, without any other indemnity or compensation, including for anticipated profits, and the Contractor waives any claim which it may have in respect of such indemnity or compensation before the courts or otherwise.
- 33.8. Each party's rights of termination hereunder are in addition to any other rights it may have under this Contract or otherwise, and the exercise of a right of termination will not be deemed to be an election of remedies. If this Contract is terminated pursuant to this Section, all further obligations of the parties under this Contract will terminate, except the obligations in Sections 3, 4, 6, 7, 8, 9, 10, 15, 16, 17, 18,

19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 37, 47, will survive, unamended; provided, however, that if this Contract is terminated on account of the Contractor's non-remedied material breach of a representation, warranty, covenant, obligation or other provision of this Contract, Owner's right to pursue all legal remedies with respect to such breach will expressly survive such termination unimpaired.

- 33.9. Upon termination of this Contract, the Contractor shall, within 7 day's notice of the termination, deliver to Owner all components and items of its Services including all instruments of service as they exist as of the date of termination. All property, title and interest of the Contractor in the Services and the instruments of service, as the same exists to the effective date of termination, shall immediately pass to and vest with Owner.

34. ASSIGNMENT AND SUBCONTRACTING

- 34.1. The Contractor may not transfer or assign its rights and obligations pursuant to the Contract, nor subcontract the same, to any Person without the prior written consent of Owner, which consent shall be at Owner's sole discretion. Notwithstanding the foregoing, the Contractor may transfer or assign its rights and obligations hereunder to an Affiliate provided that (i) the Affiliate enters into a written agreement with Owner to be bound by the provisions of this Contract in all respects and to the same extent as the Contractor is bound, and (ii) the Contractor will continue to be bound by the obligations hereunder as if such assignment had not occurred and perform such obligations to the extent its Affiliate fails to do so.
- 34.2. Owner may transfer or assign its rights and obligations pursuant to the Contract to any Person upon granting the Contractor prior written notice; and, in such case, Owner shall be released from all obligations provided for in the Contract.
- 34.3. Approval by Owner of a subcontract by the Contractor shall not create a contractual relationship in any way between Owner and the subcontractor for the performance of the Services. For greater certainty, notwithstanding any such subcontracting or assignment, the Contractor shall remain responsible to Owner for such obligations and responsibilities, including insurance, liability, indemnity and completion of the Services contemplated by the Contract.
- 34.4. Owner shall have the right by notification to the Contractor to that effect to assume the Contractor's contractual rights with any third party as to the performance of any aspect of the Contractor's Services pursuant to this Contract and, upon such notification, the Contractor shall execute and deliver to Owner an assignment of any such contracts sufficient for such purposes.

35. NOMINATION OF SUBCONTRACTORS

- 35.1. Where required, the Bidder shall indicate the names and addresses of all nominated subcontractors that it proposes to use,
- (a) on the Project, Work or Supply or
 - (b) in connection with the provision of any supply of goods or an intended fixture.
- 35.2. The CDSB reserves the right to reject any subcontractor so nominated.

- 35.3. No change shall be made to the list of nominated subcontractors after the closing of the RFP, without the prior written approval of the CDSB's Authorized Agent in all other cases.

36. ALTERNATE BIDS AND OPTIONAL FEATURES

- 36.1. Unless the Specifications, the Special Provisions or an Addendum otherwise provide, a Bidder may submit alternate Bids.
- 36.2. Where alternate Bids are submitted, each alternate Bid must be clearly labeled as such and must be submitted in a separate package.
- 36.3. An alternate Bid will only be considered where the Bidder has submitted a Bid that fully complies with the requirements of the Contract Documents. Particularly the Specifications.
- 36.4. Alternate Bids must clearly articulate how the alternate response differs from the Bid and how the alternate Bid will meet or exceed the CDSB's objectives and requirements.
- 36.5. Where alternate Bids are submitted contrary to subsections (2), (3) and (4), the CDSB may reject all of them, or (at the CDSB's election) may accept one and reject the other(s).
- 36.6. Where optional features or other options are requested in the Bid Notice, Specifications, the Special Provisions or an Addendum, the availability and price of those features or other options shall be included in the appropriate place in the Form of Bid for each Bid to which they relate.

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

- 37.1. All maps, drawings, plans, specifications, computer disks and documents,
- (a) provided by the CDSB to a Bidder shall remain the property of the CDSB and shall be returned by the Bidder upon demand by the CDSB for their return, whether or not the Bidder submits a Bid; or
 - (b) prepared by the Bidder as part of its Bid or otherwise in connection with carrying out the Project or Works or making the Supply contemplated under the Contract shall be the property of the CDSB and may be disposed of by the CDSB as it considers fit.
- 37.2. Unless the CDSB otherwise agrees in writing, where any plan, drawing or design is provided in connection with a Bid then,
- (a) the submission of a Bid by a Bidder shall be deemed to constitute a license by that Bidder to construct one sample model of the work or project contemplated based upon that plan, drawing or design, where such a sample is required in order to make

an informed decision concerning the attractiveness, functionality or other merit of the plan, drawing or design in question; and

- (b) upon the award of the Contract to the Successful Bidder, the Successful Bidder shall be deemed to have licensed the CDSB to construct such number of examples of the work or project contemplated based upon that plan, drawing or design that are contemplated under the Contract Documents, but the license conferred under clauses (a) and (b) shall not be deemed to constitute an assignment of any patent, copyright, trademark or other intellectual property of the Bidder.

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

- 38.1. Each Bidder is required to deal with the CDSB in utmost good faith both with respect to the submission of its Bid and with respect to the performance of any Contract awarded by the CDSB upon the acceptance of that Bid.
- 38.2. Where through inadvertence, a contract is awarded to a Bidder who has made an unauthorized amendment to the CDSB's Form of Bid, then within a reasonable time of the CDSB discovering that unauthorized amendment, the CDSB may:
 - (a) cancel the Contract without compensation to the Bidder by giving written notice to that effect to the Bidder;
 - (b) recover from the Bidder any amount paid to the Bidder in excess of what would have been paid had that amendment not been made, and
 - (c) where in the reasonable opinion of the Purchasing Manager, the change was made by the Bidder as part of a deliberate attempt to deceive, ban the Bidder from competing for CDSB contracts for a period of up to ten years.
- 38.3. Where in the reasonable opinion of the Purchasing Manager it is determined that, on any one or more occasions a Bidder has:
 - (a) unlawfully or to a grossly unreasonable degree intimidated, harassed, or otherwise interfered with an attempt by any other prospective supplier to bid for a CDSB contract or to perform any Contract awarded by the CDSB to that supplier;
 - (b) assaulted or committed battery against any CDSB employee in the performance of his or her duty;
 - (c) deliberately retained a known over-payment, or has knowingly failed to notify the CDSB of an over-payment or duplicate payment,ban the Bidder from competing for CDSB contracts indefinitely.
- 38.4. a Bidder has employed in the performance of a contract with the CDSB or any member municipality which formed part of the CDSB, a systematic policy of,
 - (a) over-billing;

- (b) charging for items not supplied;
- (c) charging for items of one grade, while supplying items of an inferior grade;
- (d) misrepresentation as to the quality or origin of Goods, their functionality or suitability for a purpose, or their performance characteristics; or
- (e) any other form of sharp practice, the CDSB may ban the Bidder, and any person with whom the Bidder is not at arm's length within the meaning of the Income Tax Act (Canada), from competing for CDSB contracts for a period of up to ten years.

39. DISPUTES

- 39.1. In the event of a disagreement between Owner and the Contractor during the Term of this Contract, or following the termination or breach of the Contract, as to any matter arising from or relating to this Contract, either party hereto may notify the other of such disagreement and if the parties through their respective Authorized Agents are unable to resolve the disagreement through good faith discussions within 5 Business Days of the first meeting amongst the Authorized Agents of each party, then each party's Authorized Agent shall refer the matter to a senior executive of their respective organizations, who shall have the authority to resolve the disagreement (hereinafter collectively called the "Senior Executives").
- 39.2. Each Authorized Agent of the parties shall promptly prepare and exchange memoranda stating the issues in dispute and their positions, summarizing the negotiations which have taken place and attaching relevant documents and provide same to the Senior Executives. After review of such documentation, the Senior Executives will meet at a mutually agreed time and place for negotiations within 10 Business Days of the date the matter was escalated to their attention.
- 39.3. If the matter is not resolved by the Senior Executives within 10 Business Days of the first meeting of the Senior Executives referred to in Section 39.2 the matter may be referred to arbitration pursuant to The Arbitration Act, 1991 (S.O. c. 17), upon the consent of each of the parties hereto, in accordance with the following provisions:
- (a) the party desiring arbitration under Section 39.3 of this Contract shall give a notice of arbitration (the "**Notice of Arbitration**") to the other party containing a concise description of the matter submitted for arbitration. The other party shall have 10 Business Days from delivery of the Notice of Arbitration to indicate to the party sending such notice, in writing, whether it is amenable to having such dispute be determined by arbitration. If the party sending the Notice of Arbitration shall not heard back from the party receiving the Notice of Arbitration within 10 Business Days of delivery of said notice, the receiving party will be deemed to have accepted that this matter be referred to arbitration;
 - (b) there shall be 1 arbitrator who shall be independent of Owner and the Contractor. The arbitrator shall be a suitably qualified individual who is experienced in matters regarding the dispute. Within 20 Business Days after delivery of the Notice of Arbitration, Owner and the Contractor shall jointly appoint an arbitrator. If Owner and the Contractor fail to appoint an arbitrator within that time, the arbitrator shall be designated by a judge of the Court of Queen's Bench for Ontario;

- (c) the arbitrator may determine all questions of law and jurisdiction (including questions as to whether a dispute is arbitrable) and all matters of procedure relating to the arbitration. The arbitrator shall have the right to grant legal and equitable relief (including injunctive relief) and to award costs (including legal fees and the costs of the arbitration) and interest;
 - (d) the arbitration shall take place in the City of Timmins at such place and time as the arbitrator may fix;
 - (e) the law applicable to the arbitration shall be the law of the province of Ontario and the federal laws of Canada applicable therein;
 - (f) the arbitration proceedings shall be conducted in the English language;
 - (g) the written decision of the arbitrator shall be final and binding upon the parties in respect of all matters relating to the arbitration, the procedure, the conduct of the parties during the proceedings and the final determination of the issues in the arbitration. There shall be no appeal from the determination of the arbitrator to any court. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction; and
 - (h) the costs of any arbitration shall be borne by the parties in the manner specified by the arbitrator in his or her determination.
- 39.4. Notwithstanding the fact that a disagreement has occurred between the parties, that it has been submitted to arbitration or that proceedings have been commenced, the parties shall continue to perform their respective obligations pursuant to this Contract to the extent practical.

40. WAIVERS AND AMENDMENTS

- 40.1. No failure to exercise and no delay in exercising any right, power or remedy under this Contract will operate as a waiver, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy. No waiver of any provision of, or consent to any departure from, this Contract by any of the parties will be effective unless in writing and then only in the specific instance and for the purpose for which it is given.
- 40.2. This Contract may only be amended by another agreement in writing executed by each of Owner and the Contractor.

41. INFORMED CONSENT

The Contractor expressly acknowledges that it was entitled to negotiate each of the provisions of this Contract, that it was able to ask all questions with respect to its understanding thereof, that it obtained satisfactory replies to said questions and that it was entitled to consult a legal advisor prior to executing the same.

42. QUALITY ASSURANCE

Without modifying the rights and obligations the parties may have under the Contract, Owner may, at its discretion, request that the Contractor supply its quality assurance plan and may also ask the Contractor to amend such program or to design a new one, following agreement between the parties.

43. ASSESSMENT OF PERFORMANCE

Without modifying the rights and obligations the parties may have under the Contract, Owner may, at its discretion, assess the performance of the Contractor during the performance of the Contract or upon termination thereof. Owner shall then submit its assessment to the Contractor and the latter shall supply its comments in writing. Such comments shall form an integral part of the assessment.

44. GENERAL

- 44.1. Anything supplied by or paid for by Owner for use by the Contractor shall be the property of Owner. When the Services are completed or terminated, the Contractor shall return to Owner any such materials which have not been consumed in the performance of the Services.
- 44.2. The documents constituting the Contract embody a complete and exclusive statement of all the terms and conditions which the parties wish to be bound by with respect to the matters dealt with in this Contract; and, in this respect, cancel and replace any communications, negotiations, written or oral agreements preceding the entering into of this Contract.
- 44.3. If any provision of this Contract is determined by a court of competent jurisdiction to be wholly or partially unenforceable for any reason, such unenforceability will not affect the enforceability of the balance of this Contract and all provisions will, if alternative interpretations are applicable, be construed so as to preserve the enforceability of such provisions.
- 44.4. Each of Owner and the Contractor will take all steps, execute all documents and do everything reasonably required by the other to effectively carry out or better evidence or perfect the full intent and meaning of this Contract.
- 44.5. Each of Owner and the Contractor will bear its own costs (including legal costs) of and incidental to the preparation, negotiation and signing of this Contract.
- 44.6. Each Person signing this Contract on behalf of a party is duly authorized to do so.
- 44.7. This Contract shall ensure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.
- 44.8. All documents, titles, reports, feedback reports and minutes of meetings shall be drafted in English.
- 44.9. This Contract shall be governed exclusively by the laws of the Province of Ontario and the federal laws of Canada applicable therein, construed in accordance therewith.

- 44.10. Subject to the right of the parties to seek arbitration in Section 39.3, the courts of the Province of Ontario shall have the exclusive jurisdiction to hear any disputes arising hereunder. Owner and the Contractor attorn to the jurisdiction of the courts of the Province of Ontario.

45. BIDDER'S RESPONSIBILITY

- 45.1. The Bidder shall be responsible for:

- (a) Examining all drawings and details, also the Specifications and all other Contract Documents including all cost implications relating thereto in the Total Contract Price.
- (b) Unless otherwise stated in the Specifications, the Special Provisions or an Addendum, the Successful Bidder shall be required at its own cost to
- (c) apply for and obtain and pay for fees or charges for all Permits and licenses;
- (d) pay inspection fees or charges for inspections other than those stipulated to be paid out of any inspection fee allowance provided for in the Contract Documents;
- (e) pay all applicable taxes and all other charges other than Value Added Taxes or other applicable sales, imposed under the laws of Ontario and the laws of Canada applicable therein;
- (f) provide such warranty and maintenance requirements as may be specified by the CDSB, and in default of any such specification with respect to the Contract, a one-year warranty and maintenance requirement;
- (g) provide all materials and services necessary to complete the Project so that it is finished, serviced and ready for use and operation.
- (h) Unless otherwise expressly agreed by the CDSB in writing, where technical information or details form part of the Specifications, Bid Notice, or Special Provisions (including any quantity estimates, samples, or other documents of a similar kind or nature as may be provided together with the Contract Documents or incorporated by reference therein),
- (i) the CDSB shall exercise reasonable care in the preparation of those estimates, but shall not be taken to warrant their accuracy and shall not be liable for any inaccuracy therein unless that inaccuracy is the result of the deliberate misrepresentation of the CDSB or a member of its staff;
- (j) estimates, reports, data, or details shall be deemed to have been provided only as a guide for potential Bidders;
- (k) Bidders are required to examine carefully that information and the responsibility for verification of the information so provided shall rest with each Bidder.
- (l) Where the Project, Work or Supply is to be carried out on CDSB occupied or owned property, Bidders shall be responsible for visiting the job site, and no allowance shall be made by the CDSB for failure by the Bidder to examine carefully all conditions relating to the site or work.

- (m) Where clarification of any document, fact or opinion is required, it shall be obtained by the Bidder before submitting a Bid.
- (n) It shall be the Contractor's responsibility to co-ordinate, control and check work of its own forces and of all its subcontractors and to ascertain that all work is done in accordance with all Contract Documents, governing regulations and the general standards of good commercial practice and professionalism as understood in Ontario, assuring only first class
- (o) workmanship, and using only proper materials and methods are suited to the function or performance intended.
- (p) The Successful Bidder shall be responsible for faithful and proper performance of all aspects of the Contract.
- (q) All persons submitting Bids and all their subcontractors, shall be held to have thoroughly examined all drawings, specifications and all other Contract Documents and to have visited and inspected the site on which the Project or Work is to be carried out, or the Supply is to be made, and to have thoroughly familiarized themselves with all pertinent conditions before delivery of their respective Bids, and no allowance shall be subsequently be given by the CDSB for or by reason of any error or omission on the part of any Bidder or subcontractor with respect thereto. The CDSB shall not be liable for any costs associated with any site inspection.
- (r) Without limiting the generality of any other provision of these Instructions, unless otherwise provided in the Specifications, or the Special Provisions, the Contractor shall be required to provide and pay for:
- (s) all material, labour and service costs, charges for use of tools and equipment whether owned or rented, and where any work is to be carried out or services are to be rendered on property owned or occupied by the CDSB, all protective and safety provisions, site signs and site conveniences, together with all cranes, scaffolding and shoring, freight costs, and material-handling and storing, and all services and incidentals whether shown or specified or required by good practice;
- (t) all bonds or other accepted forms of bid, performance, and labour and material payment security, insurance, permits and inspections; all applicable taxes, worker's compensation and all other applicable labour-compensation charges necessary to carry out the Project, make the Supply and complete all Work in accordance with the Contract Documents;
- (u) all services and materials required to carry out the Project, do all of the Work and make the Supply, in accordance with all Contract Documents and all instructions given by the CDSB thereunder, in accordance with governing regulations and codes and in compliance with good industrial and commercial practice for first class workmanship, which in all instances, unless otherwise stipulated, shall be deemed to require work that has a finished appearance, is ready for use or use and operation, and includes the installation of all linkages, interfaces, protocols, computer cards, computer memory, software, peripherals, housing, sheathing, insulation, and mechanical, electrical and other systems and connections required for proper functionality.

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

46. SUCCESSFUL BIDDER'S RESPONSIBILITY FOR LOSSES AND DAMAGES

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

47. WARRANTIES OF THE SUCCESSFUL BIDDER

- 47.1. The Successful Bidder shall be deemed to have expressly warranted upon the selection of its Bid as follows:
- 47.2. The Bidder
 - (a) if a corporation is a duly incorporated, organized and subsisting corporation,
 - (b) if other than a corporation, is duly registered as a business under all applicable legislation, and as such has all requisite powers, capacities, licenses and permissions under its governing legislation and the other laws applicable to it, and under the articles of incorporation or other instrument by-laws under which it is organized, to,
 - (a) carry on all businesses in which the Bidder is engaged,

- (b) enter into, exercise its rights and perform and comply with its obligations under the Contract Documents,
 - (c) and that all actions, conditions and things have been done, taken or fulfilled with respect thereto, that are required by law, contract or otherwise.
- 47.3. The Bidder and its subcontractors and the respective workforce of each are fully qualified to carry out the Work and perform the Contract and hold all requisite licenses, franchises and other authorization required by law with respect thereto.
- 47.4. The Bidder is not a party to any agreement under the terms of which the Bidder is prohibited or restricted from entering into any of the obligations assumed, liabilities imposed, or restrictions accepted by the Bidder under the Contract Documents.
- 47.5. To the best of the Bidder's information and belief and after making diligent inquiries,
 - (a) the information concerning the business, affairs and financial and other condition of the Bidder that are contained in all documents, memoranda, records, statements made sent or given by the Bidder to the CDSB during the course of the negotiation of the Contract, and in its current regulatory filings, are true and accurate in all material respects; and
 - (b) the Bidder is not aware of any material facts or circumstances having a bearing upon its ability to perform its obligations under any of the Contract Documents which have not been disclosed to the CDSB in writing.
- 47.6. In addition to its other obligations under the Contract Documents, the Successful Bidder shall be deemed to have expressly covenanted upon the selection of its Bid as follows:
 - (a) The Bidder shall carry out all work and perform all of its obligations under the Contract Documents in a good professional manner, according to the best standards of practice of the industry, profession or trade in which the Bidder carries on business (including any applicable standards of professional conduct).
 - (b) The Bidder shall employ properly qualified and experienced workers to carry out all work required in connection with the Contract and shall cause its subcontractors and their suppliers to do the same.
 - (c) The Bidder shall use only new, first class materials, and shall cause its subcontractors and their suppliers to do the same.
 - (d) The Bidder shall have an adequate work force with proper equipment in good working condition, and shall have ready access to all materials, equipment and accessories required to perform its obligations under the Contract Documents, and shall cause its subcontractors and their suppliers to do the same.
- 47.7. Where the Bidder is not a resident of Ontario,
 - (a) unless it has previously done so, it shall immediately after receiving the CDSB's order to commence work, obtain from the Ontario Retail Sales Tax Branch, a certificate showing that the Bidder has
 - (b) registered with that Branch, and shall submit that certificate to the owner, and

- (c) it shall not commence work or order any materials or equipment for the Contract until it has registered as provided in sub-paragraph (a).
- 47.8. The Bidder shall ensure that all subcontractors who are employed by it in connection with the performance of the Contract, and who are not resident in Ontario, are registered with the Ontario Retail Sales Tax Branch, before permitting them to commence any work under the Contract.

48. SUCCESSFUL BIDDER'S DEFAULT AND CDSB'S REMEDIES

- 48.1. The provisions of this section are in addition to any other rights to which the CDSB is entitled by law.
- 48.2. The following shall constitute acts or events of default by the Successful Bidder:
- (a) where the Successful Bidder fails or neglects to commence or to proceed with the Project, Work or Supply diligently and at a rate of progress that in the opinion of the CDSB will ensure entire completion within the time provided for in the Contract Documents;
 - (b) where the CDSB determines reasonably that the Successful Bidder has abandoned the work or failed to observe and perform any of the provisions of the Contract, the determination of which the CDSB shall be the sole judge;
 - (c) where the Successful Bidder is adjudged bankrupt or becomes insolvent, or a petition in bankruptcy is filed against the Successful Bidder, or where the Successful Bidder makes an assignment for the general benefit of creditors or applies for relief under the Companies Creditors Arrangement Act, or where proceedings of any type are instituted in any jurisdiction in respect of the alleged insolvency or bankruptcy of the Successful Bidder;
 - (d) where any formal or informal proceeding for the dissolution of, liquidation of, or winding up of, the affairs of the Successful Bidder is instituted by or against the Successful Bidder, or where a resolution is passed or any other act undertaken for the winding up of the Successful Bidder;
 - (e) where the Successful Bidder ceases or threatens to cease to carry on its business, or where the Successful Bidder makes or agrees to make a bulk sale of its assets;
 - (f) where a receiver, manager or trustee is appointed in respect of the business or assets of the Successful Bidder, or any part of thereof, by a court of competent jurisdiction, or under an agreement;
 - (g) where the Successful Bidder defaults in payment of any indebtedness or liability to a Bank or other lending institution, whether secured or not;
 - (h) where the Successful Bidder defaults in the completion of the work within the time limit under the contract or within the CDSB-extended time limit;
 - (i) where the Successful Bidder fails or refuses to remedy any unsatisfactory or defective work or to remove any unsatisfactory or condemned material when so ordered by the CDSB in writing;

- (j) where the Successful Bidder persists in any course in violation of any of the provisions of the Contract Documents after receiving written notice from the CDSB to correct that violation.
- 48.3. Where an act or event of default by the Successful Bidder occurs, the CDSB may terminate the Contract by giving written notice to that effect to the Successful Bidder and enforce any performance bond, letter of credit or other performance security provided by the Successful Bidder.
- 48.4. Where there is a default by the Successful Bidder under the Contract, the CDSB may waive that default by written notice to that effect, whether given before or after the default, and where the CDSB so waives the default, the position of the parties and the status of any security provided by the Successful Bidder to the CDSB, shall be as if the default had not occurred.
- 48.5. A waiver of a default shall not extend to or be taken in any manner whatsoever to affect the rights of the CDSB with respect to, any subsequent default, whether similar or not.
- 48.6. The remedies provided in these Instructions are in addition to all other legal, equitable or statutory remedies to which the CDSB is otherwise entitled, and the taking of any one remedy shall not preclude the taking of any other remedy.

49. CONTRACT NON-EXCLUSIVE

Unless otherwise expressly provided in the Bid Notice, Specifications, the Special Provisions or an Addendum, no Contract for the supply of goods, services, the supply and installation of fixtures, or any combination thereof shall be deemed or construed to confer upon the Successful Bidder an exclusive right to supply those items, nor an exclusive obligation on the Successful Bidder to provide those items only to the CDSB.

50. TERM OF THE CONTRACT

- 50.1. There is no obligation on the CDSB to renew any term of the Contract.
- 50.2. Unless otherwise expressly provided in the Bid Notice, Specifications, Special Provisions or an Addendum,
 - (a) the Contract shall be deemed to be for the term referenced in Part I - Section G – Contract Terms, and the Successful Bidder shall have no right to the award of a further contract, nor any preference in the award of any subsequent contract;
 - (b) the term of the Contract will commence with the issuance of a purchase order or the execution of the Contract for Works, as the case may be.
 - (c) Where the Bid Notice, Specifications, Special Provisions or an Addendum provide that a Contract may be renewed at the end of its term, the following rules apply:
 - i) unless otherwise stated in the Special Provisions or Addendum, each renewal shall be deemed to be for a period of one year only;

- ii) any renewal shall be at the sole discretion of the CDSB;
- iii) any renewal shall be on the same terms and conditions of the original Contract;
- iv) any renewal shall be evidenced in writing, and where not so evidenced any continuation of supply after the expiration of the term of the Contract shall be deemed to be subject to the same terms and conditions as supplies under the Contract, subject to the following provisos:
 - the CDSB may at any time discontinue placing any further order for supply, or may terminate the relationship between the parties by written notice to that effect, but no such discontinuation or notice shall affect the obligation of;
 - the CDSB to receive delivery and pay for any items or services previously ordered; and
 - the Successful Bidder to fill any order previously placed and accepted by it;

50.3. where a price adjustment is contemplated in the Special Provisions upon the renewal of the Contract, all prices payable under the Contract during the term of the renewal shall be deemed to be adjusted to reflect the average annual increase in the Consumer Price Index as published by Statistics Canada over the 12-month period immediately preceding the date of renewal;

50.4. where no price adjustment has been contemplated in the Special Provisions the CDSB may, in its sole discretion, make an adjustment to the pricing where it is clearly evident to the CDSB that the market price for the Goods and/or Services has changed since the award of the Contract. Any price change under the Contract during the term of the renewal shall be deemed to be adjusted to reflect the average annual increase in the Consumer Price Index as published by Statistics Canada over the 12-month period immediately preceding the date of renewal. This discretion will only be exercised one time during the course of the Contract and any renewal period(s); and

50.5. where more than one renewal is contemplated in the Bid Notice, Specifications, Special Provisions or an Addendum, each such renewal shall be subject independently to clauses.

51. ORIENTATION SESSION

51.1. The CDSB may require the Successful Bidder (and those employees of the Successful Bidder who will be employed in performing the Contract) to attend a training and orientation session to be conducted by the CDSB at such place in the CDSB as the CDSB may direct.

51.2. The session may last for up to one full working day.

51.3. No amount shall be payable by the CDSB in respect of that session.

52. USE OF CDSB PROPERTY AND CHARACTER AND CONDUCT OF EMPLOYEES

52.1. Where any part of the Project, Work or Supply is to be carried out on property owned or occupied by the CDSB, the Successful Bidder shall:

- (a) use that property and require its employees and subcontractors to use that property, only for such purposes as fall fairly within the scope of the Contract Documents;
 - (b) refrain from committing waste on that property and use reasonable care to avoid causing any damage to any person or thing on that property or any neighbouring property;
 - (c) employ only orderly, experienced and competent persons to do the work; and
 - (d) comply, and cause its agents, directors, officers, employees and subcontractors to comply with the CDSB's zero tolerance of violence policy, and all other policies, vision, and values.
- 52.2. Serious violations of the above requirements shall constitute grounds for the termination of the Contract.
- 52.3. The Successful Bidder shall neither bring onto nor allow the introduction or use of tobacco, alcohol or illegal narcotics or controlled substances (including marijuana, hashish and all derivatives thereof) upon any CDSB property. Exception is where tobacco is being utilized for cultural practices.

53. SUBMISSION OF BID

- 53.1. Electronic Bid submissions only, shall be accepted and received by the designated email, on or before the closing date and time stated in this Request for Proposal.
- 53.2. Bids submitted by mail, in person, or fax shall not be accepted.
- 53.3. It is the exclusive responsibility of each Bidder to submit a complete Bid in accordance with these Instructions, the Form of Bid, the Bid Notice, the Specifications and the Special Provisions.
- 53.4. It is the Bidder's responsibility to ensure that their Bid is received by email on or before the closing date and time stated in the Request for Proposal document.
- 53.5. Bidders are advised that the timing of their Bid submission is based on when the Bid is RECEIVED by email, not when a Bid is submitted by a Bidder, as Bid transmission can be delayed in an "internet traffic jam" due to file transfer size, transmission speed, etc.
- 53.6. The maximum attachment size accepted by CDSB email is 36 megabytes. Submissions larger than 36 megabytes should be provided using a secure file sharing platform.
- 53.7. Bidders shall allow sufficient time for their Bid submission, including any attachments, to be delivered through the CDSB's email server. Late Bid submissions shall not be accepted.
- 53.8. The CDSB will send a confirmation email to the Bidder advising that their Bid was submitted successfully. If an email confirmation is not received, contact CDLHC@CDSB.CARE.
- 53.9. All documents prepared and work carried out by a Bidder in preparing its Bid, and all oral presentations to the CDSB in connection with a Bid, shall be without cost to the CDSB, and neither the CDSB's publication of a Request for Proposal nor the submission of a Bid shall be construed to oblige the CDSB to award a Contract.

54. FORM OF BID

- 54.1. Every Bid shall be submitted on the CDSB's prescribed Form of Bid in its entirety and shall,
 - (a) include all material, services, appliances and labour, required to complete the work; and
 - (b) be completed in English.
- 54.2. All blank spaces provided on the Form of Bid shall be filled in including alternate, separate, additional or Unit Prices and for the start and the total completion dates.
- 54.3. All words and phrases forming part of a Bid must be written out in full, and abbreviations must not be used. A Bidder who does not comply with this requirement shall bear the risk of any ambiguity.

55. REVIEW OF BIDS

- 55.1. At the close of the RFP, all apparently eligible Bids will be examined by a representative of the CDSB's Housing Department to confirm that they are compliant and otherwise complete.
- 55.2. At its sole discretion, the CDSB may clarify any aspect of any Bid received in respect of the Bid with any Bidder at any time, and may clarify any aspect of the price Bid by the Bidder, and the purpose of such clarification may be:
 - (a) to enable the CDSB to determine whether the Bid to which it relates complies with the RFP;
 - (b) to resolve any ambiguity in the language used, or any other vague or uncertain aspect of the Bid.

No such clarification shall alter the Bid or constitute negotiation or re- negotiation of the price or any aspect thereof, or the nature or quality of the goods or services to be supplied or performed as set out in the Bid at the close of the RFP, and all correspondence with a Bidder for the purposes of such clarification shall be conducted through the Housing Division.

- 55.3. Without limiting subsection (2), the CDSB's right to clarify shall include the right to request additional or missing information relating to the work that is to be done or the Goods or Services that are to be supplied or the manner in which the Project or Work is to be carried out.
- 55.4. The right of clarification provided under this section is within the sole, complete and unfettered discretion of the CDSB and is for its exclusive benefit, and may or may not be exercised by the CDSB at any time and in respect to any or all Bids.
- 55.5. The right to clarify shall not impose upon the CDSB a requirement to clarify with the Bidder any part of a Bid, and where in the opinion of the Purchasing Manager the Bid is ambiguous, incomplete, deficient, or otherwise not acceptable in any aspect, and the CDSB may reject a Bid either before or after seeking a clarification under this section.
- 55.6. Neither the review of its submission with any Bidder, nor the seeking of clarification under this section, shall oblige the CDSB to enter into a Contract with that Bidder, and shall not constitute an acceptance of that Bid or any other Bid.
- 55.7. All clarifications under this section shall be in writing, in a form satisfactory for inclusion in the Contract and satisfactory to the CDSB.

- 55.8. Any Bidder may be required to meet with officials of the CDSB within 30 days of being so requested to explain details of the submission, at a place in Timmins specified by the CDSB, and transportation to and from the meeting for the Bidder's representatives, as well as the hourly or per diem costs of the meeting itself for any such representative, shall be at the expense of the Bidder.

56. ADDENDA AND CLARIFICATION OF THE REQUEST FOR PROPOSAL

- 56.1. The CDSB reserves the right at any time prior to the award of the Contract,
- (a) to withdraw or cancel the Request for Proposal;
 - (b) to extend the time for the submission of Bids; or
 - (c) to modify the Request for Proposal,
- by the publication of an Addendum, which shall become part of the Request for Proposal, and the CDSB 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.
- 56.2. Without limiting the CDSB's right, subsection (1) may apply to situations where no Bid is compliant or an insufficient number of Bids have been received.
- 56.3. Any Addendum shall be emailed to any registered Bidder.
- (a) In addition to the above method of posting, the CDSB may also notify prospective Bidders of any Addendum by any other 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 CDSB and notification shall be to the co-ordinates provided by the bidder to the CDSB at the time of registration.
 - (b) It is the sole responsibility of each Bidder to verify and ensure that it has received any and all Addenda issued by the CDSB. Bidders shall confirm in the Form of Bid that they have received, examined and provided for all Addenda issued under the Request for Proposal.
- 56.4. Where a Bidder submits their Bid prior to the Request for Proposal closing date and time and an Addendum has been issued by the CDSB, the Bidder is solely responsible to:
- (a) Make any required adjustments to their Bid;
 - (b) Acknowledge all Addenda that have been issued for this Request for Proposal; and
 - (c) Ensure the original Bid is withdrawn and the re-submitted Bid is RECEIVED by the CDSB before the closing date and time stated in the Request for Proposal.
- 56.5. All questions related to this Request for Proposal (RFP) or for clarification on completing the Form of Bid shall be submitted to CDLHC@CDSB.CARE
- 56.6. Any request directed to the CDSB with respect to subsection (5) prior to the closing date of the Request for Proposal must allow sufficient time for a written response or clarification to be issued by the CDSB prior to the closing date and time, should the CDSB consider it necessary to issue such response or clarification.
- 56.7. A written response or clarification of substance shall be shared with each Bidder and issued in the form of an Addendum.
- 56.8. The CDSB shall not be bound by any oral:
- (a) instruction;
 - (b) amendment or clarification of the Request for Proposal;
 - (c) information; or

- (d) advice or suggestion, provided by any member of the CDSB's staff or consultant to the CDSB concerning the Request for Proposal or the manner in which the Work is to be carried out and the Bidder bears any and all risk in relying on such representation.

57. LIENS TO BE DISCHARGED

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

58. EXCESSIVE CLAIMS

- 58.1. The CDSB may review and disallow an invoice, or reduce the amount of an invoice, submitted for hourly labour costs, or for material supplied, where the CDSB's Purchasing Manager concludes on reasonable grounds that the amount of that invoice is excessive, taking into account the time and materials that would ordinarily be required by a competent professional or tradesman to carry out the work or project to which the invoice relates.
- 58.2. Prior to disallowing or reducing an invoice under subsection (1), the CDSB shall notify the Successful Bidder in writing of its intention to review the invoice in question, and shall allow the Successful Bidder to make written or oral representations to the CDSB's Purchasing Manager as to whether the amount invoiced is excessive. The Purchasing Manager shall take those representations and all other relevant facts into account before reaching any conclusion under subsection (1). Any decision made by the Purchasing Manager under this section is final and conclusive between the parties.
- 58.3. No invoice shall be disallowed under this section where the billing to which it relates is in strict accord with the terms of the Contract Documents.

59. SET-OFF

The parties agree that the CDSB has the contractual right to set-off against any amounts owing by the CDSB to the Successful Bidder under this Contract, any amount owed to the CDSB by the Successful Bidder, whether such amount arises from this Contract or under any other contract between the CDSB and the Successful Bidder, irrespective of whether or not those contracts are related or arise at equity or law.

60. DEVIATION FROM CONTRACT DOCUMENTS AND "GOOD PRACTICE"

- 60.1. The Successful Bidder shall not deviate from the Contract Documents without the consent of the CDSB in writing.

- 60.2. The Successful Bidder shall ensure that all its subcontractors inspect all parts, items or surfaces affecting or involving their work and inform the Successful Bidder immediately, in writing, (copy to the CDSB), of all deviations from drawings, specifications or accepted good practice and standards involving or affecting their work, and not to proceed with their work if these deviations will influence or affect the appearance or quality of their work until they are corrected by the Successful Bidder, but nothing herein shall alter or derogate from the responsibility of the Successful Bidder under the Contract.

61. REJECTION OF BIDS BY CDSB

- 61.1. At its discretion, the CDSB may reject any Bid that does not,
- (a) comply with these Instructions; or
 - (b) contain in full all information required on the Form of Bid, these Instructions or any of the other Contract Documents provided by the CDSB to the Bidder.
- 61.2. The CDSB may reject any Bid submitted by a Bidder or cancel the Contract awarded to that Bidder without penalty, where any information provided by the Bidder in its Bid or as part of any pre-qualification procedure is determined to be false or otherwise misleading in any material respect.

62. WITHDRAWAL OF BIDS BY BIDDER

- 62.1. Bidders may withdraw their Bid prior to the closing date and time of the Request for Proposal.
- 62.2. Requests to withdraw Bids received by email after the closing date and time of the Request for Proposal will be permitted, and the Bidder will be disqualified.
- 62.3. Bids withdrawn may be edited and re-submitted prior to the closing date and time of the Request for Proposal. Bidders are solely responsible to ensure:
- (a) Any required adjustments are made to their Bid;
 - (b) Acknowledge all Addenda that have been issued for this Request for Proposal; and
 - (c) Ensure the re-submitted Bid is received by email prior to the closing date and time of the Request for Proposal.

63. GUIDELINES REGARDING BID IRREGULARITIES

- 63.1. As a guide to the Bidder, but without qualifying any rights and privileges reserved to the CDSB, the Bidders Guidelines set out below is indicative of the manner in which discretion reserved by the CDSB is to be exercised with respect to non-compliant Bids. However, the CDSB shall not be liable to any Bidder or other person where it elects to exercise a discretion, reserved privilege or right in a manner different from that indicated below.

BIDDERS GUIDELINES		
IRREGULARITY		RESPONSE
1.	Qualified or conditional Bid (A Bid restricted by a statement added to the Form of Bid or a covering letter or alterations to the Form of Bid).	Automatic rejection unless the Request for Proposal specifically permit such qualification or condition.
2.	A Bid received in a format not specified in the Request for Proposal such as hardcopy submission or fax.	Automatic rejection.
3.	A Bid received on documents other than those documents supplied.	Automatic rejection.
4.	Bid Security: Amount of Bid security provided by Bidder is insufficient, does not name correct Municipality as obliged, or no Bid Security is provided or is not otherwise in compliance with the Request for Proposal requirements.	NOT REQUIRED
5.	Execution of Bid bond: Corporate seal or electronic signature of Bidder, or both, are missing. Corporate seal or electronic signature of bonding company, or both, are missing.	NOT REQUIRED
6.	Bid Security: Digital bid bond not provided or not an electronically verifiable and enforceable e-Bond.	NOT REQUIRED
7.	Other irregularities.	An irregularity that goes beyond the scope of the Bidders Guidelines may be considered by the Purchasing Manager.

64. RESERVED PRIVILEGES OF THE CDSB

- 64.1. The CDSB shall have the following reserved privileges, which may be exercised or waived in its absolute discretion:

- 64.2. the CDSB may reject any Bid, the lowest Bid or all Bids, or may cancel the RFP and require the submission of new Bids;
- 64.3. in addition to considering Bid prices, when evaluating Bids and awarding the Contract, the CDSB may exercise reasonable commercial judgment taking into account with respect to its decision:
- (a) the full cost implications to the CDSB with respect to each Bid, including life-expectancy, the inclusion or exclusion of alternate or optional equipment or configurations and the price implications thereof, training or re-training costs, length and scope of warranty coverage, and long-term maintenance requirements;
 - (b) the need to achieve economies of scale in supply;
 - (c) the need to diversify sources of supply;
 - (d) compatibility with existing equipment, including battery systems and battery chargers, such compatibility to be determined by tests conducted either by the CDSB or by an independent testing agency satisfactory to the CDSB;
 - (e) compatibility with existing computer software and hardware, and capability to generate reports suitable to the CDSB's existing reporting requirements; such compatibility and capability to be determined by tests conducted either by the CDSB or by an independent testing agency satisfactory to the CDSB;
 - (f) any extraordinary or unjustified disparity between the lowest bid and the other bids received by the CDSB;
 - (g) the amount offered by a Bidder for any scrap, rubble or other component of a building that is to be demolished, or land site that is to be cleared and dug, as part of the Project;
 - (h) decommission and demolition costs, the amount offered or obtainable for scrap, the costs of removing construction or other debris, and the ability to cannibalize existing infrastructure;
 - (i) the need to secure timely and reliable sources of supply;
 - (j) the need to discontinue reliance on obsolete technology and methods;
 - (k) the need to provide state of the art service to the residents of the CDSB, or to integrate any aspect of CDSB operations with those of its neighbours;
 - (l) the need to avoid the use of unproven technology and methodologies;
 - (m) the need to spread and minimize risk to the CDSB;
 - (n) the proximity of any service centre of a Bidder to the CDSB;
 - (o) the benefit in employing suppliers who have a proven track record of successful delivery and good reputation within the business community for integrity and competence;
 - (p) the prior record of the Bidder as a contractor to the CDSB;

- (q) such other considerations as would influence the decision of a reasonable and prudent purchaser in the particular circumstances of the CDSB at the time when the Contract is awarded.
- 64.4. In awarding the contract the CDSB may take into account the adherence or non-adherence of a particular Bidder to the social, economic or labour relations policies of the CDSB;
- 64.5. the CDSB may reject a Bid submitted by a person which in the opinion of the CDSB or its professional advisors, does not possess the experience, or financial, technical, personnel or other resources that may reasonably be expected to be necessary in order to carry out the obligations that the Bidder proposes to assume under the terms of its Bid;
- 64.6. the CDSB may waive compliance with any minor requirement governing the submission of Bids, including (but not limited to) any requirement to:
 - (a) attend any meeting;
 - (b) inspect any site or thing;
 - (c) submit Bids in any particular form;
 - (d) state prices or any other aspect of an RFP in any particular manner;
 - (e) not unfairly prejudice any other Bidder.
- 64.7. where in the view of the CDSB, an insufficient number of Bids have been received in response to an RFP, the CDSB may publish a further such request;
- 64.8. the CDSB may accept any Bid conditionally;
- 64.9. where the lowest compliant Bid exceeds the budget approved by the CDSB, or where during the course of the RFP it is determined by the CDSB that it would not be reasonable in the circumstances for the CDSB to select its supplier solely by reference to price, the CDSB reserves the right to identify a short list of one or more potential suppliers with whom it will seek to negotiate bilaterally a contract for the Project in question;
- 64.10. where the Contract is awarded to the lowest compliant Bidder, the CDSB may negotiate amendments to the Contract or to the Work to be done or Services or materials to be supplied under the Contract;
- 64.11. the CDSB may modify the terms and conditions of a RFP at any time prior to the closing date and time for the submission of a Bid, but despite any other provision of this Request for Proposal, where a Bid has been received prior to the time when such a modification is made, the CDSB shall notify the Bidder concerned, and allow that Bidder a reasonable opportunity to submit a revised Bid.

65. NON-MERGER

- 65.1. Except where otherwise expressly agreed, these Instructions shall not merge upon the execution of the Contract, but the provisions of the Instructions shall be deemed to remain in effect throughout that Contract.
- 65.2. These Instructions shall define and limit the scope of any contractual or other legal rights in favour of any Bidder or subcontractor flowing from the Request for Proposal or the submission or acceptance of any Bid.

66. ACCOMMODATIONS FOR BIDDERS WITH DISABILITIES

- 66.1. In accordance with the Ontario Human Rights Code, Ontarians with Disabilities Act, 2001 (ODA) and Accessibility for Ontarians with Disabilities Act, 2005 (AODA), the CDSB will accommodate for a disability, ensuring full and equitable participation throughout the bid process.
- 66.2. If a Bidder requires this Request for Proposal in a different format to accommodate a disability, the Bidder must contact the Project Manager at communication@cdsb.care as soon as possible and in any event prior to the closing date. The Request for Proposal 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.

67. SEVERANCE WHERE PROVISION ILLEGAL ,ETC.

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

68. PERFORMANCE REVIEW

- 68.1. At the conclusion of the Project, and during the course of carrying out the Project, where the Project Manager or Consultant so directs, the CDSB and the Successful Bidder shall carry out a performance review in accordance with this section concerning the performance of work and the provision of services by the Successful Bidder.
- 68.2. Performance under the Contract shall be assessed by reference to the following criteria:
 - (a) general responsiveness of the work relationship;
 - (b) conformity of the work done, materials supplied and provision of services with the Description of Project and Specifications;
 - (c) general dependability and quality of all work done and any Goods or Services supplied;
 - (d) timely performance;
 - (e) general conformity with the reasonable expectations of the CDSB under the terms of the Contract in their entirety;
 - (f) supervision of subcontractors and the maintenance of an orderly, neat and secure job site;
 - (g) accuracy of carrying out instructions.

- 68.3. The respective representatives of the CDSB and Successful Bidder shall meet at mutually agreeable times within ten Business Days of the final completion of the Contract or of the Project Manager or Consultant so directing.
- 68.4. Where a performance review is conducted under subsection (3), each of the agreed aspects of the Successful Bidder's performance shall be ranked by the CDSB at one of the following standards:
- (a) Satisfactory (performance in accordance of general standard of CDSB suppliers);
 - (b) Unacceptable (performance well below the general standard of CDSB suppliers).
- 68.5. At any performance review under this section, the Successful Bidder shall be entitled to identify any aspect of the CDSB's operations that is undermining the Successful Bidder's ability to deliver at least a satisfactory level of performance with respect to some criteria of assessment, and where the CDSB concludes that this is in fact the case, the ranking given to the Successful Bidder with respect to that criteria of assessment will be adjusted accordingly.
- 68.6. Where at a performance review carried out prior to the completion of the Project, one or more criteria of assessment are ranked as unacceptable:
- (a) the parties shall agree at the time of the conduct of the review or within ten Business Days thereafter, on the measures to be taken by the Successful Bidder during the ensuing contract review period to improve its performance to at least a good standard;
 - (b) within ten Business Days of agreeing on those measures, the Successful Bidder shall confirm in writing that the measures in question have been implemented.
- 68.7. Where the Successful Bidder fails or refuses to implement measures as provided in subsection (6), it shall be deemed to be in default under the Contract, and the CDSB may take such remedies as provided for in the Contract Documents or are otherwise available at law or in equity.
- 68.8. Where the unsatisfactory performance of the Successful Bidder is not corrected as required under this section, that performance may be taken into account by the CDSB with respect to the award of any future contract to the Successful Bidder.
- 69. DECALARATION OF BIDDER COMPLIANCE WITH CDSB BY-LAWS AND POLICIES**
- Should the Bidder's submitted proposal not be in compliance with all CDSB's By-laws, policies, vision and values, or information provided be untrue or incorrect, the CDSB shall be entitled at its sole discretion to reject the Bidder's Bid.
- 70. STANDARD TERMS AND CONDITIONS**
- 70.1. Samples and Demonstration
- (a) Samples and Demonstrations are not required for this Request for Proposal.
- 70.2. Brand Name

- (a) Any reference to the trade name, brand name or catalogue number of a particular manufacturer shall be understood to have been made solely for the purpose of establishing and describing general performance and quality levels of the item to be supplied, unless specified otherwise.
- (b) No reference to the trade name, brand name or catalogue number of a particular manufacturer shall be construed to restrict Bidders to that manufacturer, but Bids shall be deemed to be invited for generic no-name equals and comparable equipment of any manufacturer.
- (c) Despite subsection (ii), if an item other than the one specified is bid, it is the Bidder's responsibility to demonstrate that the product bid meets the specifications, and the Bidder shall submit brochures and samples upon request and provide full specifications in detail on the item(s) bid. The CDSB shall be the sole judge (in its absolute discretion) as to whether an item bid meets its specifications.

70.3. Standard Warranty

- (a) Unless the Special Provisions otherwise provide, all construction work (including all Goods supplied and Services performed in relation thereto) shall be subject to a minimum two-year warranty from the date of the completion of the Project. Bidders are encouraged to offer longer term warranties, and an appropriate allowance may be made by the CDSB in its evaluation of the Total Contract Prices of competing Bidders, based upon the length and scope of warranty offered by each respective Bidder.

71. PERMITS, LICENSES, AND APPROVALS

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

Appendix A: Forms

Form 1: Mandatory Requirements Checklist

Form 2: Signature Page

Form 3: References & Letters of Support

FORM 1: MANDATORY REQUIREMENTS CHECKLIST

The Proponent is required to include all items with an “X” in the “CDSB Required” column with their proposal submission in the order identified. Failure to provide the items below may result in the rejection of the Proposal submission as incomplete. The Proponent shall mark an “X” in the “Proponent Included” column to indicate the items that are included in their submission.

CDSB Required	Mandatory Requirement	Proponent Included
X	Service Proposal (including detailed cost breakdown)	
X	List of relevant Project partners	
X	WSIB Clearance Certificate or proof of exemption	
X	Statement confirming Accessibility (AODA) training	
X	Proof of Insurance(s)	
X	Form 1: Mandatory Requirements Checklist	
X	Form 2: Signature Page	
X	Form 3: References and letters of support	

FORM 2: SIGNATURE PAGE

- a) I/WE, the undersigned authorized signing officer of the Respondent, HEREBY DECLARE that no person, firm or corporation other than the one represented by the signature (or signatures) of proper officers as provided below, has any interest in this RFP.
- b) I/WE further declare that all statements, schedules and other information provided in this RFP response are true, complete and accurate in all respects to the best knowledge and belief of the Respondent.
- c) I/WE further declare that this RFP response is made without connection, knowledge, comparison of figures or arrangement with any other company, firm or persons making an RFP response and is in all respects fair and without collusion for fraud.
- d) I/WE further declare that the undersigned is empowered by the Respondent to negotiate all matters with the Corporation representatives, relative to this RFP response.
- e) I/WE further declare that the agent listed below is hereby authorized by the Respondent to submit this RFP response and is authorized to negotiate on behalf of the Respondent.

Failure to acknowledge all addenda will result in your proposal being rejected.

COMPANY NAME: _____

ADDRESS: _____

PROVINCE: _____ POSTAL CODE: _____

AUTHORIZED SIGNATURE: _____ TITLE: _____

NAME (Please print or type): _____

TELEPHONE NUMBER: _____

HST REGISTRATION NUMBER: _____

EMAIL ADDRESS: _____ DATE: _____

FORM 3: REFERENCES & LETTERS OF SUPPORT

Please provide references full name, position, company name, contact information, preferred time, and method of communication, and lastly the connection or past engagement with the references provide in the table below. Letters of support may be attached to Form 5 as required.
