



Municipality of Arran-Elderslie

Request for Proposals

For

Self Contained Breathing Apparatus Equipment SCBA-RFP-02-2022

Issued June 29, 2022

Submission Deadline July 15, 2022, 4:00pm local time

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- Appendix A – RFP Scope of Supply
- Appendix B – Schedule of Items and Pricing
- Appendix C – References
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### 1.1 Invitation to Bid

This Request for Proposals (the RFP) is an invitation by the Municipality of Arran-Elderslie to potential Vendors, in good standing with the Municipality, to submit non-binding Proposals for Self Contained Breathing Apparatus Equipment for the Arran-Elderslie Fire & Emergency Services. This request will follow the guidelines in the Municipality of Arran-Elderslie Procurement Policy By-Law Number 59-09.

### 1.2 RFP Contact

For the purposes of this procurement process, the “RFP Contact” will be:

Name: Steve Tiernan

Title: Fire Chief

Email Address: firechief@arran-elderslie.ca

Bidders are not permitted to contact any employees, officers, agents, elected or appointed officials, or other representatives of the Municipality, other than the RFP contact, concerning matters regarding this RFP. Failure to adhere to this rule may result in the ineligibility of the Vendor and the rejection of the Vendor’s Proposal.

Any questions or requests for interpretation or clarification, either administrative or technical, about this RFP must be submitted via email to the RFP Contact at the time noted in the RFP Timetable.

### 1.3 Type of Contract

The selected bidder will be requested to enter into a contract for the provisions within Appendix A and B. Although the Municipality’s intent is to enter into an agreement with only one (1) legal entity, the Municipality may decide in its sole discretion to enter into agreements with multiple entities.

Work needed in addition to the scope listed will be addressed on a case by case basis taking into consideration the scope of the additional work, cost implications, interruptions to equipment, process or other incidental items.

### 1.4 RFP Timetable / Key Dates

Issue Date of RFP	<b>June 29, 2022</b>
Submission Deadline	<b>July 15, 2022 4:00 pm local time</b>
Anticipated Execution of Agreement	<b>Upon Pre-Purchase Approval For 2023 Budget from Council</b>

The RFP timetable is tentative only and may be changed by the Municipality at any time.

While no formal proponent information session has been scheduled, it remains the bidder’s responsibility to satisfy themselves as to all requirements related to this project.

### 1.5 Submissions of Proposals

Proposals must be submitted before July 15, 2022 at 4:00pm local time::

- (1) Electronically through Biddingo.com
- (2) Registered mail to:

SCBA-RFP-02-2022

Attention: Fire Chief, Steve Tiernan  
1925 Bruce Rd. 10, Chesley, Ontario  
N0G1L0

Proposals must be submitted on or before the submission deadline. Proposals submitted after the deadline will not be accepted. Vendor's are advised to make submissions well before the deadline. Vendor's making submissions near the deadline do so at their own risk.

Vendor's are advised that the timing of their submission is based on when the Proposal is received by Municipality.

### **1.5 Proposals to be submitted in Prescribed Format**

A summary of the cost to design, manufacture, deliver and install the required SCBA equipment shall be itemized to a summarized line-item cost.

Quotes provided for consideration will list costs in the format detailed in Appendix B, Schedule of Items and Prices.

It is the bidder's responsibility to ensure receipt of the latest information and updates regarding this opportunity. If a bidder has obtained this RFP from a third party, the onus is on the bidder to acquire this RFP in its entirety.

### **1.6 Amendment of Proposals**

Vendor may amend their Proposals prior to the submission deadline by submitting the amendment in a sealed package clearly marked with the RFP title and number and the full legal name and return address of the Vendor to the location set out above or via email to the RFP contact. Any amendment should clearly indicate which part of the Proposal the amendment is intended to amend or replace.

### **1.7 Exclusions**

Any exclusions from the Scope of RFP that are not included a Vendor pricing must be clearly stated in the proposal.

### **1.8 Withdrawal of Proposals**

At any time, until the signing of a written agreement, a Vendor can withdraw a submitted Proposal. A proposal may be withdrawn after its submission by written request signed by the proposer or authorized representative prior to the time and date specified for proposal submission. Proposals may be withdrawn and resubmitted in the same manner if done so before the proposal submission deadline. Withdrawal or modification offered in any other manner will not be considered. The Municipality is under no obligation to return withdrawn Proposals.

### **1.9 Proposals in English**

All Proposals are to be in English only.

### **1.10 Vendor to Assume Their Own Costs**

The Vendor will assume all costs associated with or incurred in the preparation and presentation of its Proposal, including, if applicable, costs incurred for interviews or demonstrations.

### **1.11 Proposal to be Retained by the Municipality**

The Municipality will not return the Proposal, or any accompanying documentation submitted by a Vendor.

### **1.12 Vendor to Review RFP**

Vendor should examine all the documents comprising this RFP and may direct questions or seek additional information through the above RFP contact on or before the deadline for questions. The Municipality is under no obligation to provide additional information, and the Municipality is not responsible for any information provided by or obtained from any source other than the Municipality contact. It is the responsibility of the Vendor to seek clarification from the Municipality on any matter it considers to be unclear. The Municipality is not responsible for any misunderstanding on the part of the Vendor concerning this RFP or its process.

Oral statements concerning the meaning or intent of the contents of this RFP by any person other than the persons identified herein are unauthorized and invalid. The Municipality of Arran-Elderslie will not be responsible for any other explanation or interpretation of this RFP, or for any oral instructions. Any contact with Municipality of Arran-Elderslie personnel other than identified above regarding this RFP may disqualify a proposer.

### **1.13 All New Information to Vendor by Way of Addenda**

Municipality of Arran-Elderslie may modify this RFP, any of its key actions, dates, or any of its attachments, prior to the date fixed for submission of proposals by issuance of an electronic Addendum to all proposers. Such Addendum will also be posted on the RFP website. Proposer will acknowledge receipt of all Addenda in their proposal. Any Addenda issued during the time for submission of proposals will be made part of the Agreement.

### **1.14 Post-Deadline Addenda and Extension of Submission Deadline**

If the Municipality determines that it is necessary to issue an addendum after the Deadline for Issuing Addenda, the Municipality may extend the Submission Deadline for a reasonable period.

### **1.15 Late Responses**

While late responses are usually rejected, Municipality of Arran-Elderslie retains the right to accept or reject late responses for any reason.

### **1.16 Verify, Clarify and Supplement**

When evaluating Proposals, the Municipality may request further information from the Vendor or third parties in order to verify, clarify or supplement the information provided in the Vendor's Proposal, including but not limited to clarification with respect to whether a Proposal meets any mandatory technical requirements. The Municipality may revisit the Vendor's response based on any such information.

For clarification purposes, the words "Contractor", "Company", "Proposer", "Vendor", "Supplier", "Vendor" and "Bidder" shall be read to be one and the same. The words "Contract" and "Agreement" shall be read to be one and the same. The words "Proposal" and "Proposal" shall be read to be one and the same. The words "Request for Proposal" and "RFP" shall be read to be one and the same. The words "Notice of Award" and "Award Letter" shall be read to be one and the same.

### **1.17 Evaluation of Proposals**

Proposals will be evaluated initially by a selection committee comprised Municipality of Brockville's staff within five days of the bid close date. The proposal shall be of such scope and depth to sufficiently describe and demonstrate the understanding of the equipment specified in the Scope of RFP.

Submittal of incomplete or vague proposals will be rejected.

## Evaluation Process

The following points will be used to evaluate the proposals:

Practical evaluation	25 points
Warranty	20 points
Meets specification	20 points
Price	20 points
Value added items/service	10 points
Delivery schedule/work plan	5 points

Award of the contract resulting from this RFP will be based upon the most responsible Vendor whose offer will be the most beneficial to the Municipality in terms of cost, functionality, and other factors as specified above. It is the bidder's responsibility to clearly and properly describe components, features and pricing information so that additional research is not required by the selection committee.

The Municipality of Arran-Elderslie reserves the right to:

1. After reviewing the proposals, to reject any or all proposals, or to accept proposal(s) that in its sole judgement are in the best interest for the Municipality of Arran-Elderslie.
2. Reject any or all offers and discontinue this RFP process without obligation or liability to any potential parties.
3. Accept any offer other than lowest price offered.
4. Award a contract on the basis of initial offers received, without discussions or requests for best and final offers.
5. Request Vendor and final offers.
6. Review Contractor performance and reject bids of Vendor that fall below the standard required by any contract.
7. Reject proposals that have not followed the guidelines, do not meet minimum content or quality standards, or take unacceptable exceptions to the Scope of RFP.
8. Reject any or all proposals and may waive any immaterial deviation in a proposal. Municipality of Arran-Elderslie's waiver of an immaterial defect shall no way modify this RFP or excuse the proposer from full compliance with this RFP and/or the Contract documents if awarded the contract.
9. Make investigations as deemed necessary to determine the ability of the proposer to perform the services, and the proposer shall furnish to Municipality of Arran-Elderslie all such information and data for the purpose as requested by Municipality of Arran-Elderslie. Municipality of Arran-Elderslie reserves the right to reject any proposal if the evidence submitted by, or investigation of, such proposer fails to satisfy Municipality of Arran-Elderslie that the proposer is properly qualified to carry out the obligations of the agreement and to complete the work described therein.

The most qualified Vendor(s) may be asked to participate in an oral interview to discuss in greater detail the content of their proposals. Municipality of Arran-Elderslie will notify finalists, if interviews are conducted, of the date and time of such interview(s).

### **1.18 Award of Contract**

The Municipality may choose to award all or part of the project to one or more bidder.

The Vendor who is awarded the contact for the scope within this RFP will be notified by email of the pending award. Notification of Award of a contract is not considered a binding contract and does not give the Supplier approval to procure, ship or invoice the Municipality of Arran-Elderslie for the equipment or materials listed in this RFP. A formal Purchase Order will follow the Notification of Award and is to be considered the contract for proceeding with the equipment procurement

Once an agreement is executed by the Municipality and a Vendor, the other bidders may seek results posted on the Municipality 's website.

### **1.19 Contract Documentation**

In submitting a proposal, the Vendor can offer its intention to enter into an agreement with Municipality of Arran-Elderslie by means of a Purchase Order. The Vendor's pricing proposal in response to this RFP will be incorporated into the final agreement between Municipality of Arran-Elderslie and the selected Vendor. The agreement to be executed by the successful proposer will conform to the terms of the Purchase Order, however, Municipality of Arran-Elderslie reserves the right to update the agreement to its current standards at the time Municipality of Arran-Elderslie executes the contact. Proposers for site work within the Municipality of Arran-Elderslie are advised that the indemnification and insurance provisions are mandatory and not subject to revision. The Certificate of Insurance requirement will reflect an inclusive limit of not less than \$5,000,000 per occurrence for Commercial General Liability and the following:

- Commercial General Liability Insurance\* - Occurrence basis for third party bodily injury, personal injury, and property damage (including Products and Completed Operations liability)
- Automobile Liability Insurance\* (not less than \$2,000,00)
- Employer's Liability Insurance
- Professional Errors and Omissions Insurance

\*Including an Additional Insured Endorsement for each policy

Successful Vendor who will be working on Municipality property or on behalf of the Municipality of Arran-Elderslie will be required to submit a WSIB Clearance Certificate.

### **1.20 Vendor Not to Communicate with Media**

Vendor must not at any time directly or indirectly communicate with the media in relation to this RFP or any agreement entered pursuant to this RFP without first obtaining the written permission of the RFP Contact.

### **1.21 Payment**

Payment will be made following receipt of the deliverables and an approved invoice. Payment terms are Net 30 Days from approved invoice.

### **1.22 Illegal or Unethical Conduct**

Vendor must not engage in any illegal business practices, including activities such as bid rigging, price-fixing, bribery, fraud, coercion, or collusion. Vendor must not engage in any unethical conduct, including lobbying, as described above, or other inappropriate communications; offering gifts to any employees, officers, agents, elected or appointed officials, or other representatives of the Municipality; deceitfulness; submitting Proposals containing misrepresentations or other misleading or inaccurate information; or any other conduct that compromises or may be seen to compromise the competitive process provided for in this RFP.

### **1.23 Confidential Information of the Municipality**

All information provided by or obtained from the Municipality in any form in connection with this RFP either before or after the issuance of this RFP:

- (a) is the sole property of the Municipality and must be treated as confidential;
- (b) is not to be used for any purpose other than replying to this RFP and the performance of any subsequent contracts;
- (c) must not be disclosed without prior written authorization from the Municipality ;
- (d) must be returned by the Vendor to the Municipality immediately upon the request of the Municipality ;
- (e) this RFP will not give rise to any contract based tendering law duties or any other legal obligations arising out of any process contract or collateral contract; and
- (f) neither the Vendor nor the Municipality will have the right to make any claims (in contract, tort, or otherwise) against the other with respect to the award of a contract, failure to award a contract or failure to honour a Proposal submitted in response to this RFP.

### **1.24 Cancellation**

The Municipality reserves the right to cancel this RFP at any time should it be deemed to be in the best interest of the Municipality, without liability. No obligation, either expressed or implied, exists on the part of Municipality of Arran-Elderslieto make an award based on the submission of any proposal.



# Appendix A RFP Scope of Supply

## Purpose

The Arran-Elderslie Fire & Emergency Services is seeking proposals for the purchase of Self-Contained Breathing Apparatus (SCBA's) and related components. The SCBA and related components shall meet the minimum specifications outlined in most current applicable National Fire Protection Association (NFPA) standards. Options beyond the outlined specifications are at the discretion of the vendor.

## Background

The department will be replacing SCBA equipment to comply with new NFPA 1981 Standards (2018 Edition). The evaluation and award process will allow the Arran-Elderslie Fire & Emergency Services to select the most appropriate equipment for the department based on performance, value, quality, service and added value.

## GENERAL REQUIREMENTS:

### **EXCEPTION TO SPECIFICATIONS**

The following requirements shall be strictly adhered to:

1. Exceptions will be allowed if they are equal to or superior to that specified and provided they are listed and fully documented and explained on a separate page entitled "EXCEPTIONS TO SPECIFICATIONS". The exception list shall refer to specification page number and paragraph.
2. Proposals taking **total exception to specifications** shall not be accepted.
3. SCBA and components shall be inspected upon delivery for compliance with the specifications. Deviations shall not be allowed and shall be cause for rejection of SCBA unless they were originally listed in bidder's proposal.

### Self-Contained Breathing Apparatus (SCBA)

**Option 1** Twenty (20) **Option 2** Thirty (30) air packs with (optional) quick connect regulators and universal emergency breathing safety systems (UEBSS). These packs shall meet the requirements listed in the current applicable NFPA standards.

### Facepiece

**Option 1** Fifty (46), **Option 2** Seventy-Five (69) Face pieces. The required number of the masks for each size will be determined by the proponent upon completion of fit testing all of the current members of the fire department.

Note; If face piece requires voice amplification for optimum communications they shall be included in the quote.

### Compressed Air Cylinders

**Option 1** Forty (40), Compressed Air Cylinders rated to 4500 PSIG (45-minute cylinders) and Two (2) Compressed Air Cylinders, rated to 4500 PSIG (60-minute cylinders).

**Option 2** Sixty (60) Compressed Air Cylinders rated to 4500 PSIG (45-minute cylinders) and Three (3) Compressed Air Cylinders, rated to 4500 PSIG (60-minute cylinders).

Cylinders will have two options to be priced **Option 1** will be a quick connection style of fitting, come complete with numeric identification, and a reusable dust cap, **Option 2** will be a CGA connection style of fitting, come complete with numeric identification, and a reusable dust cap.

### Rapid Intervention Team Pack

**Option 1** two (2) RIT-Packs capable of utilizing 4500 PSIG 60-minute cylinders.

**Option 2** Three (3) RIT-Packs capable of utilizing 4500 PSIG 60-minute cylinders.

### Warranty

The vendor will give an in-depth description of the warranty, including length of warranty and parts covered, including soft and hard components, as well as electrical components.

### Roll-out

The successful bidder will be:

- Present on site for delivery and of components
- Perform adjustment of SCBA seat docks
- Set up and install new SCBA
- Remove existing SCBA/cylinders
- Distribute components to respective stations and remove all packaging
- The roll out plan will provide a turn key solution for the Arran-Elderslie Fire & Emergency Services
- Provide up to four (4) training sessions for firefighters in:
  - Donning and doffing
  - Equipment use and operation
  - Cleaning and decontamination
  - Repair and maintenance of components
  - Inspection and evaluation
  - Warranty and return

### Value added items

Vendors shall provide in-depth details of any value-added items/services that they wish to include or identify as part of their bids. This may include financing options, service availability, support, training, etc.

### Optional Items that will be considered

The successful bidder will provide pricing for the following:

1. Prescription eye glass kits
2. Charging kits, if required
3. Tool adaptor kits, for air bags, air chisels etc.
4. Thermal Image camera (TIC) for use by RIT team, ISO, fire investigator. TIC shall have minimum 3.5" display screen, minimum 320x240 resolution and digital video recording capability. TIC shall be designed for fire service use and include charger and spare battery.
5. Replacement chest straps for all packs
6. Fabric protective storage bag for face piece.

\*Quantities noted are approximate, the Municipality may, at its discretion purchase more or less of the commodity.

#### Vendor Presentation/SCBA Demo Unit

Representatives from qualified vendors may be asked to provide three functioning SCBA unit as outlined in the proposal for further evaluation by the Arran-Elderslie Fire & Emergency Services SCBA Committee and firefighters. Upon delivery of the demo unit, the Arran-Elderslie Fire & Emergency Services would invite the vendor representative to provide an in person presentation of the SCBA unit complete with features, field use information, post-use inspection requirements and cleaning procedures and allowing for a Q&A period.

## Appendix B Schedule of Items and Pricing

The following fee schedule shall be completed and submitted as a part of the Proposal.

All costs related to the work required in the RFP are to be included in the items listed in the schedule and all work that is included in the item shall be detailed in the proposal.

### Option 1

Required Items	Quantity*	Unit price	Purchase Price
SCBA Units with UEBSS	20	\$	\$
Quick Disconnect Regulator (optional)	20	\$	\$
Compressed Air Cylinders 4500 PSIG 45 minutes			
Option 1 Quick Connect	40	\$	\$
Option 2 CGA Connection	40	\$	\$
Compressed Air cylinders 4500 PSIG 60 minutes			
Option 1 Quick Connect	2	\$	\$
Option 2 CGA Connection	2	\$	\$
Face Pieces	46	\$	\$
RIT SCBA Pack	2	\$	\$
PASS Devices	20	\$	\$
Optional Items	Quantity	Unit price	Purchase Price
Prescription Eye Glass		\$	\$
Charging kits		\$	\$
Tool adaptor kits		\$	\$
Voice Amplification (if required)		\$	\$
Thermal Imaging Camera		\$	\$
Replacement chest harness kits		\$	\$
Fabric protective storage bag		\$	\$
<b>Sub Total, in Canadian Funds</b>			\$
<b>HST</b>			\$
<b>Total, in Canadian Funds</b>			\$

**Option 2**

<b>Required Items</b>	<b>Quantity*</b>	<b>Unit price</b>	<b>Purchase Price</b>
SCBA Units with UEBSS	30	\$	\$
Quick Disconnect Regulator (optional)	30	\$	\$
Compressed Air Cylinders 4500 PSIG 45 minutes			
Option 1 Quick Connect	60	\$	\$
Option 2 CGA Connection	60	\$	\$
Compressed Air cylinders 4500 PSIG 60 minutes			
Option 1 Quick Connect	3	\$	\$
Option 2 CGA Connection	3	\$	\$
Face Pieces	69	\$	\$
RIT SCBA Pack	3	\$	\$
PASS Devices	30	\$	\$
<b>Optional Items</b>	<b>Quantity</b>	<b>Unit price</b>	<b>Purchase Price</b>
Prescription Eye Glass		\$	\$
Charging kits		\$	\$
Tool adaptor kits		\$	\$
Voice Amplification (if required)		\$	\$
Thermal Imaging Camera		\$	\$
Replacement chest harness kits		\$	\$
Fabric protective storage bag		\$	\$
<b>Sub Total, in Canadian Funds</b>			\$
<b>HST</b>			\$
<b>Total, in Canadian Funds</b>			\$

Payment will be made following receipt of the deliverables and an approved invoice. Payment terms are Net 30 Days from approved invoice

## Appendix C - References

Should the space provided be insufficient for the Bidder's requirements, the Bidder shall attach additional sheets as required.

### Reference Information

Provide a minimum of three (3) references from clients that have purchased SCBA units like those specified in the RFP within the past year.

The Arran-Elderslie Fire & Emergency Services reserves the right to contact these references and to consider its own experience with any service provider or contractor that currently has a contract or previously had contracts with the fire department.

<b>Name of Client</b>	
<b>Address</b>	
<b>Contact Name &amp; Title</b>	
<b>Telephone Number</b>	
<b>Email Address</b>	
<b>Brief description of SCBA unit purchased &amp; quantity</b>	

<b>Name of Client</b>	
<b>Address</b>	
<b>Contact Name &amp; Title</b>	
<b>Telephone Number</b>	
<b>Email Address</b>	
<b>Brief description of SCBA unit purchased &amp; quantity</b>	

<b>Name of Client</b>	
<b>Address</b>	
<b>Contact Name &amp; Title</b>	
<b>Telephone Number</b>	
<b>Email Address</b>	
<b>Brief description of SCBA unit purchased &amp; quantity</b>	

## Appendix D – Signature Sheet

My signature certifies that the Proposal, as submitted, complies with all terms and conditions as set forth in this request.

My signature certifies that this Vendor has no business or personal relationships with any other companies or persons that could be considered a conflict of interest or potential conflict of interest to Municipality of Arran-Elderslie, pertaining to any and all work or services to be performed as a result of this request and any resulting contract with Municipality of Arran-Elderslie.

The Proposer hereby certifies that it has: Read each clause of this RFP. Has included all costs necessary to furnish equipment and complete work in its proposed pricing. Agreed that, if it is awarded the Contract, it will make no claim against Municipality of Arran-Elderslie based upon ignorance of local conditions or misunderstanding of any provision of the contract. Should conditions turn out otherwise than anticipated by it, the Proposer agrees to assume all risks incident thereto.

I hereby certify that I am authorized to sign as a Representative for the Vendor:

Name of Vendor: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

Name (type/print): \_\_\_\_\_

Title/Position: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_ Fax

No.: \_\_\_\_\_

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

To receive consideration for award, this signature sheet must be returned as part of the Proposal.



## APPENDIX E – TERMS AND CONDITIONS

### Corporation of the Municipality of Arran-Elderslie

### Purchase Order Terms and Conditions - Supply of Goods and Services

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Alternate formats are available as per the Accessibility for Ontarians with Disabilities Act by contacting Clerk at 519-363-3039 Ext 101

#### Application

These Purchase Order Terms and Conditions apply to all procurements unless contradictory terms are contained in the Request for Tenders or Request for Proposals. By accepting the Purchase Order, delivering the Goods and/or commencing performance of the Services, the Supplier is deemed to have agreed to be bound by these Purchase Order Terms and Conditions.

#### 1. Definitions

1.1 The following terms have the following meaning:

**AODA**” means the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11;

**“Background IP”** means any intellectual property owned or licensed by a party which that party makes available, contributes, brings to, or uses in connection with the Purchase Order, excluding Work IP.

**“Business Day”** means any day excluding a Saturday or Sunday or statutory holiday in the Province of Ontario, and also excluding any day on which the principal chartered banks located in the Municipality of Arran-Elderslie are not open for business.

**“Municipality”** means The Corporation of the Municipality of Arran-Elderslie.

**“Confidential Information”** means all non-public, confidential or proprietary information (including Personal Information), whether oral, written, visual, electronic, or in any other form, relating in any way to the Purchase Order or made available to the Supplier at any time in connection with the Purchase Order and the Goods and/or the Services provided hereunder, whether or not identified as “confidential”, but does not include information which:

- a) is or becomes public knowledge other than by a breach of this Purchase Order;
- b) is in the Supplier’s possession without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Supplier; or
- c) has been independently developed by the Supplier or acquired from a source which was not subject to a duty of confidentiality to the Municipality.

**“Contract Documents”** includes the following:

- a) the scope of work and specifications applicable to the Purchase Order;
- b) the procurement documents (including, without limitation, Request for Proposals or Request for Tenders and bid documents submitted by the Supplier), if any, pursuant to which the Purchase Order is issued;
- c) these Purchase Order Terms and Conditions; and
- d) the Purchase Order.

**“Customs Duties”** means all duties, fees, tariffs or similar analogous taxes on imports or exports of the Goods.

**“Defect”** or **“Defective”** with respect to:

- a) Goods: means non-conformity to the quantity, quality, specifications, and/or other requirements set out in the Contract Documents; and
- b) Services: means non-conformity with the requirements and obligations set out in the Contract Documents, including, without limitation, Sections 8.1 or 8.3 of these Purchase Order Terms and Conditions.

**“Delivery Date”** means the delivery date specified on the Purchase Order.

**“Delivery Point”** means the place for delivery of the Goods specified on the Purchase Order.

**“Dispute”** means a claim, dispute or controversy of any kind arising out of or in connection with the Purchase Order.

**“EFT”** means Electronic Funds Transfer.

**“Goods”** means supplies, materials, equipment or other things (if any), specified in the Purchase Order (including any part of the goods specified).

**“Intellectual Property Rights”** includes all industrial and intellectual property rights and rights of a similar nature whether protected by statute, at common law, or in equity, including all rights in and to, patents, patent disclosures and inventions (whether patentable or not), copyright, trade secrets and know-how, rights in relation to designs (whether or not registerable), rights in relation to registered and unregistered trademarks, service marks, circuit layout designs and rights in relation to circuit layouts, together with the goodwill associated with the foregoing and any derivative works and all other rights in and to all documents, work product, and other materials delivered to the Municipality under the Purchase Order or in the course of performance of the Services, and all applications, registrations, renewals and extensions pertaining to the foregoing.

**“Invoice”** means an invoice submitted by the Supplier in accordance with Article 7.0.

**“OHSA”** means the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, including all regulations thereunder, as may be amended, modified, re-enacted, replaced or superseded from time to time.

**“Personal Information”** means all information and data pertaining to an identifiable individual, other than the name, business telephone number, and business address of such individual used for the purpose of communicating with such individual in relation to the individual’s employment, business, or profession.

**“Personnel”** of a person or entity means directors, officers, employees, agents, suppliers, advisors, representatives, subcontractors and any other entities that form part of that person’s or entity’s supply chain, but a reference to the Municipality’s Personnel excludes the Supplier.

**“Price”** means the price or rates specified in the Purchase Order.

**“Purchase Order”** means the purchase order for Goods and/or Services issued by the Municipality to the Supplier containing, among other things, a description of the Goods and/or Services, and includes these Purchase Order Terms and Conditions.

**“Services”** means, without limitation, the labour, work, efforts, repairs, maintenance, quality control, quality assurance, transportation, administration and services (if any), specified in the Purchase Order (including any part of the specified services and any ancillary services).

**“Site”** means the place described in the Purchase Order as the place for the use, delivery or storage of the Goods by the Municipality or for the performance of the Services.

**“Supplier”** means the party or parties to whom the Purchase Order is issued.

**“Taxes”** means any and all taxes, levies, imposts, duties, Customs Duties, stamp duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any governmental authority, together with interest, fines and penalties, including, without limitation, occupational, excise, unemployment, ownership, sales, gross receipts, income taxes, payroll taxes, employer contributions (both statutory and otherwise) and workers' compensation payments and contributions, but does not include value-added tax.

**“Warranty Period”** with respect to Goods, means the minimum period of 12 months from the date of delivery and acceptance of the Goods; and, with respect to Services, means the minimum 12 months from the earlier of the date on which the Services are completed or the termination of the Purchase Order, as may be extended pursuant to Section 14.4.

**“Work IP”** means all intellectual property (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the performance of the supply under the Purchase Order.

**“WSIA”** means the *Workplace Safety and Insurance Act*, 1997, S.O. 1990, c. 16, Sched. A, including all regulations thereunder, as may be amended, modified, re-enacted, replaced or superseded from time to time.

## **2. Supply of Goods and/or Services**

### **2.1 In consideration of payment**

of the Price by the Municipality, the Supplier shall supply the Goods and/or provide the Services to the Municipality in accordance with, and as specified in, the Purchase Order.

2.2 To the extent that the Supplier's terms and conditions are supplied to the Municipality in respect of the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of the Contract Documents (even if any representative of the Municipality signs those terms and conditions or annexes those terms and conditions to the Purchase Order) unless the Municipality expressly agrees in writing to be bound by all or any of those terms and conditions.

2.3 Where this Purchase Order relates to Goods and/or Services that are the subject of a separate written agreement between the Supplier and the Municipality, the terms of that agreement apply to the extent of any inconsistency with these Purchase Order Terms and Conditions.

2.4 The Supplier must, in supplying the Goods or performing the Services:

- a) not interfere with the Municipality's activities or the activities of any other person at the Delivery Point or the Site;
- b) be aware of and comply with, and ensure that the Supplier's Personnel are aware of and comply with:
  - i. all applicable laws;
  - ii. all Municipality policies, to the extent applicable to the supply of the Goods or the performance of the Services by the Supplier; and
  - iii. all lawful directions and orders given by the Municipality's representative or any person authorized by law or the Municipality's policies to give directions to the Supplier;
- c) ensure that the Supplier's Personnel entering the Site perform the Services or deliver the Goods in compliance with OHSA, in a safe manner and in a way that does not prejudice safe working practices, safety and care of property, and continuity of work at the Delivery Point or Site;
- d) on request by the Municipality, provide to the Municipality and its Personnel any information and assistance required to identify, evaluate, implement and report on any matter required by law in respect of anything used, produced or created in connection with the performance of the Supplier's obligations under the Purchase Order.

## **3. Delivery**

3.1 The Supplier shall supply the Goods and/or perform the Services to the Delivery Point by the Delivery Date. If no Delivery Date is specified, the Supplier shall supply the Goods and/or complete the Services within a reasonable time after the Supplier receives the Purchase Order. Time is of the essence of the Supplier's performance of the Purchase Order.

3.2 The Supplier shall ensure that the Goods are suitably packed to avoid damage in transit or in storage and in compliance with any applicable laws.

3.3 Packages must be marked with the Purchase Order number, item number, Delivery Point, contents, quantity, date and method of dispatch and weight of each package.

## **4. Title and Risk**

4.1 Risk of loss of the Goods remains with the Supplier and title will not pass to the Municipality until the Goods are delivered to and accepted by the Municipality at the Delivery Point.

## **5. Defective Goods and Services**

5.1 All Goods and/or Services will be received subject to the Municipality's inspection and approval.

5.2 If the Municipality determines that any Goods provided by the Supplier, even if the Municipality has already accepted them, do not comply with the Municipality's specifications or are Defective, then the Municipality may:

- a) accept the Goods and adjust the price in accordance with their diminished value, as determined by the Municipality;
  - b) reject the Goods outright, return them (or require the Supplier to retrieve or undo them) at the Supplier's expense, and require the Supplier to replace them; or
  - c) reject the Goods outright, return them (or require the Supplier to retrieve or undo them) at the Supplier's expense, and terminate the Purchase Order.
- 5.3 In any case when the Municipality requires replacement of Goods, the Supplier shall replace them immediately and at no additional cost.
- 5.4 In any case when the Municipality rejects Goods, it shall not be responsible for any re-stocking charge.
- 5.5 The Supplier shall promptly correct Defective work that has been rejected by the Municipality as failing to conform to the Contract Documents.
- 5.6 Upon the Municipality's request, the Supplier shall re-perform, at the Supplier's expense, any portion of the Services which are Defective until such non-compliance is corrected.
- 5.7 All or part of any payment under an invoice or any holdback may be withheld by the Municipality or set-off against the payments owing to the Supplier until the Supplier has remedied any Defects to the Municipality's satisfaction and at the Supplier's sole expense.

## **6. Price**

- 6.1 The Supplier shall supply the Goods and/or Services for the Price specified in the Purchase Order.
- 6.2 The Price is inclusive of:
- a) all charges for packaging, packing, insurance and delivery of the Goods and/or Services in accordance with this Purchase Order;
  - b) the cost of any miscellaneous services of a kind which are commonly provided with the Goods and any miscellaneous items of a kind which are commonly used or supplied in the performance of (and in conjunction with) the Services; and
  - c) the Supplier's compliance with its obligations under this Purchase Order; and
  - d) other than Goods and Services Tax (GST)/Harmonized Sales Tax (HST), Quebec Sales Tax (QST) or provincial sales tax imposed by the laws of a Canadian province (PST) applicable, the Contract Price is inclusive of all Taxes for which the Supplier is responsible under applicable laws.

## **7. Invoicing and Payment**

- 7.1 The Supplier may charge the Municipality for the provision of the Goods and Services amounts not greater than the Price. Any increase in the Price due to a change in the scope of the Services must be approved in writing by the Municipality.
- 7.2 The Municipality shall pay the Supplier the properly charged amounts for the Goods and/or Services, less any holdbacks required under the Contract Documents or the applicable lien legislation, within 30 days after approval by the Municipality of the invoice and applicable backup information.
- 7.3 Unless specified otherwise on the Purchase Order, the Supplier shall invoice the Municipality for supplied Goods and/or Services within 28 days after supply of such Goods and/or Services.
- 7.4 Payment of an invoice is not evidence or an admission that the Goods or Services meet the requirements of the Purchase Order.
- 7.5 Any Invoice must include the following details:
- a) a reference to the Purchase Order and the relevant written agreement (if any) including the line item numbers on the Purchase Order and the contract number;
  - b) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services and the relevant quantity of the Goods and/or Services;
  - c) the Price relating to the Goods and/or Services, broken down to reflect the same Price components as on the Purchase Order, including the amount applicable to HST, GST, QST or PST;

d) for all Goods provided and/or Services performed on a cost reimbursable or unit price basis, daily time sheets, which shall detail all hours worked, materials installed and equipment used, for approval by the Municipality. An approved copy of such time sheets must be submitted in support of the Supplier's Invoices; and

e) the Municipality department, Site and the Municipality contact name.

7.6 The Supplier shall send the original invoice, bill of lading, or other sufficient shipping memorandum, to the Municipality at:

Attention Accounts Payable  
PO Box 70  
1925 Bruce Rd. 10  
Chesley, Ontario  
N0G 1L0

7.7 The Municipality may reduce any payment due to the Supplier under the Purchase Order by any amount which the Supplier must pay the Municipality, including costs, charges, damages and expenses and any debts owed by the Supplier to the Municipality on any account whatsoever. This does not limit the Municipality's right to recover those amounts in other ways.

7.8 If the Purchase Order requires the Supplier to provide Services, and if the Supplier is a foreign corporation or company or a non-resident alien individual, then, unless Supplier provides the Municipality with valid documentation (received prior to payment for Services) showing that an exemption applies where the Services are performed, the Municipality reserves the right to withhold payment of amounts required to satisfy tax withholding obligations under applicable laws on account of the Services.

7.9 The Municipality shall not be subject to interest charges in the event that it fails to make any payment as it becomes due under the terms and conditions of the Purchase Order.

7.10 On every shipment originating outside of Canada, the Supplier shall furnish, in addition to its invoice, properly certified Canadian Customs invoices and USMCA certificates in quadruplicate, made up in accordance with the Canadian Customs requirements. The Supplier is responsible for all Customs Duties.

7.11 The Municipality's method of payment for Canadian Suppliers is by Electronic Funds Transfer (EFT) where the financial institution is physically located in Canada. The Supplier will be required to provide the Municipality with an Application for Vendor Direct Deposit form, by return mail, fax, email [AccountsPayable@brockville.com](mailto:AccountsPayable@brockville.com) or hand delivered. The Municipality will pay US Suppliers by cheque payment.

7.12 It is the responsibility of the Supplier to ensure account information is correct and up to date. The Municipality is not liable for errors resulting from changes to EFT information provided by the Suppliers financial institution or from the Supplier. If an uncompleted or erroneous transfer occurs because the Suppliers EFT information was incorrect and the funds are no longer under the control of the Municipality payment process, the Municipality is deemed to have made the payment and the Supplier is responsible for recovery of any erroneously directed funds. If for any reason, the Municipality is unable to submit payment by EFT the Supplier agrees to accept a cheque or have payment delayed until such time as EFT process is functional.

## **8. Conditions as to Quality of the Goods and the Services**

8.1 With respect to the Services, the Supplier warrants that:

a) the Services will be performed in a skillful and workmanlike manner, which is consistent with the level of expertise, care, skill and diligence demonstrated by experienced and reputable service providers performing services of a similar nature;

b) the Supplier shall always act diligently in the performance of the Services under the Purchase Order and Supplier shall comply with all laws applicable to the Services and with all aspects of the Purchase Order; and

c) to the extent that the Services are design Services, the works being designed will be fit for their intended purpose as described in the Purchase Order.

8.2 With respect to the Goods, the Supplier warrants that:

a) the Goods match the description in the Purchase Order;

b) if the Supplier gave the Municipality a sample of the Goods before the Municipality issued the Purchase Order, the Goods correspond with the sample;

c) the Supplier has good title to the Goods and the right to transfer title to the Goods free and clear of any encumbrances (including liens);

d) the Goods will:

i. be of good quality and workmanship and only incorporate new material;

ii. conform to any specifications and/or standards provided by the Supplier and approved by the Municipality;

iii. comply with all applicable local, provincial and federal laws and regulations;

iv. be free from defects in design, materials and workmanship; and

v. be fit for the intended purpose; and

e) the Municipality has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Supplier shall pursue any manufacturer's warranties on the Municipality's behalf if the Municipality so requests).

8.3 The Supplier further warrants that the Goods and Services and their use, manufacture, sale, lease, distribution, or other commercialization do not and will not infringe, misappropriate or violate the Intellectual Property Rights of any third party. The Supplier shall be liable for and fully defend, indemnify and hold harmless the Municipality against any liability, whether direct or indirect, arising out of a claim by any third party against the Municipality alleging that any of the Goods and Services or their receipt or use by the Municipality, infringes or misappropriates any Intellectual Property Rights. In no event shall the Supplier enter into any settlement of any such claim without the Municipality's prior written consent.

## **9. Acceptance and Change of a Purchase Order**

9.1 The Supplier may request changes to this Purchase Order, by written notice to the Municipality contact specified in the Purchase Order, in response to which the Municipality may issue an amended Purchase Order, in its sole discretion. If the Municipality is unwilling to accept the requested changes, the Municipality may terminate the Purchase Order.

## **10. Terminating this Purchase Order**

10.1 The Municipality may terminate the Purchase Order for any reason upon written notice to the Supplier:

a) the Municipality shall pay for any part of the Goods delivered or Services performed prior to the termination;

b) if the Supplier has shipped any Goods before the termination but the Goods have not been delivered to the Delivery Point at the date of termination, the Municipality may either:

i. accepts those Goods when delivered, and pay the Price for them; or

ii. return the Goods to the Supplier at the Municipality's expense; if the Supplier has not shipped the Goods at the time of termination, on receiving the written notice of termination the Supplier shall stop manufacture of the Goods in accordance with and to the extent specified in the notice, and do everything possible to mitigate any costs incurred in relation to the Goods; and

c) if the Supplier has not shipped the Goods at the time of termination, on receiving the written notice of termination the Supplier shall stop manufacture and/or delivery of the Goods in accordance with

and to the extent specified in the notice, and do everything possible to mitigate any costs incurred in relation to the Goods; and

d) if Section 10.1(b)(ii) or Section 10.1(c) applies:

- i. to the extent that the Goods were manufactured or fabricated in accordance with any specification prepared by the Supplier for the Municipality, the Municipality shall reimburse the Supplier in respect of any expenditure reasonably incurred by the Supplier prior to the date of the termination which is directly attributable to the placing of the Purchase Order and which the Supplier is not able to recover in some other way; and
- ii. for greater certainty, the Supplier is not entitled to the Price of those Goods or Services, or to any compensation, including for lost profit, for that termination other than as specified in this Article 10.0.

## **11. Confidential Information**

11.1 The Supplier shall not advertise or issue any information, publication, document or article (including photographs or film) for publication or media releases or other public Municipality relating to the Goods, Services, the Purchase Order or the Municipality's Confidential Information without the prior written approval of the Municipality.

11.2 The Supplier shall keep the Confidential Information strictly confidential and shall not, and shall ensure that the Supplier's Personnel do not, without the prior written approval of the Municipality:

- a) use Confidential Information other than as necessary for the purposes of fulfilling the Supplier's obligations under the Purchase Order; or
- b) disclose the Confidential Information, other than to the Supplier's Personnel who need the information to enable the Supplier to perform the Purchase Order or to the Supplier's legal advisors, accountants or auditors (in each case who are informed of the confidential nature of the Confidential Information and are subject to confidentiality duties or obligations to the Supplier that are no less restrictive than these Purchase Order Terms and Conditions), or where disclosure is required by law (including disclosure to any stock exchange).

11.3 The Supplier must, within 10 Business Days (or any other period agreed in writing by the Municipality after a direction by the Municipality to do so, return or destroy all Confidential Information in the Supplier's possession, custody or control.

11.4 If the Municipality or the Supplier is required by law to disclose Confidential Information, it shall promptly notify the other party so that that party may intervene to prevent the disclosure.

11.5 The Supplier specifically acknowledges that the Municipality is subject to the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M. 56, and that the Municipality may be compelled by law to disclose certain Confidential Information.

11.6 The rights and obligations under this Article 11 continue after the termination of this Purchase Order.

## **12. Privacy**

12.1 Where the Supplier collects, uses or discloses or similar operation of the Personal Information in connection with this Purchase Order, the Supplier will:

- a) comply with all applicable privacy laws; and
- b) take all appropriate technical and organizational measures against unauthorized or unlawful collection, use and disclosure of Personal Information and against accidental loss or destruction of, or damage to, Personal Information.

## **13. Intellectual Property**

13.1 Subject to the Terms and Conditions of this Article 13, a party's Background IP remains vested in that party.

13.2 The Supplier grants the Municipality a non-exclusive, perpetual, royalty-free, irrevocable, transferable license (with the right to assign and sub-license) to use the Supplier's Background IP to

the extent necessary to use the Goods and/or Services, and assigns to the Municipality all Work IP upon the creation of that Work IP.

13.3 The Municipality grants the Supplier a non-exclusive, royalty-free, revocable, non-transferable license to use the Work IP and the Municipality's Background IP to the extent required to perform the Supplier's obligations under this Purchase Order.

#### **14. Defects**

14.1 If, during the Warranty Period or within 30 days after expiration of the Warranty Period, the Municipality finds any Defective Goods or Services, the Municipality may:

- a) reject the Goods with the Defect and return them to the Supplier, in which case the Supplier must replace the Goods free of charge and reimburse the Municipality for any expenses incurred;
- b) reject the Services with the Defect, in which case the Supplier must re-perform the Services free of charge; or
- c) make good or engage another supplier to make good the Defect, in which case the Supplier must reimburse the Municipality for any expenses incurred.

14.2 If the Supplier does not replace the Goods pursuant to Section 14.1(a) or re-perform the Services pursuant to Section 14.1(b) and:

- a) the Municipality has already paid the Supplier for the Goods or Services with the Defect; the Supplier must repay the Municipality the Price for those Goods or Services; or
- b) the Municipality has not already paid the Supplier for the Goods or Services with the Defect; the Municipality is not liable to pay the Supplier for those Goods or Services.

14.3 The acceptance of any Goods or Services with a Defect by the Municipality will not bind the Municipality to accept any other Goods or Services with a Defect and does not affect any of the Municipality's other rights under this Purchase Order or at Law.

14.4 Where the Supplier has made good any Defect under this clause, those Goods or Services will be subject to an additional warranty period of 12 months, from the date the Supplier made good the Defect.

#### **15. Waiver and Release of Liens**

15.1 Upon receipt from the Municipality of amounts invoiced pursuant to Article 7.0 hereof, Supplier waives and releases all rights to, and at its sole cost shall obtain the prompt removal of, any mechanics', materialmen's, construction or any similar lien, encumbrance or claim fixed against the Municipality or its assets, which then exist or which may thereafter arise for Goods furnished or Services performed. All payments owed to Supplier hereunder shall be contingent upon Supplier providing proof of its compliance with this provision to the Municipality upon request.

#### **16. Liability and Indemnification**

16.1 To the extent permitted by law, the Municipality's liability to the Supplier arising out of or in connection with this Purchase Order is limited to the total Price paid or payable by the Municipality under this Purchase Order.

16.2 The Supplier agrees to indemnify and hold harmless the Municipality and its Personnel from and against any and all liability that the Municipality or its Personnel may suffer, sustain or incur, and any claim against the Municipality or its Personnel (including legal fees incurred in defending any claim on a full indemnity basis), arising as a result of, in respect of, or arising out of Supplier's performance, non-performance or breach of the Purchase Order, except to the extent caused by the negligence of the Municipality or its Personnel; provided however, the Supplier shall not be relieved of any pro rata, proportional, contributory or other allocation of liability or fault imposed by applicable laws. For the purpose of making the Supplier's promise to indemnify the Municipality's Personnel enforceable, the parties acknowledge that the Municipality is acting as the agent and trustee for its Personnel.

#### **17. Insurance**



17.1 Without limiting Supplier's obligations or liabilities hereunder, and subject to any requirements contained in the Request for Tenders or Request for Proposals, Supplier shall, at its sole expense, purchase and maintain the following insurance:

a) Commercial General Liability Insurance issued on an occurrence basis for an amount of not less than \$5 million per occurrence / \$5 million annual aggregate for any negligent acts or omissions relating to the obligations under agreement. Such insurance shall include, but is not limited to, bodily injury and property damage including loss of use; personal injury; contractual liability; premises, property & operations; non-owned automobile; broad-form property damage; owners & contractors protective; occurrence property damage; products; broad form completed operations; employees as Additional Insured(s); contingent employers' liability; tenants' legal liability; cross liability and severability of interest clause. Coverage shall not contain any exclusions with respect to explosion, collapse and underground property damage hazards.

- o Such insurance shall add the Corporation of the Municipality of Arran-Elderslie as an additional Insured subject to a waiver of subrogation. This insurance shall be non-contributing with and apply as primary and not as excess of any insurance available to the Municipality.

b) if the Supplier will use or provide for use motor vehicles in providing the Goods and/or performing the Services, automobile (motor vehicle) insurance covering all liabilities for personal injury and property damage arising from the use of such vehicles, with limits of liability of \$2,000,000 for each occurrence and in the aggregate; and

c) if the Supplier will provide professional advice or services, professional liability insurance, with limits of liability of \$2,000,000 for each claim and in the aggregate.

17.2 The Supplier shall ensure that all the foregoing insurance is primary and does not call into contribution any other insurance coverage available to the Municipality.

17.3 The Supplier shall on request provide to the Municipality or its designee certificates of insurance and endorsements as evidence of the insurance required under the Purchase Order.

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

18.1 If, at the time the Services commence, the Supplier is subject to the insurance requirements under the Workplace Safety and Insurance Act (WSIA), the Supplier shall comply with its obligations under the WSIA and shall provide a certificate under the WSIA on vendor compliance if requested by the Municipality .

## **19. Governing Law**

19.1 This Purchase Order and any dispute arising out of or in connection with it or its subject matter or formation (including non-contractual disputes) will be governed by, construed and take effect in accordance with the laws in force in the Province of Ontario and the laws of Canada applicable therein.

19.2 The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods (adopted at Vienna on 10 April 1980) does not apply in any respect to this Purchase Order.

## **20. Dispute Resolution**

20.1 All unresolved claims, disputes or controversies of any kind arising out of or in connection with this Purchase Order, ("Disputes") shall be resolved in a tiered approach as follows:

20.1.1 Disputes shall be referred to the Purchasing Manager of the Municipality and an employee of the Supplier of the equivalent seniority or position for resolution within a period not to exceed thirty (30) days, as may be amended by mutual agreement;

20.1.2 If unresolved, under 20.1.1 above, the Disputes shall be referred to the Municipality Manager and the President of the Supplier for resolution within a period of not to exceed thirty (30) days, as may be amended by mutual agreement;

- 20.1.3 If unresolved under 20.1.2 above, and only at the election of the Municipality, the Disputes shall be referred to the Municipality Manager and the most senior executive employee of the Supplier for resolution within a period of not to exceed thirty (30) days, as may be amended by mutual agreement. If the Municipality does not elect, at its sole option, to proceed under this section 20.1.3, the Dispute shall proceed to 20.1.4;
- 20.1.4 If the Disputes remain unresolved despite the parties attempting to resolve them following the process in sections 20.1.1, 20.1.2 (or 20.1.3 where the Municipality has elected to proceed) above, a party may elect to proceed with the Disputes under a mediation model to be agreed upon by the parties. A party shall elect to proceed to mediation no later than ten (10) days following the expiry of the timeline set out in section 20.1.2 above, as may be amended by mutual agreement. If a party elects to proceed with mediation, the other party shall be bound to proceed to mediation. No later than 10 days (or as may be amended by mutual agreement) after a party makes an election to proceed to mediation, the parties shall enter into a mediation agreement which shall set out the mediation process.
- 20.1.5 If neither party elects to proceed to mediation within the timelines outlined in 20.1.4 above or the parties are unable to enter into a mediation agreement by the timeline set forth in 20.1.4 above (as those times may be amended by the parties upon mutual consent), the matter shall proceed and be finally resolved by binding arbitration in accordance with the Arbitration Act, 1991, S.O. 1991, c. 17 (the "Act") by a single arbitrator as amended by an arbitration agreement to be executed by the parties and the arbitrator. The Parties shall mutually agree on the selection of the arbitrator, failing which the arbitrator shall be appointed in accordance with the Act. The arbitration proceedings shall take place in Brockville, Ontario, Canada. The language of the arbitration shall be English. The Parties agree that any arbitration award, including with respect to costs, shall be binding on the Parties, may be enforced in any court of competent jurisdiction and shall be final and no appeals or judicial reviews shall be permitted as of right or by application to any court of competent jurisdiction, except on errors of law. The Parties shall each bear their own costs and their proportionate share of any joint costs of arbitration, subject to any award of an arbitrator.
- 20.1.6 Concurrently with resolving the Dispute in accordance with section 20.1.1 above, and prior to the expiry of the timeline outlined in section 20.1.1 above, the parties shall agree on a mediator to hear the Dispute in the event that either party elects to proceed with a mediation of the Dispute in accordance with section 20.1.4 above, provided, however, that in no circumstance shall the selection of a mediator be deemed to be an election to proceed to mediation. A party must comply with section 20.1.4 above in order to proceed to mediation. If a mediator is not selected prior to the expiry of the timeline outlined in section 20.1.1 above, unless the parties agree otherwise, no party shall be entitled to elect to proceed to mediation under section 20.1.4 above and the Disputes shall be referred to binding arbitration.

## **21. Conflict of Interest**

21.1 The Supplier acknowledges that, unless prior Council approval has been provided, the Municipality shall not purchase, either directly or by subcontract any Goods and/or Services from any member of Council or employee of the Municipality, or any associate or family member of a member of Council or employee of the Municipality who has an interest in a Supplier that provides Goods and/or Services to the Municipality.

21.2 The Supplier shall immediately notify the Municipality of any conflict of interest.

## **22. Accessibility for Ontarians with Disabilities Act**

22.1 The Supplier shall comply with the provisions, to the extent that they are applicable, of the AODA and regulations under it, in respect of all Services provided by the Supplier on behalf of the Municipality. Without limiting the generality of the foregoing, the Supplier shall ensure that all of its Representatives and applicable others, for whom it is at law responsible, receive training about the

provision of the Services contemplated in this agreement to persons with disabilities, in accordance with section 80.49 of *Ontario Regulation 191/11*, Integrated Accessibility Standards, made under the AODA. This training includes, but is not limited to, training relating to, and ensuring compliance with, the policies, practices and procedures of the Municipality respecting the provision of services to persons with disabilities.

### **23. Miscellaneous**

23.1 The Supplier shall not assign, delegate or subcontract the Purchase Order or any interest herein, including any performance or any amount that may be due hereunder, without the Municipality's prior written consent.

23.2 The Purchase Order, including any attachments noted in the Purchase Order, constitutes the entire agreement relating to the subject matter hereof and supersedes all prior and contemporaneous understandings or statements unless expressly contained herein.

23.3 If there is any conflict between these Terms and Conditions and a provision elsewhere in the Purchase Order (including attachments to the Purchase Order), these Terms and Conditions will prevail.

23.4 No modification or alteration of the terms hereof shall be binding unless such modification or alteration is in writing and signed by both the Municipality and the Supplier.

23.5 Either party's waiver of any breach, or failure to enforce any of the Terms and Conditions hereof, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance with every term and condition hereof.