



# **Township of Adelaide Metcalfe**

**REQUEST FOR TENDER #PW-02-2023**

**FOR GRAVEL MAINTENANCE IN 2023**

**TENDER CLOSING DATE: February 6, 2023, by 12:00 p.m.**

**Bids are to be addressed to:**

**The Township of Adelaide Metcalfe with “RFT #PW-02-2023, GRAVEL MAINTENANCE” marked on the envelope and submitted to the drop box based at the front door at the Township of Adelaide Metcalfe Building, 2340 Egremont Dr RR #5, Strathroy, ON N7G 3H6**

**Administrator:**

**Coulter Cahill - Public Works Manager  
Township of Adelaide Metcalfe  
2340 Egremont Drive RR #5  
Strathroy, ON N7G 3H6**

**TENDER RECEIVED LATE WILL NOT BE ACCEPTED**

**TENDER WILL NOT BE ACCEPTED BY E-MAIL.**

---

## TABLE OF CONTENTS

INFORMATION TO BIDDERS.....	page 3
INTENT OF RFT.....	page 4
FORM OF TENDER .....	page 13
AGREEMENT TO BOND.....	page 18
FORM OF POTENTIAL CONTRACT .....	page 19

---

## 1.0 **DEFINITIONS**

In addition to terms defined elsewhere herein, the following terms have the following meanings in this Request for Tender:

- 1.0 **“Administrator”** means the staff administrator of this RFT, Coulter Cahill, Adelaide Metcalfe Manager of Public Works, or his designate.
- 1.1 **“Bidder” or “Respondent”** means an individual or entity, which has responded to this RFT by providing a Bid submission.
- 1.2 **“Bid Bond”** means the five-thousand dollar (\$5,000.00) security deposit set out in *Appendix “E”* to be provided by Bidders as part of respective Bid submissions in accordance with this RFT.
- 1.3 **“Council”** means the Municipal Council for the Township of Adelaide Metcalfe.
- 1.4 **“Closing Date and Time”** means February 6, 2023 at 12:00 p.m. EST.
- 1.5 **“Contract”** means a potential agreement to provide Products and Application for dirt road maintenance in 2023, which is formed only after a resolution and by-law passed by Council, which may or may not result from this RFT at the discretion of Council.
- 1.6 **“Crushed Granular Gravel”** means approximately 12,000 tonnes of crushed granular gravel that shall be supplied, delivered and spread on the Township roads identified in the Location Map attached to this RFT as *Appendix “D”*
- 1.7 **“Form of Potential Contract”** means the Form of Potential Contract attached to this RFT as *Appendix “F”*.
- 1.8 **“Form of Tender”** means the Form of Tender attached to this RFT as *Appendix “C”*.
- 1.9 **“Location Map”** means the Location Map attached to this RFT as *Appendix “D”*, which identifies the Township roads that require dirt road maintenance in 2023.
- 1.10 **“Performance and Labour and Material Bond”** means the Bid Bond (*Appendix “E”*) of the Consultant, which will be retained by the Township and become a Performance Bond and Labour and Material Bond for the provision of product required for dirt road maintenance identified in the Special Provisions of this RFT.
- 1.11 **“Products and Application”** means products for dirt road maintenance identified in the Special Provisions of this RFT (*Appendix “A”*) to be applied in 2023 to the Township roads identified in the Location Map of this RFT (*Appendix “F”*).
- 1.12 **“Recommendation”** means a recommendation by the staff Administrator of this RFP, which is a recommendation only, and which Council may approve or disapprove at its

discretion.

- 1.13 “RFT”** means Request for Tender #PW-02-2023.
- 1.14 “RFT Documents”** means Request for Tender #PW-02-2023, inclusive of all of its Appendices: Special Provisions (*Appendix “A”*); Response Form (*Appendix “B”*); Form of Tender (*Appendix “C”*); the Location Map (*Appendix “D”*); Bid Bond Agreement (*Appendix “E”*); and the Form of Potential Contract (*Appendix “F”*); and any documents incorporated by reference into the RFT.
- 1.15 “Special Provisions”** means the special provisions forming part of this RFT as *Appendix “A”*.
- 1.16 “Standard Specifications”** means the Ontario Provincial Standard Specifications #1010 for product and application and #102 for weighing, which are incorporated by reference into this RFT, and other specifications referenced in the Special Provisions (*Appendix “A”*) of this RFT.
- 1.17 “Tender” or “Bid” or “Bid submission”** means an offer from any individual, person or entity submitted in response to this RFT to provide Products and Application for dirt road maintenance in 2023, which is to be held open for the consideration of the Township and may be accepted or denied by the Township at the discretion of Council.
- 1.18 “Township of Adelaide Metcalfe” or “Township”** means the Corporation of the Township of Adelaide Metcalfe.

## **2.0 INTENT OF THE RFT**

- 2.1** The Township of Adelaide Metcalfe is seeking Bids from qualified Respondents for the potential provision of Crushed Granular Gravel product identified in the Special Provisions of this RFT (*Appendix “A”*) to be applied in 2023 to the Township roads identified in the Location Map (*Appendix “F”*).
- 2.2** Bidders, in submitting their respective Bids, agree that each of their respective Bids are offers to provide the Products and Application as defined in this RFT at the price per tonne set out in their respective Bid Submission, which they will hold open and honour in the event Council accepts by passing a resolution and by-law to enter into a Contract with a Bidder.
- 2.3** Bidders, in submitting their respective Bids, acknowledge and agree that in the event a recommendation of a potential contract is made by the staff Administrator of this RFT to Council, that no Contract to provide Products and Application in Adelaide Metcalfe is formed and that no Contract to provide the Products and Application is formed unless a resolution and by-law is passed by Council authorizing a Contract, which Council may or may not pass at its discretion (see Section 4 of this RFT).

### **3.0 DESCRIPTION OF DELIVERABLES**

- 3.1** The Township is seeking Crushed Granular Gravel for dirt road maintenance purposes in accordance by the Ontario Provincial Standard Specifications #1010, which is incorporated into this RFT by reference, and in accordance with the particulars set out in the Special Provisions attached hereto as **Appendix “A”**, which form a part of this RFT.
- 3.2** Estimates of the quantities of products required for dirt road maintenance for 2023 are included in the Form of Tender attached hereto as **Appendix “C”**, which is to be completed by the Bidder as part of its Bid submission.
- 3.3** The Location Map, which attached hereto as **Appendix “D”** and forms a part of this RFT, sets out the locations for the application of Crushed Granular Gravel in 2023.
- 3.4** The Bidder acknowledges that the quantities listed in the Form of Tender (**Appendix “C”**) represent good faith estimates of the quantities required by the Township for the potential contract term. The Bidder further acknowledges that these estimates are based on the information available to the Township at the time of issuance of this RFT and may be subject to change. In submitting a Bid, the Bidder agrees that in the event the Township enters into a Contract with a Bidder by passing a resolution and by-law to agree to the provision of goods and services by a consultant, the Bidder will provide the Products and Application at the price contained in the Bidder’s Bid and in such quantities and at such intervals as requested by the Township on an as-needed basis during the 2023 calendar year. For greater certainty, the quantity of Crushed Granular Gravel required in 2023 may be more or less than listed in the Form of Tender (**Appendix “C”**) and such changes shall not in any way limit or alter the Bidder’s obligation to provide the Products and Application at the price contained in the Bidder’s Tender.
- 3.5** Without limiting the foregoing, the Bidder hereby acknowledges and agrees that the Township shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any Bidder or any third party, resulting from changes to quantities listed on the Form of Tender (**Appendix “C”**) required by the Township.

### **4.0 NATURE AND INTERPRETATION OF THIS RFT**

- 4.1** This RFT does not commit the staff Administrator of this RFT to making a recommendation to Council and does not require Council to approve a Contract with a Bidder. As confirmed by the “Acceptance and Rejection of Bids” section below, the Township reserves the right to accept or reject any or all Bids submitted under this RFT if it is determined by the Township in its sole discretion that it is in its best interest to do so. Even in the event only one Bid is received, the Township reserves the right to reject

it. Without limiting the foregoing, the Township reserves the right to cancel this RFT without determining a recommended Bid and without awarding a Contract if doing so is determined by the Township in its sole discretion to be in its best interest.

- 4.2** Should the Township not receive any Bid satisfactory to the Township, in its sole and absolute discretion, the Township reserves the right to cancel and/or re-procure the project.
- 4.3** In the event that all Bids are rejected by the Township or this RFT is cancelled without Council passing a resolution and by-law to enter into a Contract, the Bidder hereby agrees that the Township shall in no manner be responsible for the payment of any costs incurred in the preparation for the Tender and the Bidder does hereby release the Township, its Mayor, councilors, employees, officers, legal counsel and agents from and against any claims, actions, losses, expenses, costs or damages of every kind and nature whatsoever which arise out of or are in any way related to the preparation and submission of a Bid to this RFT.
- 4.4** The issuance of this RFT does not commit the Township to awarding a Contract. Whether or not Council passes a resolution and by-law to enter into a Contract is entirely at the discretion of Council and cannot be pre-judged or guaranteed. In the event that there is a staff recommendation made by the staff Administrator of this RFT, such recommendation is non-binding and is subject to Council consideration.
- 4.5** In the event Council considers but does not approve a recommendation made by the staff Administrator of this RFT for any reason whatsoever and Council proceeds to cancel this RFT, the Bidder hereby agrees that the Township is in no manner responsible for the payment of any costs incurred as a result of Council's decision or in the preparation for the Tender, and the Bidder hereby releases the Township, its Mayor, councilors, employees, officers, legal counsel or agents from any claims, actions, losses, expenses, costs or damages of every kind and nature whatsoever which in any manner arises out of or is in any manner related a Bidders' preparation and submission of a Bid for to this RFT.

## **5.0 ACCEPTANCE AND REJECTION OF BIDS**

- 5.1** The Township reserves the right in its sole and absolute discretion to:
- (a) Make public the names of any or all Bidders;
  - (b) Verify with any Bidder or with a third party any information set out in its Bid;
  - (c) Waive minor formalities and accept Tenders which substantially comply with the requirements of this RFT, but the Township shall not allow any blank space in any Tender to be filled in after the Closing Date and Time;
  - (d) Accept or reject any Bid which in the view of the Township is incomplete, obscure, or irregular, which has erasures or corrections in the documents, which contains exceptions and variations, which omits one or more prices, which contains prices

the Township considers unbalanced, or which is accompanied by an Agreement to Bond issued by a surety not acceptable to the Township;

- (e) Assess the ability of the Bidder to perform any potential contract and may reject any Bid where, in the Township's sole estimation, the personnel and/or resources of the Bidder are insufficient or the list of previous comparable projects completed by the Bidder and listed in its Tender are deemed to be deficient by the Township;
- (f) Disqualify any Bidder whose Bid contains misrepresentation or any other inaccurate or misleading information;
- (g) Disqualify any Bidder or the Bid of any Bidder who has engaged in conduct prohibited by this RFT;
- (h) Make changes, including substantial changes, to this RFT provided that those changes are issued by way of addenda in the manner determined by the staff Administrator of this RFT in his sole and absolute discretion and prior to the Closing Date and Time;
- (i) Accept any Bid in whole or in part;
- (j) Reject any or all Bids, including without limitation the lowest Bid;
- (k) Recommend to Council any Bid which the Township in its sole and absolute discretion deems appropriate notwithstanding any custom of the trade to the contrary nor anything contained in this RFT or herein; and/or
- (l) Reject any Bid from any person or corporation, or any person or corporation which has a non-arm's length relationship with a person or corporation who currently has or has in the past, had a legal dispute, claim or legal proceeding against the Township with respect to any contracts, bid submissions or business transactions.

**5.2** These reserved rights are in addition to any other express rights or any other rights which may be implied in the circumstances the Township shall be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any Bidder or any third party resulting from the Township any of its express or implied rights under this RFT.

## **6.0 LEGAL CLAIMS**

**6.1** No Tender will be accepted from any individual, person, or entity which has a claim or has instituted a legal proceeding against the Township or against whom the Township has a claim or instituted a legal proceeding with respect to any previous contract, without prior approval by Council.

## **7.0 QUESTIONS**

**7.1** Questions related to this RFT shall be e-mailed to the staff Administrator of this RFT for clarification and must be submitted no later than January 30, 2023 by 12:00 p.m., so that Township staff have sufficient time to respond in advance of Tender receipt. The Township reserves the right to extend the deadline for questions if required, in this RFT.

- 7.2** The Township reserves the right to revise this RFT up to the final date for the deadline for receipt of Bids. Any necessary Addenda to this RFT will be posted on <http://www.adelaidemetcalfe.on.ca/> only. The Township at its discretion may or may not change the date for Bid submissions depending on the date and extent of any Addenda. It is the sole responsibility of Bidders to routinely check <http://www.adelaidemetcalfe.on.ca/> for any Addenda, for there is no other formal notice provided.
- 7.3** During the Tendering stage, to ensure transparency and quality of information provided to Bidders, questions received and replies to such questions, if any, will be provided in writing in an Addendum, which will be made available to all Bidders and posted on <http://www.adelaidemetcalfe.on.ca/> without revealing the source of the inquiry. If necessary for context for all Bidders, some questions may be paraphrased. To ensure that Adelaide Metcalfe answers provide as much value as possible to Bidders, questions from Bidders should reference as accurately as possible the numbered item in the RFT to which inquiries relate.

## **8.0 ACCOMODATIONS FOR BIDDERS WITH DISABILITIES**

- 8.1** In accordance with the Ontario *Human Rights Code* (“**HRC**”), *Ontarians with Disabilities Act, 2001* (“**ODA**”) and *Accessibility for Ontarians with Disabilities Act, 2005* (“**AODA**”), the Township will accommodate for a disability, ensuring full and equitable participation throughout the bid process.
- 8.2** If a Bidder requires this RFT in a different format to accommodate a disability, the Respondent must contact the staff Administrator as soon as possible and in any event prior to the Closing Date and Time. The RFT 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.

## **9.0 FORM OF TENDER**

- 9.1** All Bids shall be in the form specified in the Form of Tender (*Appendix “C”*). The Form of Tender shall be delivered to the Township of Adelaide Metcalfe Administration Office. Due to COVID- 19 protocol, the public will not be able to attend inside the building but rather there will be a drop box based at the front door for submission packages.
- 9.2** The Bidder shall furnish in the space provided in the Form of Tender details of its previous related experience. Bid submissions which are incomplete, conditional, or obscure, or which contain additions not called for, erasures, alterations, or irregularities of any kind, may be rejected as informal.
- 9.3** Bidders must complete the Form of Tender in its entirety, otherwise the Tender may be rejected by the Bidding System and/or declared informal. Should any uncertainty arise as to the proper manner of completing the Form of Tender, the Bidder may submit a



question by e-mail to the staff Administrator.

## **10.0 CONFIDENTIALITY/FREEDOM OF INFORMATION**

- 10.1** The Respondent acknowledges that any and all information relating to the business and affairs of the Township which is not a matter of public record is confidential.
- 10.2** All documentation submitted to the Township by Respondents to this RFP is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 ("**MFIPPA**"), which is a provincial statute governed by the Province under the auspices of the Privacy Commissioner. The Municipal Clerk has been designed by Council to make privacy determinations in accordance with *MFIPPA*.
- 10.3** All Bids **shall** be submitted by the Respondent on the understanding that the Bids shall become the property of the Township and may be made public by the Township as part of a public Council agenda. Should a Respondent believe that their Bid contains a trade secret or technical, commercial, financial, or labour relations that could reasonably be expected to prejudice its competitive position, it **must** state the portions of the Bid that are so affected in his/her/its Bid. In the event such statement is made in a Bid, the Township will make a reasonable attempt to treat such material as confidential, subject to its limitations under section 239 of the limitations of *Municipal Act* and the provisions of *MFIPPA*, as amended or replaced. In light of the above-noted municipal limitations, the Respondent does hereby fully release and hold harmless the Township, including its respective Mayor/Warden (as applicable), Councillors, officers, directors, employees, agents, consultants, representatives, and legal counsel from and against all responsibilities, claims, causes of action, demands, losses, costs, charges, fees, expenses, duties, dues, accounts, covenants, or other proceedings of every kind or nature whatsoever at law or in equity brought against, suffered by or imposed as a result of the release of all information contained in his/her/its respective Bid, including proprietary and personal information, in the event the Bid is considered at a municipal Council meeting, is required to be disclosed pursuant to the provisions of *MFIPPA*, or is ordered to be disclosed by the Office of the Privacy Commissioner.

## **11.0 BID BOND**

- 11.1** Each Bid submission must be accompanied by a Bid Bond in the amount of five-thousand dollars (\$5,000.00) drawn in the favour of the "Treasurer, Township of Adelaide Metcalfe". The Township will only accept Bid Bond submissions that include a fully executed Agreement to Bond document attached as **Appendix "E"**, which is completed by a duly licensed surety company authorized to transact a business of suretyship in the Province of Ontario.
- 11.2** Any costs associated with the Bid Bond is the responsibility and cost of the Bidder. No interest will be paid on any Bid Bond deposit.

- 11.3** The Township will return the Bid Bonds to all Bidders which not involved in any potential resolution and by-law passed by Council approving a Contract on the next business day after any potential contract is awarded. The Bid Bond of any Bidder involved in a resolution and by-law of Council approving a Contract will be retained by the Township and become a Performance Bond and Labour and Material Bond for the provision of Crushed Granular Gravel products identified in the Special Provisions of this RFT.

**12.0 POTENTIAL RECOMMENDATION**

- 12.1** Subject to the Township's reserved rights and privileges set out in this RFT, including the right to accept or reject any bid, including the lowest bid, and subject to Municipal Council's sole, unfettered and absolute discretion to award of any potential contract, any recommended Bid shall be the compliant Bid with the lowest price.
- 12.2** Should the Township not receive any Bid satisfactory to the Township, in its sole and absolute discretion, the Township reserves the right to cancel and/or re-procure the project.

**13.0 AWARD OF POTENTIAL CONTRACT**

- 13.1** In the event, a Recommendation is made by the Manager of Public Works and Council at its discretion, passes a resolution and by-law approving a contract with a Respondent, the Township and the Respondents shall execute a Contract in the Form of Contract set out in ***Appendix "F"***.

**14.0 CLOSING DATE AND TIME**

- 14.1** Tenders must be received by: 12:00 o'clock noon EST on February 6, 2023.

## **APPENDIX “A”**

### **SPECIAL PROVISIONS**

#### **1.0 STANDARD REQUIRED SPECIFICATIONS**

- 1.1** The Respondent shall supply Crushed Granular Gravel for dirt road maintenance purposes governed under the Ontario Provincial Standard Specifications #1010.
- 1.2** The Respondent shall deliver product in truckload quantities to the Township, under normal conditions, given one (1) full day advance notice.
- 1.3** The Respondent shall provide, deliver, and spread gravel material in a uniform layer over the Township Roads as set out in the Location Map herein, using hopper trailers or tandem tri-axle trucks with pup trailers. If a dump box is used, the Respondent holds complete responsibility for operating safely around overhead obstructions such as power lines and trees, which forms part of this RFT.
- 1.4** The Township may request less than truckload deliveries to satisfy special situations. In such cases, the Respondent and Township will arrange mutually suitable times. If applicable, the Respondent will notify the Township in advance if any extra changes apply to cover less than truckload shipments.
- 1.5** The application(s) of any type of Crushed Granular Gravel shall meet OPSS Specification #1010 including full pressure application systems. The quote is to be based on supply and application of full truckload units.
- 1.6** For the purposes of this RFT, material required as granular “M” (OPSS Specification #1010) will be spread in a uniform layer over the road. Trucks unable to spread in a safe uniform layer will be rejected and will not continue on with the Gravel Maintenance Project at the Township’s sole discretion. All equipment must be operated in a respectable and safe manner while on Township Roads where Gravel Maintenance is applied and/or needed.
- 1.7** The material required by this RFT may be subject to testing by the Township at any point in time at its sole discretion, and the material must remain free of contaminants, such as clay and large stones.
- 1.8** Weighing shall be carried out in accordance with OPSS Specification #102. The Township requires a weigh ticket for every load. The Vendor shall not permit over loading beyond the legal limit pursuant to all applicable laws, including the *Highway Traffic Act*, which forms as part of this RFT.

- 1.9** A minimum daily gravel total of 1200 tonne per day must be achieved unless otherwise arranged with the Manager of Public Works. Gravel totals exceeding 2000 tonne per day must be approved by the Manager of Public Works.
  - 1.10** The Township will be responsible for dust control, signage and leveling of the material once it has been spread on the required roads pursuant to the Location Map by the Respondent.
  - 1.11** The attached Location Map outlines the area in which product shall be applied pursuant to the terms and conditions contained in this RFT.
  - 1.12** Product application rates, location, equipment and schedules will be approved by the Public Works Manager.
  - 1.13** For the purpose of this RFT, the Respondent is not permitted to conduct the work on any weekends or statutory holiday. The work will be conducted on the application sites between the hours of 7:00 a.m. and 5:30 p.m. unless prearranged with the Public Works Manager in writing.
  - 1.14** The Township reserves the exclusive right to determine the ratio of equivalency when analyzing, quoted prices based on previous experience, product reliability, field performance, geographic conditions, and desired results.
-

**APPENDIX "B"****RFT #PW-02-2023 RESPONSE FORM (ACKNOWLEDGEMENT)****FOR THE SUPPLY AND APPLICATION OF PRODUCT FOR DIRT ROAD MAINTENANCE**

1. I/We have read and understand the Township of Adelaide Metcalfe RFT #PW-02-2023, including all Addenda, and hereby agree to all of the requirements, terms and conditions set out therein.
2. I/We, the undersigned, herewith agree to provide and apply the Crushed Granular Gravel product in accordance with the required specifications issued by the Township of Adelaide Metcalfe, at the attached prices.
3. I/We have read and understand the contents and requirements of this RFT and by endorsing below, confirm that the Township has the legal right and ability to enforce the requirements, terms and conditions of this RFT against the Bidder and that the Bidder is estopped from pleading or asserting otherwise in any action or proceeding.

Name of Bidder \_\_\_\_\_

Address \_\_\_\_\_

HST # \_\_\_\_\_

TELEPHONE \_\_\_\_\_

FAX \_\_\_\_\_

EMAIL \_\_\_\_\_

EMERGENCY CONTACT NUMBER \_\_\_\_\_

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
DATE

*I have authority to bind the Bidder*

**APPENDIX "C"****FORM OF TENDER****FOR THE SUPPLY AND APPLICATION OF PRODUCT FOR DIRT ROAD MAINTENANCE****1. Prices**

12,000 Tonne Granular "M" Gravel @ \_\_\_\_\_ per Tonne

\$

Unit of Measure	Quantity	Unit Price	Extended
-----------------	----------	------------	----------

13% HST \_\_\_\_\_

**TOTAL TENDER** \_\_\_\_\_

LIST OF REFERENCES			
NAME	ADDRESS	CONTACT PERSON	TELEPHONE NUMBER

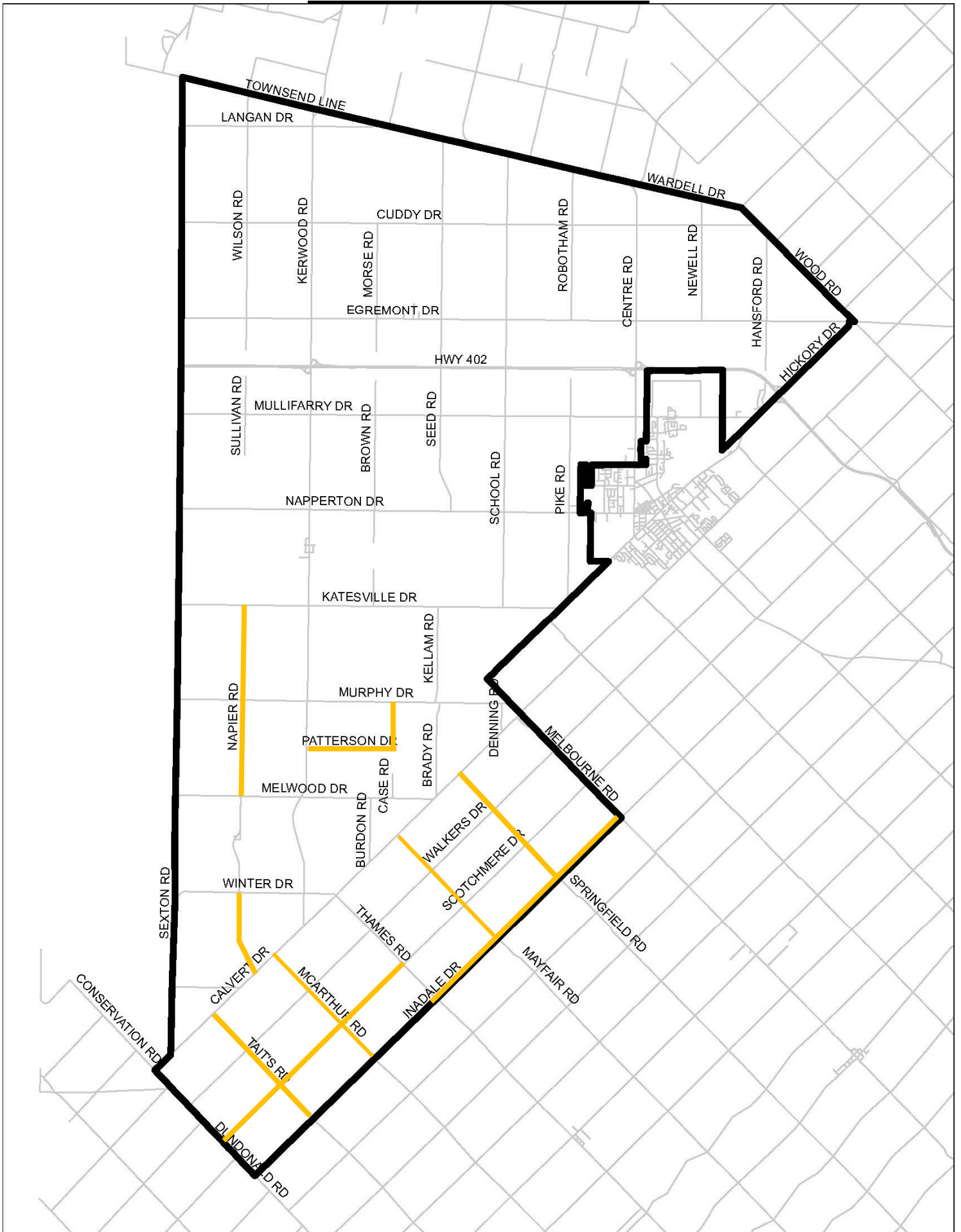
*Note: A minimum of three (3) references is required*

[illegible]



[illegible]

# MAINTENANCE GRAVEL MAP 2023



**APPENDIX "E"****AGREEMENT TO BOND**

We, the undersigned, hereby agree to become bound as Surety for:

\_\_\_\_\_ in a bond totaling five thousand dollars (\$5,000.00) securing the delivery and application of product required for dirt road maintenance identified in Request for Tender #PW-02-2023 in the event Council for the Township of Adelaide Metcalfe passes a resolution and by-law entering into a Contract with the Bidder.

\_\_\_\_\_

\_\_\_\_\_

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

(Company  
Seal)

\_\_\_\_\_  
**NAME OF BONDING COMPANY**

\_\_\_\_\_  
Signature of Authorized  
Person signing for the  
Bidder

\_\_\_\_\_  
Position

## **APPENDIX “F”**

### **FORM OF POTENTIAL CONTRACT**

**THIS AGREEMENT** made in duplicate this                      day of                      2023  
(hereinafter, the “**Effective Date**”)

**BETWEEN:**

\_\_\_\_\_  
(hereinafter, called the  
“**Consultant**”)

**OF THE FIRST PART**

-and-

**THE CORPORATION OF THE TOWNSHIP OF ADELAIDE METCALFE**  
(hereinafter, called the “**Client**” or  
“**Township**”)

**OF THE SECOND PART**

**WHEREAS**

- A. The Township is a lower-tier municipality, local municipality and municipality as defined by the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended or replaced (the “***Municipal Act***”);
- B. Pursuant to section 9 of the *Municipal Act* municipalities have the capacity, rights, powers and privileges of natural persons, which includes the power to do things that natural persons can do, such as enter into contracts;
- C. Pursuant to section 5 the *Municipal Act*, municipalities exercise power through the passing of resolutions and by-laws of their respective Council;
- D. Council for the Township has passed a resolution and by-law entering into this Agreement with the Consultant for the provision of product required for dirt road maintenance following Request for Tender #PW-02-2023.

**NOW THEREFORE** in consideration of the mutual terms, conditions and covenants contained herein, the Parties agree and covenant with each other as follows:

#### **1.0 INCORPORATION OF RECITALS**

- 1.1 The Parties agree that the above recitals are true and hereby incorporated into this Agreement by reference.

## 2.0 DEFINITIONS

In addition to terms defined elsewhere herein, the following terms have the following meanings in this Agreement:

- 2.1 **“Addenda”** means any addenda to RFT #PW-02-2023.
- 2.2 **“Contract”** means a potential agreement to provide Products and Application required for dirt road maintenance in 2023, which is formed only after a resolution and by-law passed by Council, which may or may not result from this RFT at the discretion of Council.
- 2.3 **“Contract Documents”** means this Agreement inclusive each of its Schedules, the RFT and its Appendices, any documents incorporated by reference into the RFT, and the Consultant’s Tender.
- 2.4 **“Council”** means the Municipal Council for the Township of Adelaide Metcalfe.
- 2.5 **“Crushed Granular Gravel”** means approximately 12,000 tonnes of crushed granular gravel that shall be supplied, delivered and spread on the Township roads identified in the Location Map attached to this RFT as *Appendix “D”*.
- 2.6 **“Location Map”** means the Location Map attached to this RFT as *Appendix “D”*, which identifies the Township roads that require dirt road maintenance in 2023.
- 2.7 **“Performance and Labour and Material Bond”** means the means the five-thousand dollar (\$5,000.00) security deposited as a bid bond in the Consultant’s Bid submission, which will be retained by the Township and become a Performance Bond and Labour and Material Bond for the provision and application of product required for dirt road maintenance identified in the Special Provisions of the RFT.
- 2.8 **“Products and Application”** means products required for dirt road maintenance identified in the Special Provisions of this RFT (Appendix “A”) to be applied in 2023 to the Township roads identified in the Location Map of this RFT (“Appendix “F”).
- 2.9 **“RFT”** means Request for Tender #PW-02-2023, inclusive of its Appendices and documents incorporated by reference.
- 2.10 **“Special Provisions”** means the special provisions forming part of the RFT as *Appendix “A”*.
- 2.11 **“Standard Specifications”** means the Ontario Provincial Standard Specifications #1010 for product and application and #102 for weighing, which are incorporated by reference into this RFT, and other specifications referenced in the Special Provisions (*Appendix “A”*) of this RFT.

**2.12** “Tender” or “Bid” or “Bid submission” means the Consultant’s Tender, Bid, and/or Bid Submission to RFT #PW-02-2023.

**2.13** “Term” means the Effective Date of this Agreement through June 23, 2023, as set out in section 4.0 of this Agreement.

### **3.0 ORDER OF PRECEDENCE**

**3.1** In the event of any inconsistency or conflict in the contents of the following documents, such documents shall take precedence and govern in the following descending order:

- (a) This Agreement;
- (b) Addenda to the RFT;
- (c) The RFT;
- (d) Special Provisions of the RFT (*Appendix “A”*) of the RFT;
- (e) Location Map (*Appendix “D”* to the RFT);
- (f) The Consultant’s Tender

### **4.0 CONTRACT TERM**

**4.1** The Term of this Agreement shall commence on the Effect Date and expire on June 23, 2023.

### **5.0 SUPPLY OF CRUSHED GRANULAR GRAVEL**

**5.1** The Township may request and the Consultant shall provide product required for dirt road maintenance identified in the Special Provisions of the RFT (*Appendix “A”*) at such intervals and in such quantities as requested by the Township on an as-needed basis and apply such products to the Township roads identified in the Location Map of the RFT (*Appendix “D”*) throughout the Term of this Agreement.

**5.2** The product required for dirt road maintenance provided by the Consultant shall be in conformity with the Special Provisions (*Appendix “A”*) of the RFT and shall be applied with the degree of care, skill and diligence normally provided by professional and responsible applicators.

**5.3** Products and Application shall be provided by the Consultant at the price per tonne quoted in the Consultant’s Tender.

**5.4** The Consultant hereby acknowledges and agrees that the quantities listed in the RFT represent a good faith estimate of the total quantity required by the Township for the Term, based on the information available to the Township at the time the RFT was issued. The Consultant further acknowledges and agrees that such estimate does not bind the Township and may be subject to change as circumstances require. For greater certainty, the quantity of Crushed Granular Gravel product required by the Township over the course of the Term may be more or less than that listed in the RFT and such

changes shall not in any way limit or alter the Respondent's obligation to provide the Township with Crushed Granular Gravel product at such intervals and in such quantities as may be requested by the Township from time to time at the price per tonne quoted in the Consultant's Tender. Without limiting the foregoing, the Consultant hereby acknowledges and agrees that the Township shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by the Consultant or any third party resulting from changes to the quantities listed in the RFT.

- 5.5** The Consultant shall ensure that: all vehicles delivering and applying Crushed Granular Gravel product are in proper and safe operating condition; that all deliveries are made by carriers properly licensed, trained, and insured; that all loads must be within the gross weight and axle weight laws of the Province.

## **6.0 SECURITY**

- 6.1** The five-thousand dollar (\$5,000.00) security deposited as a bid bond in the Consultant's Bid submission shall be retained by the Township and become a Performance Bond and Labour and Material Bond for the provision and application of Crushed Granular Gravel product identified in the Special Provisions of the RFT.

## **7.0 PAYMENT**

- 7.1** Payment by the Township shall be made following delivery, inspection and acceptance of the provision and application of the Crushed Granular Gravel product following presentation of an invoice which correctly corresponds with the goods provided.
- 7.2** Unless otherwise stated in the invoice, the period for payments will be within thirty (30) days, calculated from the date the invoice is received, or delivery and acceptance of the goods, whichever date is later.
- 7.3** The Consultant agrees and warrants that no cost amount identified in its Tender shall be exceeded without the expressed written approval of the Township and that all prices contained in the Proposal form an upset limit per tonne above which no further payment will be made. The Respondent acknowledges and hereby agrees that it will perform all of the required conditions pursuant to the Special Conditions set out in the RFT

## **8.0 INVOICES**

- 8.1** Invoices for monies due on this Agreement shall be delivered to the Township at the address shown on the signature page of this Agreement.
- 8.2** Payments may be deferred at the Township's election if the following information is not shown on the invoice:

- (a) Amount for the total invoice

- (b) H.S.T. amount
- (c) Date of invoice
- (d) Complete product description
- (e) Purchaser's name and ship to address
- (f) Purchase Order Number.

**8.3** The Consultant shall, in every case, deliver a packing slip with all goods or materials. This packing slip shall show distinctly the number of the official Purchase Order upon which the goods or materials are being delivered and also shall specify in detail all the goods or materials therewith offered for acceptance, showing the number of pieces, weight, length or volume, as the case may be, of each class of goods or materials.

## **9.0 INDEPENDENT CONTRACTOR**

**9.1** The Consultant acknowledges that in providing and applying Crushed Granular Gravel product identified in the RFT, neither the Consultant nor any of its personnel or any retained sub-consultants are engaged as an employee, servant or agent of the Client.

## **10.0 EMPLOYEES/OCCUPATIONAL HEALTH AND SAFETY/WORKPLACE INJURIES**

**10.1** The Consultant warrants that the provision of Products and Application by the Consultant shall be carried out in a manner that is in conformity with the *Occupational Health and Safety Act* and other legislative or legal requirements; he/she/it shall ensure that all of its employees or permitted sub-consultants are qualified in competency-based training standards to deliver the Products and Application described in this Agreement; he/she/it shall demonstrate to the Municipality the Consultant's establishment and maintenance of a health and safety program with objectives and standards consistent with applicable legislation and safety requirements; and he/she/it shall ensure that all employees and permitted consultants providing Services at all times, adhere to all applicable laws, health and safety standards and industry standards. The Consultant hereby acknowledges and agrees that that he/she/it shall be fully responsible and for any and all work related injuries of its employees or permitted sub-consultants and agrees that where the provisions of the *Occupational Health and Safety Act* of Ontario and Regulations apply to the Services provided, all of the responsibilities and obligations imposed under the Act must be assumed by the Consultant.

## **11.0 CONFIDENTIALITY**

**11.1** The Consultant acknowledges that any and all information relating to the business and affairs of the Client that has not been disclosed on a public agenda of a Council meeting is confidential. Unnecessary access, unreasonable access, copying, duplication, publication or any other means of communication of Client information is strictly prohibited. The Consultant shall ensure that all information of the Client.

## **12.0 INDEMNIFICATION**



- 12.1** The Consultant shall be fully responsible for the provision of Products and Application by the Consultant and any sub-consultants.
- 12.2** The Consultant does hereby release, indemnify and hold completely harmless the Client and each of its respective Mayor, Councillors, employees, officers, agents, and legal counsel from and against any and all liability, including all actions, claims, costs (including legal costs), damages, demands, expenses, judgments, losses, proceedings, suits arising from or related to: (i) the Consultant's failure to exercise reasonable care or diligent performance of any delivery of Products and Application performed or rendered by the Consultant, its agents, officials, employees, sub-consultants, officials and employees arising from this Agreement; (ii) the Consultant's failure to comply with the terms, covenants or provisions of this Agreement; (iii) all costs attributable to any breach of contract by the Consultant; and (iv) the negligent acts, errors or omissions of the Consultant, its employees, officers, agents or sub-consultants in the performance of this Agreement.

### **13.0 INSURANCE**

#### **13.1 The Respondent Comprehensive General Liability and Automobile Insurance:**

The Consultant shall carry a Commercial General Liability ("CGL") Insurance policy with coverage in an amount not less than \_\_\_\_\_ million dollars (\$\_\_\_\_,000,000.00) <to the satisfaction of the Client> per occurrence for general liability, contractual liability, products & completed operations, bodily and personal injury (including death), damage to property (including loss of use thereof), environmental damage and losses arising from the Products and Application and automobile insurance for both owned and non-owned vehicles.

The automobile coverage shall provide for third party liability and accident benefits insurance and covering licensed vehicles.

The CGL shall contain both cross liability and severability of interest clauses.

#### **13.2 Errors and Omissions Insurance**

The Consultant shall carry Errors and Omissions coverage for potential errors and omissions arising from the provision of its work in an amount determined to be appropriate by the Township, underwritten by an insurer licensed to conduct business in the Province of Ontario. The Errors and Omissions coverage shall be in force for each year of any potential contract and renewed for three (3) years post termination of this Agreement;

#### **13.3 Aggregate Amounts**

Where such policies set out in Subsection 13.1 and 13.2 above have aggregates, the minimum acceptable aggregates shall be \_\_\_\_\_ million dollars (\$\_\_\_\_,000,000.00) <to the

satisfaction of the Client>.

#### **13.4 Proof of CGL & E&O Insurance**

Prior to the delivery of the Products and at any time upon request of the Client, the Consultant shall provide the Client with proof of the above-noted insurance coverage on a Certificate of Insurance acceptable to the Client.

#### **13.5 Coverage Change by Consultant:**

The insurance policies set out in Section 13.1 above shall be endorsed to provide that the coverage shall not be changed or amended in any way nor cancelled by the Consultant until thirty (30) days after written notice of such change or cancellations has been personally delivered to the Client.

#### **13.6 Increased Coverage for Project**

The Township trusts that as a business operator, the Consultant carries appropriate insurance coverage for the Project without increased fees to the Township. In the event the Client makes a request to have the amount of coverage increased or for the Client to obtain other special insurance for the Project, then the Consultant shall endeavour forthwith to obtain such commercially reasonable increased or special insurance at the Consultant's expense.

#### **13.7 WSIB Certificate**

Prior to the provision of Products and Application required for dirt road maintenance, the Respondent shall provide to the Township a satisfactory clearance certificate from the Workplace Safety Insurance Board both prior to the commencement of work and at any time during the Project, stating that all assessments or compensation payable to the Workplace Safety Insurance Board have been paid and that coverage of its workers is valid. If the Consultant is a sole proprietor, an Independent Operators Ruling is required. The Successful Respondent shall download the Form that corresponds to the classification of Work for which this RFP is the subject from the Workplace Safety and Insurance Board site at: <http://www.wsib.on.ca> and submit the completed form to WSIB to receive the Independent Operators Ruling. The WSIB Ruling must be submitted to the Township prior to commencement of the Work. The Successful Respondent shall maintain such Insurance or pay such assessments as will protect the Successful Respondent and the Township from claims under *Workplace Safety and Insurance Act* and from any other claims for damage from personal injury (including death), and property damage which may arise from a Successful Respondent's work under contract. In the event a Successful Respondent is exempt from WSIB or has opted out, confirmation of Employer's Liability Insurance in the amount of \$2,000,000.00 is required. Such coverage can be confirmed on a Certificate of Insurance form deemed acceptable by the Township.

#### **14.0 ASSIGNMENT**

- 14.1** The Respondent shall not assign or transfer this Contract or any part thereof, without the written consent of the Township, duly approved and executed.

#### **15.0 TERMINATION**

- 15.1** This Agreement may be terminated by the Township at any time without cost or penalty.
- 15.2** The Consultant may terminate this Agreement by providing 90 days' written notice to the Township.

#### **16.0 NOTICE**

- 16.1** Any notice or any other communication required or permitted to be given under this Agreement shall be in writing. E-mail correspondence shall be considered to be 'in writing' and shall be deemed effective if and at the time delivery is confirmed to the e-mail addresses of the representative officer of a party listed below or to such other e-mail address as provided by a party in writing during the course of this Agreement to serve as an e-mail address to which notice may be provided. Notice may also be effected if delivered by registered mail or personal delivery and/or by courier with receipt verified by signature, to the officer position noted below for a party or to such other address as may be provided by a party in writing during the course of this Agreement to serve as an address and officer to which notice may be provided. Notice shall be deemed effective at the time of delivery.

Any notice in writing may be delivered to each of the parties by delivering to the acting officers and addresses set out below:

To \_\_\_\_\_:  
Address: \_\_\_\_\_  
Attn: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**To The Township of Adelaide Metcalfe**  
Address: 2340 Egremont Dr. #5, Strathroy, ON N7G 3H6  
Attn: Coulter Cahill, Manager of Public Works  
E-mail: [ccahill@adelaidemetcalfe.on.ca](mailto:ccahill@adelaidemetcalfe.on.ca)

or to any other address as any party may at any time advise the other of, in writing.

#### **17.0 SUCCESSORS, SUBCONTRACTORS AND ASSIGNS**

- 17.1** This Agreement shall extend to, benefit and bind the parties thereto, their successors, sub-contractors and permitted assigns, respectively.

## **18.0 SEVERABILITY**

- 18.1** Should any provision or provisions of this Agreement be determined to be void or unenforceable in whole or in part, it or they shall be deemed not to affect or impair the validity or enforceability of any other provision and it or they shall be considered separate and severable from the Agreement and its remaining provisions which shall remain in force and be binding on the parties.

## **19.0 AMENDMENT**

- 19.1** This Agreement may not be amended or modified except by written instrument executed by both parties.

## **20.0 VOLUNTARY AGREEMENT**

- 20.1** The Parties warrant that this Agreement is voluntary, that none of the Parties are under any legal disability and that each Party has had an opportunity to seek the advice of independent legal counsel with respect to this Agreement.

## **21.0 GOVERNING LAW**

- 21.1** This Agreement is governed by and is to be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable in that Province.

## **22.0 COUNTERPARTS**

- 22.1** This Contract may be executed and initialed by the Parties by original or electronic signature and be delivered by the parties in separate counterparts by e-mail or other functionally equivalent electronic means of transmission. Execution and delivery copy of this Agreement as set out above shall be deemed to effectively bind the parties and meets the requirements of the *Electronic Commerce Act 2000*, S.O. 2000, c. 17, as amended or replaced. Each counterpart will be considered an original and each, when held together, shall constitute one and the same instrument.

**[ONE (1) ENDORSEMENT PAGE FOLLOWS]**

---

**IN WITNESS THEREOF** this Agreement has been executed by the Parties hereto on the date(s) set out below and the Parties agree that this Agreement shall be effective on the date set out at the top of page one (1) of this Agreement.

**THE TOWNSHIP OF ADELAIDE METCALFE**

Address for Service:

Township of Adelaide Metcalfe  
2340 Egremont Dr. #5  
Strathroy, ON N7G 3H6

Per: \_\_\_\_\_

Mayor, Susan Clarke

Per: \_\_\_\_\_

Clerk, Mike Barnier

*We have authority to bind the Corporation*

**## NAME CONSULTANT ##**

Date: \_\_\_\_\_, 2023

Address for Service:

Attn:  
Address

Per: \_\_\_\_\_

Per: \_\_\_\_\_

*We have authority to bind the Corporation*