



Township of Adelaide Metcalfe

REQUEST FOR TENDER #PW-03-2023 DRAIN MAINTENANCE OF MORROW DRAIN

TENDER CLOSING DATE: February 22, 2023, by 12:00 p.m.

Bids are to be addressed to:

**The Township of Adelaide Metcalfe with “RFT #PW-03-2023, DRAIN
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.

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 “D”* 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 22, 2023 at 12:00 p.m. EST.
- 1.5 **“Drainage Superintendent”** means the Drainage Superintendent for the Township or his/her designate.
- 1.6 **“Form of Potential Contract”** means the Form of Potential Contract attached to this RFT as *Appendix “E”*.
- 1.7 **“Location Map”** means the Location Map attached to this RFT as *Appendix “A”*, which identifies the course of the Morrow Drain.
- 1.8 **“Morrow Drain”** means the Municipal drain requiring maintenance.
- 1.9 **“Performance and Labour and Material Bond”** means the Bid Bond (*Appendix “E”*) of the Contractor, which will be retained by the Township and become a Performance Bond and Labour and Material Bond for Work identified in the Special Provisions of this RFT.
- 1.10 **“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.
- 1.11 **“RFT”** means Request for Tender #PW-03-2022.
- 1.12 **“RFT Documents”** means Request for Tender #PW-03-2023, inclusive of all of its Appendices: the Location Map (*Appendix “A”*); Special Provisions (*Appendix “B”*); Response Form (*Appendix “C”*); Bid Bond Agreement (*Appendix “D”*); and the Form of

Potential Contract (*Appendix “E”*); and any documents incorporated by reference into the RFT.

- 1.13 “Special Provisions”** means the special provisions forming part of this RFT as *Appendix “A”*.
- 1.14 “Tender” or “Bid” or “Bid submission”** means an offer from any individual, person or entity submitted in response to this RFT to provide maintenance on the Morrow Drain 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.
- 1.15 “Township of Adelaide Metcalfe” or “Township”** means the Corporation of the Township of Adelaide Metcalfe.
- 1.16 “Work”** means the brushing, tree removal, cleaning and maintenance of the Morrow Drain.

2.0 INTENT OF THE RFT

- 2.1** The Township of Adelaide Metcalfe is seeking Bids from qualified Respondents to perform drain maintenance on the Morrow Drain identified in the Location Map (*Appendix “A”*) and in accordance with the Special Provisions of this RFT (*Appendix “B”*).
- 2.2** Each Bidder is invited to inspect the drain site prior to submitting their Bid and satisfy themselves by personal examination as to the local conditions that may be encountered throughout the completion of the Work. The contractor should make allowances in their quote included in the Response Form (*Appendix “C”*) for any difficulties that may be encountered throughout the completion of the Work.
- 2.3** Bidders, in submitting their respective Bids, agree that each of their respective Bids are offers to perform the Work as defined in this RFT at the lump sum price 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 any potential contract with a Bidder.
- 2.4** 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 perform drain maintenance in Adelaide Metcalfe is formed and that no contract to perform drain maintenance 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 SCOPE OF WORK

- 3.1** The Township is seeking the brushing and tree removal along approximately 5780 meters (18,960 feet) of the Morrow Drain. There is an existing working corridor, with smaller scrub brush that the Township requires to be cleared in sections throughout the wooded areas located along the Morrow Drain as identified in the Location Map (*Appendix "A"*). This corridor is expected to be followed whenever possible.
- 3.2** The Township requires brushing one side of the bank only and excavation of sediment along approximately 5780 metres (18,960 feet) of the drain.
- 3.3** The Township requires the cleaning of culvert crossings and road crossings located along the drain. The total number of crossings is the responsibility of the Bidder and is to be included in the Response Form (*Appendix "C"*).
- 3.4** It is not required as part of this RFT to remove undisturbed soil at any location, particularly on the banks of the drain.
- 3.5** The Location Map, which attached hereto as *Appendix "A"* and forms a part of this RFT, sets out the location of the Morrow Drain.
- 3.6** The above shall include all appurtenances and all necessary work required to complete the drain maintenance required to the satisfaction of the Drainage Superintendent.

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.
- 4.6** In the event Council passes a resolution and by-law directing the endorsement of a contract and the contractor does not endorse a contract substantially in accordance with the Form of Potential Contract within two (2) weeks of the Council resolution, the Township may proceed to endorse an Agreement substantially in the Form of Potential Contract with the next lowest-priced and compliant bid.

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 The rights set out in 5.1 above 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 February 9th, 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 **RESPONSE FORM**

- 9.1 All Bids shall be in the form specified in the Response Form (*Appendix “C”*). The Response Form shall be delivered to the Township of Adelaide Metcalfe Administration Office.
- 9.2 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 Response Form in its entirety; otherwise, the Tender may be rejected and/or declared informal. Should any uncertainty arise as to the proper manner of completing the Response Form, 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 “D”**, 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 Work 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 RECOMMENDATION OF POTENTIAL CONTRACT

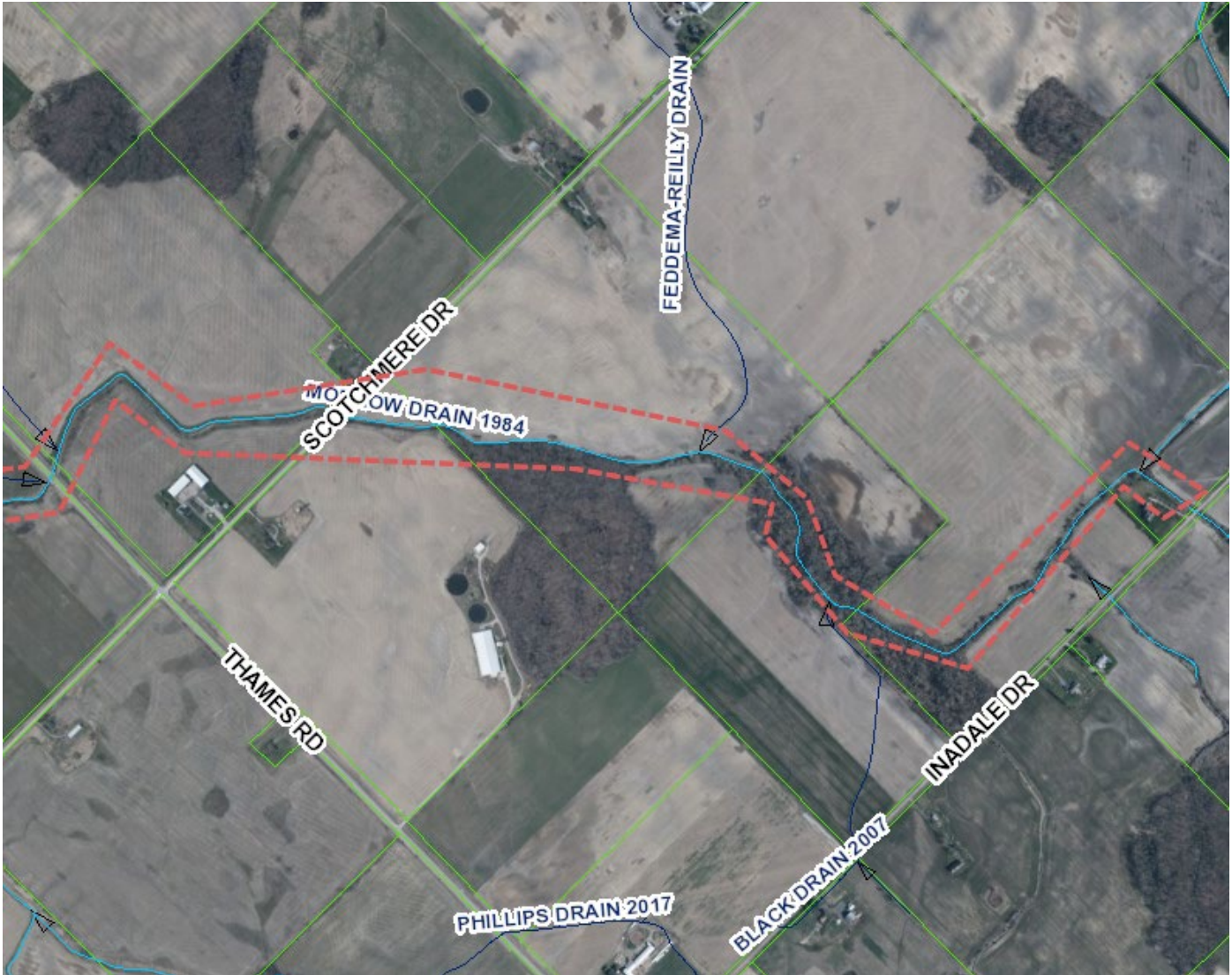
- 13.1** In the event, a Recommendation is made by the Manager of Public Works and Council at its discretion, passes a resolution and by-law approving a contract with a Respondent, the Township and the Respondents shall execute a contract substantially in the form of the Form of Potential Contract set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

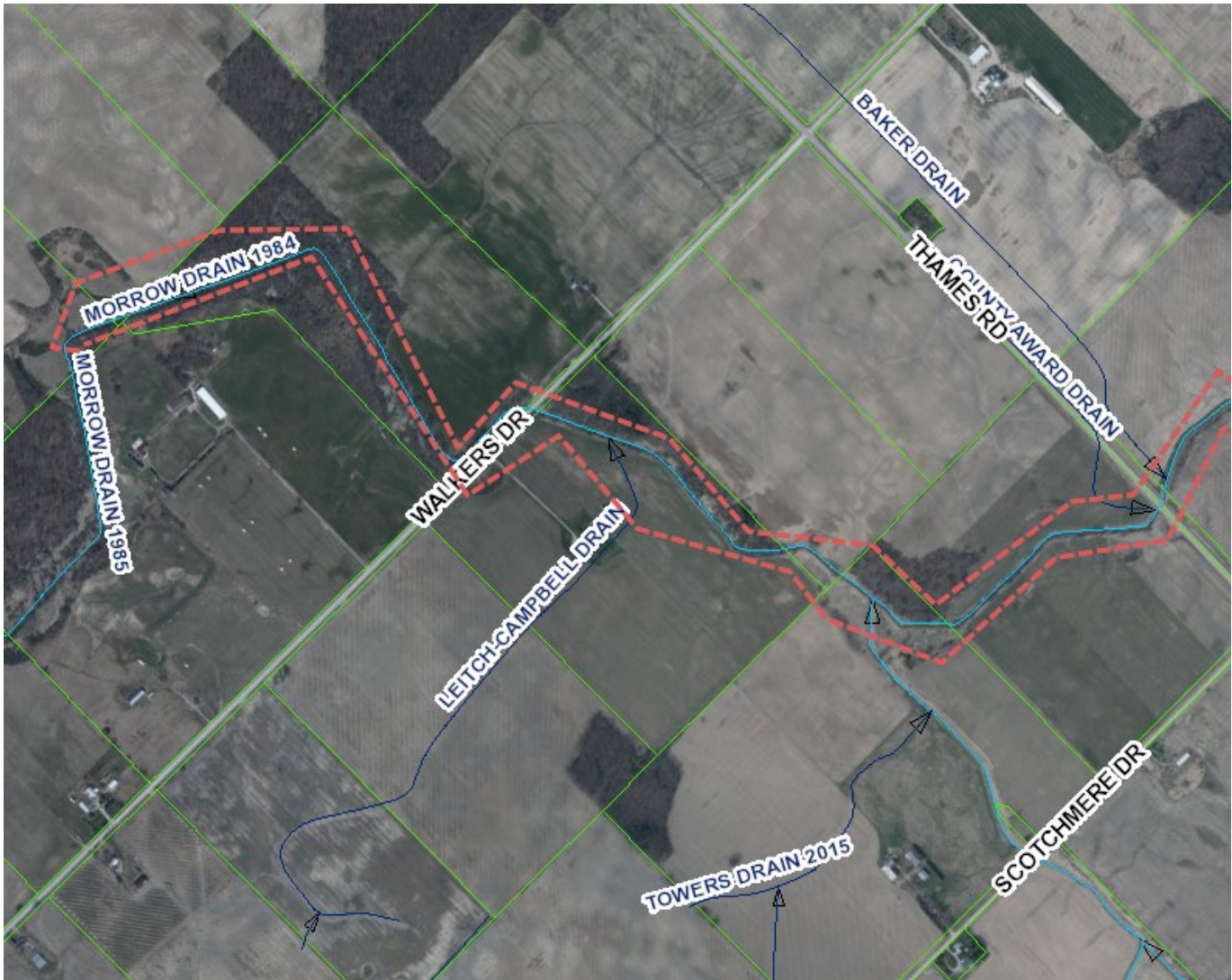
14.0 CLOSING DATE AND TIME

- 14.1** Tenders must be received by: 12:00 o'clock noon EST on February 22nd, 2023.
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APPENDIX "A"

LOCATION MAP





APPENDIX “B”

SPECIAL PROVISIONS

1.0 APPLICATION OF SPECIAL PROVISIONS

- 1.1** The special provisions in this Appendix apply only in the event that council for the Township of Adelaide Metcalfe passes a resolution and by-law to enter into a contract substantially in the form of the Form of Potential Contract attached as *Appendix “E”*. In such event, the special provisions herein are incorporated by reference into any contract.

1.2 STANDARD REQUIRED SPECIFICATIONS

- 1.3** The Work is not to be conducted between March 15th, 2023 and July 15th, 2023 as per Department of Fisheries and Ocean (DFO) regulations.
- 1.4** The plan and profile from the applicable engineer’s report are available upon request and will be supplied to the contractor. The contractor is expected to adhere to plan and grade as per report.
- 1.5** The contractor shall be responsible to notify any and all affected utilities, railways and pipeline companies and shall carry out all directions of the affected utility necessary to protect their installations. Under no circumstances will the Township of Adelaide Metcalfe become involved in any notification of any utility, railway and pipeline company.
- 1.6** The contractor will be responsible for all float moves required. At no time will operators be allowed to “track” along road property without express permission of the applicable road authority.
- 1.7** The contractor shall be responsible to contact all affected owners along the course of the drain a minimum of seven (7) days prior to commencement of the Work, regarding the location of the tile drain outlets to prevent damage to same and details of his proposed schedule of operations. Any located tile drain outlets damaged by the contractor shall be repaired by the contractor and at the expense of the contractor. All repairs shall be to the satisfaction of the Drainage Superintendent or his/her designated representative. The contractor shall contact Andrew Neely at (519-247-3687) three (3) working days prior to commencing work to arrange for an inspection.

2.0 HEALTH AND SAFETY

- 2.1** The Contractor shall be responsible for the health and safety on the worksite including ensuring that all employees wear suitable personal protective equipment including safety boots and hard hats.
- 2.2** The contractor shall be responsible for the traffic control as per the Ontario Traffic Manual Book 7-Temporary Conditions when working on public road allowances. A copy of a traffic control plan shall be kept on site at all times. The contractor shall maintain suitable barricades, warning lights, and temporary traffic notices, at his/her expense, in their proper position to protect the public, day and night. Flagmen are the responsibility of the contractor when working on the road allowance and when entering or exiting a worksite onto a roadway.
- 2.3** The contractor shall be responsible for ensuring that all procedures are followed under the *Occupational Health & Safety Act* to ensure that work sites are safe and that accidents are prevented. In the event of a serious or recurring problem, a notice of non-compliance will be issued. The contractor will be responsible for reacting immediately to any deficiency and correcting any potential health and safety risk. Continuous disregard for any requirement of the *Occupational Health & Safety Act* could be caused for the issuance of a stop work order or even termination of the contract.
- 2.4** The contractor shall be responsible ensuring that only competent workers are employed on site and that appropriate training and certification is supplied to all their employees.

3.0 ENVIRONMENTAL CONSIDERATIONS

- 3.1** The contractor shall take care and adhere to the following considerations:
- All excavated and stockpiled material shall be placed a minimum of three (3) metres from the top of the bank. Material shall not be placed in surface water runs or open inlets that enter the channel;
 - All granular and erosion control materials shall be stockpiled a minimum of three (3) metres from the top of the bank;
 - All activities, including maintenance procedures, shall be controlled to prevent the entry of petroleum products, debris, rubble, concrete, or other deleterious substances into the water. Vehicle and equipment refueling and maintenance shall be conducted away from the channel, any surface water runs, or open inlets. All waste materials shall be stockpiled well back from the top of the bank and all surface water runs and open inlets that enter the drain;
 - All construction in the channel shall be carried out during periods of low flow.

Silt fence shall be installed downstream of the proposed work and inspected daily for the duration of the Work; and

- Where riparian and bank vegetation has been removed, the contractor shall re-establish vegetation (via seeding with an approved grass mixture). Seeding shall be applied within 24 hours of the banks being disturbed while the soil is still moist and if not practical, at a later date within the optimum grass and legume seed germination period.

4.0 BRUSH AND TREE REMOVAL

4.1 Brush and tree removal shall be carried out as follows:

- Within the channel (bottom and one side of the slope);
- Along the side of the channel from which excavation operations are being carried out from top of the bank for distance of six (6) metres;
- Along the side of the channel opposite to the side from which excavation operations are being carried out from the top of the bank for a distance of three (3) metres. Through bushlands the opposite side width shall be decreased to one (1) metre;
- Healthy, mature trees along the side channel and top of bank with diameter of an excess of forty (40) centimetres shall not be removed if at all possible; and
- Across improved areas, the Drainage Superintendent will designate any trees to be removed.
- Large trees shall be removed to ground level and the timber debris shall be bulldozed and piled at one hundred and fifty (150) metre intervals across farmlands.
- The timber debris across improved lands and road crossings shall be hauled to the abutting farmlands and piled as set out.

5.0 EXCAVATION AND DISPOSAL

5.1 The grade will be established using a laser level to determine the grade line between culvert inverts. A ten (10) percentage embedment must be used if a culvert is to be replaced. This slope will be compared to the most recent engineer report and discussed with the Drainage Superintendent prior to any excavation work.

5.2 Excavation and disposal operations shall be carried out on the side of the drain designated by the Drainage Superintendent.

5.3 The excavated sediment shall be at least one and a half (1.5) metres clear from the top of the drain and shall be spread back and leveled to a depth of one hundred and fifty (150) millimetres across farmlands.

- 5.4** All sediment from piped and concrete access culverts, farm bridges and road culverts shall be disposed of equally to abutting farmlands and leveled as described herein.

APPENDIX "C"**RFT #PW-03-2023 RESPONSE FORM (ACKNOWLEDGEMENT)****FOR DRAIN MAINTENANCE OF THE MORROW DRAIN**

1. I/We have read and understand the Township of Adelaide Metcalfe RFT #PW-03-2023, 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 perform drain maintenance on the Morrow Drain 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 _____

I/We identify that there are _____ culvert and road crossings.

HST # _____

SCHEDULE OF PRICES

Lump Sum Quote 1) \$ _____

13% HST 2) \$ _____

TOTAL (Lines 1 + 2) 3) \$ _____

TELEPHONE

FAX

EMAIL

EMERGENCY CONTACT NUMBER

AUTHORIZED SIGNATURE

DATE

I have authority to bind the Bidder

APPENDIX "D"**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 Work identified in Request for Tender #PW-03-2023 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 _____ 2022.

(Company
Seal)

NAME OF BONDING COMPANY

Signature of Authorized
Person signing for the
Bidder

Position

APPENDIX “E”

FORM OF POTENTIAL CONTRACT

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

BETWEEN:

(hereinafter, called the
“**Contractor**”)

OF THE FIRST PART

-and-

THE CORPORATION OF THE TOWNSHIP OF ADELIADÉ 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 Contractor for the provision of product required for dirt road maintenance following Request for Tender #PW-03-2023.

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-03-2023.
- 2.2 **“Contract”** means a potential agreement to perform drain maintenance on the Morrow Drain, 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 Contractor’s Tender.
- 2.4 **“Council”** means the Municipal Council for the Township of Adelaide Metcalfe.
- 2.5 **“Location Map”** means the Location Map attached to this RFT as *Appendix “D”*, which identifies the course of the Morrow Drain.
- 2.6 **“Morrow Drain”** means the Municipal drain requiring maintenance.
- 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 Contractor’s Bid submission, which will be retained by the Township and become a Performance Bond and Labour and Material Bond for the Work identified in the Special Provisions of the RFT.
- 2.8 **“RFT”** means Request for Tender #PW-03-2023, inclusive of its Appendices and documents incorporated by reference.
- 2.9 **“Special Provisions”** means the special provisions forming part of the RFT as *Appendix “A”*.
- 2.10 **“Tender” or “Bid” or “Bid submission”** means the Contractor’s Tender, Bid, and/or Bid Submission to RFT #PW-03-2023.
- 2.11 **“Term”** means the Effective Date of this Agreement through April 15th, 2024, as set out in section 4.0 of this Agreement.
- 2.12 **“Work”** means the brushing, tree removal, cleaning and maintenance of the Morrow Drain.

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 "B"*) of the RFT;
- (e) Location Map (*Appendix "A"* to the RFT);
- (f) The Contractor's Tender

4.0 CONTRACT TERM

4.1 The Term of this Agreement shall commence on the Effect Date and expire April 15th, 2024, unless the Parties mutually agree upon an extension of this Agreement.

4.2 During the Term of this Agreement, the Work is not to be conducted between March 15th, 2023 and July 15th, 2023 as per the Department of Fisheries and Oceans (DFO) regulations.

5.0 MAINTENANCE OF THE MORROW DRAIN

5.1 The Township may request and the Contractor shall conduct the Work identified in the Special Provisions of the RFT (*Appendix "A"*) as requested by the Township on an as-needed basis and to complete drain maintenance to the Morrow Drain identified on the Location Map of the RFT (*Appendix "D"*) throughout the Term of this Agreement.

5.2 The maintenance required for drain maintenance provided by the Contractor 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 The Contractor hereby acknowledges and agrees that the Work identified in the RFT represent a good faith estimate of the total Work required by the Township for the Term, based on the information available to the Township at the time the RFT was issued. The Contractor further acknowledges and agrees that such work does not bind the Township and may be subject to change as circumstances require. For greater certainty, the Work required by the Township over the course of the Term vary than that listed in the RFT and any changes shall not in any way limit or alter the Respondent's obligation to provide drain maintenance for the Township as quoted in the Contractor's Tender. Without limiting the foregoing, the Contractor 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 Contractor or any third party resulting from changes to the Work listed in the RFT.

5.4 The Contractor shall ensure that: all vehicles operated by the Contractor or any sub Contractor during the Term of this Agreement are in proper and safe operating condition;

that all deliveries are made by carriers properly licensed, trained, and insured, and 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 Contractor's Bid submission shall be retained by the Township and become a Performance Bond and Labour and Material Bond for the Work identified in the Special Provisions of the RFT.

7.0 PAYMENT

- 7.1** Payment by the Township shall be made following completion of the Work and following presentation of an invoice, which correctly corresponds with the Work completed.
- 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, completion of the Work, whichever date is later.
- 7.3** The Contractor 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 Response Form have an upset limit 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.

9.0 INDEPENDENT CONTRACTOR

- 9.1** The Contractor acknowledges that during the completion of the Work identified in the RFT, neither the Contractor nor any of its personnel or any retained sub-contractors are engaged as an employee, servant or agent of the Client.

10.0 EMPLOYEES/OCCUPATIONAL HEALTH AND SAFETY/WORKPLACE INJURIES

10.1 The Contractor warrants that the drain maintenance conducted by the Contractor 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-contractors are qualified in competency-based training standards to perform drain maintenance described in this Agreement; he/she/it shall demonstrate to the Municipality the Contractor'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 contractor providing Services at all times, adhere to all applicable laws, health and safety standards and industry standards. The Contractor 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-contractors 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 Contract.

11.0 CONFIDENTIALITY

11.1 The Contractor 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 Contractor shall ensure that all information of the Client.

12.0 INDEMNIFICATION

12.1 The Contractor shall be fully responsible for the completion of the Work by the Contractor and any sub-contractor.

12.2 The Contractor 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 Contractor's failure to exercise reasonable care or diligent performance of any delivery performed or rendered by the Contractor, its agents, officials, employees, sub-contractors, officials and employees arising from this Agreement; (ii) the Contractor's failure to comply with the terms, covenants or provisions of this Agreement; (iii) all costs attributable to any breach of contract by the Contractor; and (iv) the negligent acts, errors or omissions of the Contractor, its employees, officers, agents or sub-contractors in the performance of this Agreement.

13.0 INSURANCE

13.1 The Respondent Comprehensive General Liability and Automobile Insurance:

The Contractor shall carry a Commercial General Liability ("CGL") Insurance policy with coverage in an amount not less than two million dollars (\$2,000,000.00) 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 Work 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 Contractor 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 five million dollars (\$5,000,000.00).

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 Contractor 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 Contractor:

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 Contractor 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 Contractor 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 Contractor shall endeavour forthwith to obtain such commercially reasonable increased or special insurance at the Contractor's expense.

13.7 WSIB Certificate

Prior to the commencement of the Work 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 Contractor 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 Contractor 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

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, Sue Clarke

Per: _____

Clerk, Mike Barnier

We have authority to bind the Corporation

NAME CONTRACTOR

Date: _____, 2023

Address for Service:

Attn:
Address

Per: _____

Per: _____

We have authority to bind the Corporation