



# Township of Adelaide Metcalfe

**REQUEST FOR TENDER #PW-04-2023**  
SINGLE SURFACE TREATMENT TENDER

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

**Bids are to be addressed to:**

**The Township of Adelaide Metcalfe with “RFT #PW-04-2023, SINGLE SURFACE TREATMENT TENDER” 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 **“Class 5 Aggregate”** means the material supplied by the Township, which will be made available strictly at the Township road department yard, as outlined in the attached Location Map in *Appendix “A”*.
- 1.5 **“Closing Date and Time”** means April 12, 2023 at 12:00 p.m. EST.
- 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 “D”*, which identifies the locations that require the single service treatment.
- 1.8 **“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.
- 1.9 **“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.
- 1.10 **“RFT”** means Request for Tender #PW-04-2023.
- 1.11 **“RFT Documents”** means Request for Tender #PW-04-2023, 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.

- 1.12 “Single Surface Treatment”** means the application of all materials necessary to apply the single surface treatment.
- 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 single surface treatment 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 application of a single surface treatment on the roads identified in the Location Map attached to this RFT as *Appendix “A”*.

## **2.0 INTENT OF THE RFT**

- 2.1** The Township of Adelaide Metcalfe is seeking Bids from qualified Respondents for the supply and application of Single Surface Treatment on roads identified in the Location Map (*Appendix “A”*) and in accordance with the Special Provisions of this RFT (*Appendix “B”*).
- 2.2** 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.
- 2.3** 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 for the application of Single Surface Treatment in Adelaide Metcalfe is formed and that no contract to apply Single Surface Treatment 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 bids from qualified vendors for the supply and application of Single Surface Treatment with the exception of the Class 5 Aggregate, on approximately

12.3 km (89,790 square metres) of road as identified in the Location Map on *Appendix "A"*.

- 3.2 The application of the Single Surface Treatment shall include all materials necessary to apply the Single Surface Treatment with the exception of the Class 5 Aggregate, together with all labour, tools, equipment or other items necessary to complete the work in accordance with this RFT and any potential Form of Contract agreed to by resolution and by-law.
- 3.3 The Township shall supply the Class 5 Aggregate with respect to the Work as setout herein and the Class 5 Aggregate will be available at the Township Roads Department yard, as specified in the Location Map attached as *Appendix "A"*. The aggregate will be loaded into the contractor's truck by the Township and hauled to the jobsite by the contractor. The price for hauling the aggregate is to be included in the unit price for the application of the aggregate in the Response Form attached as *Appendix "C"*.
- 3.4 The contractor shall provide a traffic control plan in compliance with the *Construction Act R.S.O. 1990*, regulations inclusive of personnel and signage.
- 3.5 One (1) set of steel rollers and one (1) set of rubber tire rollers will be required for the application of the Class 5 Aggregate.
- 3.6 The contractor shall maintain a satisfactory route for traffic and access to private entrances at all times throughout the completion of the Work.

#### **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 April 3, 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.adelaidemetcalfecan.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.adelaidemetcalfecan.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**

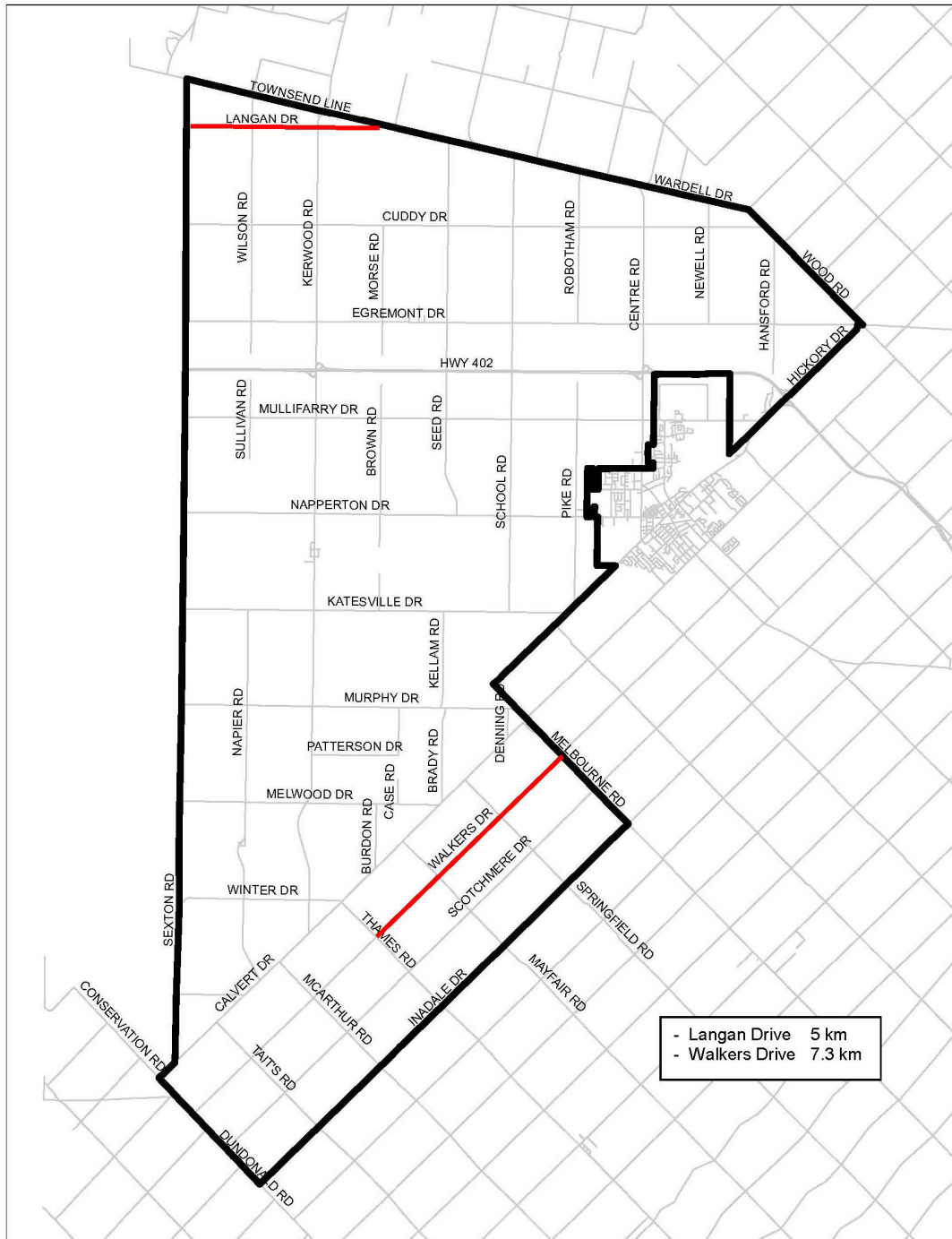
- 13.1** In the event, a Recommendation is made by the Manager of Public Works and Council at its discretion, passes a resolution and by-law approving a contract with a Respondent, the Township and the Respondents shall execute a contract substantially in the form of the Form of Potential Contract set 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 April 12, 2023.
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# APPENDIX "A"

## LOCATION MAP



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## **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 to be completed Monday to Friday excluding statutory holidays. The Work is to be conducted on the application sites between the hours of 7:00 a.m. and 5:30 p.m. unless rearranged with the Manager of Public Works, in writing.
- 1.4** The contractor is required to have a satisfactory Commercial Vehicle Operator’s Registration rating. The CVOR rating is to be presented to the Township prior to the commencement of the Work.
- 1.5** If at any time, in the opinion of the Public Works Manager or his/her designate, damage is being done, or is likely to be done to any highway or any improvement thereon, other than such portions as are part of the Work, by the contractor’s vehicles or other equipment whether licensed or unlicensed, the contractor shall, on the direction of the Public Works Manager and at the contractor’s own expense, make changes in or substitutions for such vehicles or other equipment or shall alter loadings or shall in some other manner remove the cause of such damage to the satisfaction of the Public Works Manager.
- 1.6** The Township reserves the exclusive right to determine the ratio of equivalency when analyzing, quotes prices based on previous experience, product reliability, field performance, geographic conditions, and desired results.
- 1.7** All material required for the supply and application of the Single Surface Treatment may be subject to testing by the Township at any point in time throughout the completion of the Work, at its sole discretion, and the material must remain free of contaminants.
- 1.8** Where a vehicle is hauling material for use of the Work, in whole or part, upon a public highway and where motor vehicles registration is required for such vehicle the contractor shall not cause or permit such vehicle to be loaded beyond the legal limit
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as specified in the *Highway Traffic Act R.S.O. 1990*.

## **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.
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**APPENDIX "C"****RFT #PW-04-2023 RESPONSE FORM (ACKNOWLEDGEMENT)****FOR SINGLE SURFACE TREATMENT**

1. I/We have read and understand the Township of Adelaide Metcalfe RFT #PW-04-2023, 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 apply the Single Surface Treatment 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 # \_\_\_\_\_

Item No.	OPSS Spec. No.	Item Description	Units per m <sup>2</sup>	Cost Per m <sup>2</sup>	# of m <sup>2</sup>	Total Cost
1	304 S.P.	Class 5 Aggregate 1/4" Clear	17 kg/m <sup>2</sup>	Apply	89,790 m <sup>2</sup>	
2	304 S.P.	H.F. 150S Binder	2 l/m <sup>2</sup> per application	Supply and Apply	89,790 m <sup>2</sup>	
				<b>Sub-Total</b>		

H.S.T. 13%
<b>TOTAL</b>

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-04-2023 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 "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 METCALFÉ**  
(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 application of the Single Surface Treatment following Request for Tender #PW-04-2023.

**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-04-2023.
- 2.2 **“Contract”** means a potential agreement to apply Single Surface Treatment, 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 locations that require the single service treatment.
- 2.6 **“Performance and Labour and Material Bond”** 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.
- 2.7 **“RFT”** means Request for Tender #PW-04-2023, inclusive of its Appendices and documents incorporated by reference.
- 2.8 **“Special Provisions”** means the special provisions forming part of the RFT as *Appendix “A”*.
- 2.9 **“Tender” or “Bid” or “Bid submission”** means the Contractor’s Tender, Bid, and/or Bid Submission to RFT #PW-04-2023.
- 2.10 **“Term”** means the Effective Date of this Agreement through August 31, 2023, as set out in section 4.0 of this Agreement.
- 2.11 **“Work”** means the application of a single surface treatment on the roads identified in the Location Map attached to this RFT as *Appendix “A”*.

## 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 August 31, 2023 unless the Parties mutually agree upon an extension of this Agreement.

#### **5.0 APPLICATION OF SINGLE SURFACE TREATMENT**

- 5.1** The Contractor shall supply and apply Single Surface Treatment on approximately 12.3 km of road (89,790 square metres) of Township roads, as set out in the Location Map attached as *Appendix "A"* of the RFT.
- 5.2** The Single Surface Treatment supplied and applied by the Contractor shall be in conformity with section 3 and the Special Provisions (*Appendix "B"*) of the RFT.
- 5.3** The application of the Single Surface Treatment shall include all materials necessary to apply the Single Surface Treatment, together with all labour, tools, equipment or other items necessary to complete the Work in accordance with the RFT and this Agreement to the satisfaction of the Township.
- 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.
- 5.5** 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 apply Single Surface Treatment 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.
- 5.6** In the event the Township requests the Contractor to perform new and additional work

other than the approximate 12.3 km (89,790 square metres) of road set out in the Location Map attached as *Appendix "A"* of the RFT during the Term of this Agreement, the Contractor shall hold open and use the pricing set out in its proposal for any additional work agreed to by the Parties.

## **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.

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

**10.1** The Contractor warrants that the application of Single Surface Treatment 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 apply Single Surface Treatment as 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:

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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](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**

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**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*