
**DESIGN-BUILD SERVICES FOR NICHOLLS OVAL
SPLASH PAD IN PETERBOROUGH, ONTARIO**

CLOSING DATE: **THURSDAY, FEBRUARY 14, 2017
before 3:00 pm**

PROPOSAL DEPOSIT: **MANDATORY (See Item 5.1.1 for
details)**

DISTRIBUTION: Potential Proponents and/or sub-contractors/sub-consultants must provide contact information to the City (email to tenders@peterborough.ca), including an indication of whether they are a Proponent or sub-contractor/sub-consultant, in order to be placed on the Distribution List, and to be advised of any addenda or further information that may be issued.

1.0 INTRODUCTION

The City of Peterborough (the “City”) appreciates your interest in this Request for Proposals (“RFP”).

Through this RFP, the City is seeking the services of a Design-Build Team, to design and construct a Splash Pad at Nicholls Oval Park (the “Work/Project”).

In this RFP, the successful Proponent shall be referred to as the “Design -Build Team”/the “Firm” (refers to both the Firm and the individual Design and Build Team members from the Firm).

1.1 Site Meeting

Not applicable to this RFP.

1.2 Attachments

The following Attachments are provided for information only:

Attachment 1 – Sample of Agreement to Bond

Attachment 2 – Sample Contract

Attachment 3 - Park Location Map

Attachment 4 – Aerial Map of Park

Attachment 5 - Accessible Parking and Pathway Specifications

Attachment 6 - Accessibility for Ontarians with Disabilities

1.3 Appendices

The Appendices listed below are included in this RFP. They are to be completed and submitted as part of the Proposal:

Appendix A – Submission Cover Page and Checklist

Appendix B - Acknowledgements

Appendix C – Pricing

Appendix D – Sub-Contractors

1.4 Consultant

Not applicable to this RFP.

1.5 City Representative or Designate

The City of Peterborough representative or designate shall be referred to as the “Owner”.

City of Peterborough

500 George Street North

Peterborough, Ontario K9H 3R9

Representative: Mary Gallop

Fax: 705-876-4615

Email: mgallop@peterborough.ca

1.6 General Definitions

“Agreement to Bond” means a letter or form issued by a licensed bonding agency advising that, if the Proponent is successful, the bonding agency will issue required bond(s).

“Award” means the acceptance of a Proposal in accordance with this RFP.

“Budget” means an amount approved by Council for operating expenses or capital projects.

“Certificate of Insurance” means a certified document issued by an insurance company licensed to operate by the Province of Ontario, certifying that the Proponent is insured in accordance with the City’s requirements.

“Change Order” means a written order issued from the City that changes the scope or specifications of the Work.

“City” means The Corporation of the City of Peterborough.

“Consultant” means the provider of a Service who, by virtue of professional expertise or service, is contracted by the City to undertake a specific task or assignment. Examples include: a planner completing a specific study; an architect or engineer drawing plans and managing construction for a particular building or project; a lawyer representing the City for a particular legal matter; an appraiser providing an opinion of value on an asset; etc.

“Contract” means a binding agreement between the City and one or more other parties, which has been duly authorized and executed, in accordance with the City’s Purchasing By-law.

“Contract Documents” means the RFP and any addenda, the Contract and the successful Proponent’s Proposal.

“Contract Administrator” or **“Engineer”** or **“Project Manager”** means the City employee, or Consultant, or such other officer, as may be authorized by the City to act in a particular capacity.

“Successful Proponent” means the person, partnership or corporation, (i.e. a Design-Build Team/Consultant/Vendor) and any employee or sub-contractor thereof that has been successful in the award of a Proposal and thereby agrees to supply the goods and/or services under the terms of the RFP and is undertaking the Work as identified in the Contract.

“Goods and/or Services” means supplies, equipment, maintenance, and professional services.

“Irrevocable Letter of Credit” means an irrevocable document on a financial institution’s standard form requesting that the party to whom it is addressed pay the bearer or a person named therein money as a result of failure to perform or to fulfill all the covenants, undertakings, terms, conditions and agreements contained in the Contract.

“Material Safety Data Sheets (MSDS)” means Material Safety Data Sheets that must be submitted by the successful Proponent for all hazardous materials, including an index of chemical compounds, with details of properties, handling details, precautions and first-aid procedures.

“Owner” or **“Authority”** or **“Corporation”** means The Corporation of the City of Peterborough.

“Proponent” means a person or Company submitting a Proposal.

“Proposal” means a written submission and offer, received from a Proponent in response to a public invitation to provide goods and/or services based on an approved format of the City containing terms and conditions;

“Request for Proposals (RFP)” means a solicitation from the City to potential Proponents to submit a Proposal.

“Surety” means a specified dollar amount in the form of certified cheque, Proposal bond, performance bond, labour and materials bond, letter of credit or any other form as deemed necessary and stated in a Quotation, Proposal or Tender request issued by the City.

“Work/Project” means the goods and/or services supplied by the successful Proponent pursuant to the Contract, and include all labour, materials, equipment, and any other items, which are required to execute the Contract.

2.0 PROPOSAL CLOSING TIME

Sealed Proposals are to be submitted to the City of Peterborough, Information Reception Desk, Main Floor, City Hall, 500 George Street North, Peterborough, Ontario, **before 3:00 pm on Thursday, February 14, 2013** (the **“Closing”**).

Time registered on the City Hall digital phone system will be considered the official time of day when determining exact time of submission.

Proposals will not be accepted after the Closing.

3.0 PROPOSAL OPENING AND RESULTS

All Proposals received on time will be opened on **Thursday, February 14, 2013 at 3:15 pm** at City Hall.

As this is an RFP, for which a number of criteria will be evaluated, only the names of Proponents will be identified at the opening and the financial information submitted will **not** be publicly disclosed. This information is unofficial, subject to review and award.

A list of Proponents will be available after the Opening on the City website at www.peterborough.ca/tenders-quotes-proposals.

Proponents will not be notified in writing of the Proposal results.

4.0 CITY CONTACT PERSONS

4.1 Contacts

Proponents may only contact Mary Gallop, Manager of Facilities and Special Projects, **in writing only**, by email to mgallop@peterborough.ca, or fax to 705-876-4615, with questions related to the detailed specifications, or the nature of the goods/services requested in this RFP.

Questions related to the bid solicitation process itself should be addressed only to Bernadette Lawler or Marla Sutherland of Corporate Services, **in writing only**, by email to tenders@peterborough.ca, or fax to 705-876-4615.

In accordance with Part 5, Section 10 (6) of the City's Purchasing Policy By-law 10-132, City Council members and employees, other than the employees who are the official contact persons identified in the RFP, or their designates, are prohibited from discussing any aspect of an RFP process with a prospective Proponent from the time the RFP is issued until such time as an award report has been prepared and submitted to the appropriate approval authority.

Proponents are cautioned, therefore, to deal exclusively with the contact persons referenced in this Section, or their designates.

4.2 Errors, Omissions and Questions

The City shall not be held liable for any errors or omissions in any part in this RFP.

Proponents with questions related to this RFP, finding errors in, or omissions from the document, or having any doubt as to the meaning or intent of any part of this RFP, must communicate with a contact person listed in this Section (**providing reference to the applicable Section(s) and Item number(s)**) **before 12:00 NOON on Wednesday, February 6, 2013** to allow staff time to

respond or to prepare and distribute an addendum as necessary, and to allow time for Proponents to receive and process the new information.

There will be no consideration of any claim after submission of the Proposal, that there is a misunderstanding with respect to the conditions imposed by the RFP.

Nothing in the RFP is intended to relieve the Proponent from forming their own opinions and consideration with respect to the matters addressed in the RFP.

The RFP, all Attachments, Appendices and Addenda, if applicable, are available on the City website at www.peterborough.ca/tenders-quotes-proposals **P-07-13**.

5.0 INSTRUCTIONS TO PROPONENTS

5.1 Proposal Deposit

5.1.1 Amount

The Proponent shall include a certified cheque, money order, bank draft, irrevocable letter of credit, or bid bond issued by a Surety licensed and qualified to function in the Province of Ontario, in the amount of **at least ten percent (10%) of the Proposal amount (excluding HST) as stated in Appendix C, Pricing Table 1, Line 4**, payable to The Corporation of the City of Peterborough (hereinafter referred to as the "Proposal Deposit"). The Proposal Deposit shall be attached to the front of the submission marked "**ORIGINAL**".

A bid bond or letter of credit must be valid for ninety (90) days after Closing.

To ensure the ten percent (10%) of tendered price requirement has been met, the Proposal Deposit calculation should be extended to three (3) decimal points and the cheque amount should then be rounded up to the next highest cent. As an example, a Proposal Deposit of ten percent (10%) on a proposed price of \$945,657.23 would be \$94,565.723 which when rounded up to the next highest cent would be \$94,565.73.

5.1.2 Purpose of Proposal Deposit

Through the Proposal Deposit, the Proponent acknowledges that:

- a. The Proposal has been submitted in good faith, and with no collusion with any other Proponent;
- b. The Proposal is genuine and accurate;
- c. The City can rely on the representations in the Proposal; and
- d. The Proponent shall fulfill all requirements of the Proposal if the City accepts it.

The City shall not pay interest on the Proposal Deposit.

5.1.3 Failure to Provide

Failure to provide any Proposal Deposit will render the Proposal null and void. The Proposal, in such cases, shall not be accepted by the City, and shall not qualify as a Proposal. In such circumstances, the Proponent will be notified.

5.1.4 Perfecting the Proposal Deposit

Failure to provide a Proposal Deposit in the proper form or quantum may, at the discretion of the City, render the Proposal null and void. The City, however, reserves the right to have a Proponent perfect the Proposal Deposit in proper form or quantum at the City's option within two (2) working days after the City has notified the Proponent in writing of the need to perfect the Proposal Deposit. The Proponent can then perfect the Proposal Deposit provided that:

- a. The Proposal Deposit is then in proper form; and
- b. The Proposal Deposit is then provided in an amount which is at least twice the amount stated in **Item 5.1.1**.

5.1.5 Forfeit of Proposal Deposit

The Proposal Deposit of the successful Proponent shall be forfeited to the City in the event that the successful Proponent, prior to executing a Contract, notifies the City that they are not prepared to complete the Work, or provide the goods/services.

The Proponent acknowledges that any forfeiture of the Proposal Deposit does not relieve the Proponent of their liability to pay damages sustained by the City arising from failure by the Proponent to enter into a Contract with the City.

5.1.6 Return of Proposal Deposit

The Proposal Deposit of the successful Proponent will be returned after all the documents are completed to the satisfaction of the City, and in particular:

- a. The successful Proponent has executed the Contract (if required in the RFP) with the City; and
- b. The successful Proponent has provided all insurance and bonding information (if required in the RFP).

The Proposal Deposit provided by each unsuccessful Proponent shall be returned within ten (10) working days from the date of the City entering into a Contract with the successful Proponent.

All Proponents acknowledge the length of time between the Closing and the time Proposal Deposits can be returned may be substantial.

If for whatever reason, the City decides not to accept any of the Proposals; all Proposal Deposits will be returned.

5.2 Addenda

It may be necessary for a variety of reasons to issue addenda that may include, but not be limited to:

- a. Correction to, or clarification of, the RFP;
- b. Extension of the Proposal Closing date;
- c. Retraction or cancellation of the RFP;
- d. Respond to Proponent's questions.

All Proponents must **provide the City of Peterborough, Corporate Services with company information**, including mailing address, email address, phone and fax number, to be advised of addenda when issued or further information, and to be placed on the Distribution List. Information should be provided to **tenders@peterborough.ca**.

All addenda issued to potential Proponents who have provided contact information will include a covering letter asking the recipient to confirm receipt of the most recent addendum and any previous addenda.

Addenda will be faxed, emailed or mailed to the latest address as provided by the Proponent. It is the Proponent's responsibility to notify Corporate Services of any change to their fax number, email or mailing address.

Although the City will make every reasonable effort to ensure a Proponent receives all addenda issued, it is the Proponent's ultimate responsibility to ensure all addenda have been received and are reflected in their Proposal.

The Proponent shall confirm the number of addenda received, when completing **Appendix B**.

All addenda will be posted on the City's website at **www.peterborough.ca/tenders-quotes-proposals** – **P-07-13** and Proponents should refer to the website before submitting to ensure they are aware of all addenda.

5.3 Proposal Submission

The City is seeking Proposals from Proponents who are both interested and capable of undertaking the Contract. The onus is on the Proponent to demonstrate their knowledge, understanding and capacity to conduct the Work.

The detail and clarity of the written submission will be indicative of the Proponent's expertise and competence.

5.3.1 All Requirements

The Proponent shall complete and submit **all** requirements indicated, and in the order stated in **Appendix A**, which is the:

- a. Cover Page for the Proposal submission;
- b. Checklist of what is to be included in the Proposal submission; and

- c. Confirmation by the Proponent of items included in the Proposal submission.

5.3.2 Original

The Proposal shall be typed or written in ink. It shall contain original signatures where required and shall clearly be marked "ORIGINAL" and shall include all requirements, as set out in **Appendix A**. Note: The Proposal Deposit, if required, shall be attached to the front of the "ORIGINAL".

5.3.3 Copies

In addition to the "Original", the Proponent shall also submit **five (5) copies** of all requirements, as set out in **Appendix A**.

5.3.3.1 Colour Renderings

The Proponent shall submit **one (1) Original and five (5) copies** of their proposed Splash Pad plan in **colour renderings** to show the distribution of all play elements in their submission. Should Proponents submit more than one (1) design; the same requirements apply in terms of copies of submission.

- 5.3.4 Offers made in the Proposal will be considered by the City to be binding and irrevocable and shall remain open for acceptance by the City for a period of ninety (90) days from the Proposal Closing.

- 5.3.5 A Proposal shall be accepted only when submitted in an envelope sealed and clearly addressed to "**City of Peterborough, Information Reception Desk, 500 George Street North, Main Floor, Peterborough, Ontario, K9H 3R9**" and marked "**P-07-13 Design-Build Services for Nicholls Oval Splash Pad**" and include the name and address of the Proponent.

- 5.3.6 Proponents should not send Proposals collect by courier or with insufficient postage. Proposals determined to be "COLLECT" by courier, or with insufficient postage, will be invoiced accordingly at a later date.

- 5.3.7 Faxed or emailed Proposals will not be accepted.

5.4 Adjustments to Proposal

Adjustments received by telephone, email, mail or fax shall not be considered.

5.4.1 Request to Adjust a Proposal before Closing

A Proponent who has already submitted a Proposal may make a request to adjust their Proposal before the Closing time.

In order to make the adjustment, the already submitted Proposal may:

- a. Be returned to the Proponent for adjustment and re-submission before the Closing time; or
- b. Be superseded by the Proponent making another submission before the Closing time.

The Proposal contained in the envelope bearing the latest date and time shall be considered the intended Proposal and any others shall be considered withdrawn and will be returned to the Proponent.

Authenticity of the request may be confirmed by the City.

5.4.2 Request to Withdrawal a Proposal before Closing

A Proponent who has already submitted a Proposal may request that their Proposal be withdrawn before the Closing time. The request must be provided in writing, on Company letterhead and include contact information for verification. Authenticity of the request may be confirmed by the City. Proposals withdrawn under this procedure cannot be reinstated.

5.4.3 Request to Withdraw a Proposal during Proposal Opening

No request for withdrawal of a Proposal shall be permitted during the Proposal Opening process.

5.5 Indemnification and Insurance

5.5.1 Indemnification

The Design-Build Team, all contractors, sub-contractors, consultants and their employees or agents shall, at all times, indemnify and save harmless the City, its employees and Members of Council from and against any and all manner of claims, demands, losses, costs, charges, actions and other proceedings whatsoever made or brought against, suffered by, or imposed on the City in respect of any loss, damage or injury to any person or property directly or indirectly arising out of, resulting from, or sustained, as a result of this Contract, provision of services or any operations connected therewith except for the negligence or willful misconduct of the City.

5.5.2 Insurance General Information

All insurance costs related below will be borne by the Design-Build Team.

All applicable deductibles under the required insurance policies are at the sole expense of the Design-Build Team.

All policies shall apply as primary and not as excess of any insurance available to the City.

All policies shall be endorsed to provide the City with not less than thirty (30) days' written notice of cancellation, change or amendment restricting coverage.

All policies shall be with insurers licensed to underwrite insurance in the Province of Ontario with an AM Best rating of no less than A-.

The Design-Build Team shall ensure that all sub-contractors have valid coverage with the same limits and wording as outlined in any of the sub-sections of **Item 5.5**.

The following requirements are standard for the City and are included as an indication of the level of coverage which will be sought by the City.

a. Commercial General Liability

The Design-Build Team shall provide and maintain, during the term of the Contract, Commercial General Liability insurance, subject to limits of not less than **two million dollars (\$2,000,000)** inclusive per occurrence, and with a property damage deductible not to exceed **five thousand dollars (\$5,000)** or as agreed to by the City. To achieve the desired limit, umbrella or excess liability insurance may be used. The coverage shall include coverage for, but not be limited to:

- i. Bodily injury including death;
- ii. Damage to property including loss of use thereof;
- iii. Premises and operations liability;
- iv. Products or completed operations liability;
- v. Blanket contractual liability;
- vi. Cross liability clause;
- vii. Severability of interest clause;
- viii. Contingent employer's liability;
- ix. Personal injury liability;
- x. Owner's and Design-Build Team's protective coverage;
- xi. Liability with respect to non-owned licensed motor vehicles;
- xii. If applicable, demolition of buildings or removal of property;
- xiii. Sudden and Accidental Pollution, 120 hour reporting; and
- xiv. Name the "Corporation of the City of Peterborough" as an additional insured party.

The City is to be added as an additional insured but only with respect to liability arising out of the operations of the Named Insured.

b. Vehicle Insurance

The Design-Build Team shall provide and maintain during the term of the Contract, Standard OAP 1 Automobile Policy insurance, subject to a limit not less than **two million dollars (\$2,000,000)** with the physical damage deductible not to exceed **five thousand dollars (\$5,000)** or as agreed to by the City for all licensed motor vehicles owned or leased by the Design-Build Team.

5.5.3 Proof of Insurance

The Proponent shall provide, with their Proposal, proof of insurance required per **Item 5.5.2.**

In the event that satisfactory proof of insurance cannot be provided, a letter from the Proponent's insurance company confirming that the Proponent will be able to obtain the required insurance will suffice.

5.5.4 Certificate(s) of Insurance

Within ten (10) working days of notification of award of this RFP, and prior to the start of any Work, the Design-Build Team shall file with the City, together with the signed Contract documents (if required), a certificate of insurance, as confirmation of coverage, and, if required, a certified true copy(s) of the policy(s) certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the Work.

If the Design-Build Team does not provide the Certificate(s) of Insurance as herein requested, the Contract will be terminated and will be awarded to the next qualified Proponent.

5.5.5 Maintaining Required Insurance

If the Design-Build Team fails to maintain insurance as required by the Contract, the City shall have the right to provide and maintain such insurance and give evidence to the Design-Build Team. The Design-Build Team shall pay the cost thereof to the City on demand, or the City may deduct the cost from the amount which is due to or may become due to the Design-Build Team.

5.5.6 Change in Coverage

If the City requests to have the amount of coverage provided by these policies increased, or to obtain other special insurance for this Contract, the Design-Build Team shall endeavour forthwith to obtain such increased or special insurance at the City's expense as a disbursement, such increase to be added to the upset cost of this Contract.

5.6 Workplace Safety and Insurance and Employment Insurance Compliance

The Proponent shall submit a copy of a valid and current "Clearance Certificate" from the WSIB with their Proposal, or documentation from the WSIB confirming their exemption.

Information is available to the Proponent on-line at www.wsib.on.ca.

Other links

a. Link to WSIB Construction Contractor Brochure, which outlines changes in WSIB coverage

http://beregisteredbeready.ca/asset_files/images/NEWCoverageZoneSigns_Brochure.pdf

b. Link to WSIB Construction Contractor Information

<http://beregisteredbeready.ca/>

c. Link to WSIB E-Registration for Contractors

<https://eservices.wsib.on.ca/portal/server.pt/community/eservicespublic/registration>

The Design-Build Team, forthwith upon being notified that they are the successful Proponent, shall provide the City with a current and valid “Clearance Certificate” from the WSIB.

If the Design-Build Team does not provide the Clearance Certificate as herein requested, or proof of exemption, or satisfactory proof that an application is in process, the Contract will be terminated and will be awarded to the next qualified Proponent.

During the term of the Contract, Design-Build Team shall ensure that the City has a current and valid “**Clearance Certificate**”. The City will not pay invoices unless a current and valid “**Clearance Certificate**” is provided.

The Design-Build Team clearly understands and agrees that they are not, nor is anyone hired by them, covered by the City under the **Workplace Safety Insurance Act, Employment Insurance Act**, or any other act, whether provincial or federal, in respect of themselves, their employees and operations, and shall, upon request, furnish the City with satisfactory evidence that they have complied with the provisions of any such acts.

Information on coverage under the **Workplace Safety and Insurance Act** can be obtained from the WSIB. The City is not to be deemed the employer of the Design-Build Team or any of their personnel under any circumstance whatsoever.

5.7 Bonding

5.7.1 Agreement to Bond

If the Proposal submitted is for an amount of \$100,000 or greater, before HST, the Proposal shall be accompanied by an Agreement to Bond. The Agreement to Bond must be issued by a Surety licensed and qualified to function in the Province of Ontario, or one hundred percent (100%) of the amount of the Proposal in cash or acceptable collateral. The Agreement to Bond shall be attached to the front of the “ORIGINAL” Proposal submission.

Failure to provide an Agreement to Bond with the Proposal will render the Proposal null and void.

5.7.2 Performance and Labour and Materials Bonds

Within ten (10) working days of notification of award of the Proposal, the Design-Build Team shall furnish **Performance and Labour and Materials Bonds** to the Corporation of the City of Peterborough, if required, and as stated in **Chart 1**.

Chart 1: Bonding Requirements

Amount of Proposal Submitted (before HST)	Percentage Performance Bond	Duration of Performance Bond	Percentage Labour and Materials Bond	Duration of Labour and Materials Bond
Up to \$100,000	Nil	N/A	Nil	N/A
Greater than \$100,000 and up to \$1,000,000	50%	One (1) year from Substantial Completion	50%	Duration of Contract

The Bond(s) must be issued by a Surety licensed and qualified to function in the Province of Ontario.

Failure by the Design-Build Team to provide the Bond(s), as herein requested, shall cause the Contract to be terminated and the Contract will be awarded to the next qualified Proponent.

See **Attachment 1 “Sample of Agreement to Bond, Performance and Labour and Materials Payment”**.

5.8 Accessibility for Ontarians with Disabilities

5.8.1 Accessibility Standards for Customer Service

- a. Pursuant to Section 6 of **Ontario Regulation 429/07**, Accessibility Standards for Customer Service (the “Customer Service Standards”) made under the **Accessibility for Ontarians With Disabilities Act, 2005** (“AODA”), the Proponent shall ensure that all of their employees, agents, volunteers, or others for whom they are responsible for, complete training about the provision of goods and services provided to people with disabilities;

Training shall include, without limitation:

- i. Reviewing the purposes of the Act and the requirements of the Customer Service Standards;
 - ii. Learning how to interact and communicate with people with various types of disabilities;
 - iii. Learning how to interact with people with disabilities who use an assistive device, service animal or a support person;
 - iv. Learning how to use the equipment or assistive devices available on City premises or that are otherwise provided that may help with the provision of goods or services to people with disabilities;
 - v. Learning what to do if a person with a particular type of disability is having difficulty accessing the City’s goods or services; and
 - vi. Reviewing the City’s Accessible Customer Service policy, procedures and practices governing the provision of goods or services to people with disabilities.
- b. Provide proof of Customer Service training per **Item 5.8.4**.

5.8.2 Integrated Accessibility Standards

- a. Pursuant to Section 5 of **Ontario Regulation 191/11**, Integrated Accessibility Standards (the "IAS") made under the AODA, the Proponent shall ensure that accessibility design, criteria and features be incorporated when providing goods, services and/or facilities, where practicable.

Refer to **Section 7.0** of this RFP for accessibility specifications.

Where it is not practicable to incorporate accessibility, an explanation shall be provided, if requested.

- b. Pursuant to Section 7 of the IAS, training is required for a Contract signed on or after January 1, 2014. A Contract signed prior to January 1, 2014 does not require IAS training. The Proponent shall ensure that all of their employees, agents, volunteers, or others for whom they are responsible for, complete training about the requirements of the IAS and the **Human Rights Code**.

Training shall include, without limitation:

- i. Training on the requirements in the IAS, highlighting the accessibility standards for Information and Communication, Employment, Transportation and the Design of Public Spaces; and.
- ii. A review of the **Human Rights Code** as it pertains to persons with disabilities and understanding the differences between the **Human Rights Code** and the IAS.

5.8.3 Accessible Built Environment Standard

- a. The Project must meet all requirements of the Final Proposed Accessible Built Environment Standards released by the Ontario Government in July 2010, developed under the Accessibility for Ontarians with Disabilities Act. The Proponent shall be responsible for designing and constructing the Work to meet these draft standards which have been adopted by the City, if the requirements are at a higher level than any existing applicable regulations.
- b. Built Environment Standard training is currently not required.
- c. Refer to **Section 7.0** of this RFP for accessibility specifications.

5.8.4 Accessibility Training

- a. Pursuant to the AODA and its subsequent Standards, the Proponent shall submit, within ten (10) business days of notification of award, with their signed Contract, the completed **Attachment 6**, providing their representation, warranty and acknowledgement that their employees, agents, volunteers, or others, have completed Accessibility Training as outlined in this Section.
- b. **If the Proponent does not provide the completed Attachment 6, as requested herein, the Contract may be terminated.**

- c. The Proponent shall submit to the City, if requested, documentation describing their accessibility training policies, practices and procedures, and a summary of the contents of training. A record of the dates on which training was provided, complete with the names of the attendees, shall be included in the documentation.
- d. The City reserves the right to require the Proponent, at the Proponent's expense, to amend their accessibility training policies, practices and procedures, if the City deems them to not be in compliance with the requirements of the AODA.
- e. The Proponent shall only assign the employees who have successfully completed accessibility training, to provide services on behalf of the City.

5.8.5 Available Resources

The following resources are available to the Proponent:

- a. The City's Accessibility Policy and related Procedures:
www.peterborough.ca/accessibility
- b. The Ministry of Community and Social Services website with resources to assist public and private sector organizations in complying with the Accessibility Standards:
www.mcsc.gov.on.ca/en/mcsc/programs/accessibility/index.aspx
- c. Customer Service e-learning training module entitled "Serve-Ability", produced by the Ministry of Community and Social Services: www.mcsc.gov.on.ca/en/serve-ability/index.aspx

If you require clarification of the requirements within this notice, please contact the Accessibility Coordinator by phone at 705-742-7777 (Toll-free 1-855-738-3755) Extension 1785, or email at accessibility@peterborough.ca.

5.9 Asbestos Awareness

Not applicable to this RFP.

5.10 Other Requirements

5.10.1 Appendices

The Proponent shall complete and submit all applicable Appendices listed in **Appendix A**. The Proponent shall mark an "X" beside all items included.

5.10.2 Company Profile

The Proponent shall clearly identify full name, addresses, phone numbers, and fax numbers, of the Company. The Proposal should also identify the individual authorized as a signing authority to negotiate the Proposal in the event the Proponent is selected.

5.10.3 Competencies

The Proponent shall outline their ability to meet the following competencies:

- a. Previous experience with related similar size/type projects – for design and installation;
- b. Technical/professional knowledge; and
- c. Planning and organizing ability.

5.10.4 Experience

The Proponent shall outline their past experience, including a list of similar projects completed in the last five (5) years with a value of \$200,000 or greater and include:

- a. Client and Consultant references, including company name, contact person, current telephone and e-mail addresses;
- b. A clear description of the projects, identifying the scope of each;
- c. Identify the Construction Tender Cost and the Final Construction Cost.
- d. The Proponent must provide details about the goods/services provided. Note: the City reserves the right to contact any or all of the supplied references and may disqualify Bidders who have been given negative performance/service and/or quality ratings by supplied references or other references contacted.

5.10.5 Key Personnel

The Proponent shall provide the list of key personnel they expect to assign to manage this Project. As a minimum, include the Construction Project Manager and Site Superintendent. Provide their resumes and a summary of their past project experience identifying the projects undertaken, the value, the year completed, their role while in your employ or that of others.

5.10.6 Project Schedule

The Proponent shall provide a written Work Schedule with their Proposal submission, showing the timing of all phases of the Work and defining how they shall complete the Work. All Work must be substantially complete by June 1, 2013. Total Completion is required by June 24, 2013.

The Proponent shall highlight, within the Schedule, activities to be undertaken by sub-contractors.

All Work hours shall comply with the local noise by-laws of authorities having jurisdiction. All Work on this Project shall be done between the hours of 7:00 am and 7:00 pm, unless otherwise specified.

The Proponent shall include all overtime for Work, as herein specified, at no additional cost to the Contract.

The Proponents shall demonstrate that they can work within a project schedule (two (2) recent examples with references are required);

Note: the Design-Build Team, upon notification of award, will provide a final written Work Schedule. The hours of Work on the site shall be first approved by the Owner.

5.10.7 Meets Requirements and Specifications

The Proponent shall provide a letter with sufficient details that provide confirmation that all equipment and work meets the requirements and specifications of **Sections 7.0**. The Proponent shall also provide information regarding the quality and durability of the components of the Splash Pad included in the Proposal. The Proponent shall provide specifications regarding rust inhibitor treatment and surface colour application. **Failure by the Proponent to provide such confirmation/information may result in rejection of the Proposal.**

5.10.8 Warranty

The Proponent shall provide written confirmation of warranty on all components supplied and installed with this Proposal, including OEM warranties. Warranty must meet the minimum standards outlined in **Item 7.10.g.** of this RFP. The Proponent shall outline any additional extended warranty available, including costs. Warranty coverage is to begin on the City's first "in-service" date.

5.10.9 C.S.A. Playscapes and Equipment Standards - All Proposals submitted will certify, by way of written confirmation from the company President or other appropriate authority, to bind the company that the entire Proposal and installation conforms to the most recent edition of the C.S.A. Standards, where applicable.

5.10.10 Health and Safety Policy

The Proponent shall provide a copy of the Company Health and Safety Policy with their submission.

5.11 Contract

Contract shall also mean "Agreement", if applicable.

5.11.1 Execution of Contract

The Design-Build Team shall enter into and sign a formal Contract with the City, within ten (10) working days of notification of award of the Proposal and submission of other required documentation as per this RFP.

The City will also issue a Purchase Order to the Design-Build Team in conjunction with the Contract.

See **Attachment 2 "Sample Contract"** attached.

5.11.2 City's Right to Terminate Contract under Certain Conditions

The City shall have the right to terminate the Contract forthwith and without penalty, upon written notice to the Firm, in the event that:

- a. The Firm makes an assignment for the benefit of creditors, or becomes bankrupt or insolvent, or an order is made for the winding-up of the Firm, or if a receiver is appointed on account of the Design-Build Team's insolvency; or
- b. The Firm refuses or fails to supply sufficient properly skilled employees or proper materials at all times to perform the Work in the manner and to the standards required under this Contract, or they fail to observe and comply with any provisions of law, including, without limiting the generality of the foregoing, all requirements of all governmental authorities, including federal, provincial and municipal legislative enactments, by-laws and other regulations now or hereafter in force which pertain to or affect the services or the conduct of the Firm's business; or
- c. The Firm fails to institute appropriate corrective action forthwith after verbal notification by the City (which shall be confirmed subsequently in writing) of any failure on the part of the Firm to comply with the terms and specifications of the Contract; or
- d. The Work performed is not satisfactory; or
- e. Delivery requirements are not met; or
- f. The invoiced amounts do not match the quoted prices.

5.11.3 Forthwith, upon the termination of this Contract, for any reason, the parties shall take the following step:

- a. All collections or unfulfilled orders shall be appropriately adjusted and all steps shall be taken to perform all unfilled orders and collect all outstanding accounts.

5.11.4 Failure to Execute Contract

In the event that the Design-Build Team fails to execute the Contract or to accept the City's Purchase Order, or to file any of the required documentation required in this RFP within the specified time period, the Design-Build Team agrees that the City may retain the Design-Build Team's Proposal Deposit and, at its discretion, cancel the Contract award and enter into a contract with the next qualified Proponent.

5.11.5 Changes to Work when Contract Underway

No deviation from the specifications shall be made by the Design-Build Team in the execution of the Contract, without the written approval of the City.

The City will not pay the Design-Build Team any amounts over and above the tendered amount unless the City and the Design-Build Team agree to a price change as the result of changes in the Work required, and before the additional Work is undertaken.

The Design-Build Team shall furnish a complete breakdown of any costs beyond the RFP submission amount to support the additional amount.

5.11.6 Cancellation of Contract

The City reserves the right to cancel any resulting Contract, due to non-performance of any kind, with thirty (30) days written notice. The City shall reserve the right to determine “non -performance” or “poor quality” of service and further reserves the right to cancel any or all of the Contract at any time should the performance of the Design-Build Team not meet the terms and conditions of this RFP, and upon thirty (30) days written notification to the Design-Build Team.

“Non-performance” shall mean the failure to meet the complete terms and conditions of the Contract, including, but not limited to, the response time for service calls - if applicable, maintenance of parts and inventory – if applicable, performance, provision of requested reports, etc. The City retains the right to claim damages as a result of such default. Should non-performance involve any issues regarding health and safety of staff on site, the Contract may be cancelled immediately without notice in its entirety, and at the sole discretion of the City.

The City may also cancel the Contract without cause by means of a thirty (30) day advance written notice.

5.11.7 Overhead and Profits

If a change in the Work results in a net increase in the Price (i.e. Change Order/Change Directive), the Design-Build Team is allowed 10% for overhead and 5% profit on the construction value of their sub-contractor’s work only.

For clarity, this means the Design-Build Team is entitled to 10% for overhead and 5% for profit over and above the price of the Work submitted by their sub-contractor (inclusive of bonding and insurance costs).

Example:

Value of Work: \$100.00

Allowance for overhead on sub-contractor’s work: 10%

Allowance for profit on sub-contractor’s work: 5%

Total value of change order or directive: \$115.50.

The Design-Build Team is not allowed additional overhead and profit on their own work as it would be part of their detailed price submission for a Change Order/Change Directive.

6.0 GENERAL TERMS AND CONDITIONS

6.1 Freedom of Information Act

The Proponent hereby consents to the disclosure of the information contained in this Proposal, pursuant to **The Municipal Freedom of Information and Protection of Privacy Act**, R.S.O. 1990, c.M. 56 (“MFIPPA”).

If a Proponent considers any part of the Proposal proprietary, the Proponent shall clearly mark such page or section of the Proposal as confidential. The complete Proposal submission details are not to be identified as confidential.

The Proponent shall clearly identify, if applicable, patent, proprietary, copyright rights or similar confidential information, the disclosure of which could cause them injury or damage. The Proponent is encouraged to place all such details and information within a separate section of their Proposal submission.

The Proponent acknowledges that marking any page or section as “confidential” does not automatically protect that portion of the Proposal from release, but only assists the City in making a determination if a request for information is made by a third party. Any decision made by the City to release or withhold information under MFIPPA may be appealed to the Information and Privacy Commissioner of Ontario, who may direct the release of such information or uphold the City’s decision in whole or in part.

The identity of submitting Proponents, as well as the successful Proposal amount, may be available to the public on the City website as part of the award process.

The MFIPPA Coordinator for the City is the City Clerk. Any questions regarding the MFIPPA may be directed to the City Clerk’s office at 705-742-7777, (Toll Free 1-855-738-3755), Extension 1819.

6.2 Reports and Draft Reports

If the Proponent and the City enter into a Contract, the City, subject to the requirements of MFIPPA, may release any information received by the City, by making it available to City Council prior to, or concurrent with, the public release of any staff report which contains a recommendation based on such information, whether or not the information is incomplete or in final form.

6.3 Costs Incurred

The City shall not, under any circumstances, be responsible for any costs incurred by the Proponent in the preparation of the submission, including, but not limited to, costs to prepare documentation, travel, and attendance at any site meetings.

6.4 Sub-Contractors

No sub-contracting of any part of the Contract shall be permitted without the authorization of the City.

The Proponent shall include a list of all sub-contractors whom the Proponent intends to employ in this Proposal, if applicable, by completing **Appendix D**.

If the Design-Build Team wishes to substitute a sub-contractor other than the one(s) named in **Appendix D**, the Design-Build Team shall provide the City with the following:

- a. Reason for the substitution;
- b. Documentation from the originally named sub-contractor indicating their desire to withdraw from the Project including the reason(s) for withdrawal; and
- c. The proposed substitute sub-contractor's experience and competence to carry out the Work.

The City reserves the right to waive requirement b. at its sole discretion.

Employment of the proposed substitute sub-contractor to perform contract Work is subject to the written consent of the City.

The Design-Build Team shall be held fully responsible to the City for the acts and omissions of persons directly employed by them; for the acts and omissions of their sub-contractors; and for persons directly or indirectly employed by the sub-contractors. In view of this responsibility for the acts and omissions of their sub-contractors/suppliers, the Design-Build Team shall not be obliged to employ, as a sub-contractor/supplier, any person or firm to whom they object. The Design-Build Team agrees to enter into a signed agreement with every sub-contractor/supplier that references the executed Contract between the Design-Build Team and the City. The Design-Build Team shall hold all sub-contractors/suppliers equally responsible for safe Work performance.

Nothing contained in the Contract shall create a contractual relationship between a sub-contractor and the City.

6.5 Assignment/Subletting

The Design-Build Team shall not assign or sublet the Contract or any portion thereof without the prior written consent of the City. Such consent shall not release or relieve the Design-Build Team from any of their obligations or liabilities under the Contract.

6.6 Pricing and Taxes

The Proposal amount shall be stated in Canadian funds and shall include all applicable charges (i.e. duty, freight, exchange, supply, delivery, installation costs, and any other charges, as may be applicable), FOB site. **HST shall be extra** (see **Appendix C**).

This offer will remain open to acceptance until the Contract is awarded to the Design-Build Team for the said Work or until ninety (90) days after the said Proposal Closing, whichever event occurs first, and that the City may at any time within that period, without notice, accept this Proposal, whether any other Proposal has been previously accepted or not.

The City is not responsible for costs incurred as a result of not understanding the statements in this RFP. It is the Proponent's responsibility to seek clarification if unsure of what is expected.

6.7 Accept/Reject

The City may accept a Proposal in whole or in part, whether the Proposal price is the lowest or not, and may reject any or all Proposals. There is no requirement of this RFP, implied or otherwise, that the Proposal representing the lowest price would be selected or preferred.

The RFP is used as a means of evaluating a number of criteria (one of which is submitted price). It is the intent of the Evaluating Committee to recommend one (1) successful Proponent.

Should the Proposal(s) received be unsatisfactory, the City reserves the right, in its sole and absolute discretion, to cancel or re-issue the Proposal solicitation, or negotiate for the whole or any part of the Work with one or more of the Proponents, commencing with the lowest Proponent, to arrive at a mutually satisfactory arrangement with respect to any modifications to the Proposal.

Revised Proposals will not be called for if only minor changes are contemplated.

The City reserves the right to reject any Proposals submitted which may be restricted by the clauses or by any agreements or by restrictive statements of any kind in a Proponent's Proposal submission.

The City also reserves the right to award the Proposal to another qualified Proponent whom the City, in its sole and absolute discretion, deems appropriate.

Should the City receive only one (1) Proposal submission for goods/ services that have a known multiple-source potential, the City reserves the right to recall or cancel the RFP.

Should qualified Proposal submissions exceed the City's budget provision for this RFP the City also reserves the right to reject or recall the RFP (see **Item 6.10**).

If no Proposals are received, the City reserves the right to enter into negotiations with any one or more persons whatsoever.

Revised Proposals will not be called for, if only minor changes are contemplated.

6.8 Causes for Rejection

6.8.1 The following will result in a Proposal being rejected:

- a. Proposal received late (will not be opened);
- b. Proposal received where a pre-qualification process or meeting is mandatory and has not been met by the Proponent (will not be opened);
- c. No Proposal Deposit, if required in RFP (Proponent will be notified);
- d. Correct version of Proposal form not used;
- e. Proposal not complete;
- f. Proposal not legible in whole or in part;
- g. Proposal not completed in ink or type;

- h. Proposal not signed;
- i. Erasures, alterations or cross-outs not initialed in ink by the Proponent; and
- j. Other mandatory forms or details required and clearly shown in the RFP as being required upon submission of a Proposal are omitted.

6.8.2 The following represent examples of circumstances where a Proposal is questioned but may be accepted after examination or correction:

- a. Proposal containing simple arithmetic errors (if pricing required in the RFP), as determined during evaluation process;
- b. Proposal not acknowledging correct number of addenda issued; and
- c. Proposal Deposit (if required in the RFP) not in proper form or quantum.

6.9 Rejection of Proposal when the City/Proponent Relationship Impaired

The City may reject a Proposal from a Proponent where, in the opinion of the Director of Corporate Services and the City Solicitor, the commercial relationship between the City and the Proponent has been impaired by the act(s) or omission(s) of the Proponent, within the five (5) year period immediately preceding the date on which the Proposal is to be awarded.

The act(s) or omission(s) include, but are not limited to, the following:

- a. Threatening litigation or pursuing litigation of the City, in relation to previous contracts awarded to the Proponent by the City, or a person against whom the City is pursuing litigation. Threatening litigation means transmitting a written threat to commence a judicial proceeding;
- b. A claim has been made by the City on the Proponent, under a security submitted by the Proponent, such as a Proposal Deposit, Performance Bond or Materials and Labour Bond;
- c. The Proponent has refused to follow reasonable directions of the City or to cure a default under any Contract or Agreement with the City;
- d. The Proponent refuses to enter into any Contract or Agreement with the City after the Proponent's Proposal has been accepted by the City;
- e. The Proponent has communicated, directly or indirectly, with any other Proponent about the preparation of the Proponent's Proposal for the same goods/services;
- f. The Proponent or any person with whom that Proponent is not at arm's length within the meaning of the **Income Tax Act** (Canada) as amended, has been convicted of an offence under any taxation statute in Canada;
- g. The Proponent has been convicted under the *Criminal Code* or other legislation;
- h. The Proponent has been convicted under any environmental legislation;
- i. The Proponent has been convicted relating to product liability or occupational health or safety; or
- j. The Proponent has been convicted under the financial securities legislation.

6.10 All Proposals Exceed Approved Budget

In the event that all Proposals exceed the approved budget, and staff are not prepared to seek additional funding, the Director of Corporate Services may, in consultation with the City Solicitor, opt for one (1) of the following:

- a. Approach the preferred Proponent to seek options to change the Scope of Work and obtain a corresponding price change for the reduced Scope;
- b. Approach the top three (3) Proponents to seek options to change the Scope of Work and obtain a corresponding price change from each for the reduced Scope; or
- c. Advise all Proponents that the bid solicitation process will be cancelled, and a review of the Scope of Work will be undertaken and that a new bid solicitation may be issued later.

6.11 Rights of the City

The City reserves the right to communicate with one (1) or more Proponents following the Proposal Closing to clarify elements of the submission.

The City will retain the right to ensure that an acceptable standard of use, service and operation is maintained.

6.12 Invoicing/Payment

Invoices shall be paid net thirty (30) days from date of invoice and verification that goods/services listed have been provided to the satisfaction of the City. All invoices shall include the Design-Build Team's HST number, as applicable.

6.13 Electronic Funds Transfer

The City's preferred method for payment of invoices is via Electronic Funds Transfer ("EFT"). Information may be obtained from the City contact person if the Design-Build Team chooses to participate in the program. Signup is required only once. Information submitted is held in the strictest confidence and is kept on file for **all** future payments.

6.14 Employees

In the performance of this Contract, the Design-Build Team shall be an independent vendor. The Design-Build Team and their employees shall not be deemed to be employees of the City.

The Design-Build Team shall employ only orderly, competent and skilful employees to ensure that the services are carried out in a respectable manner.

In the event that any person employed by the Design-Build Team, in connection with the service arising out of this Proposal gives, in the opinion of the City, just cause for complaint, the Design-Build Team, upon notification by the City in writing, shall not permit such person to continue in any future service arising out of this Proposal.

6.15 Relationship of Parties

The Proponent expressly acknowledges that they are an independent vendor and neither agency, partnership nor employer-employee relationship is intended or created by the resulting Contract.

The Design-Build Team shall be solely responsible for all matters, if applicable, relating to statutory deduction of all taxes, employment insurance and Canada Pension and all licenses and permits which may be or become required to perform all Services.

The Design-Build Team shall be solely responsible for all their personnel matters, if applicable, relating to hiring, firing, discipline, leave, remuneration, WSIB and insurance premiums.

The Design-Build Team fully acknowledges and accepts their responsibility as contractor as defined under the **Occupational Health and Safety Act**.

6.16 Confidentiality

The Design-Build Team recognizes that they may, by the nature of the goods or services being provided for the City, have access to confidential information. It is understood and agreed that the Design-Build Team, their employees, agents, representatives and officers (the "Design-Build Team"), shall hold all information, whether confidential or not, in the strictest confidence. The Design-Build Team shall not disclose, nor permit by any act or failure to act, the disclosure of any information to any third party at any time during or after the term of their Contract with the City. Nor will the Design-Build Team use any information however obtained as a result of performing duties for the City for their own commercial, financial or personal advantage. The Design-Build Team also acknowledges that they may be held both criminally and civilly responsible for any breach of confidentiality.

It is hereby agreed that the following information is not considered to be confidential under this Contract:

- a. Information already in the public domain;
- b. Information disclosed to the Design-Build Team by a third party who is not under a confidentiality obligation;
- c. Information developed by or in the custody of the Design-Build Team before entering into this Contract;
- d. Information developed by the Design-Build Team through their work with other clients; and
- e. Information required to be disclosed by law or regulation, including, but not limited to, subpoena, court order or administrative order.

6.17 Conflict of Interest

The Design-Build Team covenants that the Contract will be undertaken without a conflict of interest and that, during the course of the Contract, the Design-Build Team shall not undertake any work for any other client, which would result in a conflict of interest, without the prior written consent of the City.

6.18 Ownership

All information, data, policies, plans, and documents prepared and collected by the Design-Build Team shall be deemed to be the property of the City. The Design-Build Team shall deliver all information, data, policies, plans, and documents to the City immediately upon completion, abandonment, or termination of the Work. Any re-use of documents by the City for other projects beyond the scope of this Project shall be at the City's sole risk.

6.19 Deviation

No deviation from the specifications or requirements of this RFP document shall be made by the Design-Build Team in the provision of the goods/services, without written approval of the City. See **Item 5.11.5**.

6.20 Infringement Claim

The Design-Build Team shall render the City harmless from any patent infringement claims that may arise.

6.21 Publication

The Design-Build Team shall obtain the consent in writing of the City before publishing or issuing any information regarding this Project.

6.22 Public Relations

The Design-Build Team and employees shall conduct themselves in a manner conducive to the maintenance of good public relations for the City.

Under no circumstances shall the Design-Build Team or employees enter upon, or allow their equipment to enter upon private property without first obtaining approval from the respective property owner.

If, during the performance of the Work, the Design-Build Team or employees receive complaints or enquiries to which the Design-Build Team or employees are not qualified to respond, the name of the complainant or the person making the enquiry shall be recorded along with their address and telephone number. A report of the incident is to be given to the City's representative within two (2) business days of the incident.

6.23 Non Exclusive

Not applicable to this RFP.

6.24 Force Majeure

Save and except for the payment of any monies required hereunder, neither party shall be deemed to be in default of this Contract where the failure to perform or the delay in performing any obligation is due wholly or in part to a

cause beyond their reasonable control, including, but not limited to, an Act of God, an act of any federal, provincial, municipal or government authority, civil commotion, strikes, lockouts and other labour disputes, fires, floods, sabotage, earthquakes, storms, epidemics and an inability to perform due to causes beyond the reasonable control of the party.

The party subject to such an event of force majeure shall promptly notify the other party of their inability to perform or of any delay in performing due to an event of force majeure and shall provide an estimate, as soon as practicable, as to when the obligation will be performed. The time for performing the obligation shall be extended for a period equal to the time during which the party was subject to the event of force majeure. Both parties shall explore all reasonable avenues available to avoid or resolve events of force majeure in the shortest time possible, but this requirement shall not oblige the party suffering the strike, lockout or labour dispute to compromise their position in such dispute.

6.25 Protection of Work and Property

The Design-Build Team shall be held responsible by the City for all damage caused by themselves, their employees, or any sub-agents, including damage to subsurface or surface utilities, properties, pavement, sidewalks, curbs, buildings, homes or structures adjacent to or in the general area of the Work, through any other cause relating to the Work carried out under this Contract.

Additionally, the Design-Build Team will be required to make good all such damage, at their expense, and to the satisfaction of the City. Replacement of any building component and/or operational equipment shall be the full replacement cost.

The Design-Build Team shall be fully responsible for ALL accidents arising by reason of execution or non-execution, or non-repairs of the said Work, or by reason of any failure to comply with the requirements of this clause and shall fully indemnify the City in respect thereof.

The Design-Build Team shall conduct the Work at all times with the safety of employees on the job and the safety of the public in mind. All Work shall be done in accordance with recognized safe working practices and all government requirements applying to the Work.

6.26 Execution of Work

The Design-Build Team shall execute the whole of their Work with every possible dispatch and in a substantial and workmanlike manner, comprehending what may be reasonably implied from the Specifications though not particularly shown or called for.

The whole of the Work shall be completed to the satisfaction of the City. If the Design-Build Team fails to perform the Work as required on any particular date, the City, at its discretion, may have others do the Work and charge the Design-Build Team.

6.27 **Laws, Acts and Regulations**

The Design-Build Team shall comply with all federal, provincial and municipal laws, statutes, regulations and by-laws, including, without limitation, the **Workplace Safety Insurance Act**, the **Occupational Health and Safety Act**, and the **Environmental Protection Act**, as amended from time to time in the transportation and delivery of said goods/services.

In the event of conflict between the provisions of the above authorities, the most stringent provisions will apply.

This Contract shall be governed and construed pursuant to laws of the Province of Ontario and the Government of Canada.

Where the provisions of the above acts, and any related regulations are applicable to the equipment provided, all the responsibilities and obligations imposed upon the Design-Build Team must be assumed by the Proponent.

6.28 **Health and Safety**

The Design-Build Team shall comply with all conditions and regulations of the **Occupational Health and Safety Act**, R.S.O.1990, the City and the Province of Ontario.

The Design-Build Team shall take all necessary precautions to ensure that duties are performed safely and shall comply with all applicable provisions of law relating to injury to persons and property on, or about the premises where the Work is performed.

The Design-Build Team shall, in addition to their other obligations under this RFP, have sole responsibility for the construction and management of construction of the Work, including all matters related to health and safety and site security. The Design-Build Team is the “constructor” under OHSA.

The Design-Build Team shall be responsible for ensuring the supervision of staff and associated equipment for all construction activities during and outside of normal operating hours.

6.29 **Competent Supervision**

The Design-Build Team shall ensure at all times that adequate and competent full-time supervision is provided, if applicable, by a Competent Supervisor as defined under the **Occupational Health and Safety Act** (Ontario). The Supervisor shall represent and be an agent for the Design-Build Team for all purposes and directions given to the Supervisor shall bind the Design-Build Team.

Before undertaking a Contract with the City, the Design-Build Team shall supply proof of competent personnel to implement and supervise a health and safety program, if applicable, to ensure that the City standards and the standards of the **Occupational Health and Safety Act** (hereafter called "legislation") shall be complied with throughout the term of the Contract.

6.30 Quality Control

The Design-Build Team must ensure the regular daily supervision of staff, inspection of the Work and any other requirements to provide satisfactory performance and service. Brief periodic meetings may be required to discuss any concerns or problems at the discretion of the City contact.

6.31 Emergencies

The City has the authority to stop the Work whenever, in its opinion, such stoppage may be necessary to ensure the proper and safe execution of the Work.

6.32 Warranty

The Design-Build Team must provide a two (2) year warranty on parts and labour commencing at Substantial Completion as defined by the Construction Lien Act (Ontario).

A written warranty must be provided to the City at the time the holdback is requested.

The Design-Build Team shall furnish proof that they are able to provide service, should it be required, during and/or after the warranty period within (5) five business days.

6.33 Holdbacks

Holdbacks shall be in compliance with the **Construction Lien Act**.

6.33.1 Contract Completion Security

The City shall deduct, on each Certificate of Payment, after the ten percent (10%) lien holdback has been deducted, a further one percent (1%), to be set aside and held as a Contract Completion Security Account. The accumulated amount in this account shall be released to the Design-Build Team upon Total Completion of the Work. Partial releases will not be made.

If, within fifteen (15) days of written notification by the City at any time after Substantial Completion, the Design-Build Team does not reach Total Completion, by failing to completely finish outstanding Work, the City shall have the right to complete such Work and deduct the cost for such Work together with an appropriate administration fee from the Contract Completion Security Account.

6.34 Construction Lien Act

The Design-Build Team agrees to comply with the provisions of the **Construction Lien Act**, including, but not limited to, ensuring that holdbacks are retained in accordance with Part IV of the Act with respect to the supply of goods and services.

If any lien is preserved, or written notice of lien is given, pursuant to the **Construction Lien Act**, for the supply of goods and services in connection with the Work, the Design-Build Team forthwith:

- a. Shall give written notice to the City of such documents, process or claim; and
- b. Shall be considered to be in default of their obligations contained herein until such time as each Claim for Lien, together with any associated Certificate of Action, is discharged or vacated or written notice is received that such lien is withdrawn or a Court declaration is obtained that the written notice of lien is no longer binding or that the related lien has expired.

The Design-Build Team shall indemnify, defend and save the City harmless from and against any and all claims, actions, demands made against the City in connection with the **Construction Lien Act** and all costs incurred by the City as a result thereof. In the event that any action, cause of action, claim or other legal document or process or other alleged claim is commenced against or imposed upon the City, the City shall, within a reasonable time, give notice to the Design-Build Team of such document, process or claim. Upon receipt of such notice from the City, the Design-Build Team, at their own expense and to the satisfaction of the City, shall appeal, contest, defend or settle such legal document, process or claim on behalf of the City and reasonably notify the City on a periodic basis of the progress of the matter. The Design-Build Team acknowledges and agrees that the City reserves the right to elect at any time to conduct its own appeal, contestation, and defense or settlement negotiations at the Design-Build Team's expense after giving notice of same to the Design-Build Team.

The Design-Build Team acknowledges and agrees that no reduction in financial security shall be considered if the Design-Build Team is in default with any provision of this RFP or any Contract flowing out of the awarding of the RFP.

6.35 Permits, Fees and Certificates

The Design-Build Team shall apply for and pay for all permits and all inspections required for the Work hereinafter specified, and provide the City with all certificates necessary, as evidence that the Work conforms to the law and regulations of all authorities having jurisdiction. The Design-Build Team shall provide to the City copies of all plans as may be required to comply with regulations.

6.36 Use of City Site(s)

“No Smoking” is to be observed in all City buildings and on City owned property and parkland, and within nine (9) metres of any entrance, exit or air intake.

The Design -Build Team is responsible for ensuring that no person who is impaired by alcohol or drugs shall enter and/or remain on the site. The City may cause to remove from the site, for a duration determined solely by the City, any persons not observing or complying with these requirements and such non-compliance may be cause for termination of the Agreement/Contract.

6.36.1 Temporary Facilities

The Design-Build Team shall provide on-site portable toilets; maintaining them to provincial and municipal sanitary regulations; and ensuring they are clean at all times. The Design-Build Team shall not use existing toilet facilities inside the park building. Portable toilets are to be placed at locations as directed by the City.

The toilets shall be removed when the Work is complete. The area shall be restored to its original condition.

6.37 Tipping Fees

The submitted prices shall be **inclusive** of all City tipping fees that may be necessary to complete the Work as specified in this RFP. In the event that materials are to be deposited at the City landfill site, the Design-Build Team shall be required to use “roll-off” type containers. In the event that earth fill or other aggregates are taken to the landfill site, dump trucks may be used.

6.38 Storage of Equipment, Materials, Disposal of Materials and Cleaning Up

The Design-Build Team shall confine their equipment, the storage and disposal of materials, and the operation of the workmen, to limits indicated by law, ordinance, permits, or directions of the City or designate, and shall not unreasonably encumber other areas with materials or other equipment. The Design-Build Team shall provide or arrange for all necessary storage and disposal facilities of equipment and materials required while carrying out the terms of the Contract. Upon completion of the Work at the site, the Design-Build Team shall remove from the premises all surplus materials and all debris resulting from the operations and leave the site clean unless otherwise stated.

The Design-Build Team is responsible for restoration of all damaged grounds.

Following Project turnover after reasonable notice, the City may at its discretion remove equipment, materials, and clean up the site with all costs being paid by the Design-Build Team.

6.39 Workmanship

The Work outlined in this RFP shall be undertaken and completed by experienced tradesmen and in conformance with and up to the minimum acceptable standards of all relevant codes and regulations.

6.40 Responsibility

Nothing contained herein shall be construed as relieving the Design-Build Team from making good and perfect in all the usual details of construction, and they will be held responsible to provide all materials, to do all Work and to bear all expense incidental to the satisfactory completion of the Work embraced in these specifications.

6.41 Quality of Work

The Design-Build Team shall execute the whole of the Work with every possible dispatch and in a substantial and workmanlike manner.

6.42 Protect the Site from Damage

The Design-Build Team shall be responsible for maintaining the security of the site at all times, until the completion of the Project. This requirement includes, but is not limited to, ensuring that the site is not damaged by trespassers, weather events (including rain, snow, wind, etc.) or any foreseeable source of damage. In the event the City suffers any loss or damage as a result of the negligent act or omission by the Design-Build Team, the City shall be entitled to deduct the amount of the loss or damage from any amount owing to the Design-Build Team and/or pursue any other remedy available at law.

6.43 Loss, Damage and Claims

The City will not in any manner be answerable or accountable for any loss or damage that shall or may happen to the said Work, or in any part or parts thereof respectively, or for any of the materials or other things used and employed in finishing and completing the Work or for any injury to any person or persons, either workers or the public, or for any damage to the adjoining property. The Design-Build Team will properly guard and make good all damage which may arise or be occasioned by any cause connected with the Contract, or the Work done by the Design-Build Team, and will indemnify and keep indemnified the City against the same, until the completion of all the Work required.

6.44 Collusion

The Proponent declares that this response is NOT made in conspiracy with any other Proponent bidding for the same products/services and is without collusion or fraud.

6.45 Failure to Comply**6.45.1 Standards and Legislation**

The Design-Build Team may be required to provide written documentation that all materials supplied to perform the requirements of the RFP meet municipal, provincial and federal government standards, legislation and laws. Failure by the Design-Build Team to comply with these laws, legislation, regulations, and provisions shall be just cause for the City, at its discretion, to stop performance of this Contract, until such time as the Design-Build Team is in compliance with the law. The City may, at its discretion, award the Contract to any other Proponent or may re-issue the RFP. The City may set-off or assess against the Design-Build Team any damages whatsoever as a result of failure to comply.

6.45.2 All RFP Terms

Failure to comply with all the terms, specifications, requirements, conditions and general provisions of this RFP, to the satisfaction of the City, shall be just cause for the cancellation of the Contract. The City shall then have the right to award this Contract to any other Proponent or to re-issue the RFP. The City shall assess against the Design-Build Team any damages whatsoever as a result of failure to perform. In addition, the City may, at its discretion, stop the performance of this Contract until such time as the Design-Build Team complies with all the provisions of this Contract.

6.46 Safety Requirements

The Design-Build Team must ensure that, during the performance of the Work outlined in the Contract, their personnel are equipped with and wear the necessary safety apparel, including headgear, footwear and other equipment as appropriate.

7.0 SCOPE OF WORK

7.1 Introduction

The City requires the design, supply and construction of a Splash Pad at Nicholls Oval Park, with Substantial Completion **no later than June 15, 2013**.

7.2 The Site

Nicholls Oval Park is the site for the new Splash Pad. The Park is located at 725 Armour Road, Peterborough, Ontario. A Park location map is included as **Attachment 3**. Each Proponent must visit the site and satisfy themselves as to the location, conditions and constraints of the park area in question. An aerial photograph of the site of the Splash Pad is enclosed as **Attachment 4**.

Submission of a Proposal by the Proponent is evidence that such visit has been conducted and the Proponent is aware of all limitations and restrictions of the site. If selected as the Design-Build Team, the Proponent agrees not to submit a specific claim for compensation due to adverse soil conditions and natural conditions, or any adverse general or local conditions.

7.3 Project Budget as an Upset Limit

The City is committed to optimizing the value of their investment. The Proponent is advised that an upset limit of **two hundred and thirty thousand dollars (\$230,000)** excluding HST but including duty, freight, exchange, supply, delivery, installation costs, and any other charges, as may be applicable, to the design, supply and installation of the Splash Pad. This upset limit will be strictly adhered to. **Proposals exceeding \$230,000 will not be reviewed.**

7.4 Construction Project (the "Work")

The Design-Build Team shall design, procure, construct, install, and commission the following elements of the overall Work.

The Design -Build Team will be required to make all of the necessary connections to services.

7.5 Scope of Work

The Scope of Work involves:

- a. Removal of the existing concrete pad;
- b. Verification of the suitability of the water and drain lines and its repair/replacement if required (see **Appendix C, Item 2** for \$10,000 allowance for this element);
- c. Design, supply and installation of a complete turnkey Splash Pad;
- d. Creation of two (2) accessible parking spaces and an accessible pathway to the Splash Pad (see **Attachment 5** for specifications);
- e. Perimeter fencing (shown as an allowance of \$8,000 in **Appendix C**).

All mechanical and electrical plant components are to be housed in a concrete structure, supplied by the Design-Build Team, of size and internal layout as required, forming part of the Proposal.

7.6 Design-Build Team Requirements

The Design-Build Team's requirements shall include, but may not be limited to:

- a. Design, prepare plans and specifications and complete construction of a turnkey Splash Pad facility;
- b. Meet with City staff to discuss design details, make recommendations during the construction phase as necessary;
- c. Construct complete concrete base and surface, electrical, mechanical and servicing systems for a complete turnkey facility;
- d. Provide above ground concrete bunker with lockable doors to house all electrical and mechanical services;
- e. Submit shop drawings suitable for all necessary approvals;
- f. Provide two (2) complete sets of "As-Built" drawing plans and one (1) electronic copy on CD Rom for approval by the City, prior to release of final payment; and
- g. Supply a list of component parts and replacement costs.

7.7 Critical Success Factors

The City is looking for a Design-Build Team that can successfully design and deliver the Work at the park and meet the following critical success factors:

- a. Achieve Substantial Completion on or before June 15, 2013;
- b. Achieve Total Completion on or before June 24, 2013 where Total Completion means less than \$500 in work remaining to be completed, including deficiencies; and
- c. Develop and implement value for money solutions.

7.8 Significant Elements

The significant elements that should be considered in the design are as follows:

- a. Pad shall cover an area of approximately 3,500 square ft at the site of the existing Wading/Splash Pad (see **Attachment 4**);
- b. Designed for a variety of ages, with a distinct separation of toddler splash features with school age splash features;
- c. Pad to provide a non-slip concrete surface;
- d. An allowance for fencing to be carried by the Design-Build Team of \$8,000 (contained in **Appendix C**);
- e. Meet all safety and legislated standards required for children's playgrounds in public facilities;
- f. Meet all requirements of the Province of Ontario's AODA Guidelines for Public Spaces and DRAFT Guidelines for Built Environment Standards;
- g. Easy maintenance;
- h. Installation of the required mechanical equipment in the supplied portable concrete structure;
- i. All services under concrete to be sleeved in PVC pipe for ease of replacement;
- h. Concrete pad at 125mm depth (5") with fibre mesh complete with 250mm depth granular 'A' base and sub-drainage system for frost protection.
Concrete installation to meet OPSS 350 and 351.
- i. All electrical connections, grounding, connections for Splash Pad and features apparatus;
- j. Specify multi-program sequencing and flow control on each Splash Pad apparatus;
- k. Identify the user-control features (i.e., push button start);
- l. Specify control system to provide control of volume, length of time, and sequencing for all Splash Pad apparatus;
- m. Specify water consumption/unit time at given pressure for each spray feature;
- n. All drainage piping and drainage basins, connections, for Splash Pad areas;
- o. Direct draining system using fresh water; and
- p. Supply and Installation of backflow preventer for Splash Pad, as per PUS Cross Connection Control Program (Proponent is to contact PUSI directly at 705-748-9300 for this information).

7.9 Design Plan

The Park Neighbourhood Association has a vision for the design plan. The Splash Pad apparatus and features listed in **Table 1** are preferred (but not exclusive). Stainless steel is preferred to colour painted fixtures.

Proponents are asked to provide creative design solutions that will maximize the Splash Pad play value and include as many of the features identified below that are within budget and space allocated for the Splash Pad.

Table 1: Preferred Features

Item	Feature	Description
1	Hand pump	Upright old fashioned water pump apparatus
2	Lazy River	Circular river which takes water from the pump in Item 1 in a small meandering river to a drain. This feature should have a river depth of no deeper than 20 millimeters and should consume no greater than 20% of the total area of the Splash Pad (Reference Project: The Quarry, Leander Texas)
3	a. Bamboo #10 Water – b. Water Tunnel #2 c. Team Spray #1 d. Ground Geyser e. Spray Loop f. Foaming Geyser #2 g. Water Jellies	Vortex Aquatic Structures Inc. or approved alternate
4	Waterfall combined with a Wall Feature	At a height that will accommodate children and adults, this feature will contain sprays and squirting jets as well as a vertical drop of water. Design of this feature must ensure it does not become a hazardous climbing feature. The wall feature must have a location for a donor's plaque (to be provided by City).
5	Other	Creative elements that maximize play value in a Splash Pad.

Water cannons, and features that are of similar type, are not desired in the design plan.

As this is an RFP, Proponents can submit more than one (1) design with their submission and each design will be reviewed independently under as per **Item 8.4**

7.10 Splash Pad Criteria

The following should be considered as minimum standards when proposing the Splash Pad elements and services. Alternatives may be considered where it is believed such alternatives exceed function and durability of specified materials. The onus will be on the Proponent to demonstrate superiority of alternative materials/methods presented.

- a. **Accessibility** - all Proposals shall provide full accessibility meeting AODA Guidelines for Public Spaces and all requirements of the Final Proposed Accessible Built Environment Standards, released by the Ontario Government in July 2010 (see **Item 5.8**). To this end, it is proposed that the surface of the new Splash Pad be at equal grade, 'flush', with the adjacent walkways or ground surface unless otherwise indicated. The asphalt pathway connecting the new accessible parking to the Splash Pad will not exceed a five percent (5%) change in grade;

- b. **Water Features** - inclusion of a variety of splash features; water conservation consideration utilizing various activation features; connection for winterization of the Splash Pad. Vortex Aquatic Structures Inc. or suitable alternative. A request for alternatives must be made **by February 1, 2013** to Mary Gallop, Manager of Facilities and Special Projects (see **Item 4.1**) and demonstrate comparability of the alternate to Vortex or the superiority of the alternate recommended as per the specifications identified in **Section 7.0**;
- c. **Concrete Pad Surface Finish** – concrete surface must have anti-slip features when water is applied to the surface. The textured/patterned finish on the concrete shall be consistent with no rough patches and be conducive to bare-foot Splash pad users. Steel trowel and Broom finished concrete is not acceptable. Finished surfaces must be even, with no lips or trip edges. Prior to installation of the concrete pad, the City may request that sample concrete finishes (approx. 0.5m X 0.5m in size) be cast for approval;
- d. **Materials** - All hardware and accessories shall be tamper-resistant to eliminate risk of vandalism. Stainless steel for hardware is preferred due to its structural integrity and resistance to corrosion. Unless otherwise stated all goods supplied as a result of this RFP shall be new only, never used, of the latest manufacture and not re-manufactured;
- e. **Hand-over** - The Design-Build Team shall make provisions for the time and expense to ensure that the Splash Pad is functioning as intended upon Project completion. After Project completion, the Design-Build Team will provide one (1) fall winterization and one (1) startup spring opening of the new Splash Pad features and services; these costs to be included in their Proposal. An on-site meeting will be held with the Design-Build Team and City staff to review the operations and winterization of the Splash Pad and spring start-up. Upon Project completion, an operations kit shall be provided to the City for routine maintenance and adjusting of the Splash Pad system. The kit shall include two (2) operations manuals with necessary hand tools and hardware;
- f. **C.S.A. Standards** - All materials and installation conform to the most recent edition of the C.S.A. standards; where applicable (see **Item 5.10.9**); and
- g. **Warranty** - The Design-Build Team will guarantee the work for two (2) years from date of Substantial Completion against all defects in material, equipment and workmanship and provide a letter to the City upon Substantial Completion of the Work, with the Warranty commencing on the City's first in-service date. The guarantee shall cover repair damage to any part of the premises resulting from leaks, or other defects in material, equipment, and workmanship to the satisfaction of the City. Repairs must be made promptly, at no cost to the City

7.11 Specific Instructions

7.11.1 Preconstruction

The Design-Build Team must notify all utility agencies regarding the installation of any services in this contract area and to obtain stakeouts and permits for these services.

The Design-Build Team is responsible for any damage caused to underground utilities or services by their work forces including sub-contractor(s) in the execution of this Contract. The Design-Build Team is responsible for any necessary utility locates.

The entire work site of installation must be enclosed by steel construction fence hoarding for the duration of construction. All construction fencing must be removed after the completion. Where this is not adequately performed, the City may engage such forces as are necessary to complete the hoarding at the Design-Build Team's expense.

The Design-Build Team is advised that the site location is a public park with a variety of activities, including a rugby field, picnic pavilion, bike and pedestrian trails, and open space that will be ongoing during the construction period. It is the Design-Build Teams' responsibility to ensure the safety of the Public at all times throughout the construction of the Splash Pad facility and the Design-Build Team must take every necessary precaution to ensure public safety.

The Splash Pad may be designed with a theme in mind or consist of a variety of splash elements. The Proponent should consider that this Splash Pad will be used by children of all ages and abilities.

Design and Shop drawings in conjunction with product specifications for the Splash Pad must be submitted for approval prior to construction.

The Design-Build Team is responsible for survey layout of all elements including grade elevations to the approval of the City. Grade and survey layout stakes shall conform to the OPSS applicable sections and the City standards.

The City will confirm on site the layout of the various Splash Pad elements with the Design-Build Team, prior to start of work.

7.11.2 Construction

It is the responsibility of the Design-Build Team to respond to any emergencies regarding this Contract until Substantial Completion.

The Design-Build Team shall include, as part of the turnkey operation, the removal and disposal of the existing concrete wading pool. Any areas not covered by the new Splash Pad will require the placing of sod on top of 150mm of screened topsoil at this location.

All equipment shall be installed by a reputable company with previous successful experience in the installation of the same or similar equipment.

The Design-Build Team shall, at all times, keep the premises free from accumulations of waste material or rubbish caused by the work. All rubble and waste material caused from work or demolition must be hauled off site and disposed of immediately. In case of dispute, the City may remove the rubbish and charge the cost to the Design-Build Team, as the City shall determine to be just. At the completion of the work the Design-Build Team shall remove all their plant, tools and surplus materials, and shall leave the works "broom clean" or its equivalent.

The Design-Build Team shall not close or obstruct access along adjacent roadways to the site and in the Park; shall not place or store materials or park vehicles or equipment on same and shall not obstruct emergency vehicle access routes.

The Design-Build Team will be responsible for the protection and maintenance of all equipment during construction until granting of Substantial Completion.

All turf areas that have been damaged or disturbed are to be resodded. Ensure minimum 150mm depth of topsoil under new sod areas. Topsoil is to be clean, screened, and free of any clay, stones, or other materials.

The Design-Build Team shall be responsible for the reinstatement and repair of all items damaged as a result of the work. These include, but are not limited to, curbs, municipal sidewalks, and boulevards. Such repairs must be completed prior to Substantial Completion.

7.11.3 Performance

All work must meet the approval of the City. Otherwise the City may request the work be changed or removed at the Design-Build Team's expense.

All workmanship and material is to be guaranteed for a minimum period of two (2) years unless otherwise stated from the in-service date of the Project and all work must be performed to the satisfaction of the City.

7.11.4 Administration

No work in excess of the amount of the Contract and as shown on the drawings and in the specifications is to be carried out without written authority from the City. Any work that is carried out without such authority will be entirely at the Design-Build Team's own risk and expense.

The Design-Build Team shall be responsible for obtaining and paying the cost for any permits, if necessary.

Upon completion of installation, the site(s) must be restored to conditions existing at the time of Design-Build Team arrival. Any damage by the Design-Build Team resulting from installation or access to the site(s) including excessive rutting, damage to pathways, curbing, sidewalks, trees, fences, etc. are to be corrected at the Design-Build Team's expense. This shall be determined during final inspection and must be restored to the satisfaction of the Owner.

The Design-Build Team shall provide a schedule of work for the entire project, outlining milestones.

Regularly scheduled, monthly meetings with City staff will be required to provide updates on progress and problems.

Payment requests for work completed must be provided on a monthly basis and will be subject to deductions as permitted in the Construction Lien Act.

7.11.5 Tree Protection Zones

The Design-Build Team is to submit a tree protection plan for all trees within the construction zone and access route for approval. Project construction will be permitted to commence after approval. Tree protection zones as outlined below are to be erected and approved by the City.

The following is a table showing minimum required distances for determining a Tree Protection Zone ("TPZ") for City-owned trees. Some trees and some site conditions may require a larger TPZ.

Converted from ISA Arborists' Certification Study Guide, general guideline for tree protection barriers of 1 foot of diameter from the stem for each inch of stem diameter.

Table 2: Tree Protection Zones¹

Trunk Diameter (DBH) ²	Minimum Protection Distances Required ³ City-owned and Private Trees
< 10 cm	1.2 m
10 – 29 cm	1.8 m
30 – 40 cm	2.4 m
41 – 50 cm	3.0 m
51 – 60 cm	3.6 m
61 – 70 cm	4.2 m
71 – 80 cm	4.8 m
81 – 90 cm	5.4 m
91 – 100 cm	6.0 m
> 100 cm	6 cm protection for each 1 cm diameter

¹ Source: Toronto Parks, Forestry and Recreation; Tree Protection Policy and Specifications for construction near trees.

² Diameter at breast height (DBH) measurement of tree stem taken at 1.4 metres above the ground.

³ Tree Protection Zone distances are to be measured from the outside edge of the tree base.

All TPZ's must have signage identifying what it is and what it does not permit. Within a TPZ there must be:

- a. No construction;
- b. No altering of grade by adding fill, excavating, trenching, scraping, dumping or disturbance of any kind;
- c. No storage of construction materials, equipment, soil, construction waste or debris;
- d. No disposal of any liquids e.g. concrete slush, gas, oil, paint;
- e. No movement of vehicles, equipment or pedestrians;
- f. No parking of vehicles or machinery;
- g. Directional micro-tunneling and boring may be permitted within the limits of a TPZ subject to approval by Forestry Operations; and
- h. Open face cuts outside a TPZ that are consistent with an approved plan and that require root pruning, require the services of a qualified arborist or approved tree professional. An exploratory dig, either by hand or using a low water pressure hydrovac method, must be completed prior to commencing with open face cuts outside the TPZ.

7.12 Services

- a. **Water Supply** – The existing building at Nicholls Oval Park contains a two inch (2") water line that services the washrooms and rugby field irrigation. The Design-Build Team will be required to provide servicing to the Splash Pad concrete bunker, including separate water meter and back-flow preventer. It will be the Design-Build Team's responsibility to verify the location and capacity of the water service and its suitability for the Splash Pad requirements.
- b. **Storm Water Drain** – Design-Build Team to verify existing drain conditions and provide drainage from Splash Pad to the sanitary sewer.
- c. **Hydro Electricity** - The existing wash room facility at Nicholls Oval Park contains a 100-amp single-phase electrical service that services this building. The Design-Build Team will be required to provide electrical servicing to the new portable concrete mechanical/electrical building from this facility and from there to the new Splash Pad. The Design-Build Team is responsible for all connections and services to the controllers and Splash Pad.

7.13 Ministry of Labour Notice of Project

The Design-Build Team must provide a Notice of Project ("NOP") to the Ministry of Labour ("MOL") prior to starting the Project that meet the standards set out in Section 6 (1) of the Regulation for Construction Projects, O.Reg 213/91 (the Regulation). A copy of the Notice must be provided to the City following award of Project.

7.14 Workplace Hazardous Materials Information Systems (“WHMIS”)

The Design-Build Team shall provide proof that all employees and sub-contractors have received WHMIS training.

7.15 Material Safety Data Sheets (“MSDS”)

The Design-Build Team shall submit MSDS sheets for all hazardous materials, including an index of chemical compounds, with details of properties, handling details, precautions and first-aid procedures. Copies must also be available on each job site for the duration of the Work.

7.16 Project Schedule

This project is on a tight timeline, and must adhere to the following schedule as closely as possible:

RFP Issue	January 23, 2013
Last date to request alternative (see Item 7.10.b)	February 1, 2013
Closing date of RFP	February 14, 2013
Approval by City	March 19, 2013
Substantial Completion	June 15, 2013
Total Completion	June 24, 2013

8.0 EVALUATION**8.1 Evaluation**

This is an RFP, which shall be awarded based on evaluation of the criteria set out in this Section.

8.2 Evaluation Committee

An Evaluation Committee comprised of representation from the City’s Community Services Department, Public Works, and the Neighbourhood Association, will be evaluating submissions using the Criteria in **Item 8.4**. The City reserves the right to change the makeup of the Committee, if required.

8.3 Clarification and References

The City reserves the right to contact any Proponent to seek clarification of the contents of their Proposal.

Some scores assigned to the various categories may be determined through reference checks.

The City may investigate as it deems necessary to determine the ability of the Proponent to perform the Work and the Proponent shall furnish the City all such information and data for this purpose as the City may request.

The City reserves the right to contact any or all of the supplied references and may disqualify Proponents who have been given negative performance/service and/or quality ratings by supplied references or other references contacted.

The City reserves the right to reject any Proposal if the evidence submitted by or investigation of such Proponent fails to satisfy the City that the Proponent is qualified to carry out the obligations of the Agreement.

8.4 Evaluation Criteria

Proposals will be evaluated and scored according to the rating scheme indicated in **Table 3**. The Proposal must ensure that their Proposal addresses all items of the evaluation criteria listed.

Table 3: Rating Scheme

#	CRITERIA	RATING (%)
1	Compliance with minimum design and accessibility, quality of materials, durability, and warranty.	35%
2	Price $\frac{\text{Cost of Lowest Proposal}}{\text{Cost of Proposal being evaluated}} \times 10$ (Proposals exceeding \$230,000 will not be reviewed as per Item 7.3)	10%
3	Experience/expertise on past projects	15%
4	Overall design and play amenity values	40%
	TOTAL	100%

Note: Lowest or any Proposal not necessarily accepted.

8.5 Recommendation of Award

Recommendation for award of this Proposal will be based on the Proponent's overall total score. By responding to this RFP, the Proponent agrees to accept the recommendation of the Evaluation Committee as final and binding.

The award of this RFP shall be in accordance with the City of Peterborough's current Purchasing By-law. The decision of the City will be final.

The Design-Build Team shall not make any claims for additional costs or expenses due to the delay in, or cancellation of the award of this RFP, due to the approval process.

8.6 Requirements on Acceptance of Award

The Design-Build Team will be required to submit, within ten (10) business days of notification of award of the RFP; with the required copies of the signed Contract (if requested in **Item 5.11.1**) and prior to start of Work, the following:

- a. Certificate(s) of Insurance, if requested in **Item 5.5.4**;

- b. Proof of a valid and current Clearance Certificate or proof of exemption from the WSIB, if requested in **Item 5.6**;
- c. Bond(s), as requested in **Item 5.7**;
- d. Completed Attachment **6** , regarding Accessibility for Ontarians with Disabilities, as requested in **Item 5.8**;
- e. Proof of competent personnel to implement and supervise a health and safety program (**Item 6.29**);
- f. Final Work Schedule (**Item 5.10.6**);
- g. Copy of Notice of Project (**Item 7.13**);
- h. Proof of WHMIS training (**Item 7.14**); and
- i. MSDS sheets (**Item 7.15**).

Attachment 1:

**SAMPLE OF AGREEMENT TO BOND
PERFORMANCE AND LABOUR AND MATERIALS PAYMENT**

FOR the Corporation of the City of Peterborough

I/We, the undersigned, hereby agree to become bound as surety for:

(Name of Proponent)

In a Performance Bond totaling 50% of the Total Contract Price and in a Labour and Materials Payment Bond totaling 50% of the Total Contract Price, and conforming to the Instruments of Contract attached hereto, for the full and due performance of the Works shown as described herein, if the Proposal for:

(insert RFP # and Title)

Is accepted by the Corporation of the City of Peterborough.

It is a condition of this Agreement that if the above mentioned Proposal is accepted, application for the above mentioned Bonds must be completed with the undersigned within ten (10) working days of notification of award of the Proposal related thereto, otherwise this Agreement shall be null and void.

DATED at _____ this _____ day of _____, 2013

Name of the Bonding Company

BY:

Signature of Authorized Person
Signing for Company

Company Seal

Position

Attachment 2

Sample Contract

THIS CONTRACT made in triplicate this XXth day of February, 2013.

B E T W E E N:

THE CORPORATION OF THE CITY OF PETERBOROUGH
(the "City")

and

COMPANY X
(the "Design-Build Team")

WHEREAS the City desires the Design-Build Team to proceed with the design build services for the **Nicholls Oval Park Splash Pad** at 725 Armour Road ("the Park"), in the City of Peterborough, pursuant to RFP# **P-07-13**, in accordance with the Design-Build Team's Proposal which is attached hereto as **Schedule A** and forms part of this Contract (hereinafter referred to as the "Work");

AND WHEREAS the Design-Build Team agrees to fully perform the Work;

NOW THEREFORE THIS CONTRACT WITNESSETH THAT in consideration of the mutual covenants and agreements herein contained the parties agree as follow:

ARTICLE 1 – TERM OF PERFORMANCE

- 1.1 The Design-Build Team agrees to complete the Work in accordance with **Schedule A** attached hereto.
- 1.2 The City warrants that the Work can lawfully be undertaken at the Park, in the City of Peterborough (hereinafter referred to as the "Place of Work"), and that there are no legal impediments to constructing the Work.
- 1.3 Time is of the essence of this Contract.
- 1.4 Prior to commencement of the Work, the Design-Build Team shall prepare and submit to the City a construction schedule indicating the timing of the major activities of the Work and provide sufficient detail of the critical events and their inter-relationship to demonstrate that the Work will be performed in conformity with the Term of Performance.

- 1.5 The Design-Build Team shall monitor the progress of the Work relative to the construction schedule and update it on a monthly basis or as stipulated in the Contract Documents and shall advise the City of any revisions required to the schedule as a result of additional services/changes in work.
- 1.6 In the event of any discrepancy or conflict between any term and conditions contained in the Contract Document, such conflict or discrepancy shall be resolved by the City with reference to the following documents, and in the following order of priority:
 - (1) The RFP, including any addenda;
 - (2) The Contract;
 - (3) The Design-Build Team's Proposal

ARTICLE 2 – RETAINER AND CONTRACTING SERVICES TO BE PROVIDED

- 2.1 The City retains the Design-Build Team to perform and, subject to early termination of this Contract by the City as hereinafter provided, to complete all the services comprising the Work.

ARTICLE 3 – CONTRACT PRICE

- 3.1 The Project Contract Price payable to the Design-Build Team for the services to be performed hereunder shall not exceed the sum of \$XX (the "Contract Price"), which amount includes all applicable tax. Included in the Project Contract are all applicable customs, duties, freight, exchanges, patent fees, royalties, and all other charges, as detailed in the Design-Build Team's Proposal.
- 3.2 In the event that services are required which are in addition to the Work, the Design-Build Team shall receive as payment for such additional services such amounts as may be negotiated between the Design-Build Team and the City and agreed in writing in accordance with **Article 5** hereof.
- 3.3 Unless otherwise expressly agreed by the parties, the Project Contract Price includes all allowances and disbursements sustained by the Design-Build Team in completing the Project.
- 3.4 When the Work is substantially performed the Design-Build Team shall prepare and submit to the City a comprehensive list of items to be completed or corrected and apply for a review by the City to establish Substantial Completion of the Work or Substantial Completion of the designated portion of the Work. Failure to include an item on the list does not alter the responsibility of the Design-Build Team to complete the Contract.

- 3.5 No later than ten (10) working days after the receipt of the Design-Build Team's list and application, the City will review the Work to verify the validity of the application, and no later than seven (7) working days after completing the review, will notify the Design-Build Team whether the Work or the designated portion of the Work is substantially performed.
- 3.6 The City shall state the date of Substantial Completion of the Work or designated portion of the Work in a certificate and immediately following the issuance of the certificate of Substantial Completion of the Work, the Design-Build Team, in consultation with the City, will establish a reasonable date for finishing the Work.
- 3.7 When the Design-Build Team considers that the Work is completed, the Design-Build Team shall submit to the City an application for final payment containing the following documentation:
- 3.7.1 A statutory declaration certifying that all accounts of all sub-contractors and suppliers relative to the Project have been paid in full, less only the part of the holdback monies due to them;
- 3.7.2 If bonding is provided, written consent of the Design-Build Team's bonding company to the partial release of holdback monies with reference to the specific amount proposed to be released; and
- 3.7.3 A notarized signed statement that the Design-Build Team, sub-contractors or suppliers have not worked on the Project or supplied goods or services to the project during the forty-five (45) day lien period, other than for necessary correction of defects or deficiencies as defined herein.

ARTICLE 4 – PERMISSION FOR LATE COMPLETION NOT A WAIVER

- 4.1 If the Design-Build Team fails to complete the Work within the time specified but is permitted by the City to proceed and complete the Work, such permission shall not constitute a waiver in respect of any responsibility of the Design-Build Team for damages arising from the Design-Build Team's default hereunder in failing to comply with its obligations to perform.

ARTICLE 5 – ADDITIONAL SERVICES / CHANGES IN WORK

- 5.1 The City may furnish, as necessary for the execution of the Work, additional requests consistent with this Contract in the form of a Change Order or Additional Instructions, as set out in **Schedule B**. The Work shall be completed in conformity with any Change Order or Additional Instructions, which have been issued. Any additional instructions or changes in Work, which result in a change in the Project Contract Price or the Term of Performance, shall be shown on the written Change Order.

- 5.2 The City has the right, for the purpose of further describing the Work, to furnish to the Design-Build Team such other documents and drawings as may be requisite from time to time and the Design-Build Team shall conform to such other documents and drawings as if they were contained in **Schedule A**.
- 5.3 Upon receipt of a Change Order signed by the City, the Design-Build Team shall proceed promptly with the change in the Work. The adjustment in the Contract Price for a change carried out by way of a Change Order or Change Directive shall be determined on the basis of the cost of expenditures or value of the savings to perform the work attributable to the change. If a change in the Work results in a net increase in the Contract Price, an allowance for overhead and profit shall be included only for work provided by a sub-contractor. The allowance for increases in the contract price shall be ten per cent (10%) for overhead and five per cent (5%) for profit.

The Design-Build Team is not allowed additional overhead and profit on their work undertaken by their own forces as it would be part of their detailed price submission for a Change Order or Change Directive.

- 5.4 If a change in the Work results in a net decrease in the Contract Price, the amount of the credit shall be the net cost, without deduction for overhead or profit. When both additions and deletions covering related Work or substitutions are involved in a change in the Work, the allowance for overhead and profit shall be calculated on the basis of the net increase, if any, with respect to that change in the Work.
- 5.5 The Design-Build Team shall keep and present, in such form as the City may require, an itemized accounting of the cost of expenditures and savings. The cost of performing the Work attributable to the Change Order shall be limited to the actual cost of all of the following, unless specifically referred to elsewhere:
- 5.5.1 Wages and benefits paid for labour in the direct employ of the Design-Build Team under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the City and Design-Build Team Design-Build Team;
 - 5.5.2 Salaries, wages and benefits of the Design-Build Team Design-Build Team's office personnel engaged in a technical capacity and other personnel at shops or on the road, engaged in expediting the production or transportation of materials or equipment;
 - 5.5.3 Contributions, assessments, or taxes incurred for such items as unemployment insurance, provincial health insurance, workers' compensation and Canada Pension Plan, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the Design-Build Team and included in the cost of the Work;

- 5.5.4 The cost of all products including cost of transportation thereof;
 - 5.5.5 The cost of materials, supplies, equipment, temporary services and facilities, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed; and cost less salvage value on such items used but not consumed, which remain the property of the Design-Build Team;
 - 5.5.6 Rental cost of all tools, machinery and equipment, exclusive of hand tools, whether rented from or provided by the Design-Build Team or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery cost thereof;
 - 5.5.7 Deposits lost;
 - 5.5.8 The amounts of all subcontracts;
 - 5.5.9 The cost of quality assurance such as independent inspection and testing services;
 - 5.5.10 Charges levied by authorities having jurisdiction at the Place of Work;
 - 5.5.11 Royalties, patent license fees and damages for infringement of patents and cost of defending suits therefore subject always to the Design-Build Team obligations to indemnify the City;
 - 5.5.12 Any adjustment in tax and duty for which the Design-Build Team is liable;
 - 5.5.13 Charges for long distance telephone and facsimile communications, courier services, expressage, and petty cash items incurred;
 - 5.5.14 The cost of removal and disposal of waste products and debris; and
 - 5.5.15 The cost incurred due to emergencies affecting the safety of persons or property.
- 5.6 The Design-Build Team shall not be entitled to any additional compensation for additional Work, services, disbursements or materials unless such changes are confirmed by a Change Order signed by the City.

- 5.7 The City reserves the right to delete certain items from the Work, provided that it must so advise the Design-Build Team of the deletion in writing. An adjustment in compensation arising from the deletion shall be reflected in a Change Order, or, failing Agreement, submitted to Arbitration.

ARTICLE 6 – DELAYS

- 6.1 If the Design-Build Team is delayed in the performance of the Work by an action or omission of the City, or anyone employed or engaged by them directly, contrary to the provisions of the Contract Documents, then the Term of Performance shall be extended for such reasonable time as the City may recommend in consultation with the Design-Build Team. The Design-Build Team shall be reimbursed by the City for reasonable costs incurred by the Design-Build Team as a result of such delay.
- 6.2 If the Design-Build Team is delayed in the performance of the Work by a “Stop Work Order” issued by a court or other public authority and providing that such order was not issued as a result of an act or fault of the Design-Build Team or any person employed or engaged by the Design-Build Team directly or indirectly, then the Term of Performance shall be extended for such reasonable time as the City may agree with the Design-Build Team, or failing such agreement, shall be equivalent to the actual stoppage in work.
- 6.3 If the Design-Build Team is delayed in the performance of the Work by labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for their members by a recognized contractor’s association, of which the Design-Build Team is a member or to which the Design-Build Team is otherwise bound), fire, unusual delay by common carriers or unavoidable casualties, or without limit to any of the foregoing, by a cause beyond the Design-Build Team’s control, then the Term of Performance shall be extended for such reasonable time as the City may recommend in consultation with the Design-Build Team. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the Design-Build Team agrees to a shorter extension. The Design-Build Team shall not be entitled to payment for costs incurred by such delays unless such delays result from actions or omissions by the City.
- 6.4 No extension shall be made for delay unless notice in writing is given to the City not later than ten (10) working days after the commencement of delay, providing however, that, in the case of a continuing cause of delay, only one notice shall be necessary.

ARTICLE 7 – CONCEALED OR UNKNOWN CONDITIONS

- 7.1 If the City or the Design-Build Team discovers conditions at the Place of Work that are:

- 7.1.1 Subsurface or otherwise concealed physical conditions which existed before the commencement of the Work which differ materially from those indicated in the Contract Documents; or
- 7.1.2 Physical conditions of a nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents.

Then the observing party shall notify the other party in writing before conditions are disturbed and in no event later than five (5) working days after first observance of the conditions.

- 7.2 The City will promptly investigate such conditions and make a finding. If the finding is that the conditions differ materially and this would cause an increase or decrease in the Design-Build Team's cost or time to perform the Work, the City shall issue appropriate instructions for a change in the Work.
- 7.3 If the City finds that the conditions at the Place of Work are not materially different or that no change in the Contract Price or the Term of Performance is justified, the City shall report the reasons for this finding to the Design-Build Team in writing.

ARTICLE 8 – TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS

- 8.1 For the purposes of applicable environmental legislation, the City shall be deemed to have control and management of the Place of Work with respect to existing conditions.
- 8.2 The City hereby confirms to the Design-Build Team that all known toxic or hazardous substances or contaminants have been removed from the Place of Work.
- 8.3 The City shall take all reasonable steps to ensure that no person suffers injury, sickness, or death and that no property is injured or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances or materials which were at the Place of Work prior to the Design-Build Team commencing the Work.
- 8.4 Unless the Contract expressly provides otherwise, the City shall be responsible for taking all necessary steps, in accordance with legal requirements, to dispose of, store or otherwise render harmless toxic or hazardous substances or materials which were present at the Place of Work prior to the Design-Build Team commencing the Work.

- 8.5 If the Design-Build Team encounters toxic or hazardous substances or materials at the Place of Work, or has reasonable grounds to believe that toxic or hazardous substances or materials are present at the Place of Work, the Design-Build Team shall immediately report the circumstances to the City in writing.

ARTICLE 9 – INDEMNIFICATION

- 9.1 The Design-Build Team shall indemnify and save the City harmless from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever, whether direct or indirect, which the City, its agents, servants or officers, may suffer as a result of the errors, omissions or the negligence of the Design-Build Team, their agents, servants or officers, in the performance of the services hereunder.

ARTICLE 10 – FINANCIAL SECURITY/PERFORMANCE AND LABOUR AND MATERIALS SECURITY

- 10.1 In accordance with **Item 5.7** of the RFP, to secure the due performance of the Design-Build Team's obligations hereunder, the Design-Build Team shall deposit, concurrent with the execution of this Contract, financial security in the form of a Performance and Labour and Materials Bond, or some other acceptable form of security, in satisfactory form, acceptable to the City, in the amount of fifty per cent (50%) each of the Contract Price. The performance security shall provide for payment to the City of such sums as may be requested from time to time to the maximum limit of the credit without recourse, and shall remain in full force and effect until the obligations of the Owner pursuant to this Agreement have been completed.

ARTICLE 11 – INSURANCE AND WORKPLACE SAFETY AND INSURANCE ACT

- 11.1 The Design-Build Team shall provide, maintain, and pay for all insurance coverage in accordance with **Items 5.5 and 5.6** of the RFP, and the duration of each insurance policy shall be from the date of commencement of the Work until the date of the final certificate for payment. Without limiting the generality of the foregoing the Design-Build Team at its expense, shall obtain and file with the City prior to commencement of the Work and shall keep in force until the date of the final certificate of payment comprehensive general liability insurance in respect of the Work (including all risks insurance for personal injury and property damage in respect of all equipment and all motor vehicles used or to be used in connection with the Work and contractual liabilities, with minimum inclusive limits of five million dollars (\$5,000,000). Upon the placement, renewal, amendment, or extension of all or any part of the insurance, the Design-Build Team shall promptly provide the City with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements.

- 11.2 Without limiting the generality of the foregoing the Design-Build Team, at their expense, shall be responsible for **Workplace Safety and Insurance Act** contributions and other incidental expenses, and no extras will be allowed for such items.
- 11.3 The Design-Build Team shall be responsible for deductible amounts under the policies of insurance.

ARTICLE 12 – WARRANTY

- 12.1 During the warranty periods the City shall promptly notify the Design-Build Team in writing of observed defects and deficiencies in the Work.
- 12.2 The Design-Build Team shall promptly correct, at the Design-Build Team's expense, defects or deficiencies in the Work, which appear prior to, and during, the warranty periods.
- 12.3 Any warranties on any specific part of the Work provided by a manufacturer or supplier shall be provided or assigned to the City, and such specific warranty shall apply to such part of the Work.

ARTICLE 13 – RECORDS AND AUDIT

- 13.1 For the purpose of determining the fees calculated on a time basis, the Design-Build Team shall keep a detailed record of the hours worked by the staff employed to provide the Services.
- 13.2 During the term of this Contract, and for a period of two (2) years thereafter, the City may inspect and audit the books, payrolls, accounts and records of the Design-Build Team at any time with respect to any item that the City is required to pay, either directly or indirectly pursuant to this Agreement.

ARTICLE 14 – COVENANTS OF THE DESIGN-BUILD TEAM

- 14.1 Whenever possible, the Design-Build Team shall give consideration to the use of local labour, building product suppliers and sub-trades.
- 14.2 The Design-Build Team shall endeavour to use Canadian made products where price and quality are comparable to corresponding foreign made products.
- 14.3 The Design-Build Team agrees to provide all necessary labour, materials, plant, equipment, and services required for the execution and completion of the entire Work, inclusive of all trades, for the construction and completion of the Work as defined in this Contract as consideration for payment of the contract price.

- 14.4 The Design-Build Team shall skillfully and competently perform the services set forth in the project description and shall employ only skilled and competent staff and sub-contractors who will be under the supervision of the Design-Build Team's project supervisor.
- 14.5 The Design-Build Team shall exercise control of the Work and shall effectively direct and supervise the Work so as to ensure conformity with this Contract.
- 14.6 The Design-Build Team shall be solely responsible for the construction means, methods, techniques, sequences, procedures, and for co-ordinating the various parts of the Work under this Contract.
- 14.7 When separate Contracts are awarded for other parts of the Project, or when Work is performed by the City's own staff, the Design-Build Team shall assist the City in the co-ordination and scheduling with other contractors and of the Work.
- 14.8 The Design-Build Team shall maintain the Work in a tidy condition and free from the accumulation of waste products and debris, other than that caused by the City, other contractors, their agents and employees.
- 14.9 The Design-Build Team shall remove construction waste products and debris, other than that resulting from actions by the City, other contractors, their agents and employees.

Construction Liens

- 14.10 The Design-Build Team agrees to comply with the provisions of the **Construction Lien Act**, including, but not limited to ensuring that holdbacks are retained in accordance with Part IV of that Act with respect to the supply of services or materials to the Work
- 14.11 If any lien is preserved or written notice of lien is given pursuant to the **Construction Lien Act** for the supply of services or materials in connection with the construction, installation or maintenance of any portion of the Work located on a public street or highway or any lands or premises owned by the City or in which the City has an interest, the Design-Build Team forthwith shall give written notice to the City of such document, process or claim.
- 14.12 The Design-Build Team shall indemnify, defend and save the City harmless, from and against any and all claims, actions, demands made against the City in connection with the **Construction Lien Act** and all costs incurred by the City as a result thereof. In the event that any action, cause of action, claim or other legal document or process or other alleged claim is commenced against or imposed upon the City, the City shall, within a reasonable time, give notice to the Design-Build Team of such document, process or claim. Upon the receipt of such notice from the City, the Design-Build Team, at their own expense and to the satisfaction of the City, shall appeal, contest defend or settle such legal document, process or claim on behalf of the City and reasonably notify the City on a periodic basis of the progress of the matter. The Design-Build Team

acknowledges and agrees that the City reserves the right to elect at any time to conduct its own appeal, contestation, defense or settlement negotiations at the Design-Build Team's expense after giving notice of same to the Design-Build Team.

- 14.13 If any lien is preserved or written notice of lien is given pursuant to the **Construction Lien Act** for the supply of services or materials in connection with the construction, installation or maintenance of any portion of the Work located on a public street or highway or any lands or premises owned by the City or in which the City has an interest, the Design-Build Team shall be considered to be in default of their obligations contained herein until such time as all Claims for Liens, together with any associated Certificates of Action are discharged or vacated or written notice is received that such liens are withdrawn or a Court declaration is obtained that the written notices of lien are no longer binding or that the related liens have expired.
- 14.14 The Design-Build Team acknowledges and agrees that no reduction in Financial Security shall be considered if the Design-Build Team is in default with any provision of this section.

ARTICLE 15 – TEMPORARY SUPPORTS, STRUCTURES, AND FACILITIES

- 15.1 The Design-Build Team shall, at their expense, design, erect, operate, maintain, and remove any temporary supports, structures, and facilities necessary for the performance of the Work.
- 15.2 The Design-Build Team shall, at their expense, ensure that temporary supports, structures, and facilities are constructed to sufficient design tolerances and with sufficient skill that the temporary supports, structures, and facilities safely perform their functions.
- 15.3 In the event the Design-Build Team intends to erect any temporary supports, structures, and facilities necessary for the performance of the Work, they shall, prior to erecting such temporary support, structure, or facility provide the City's Building Division with drawings, stamped by a qualified engineer stating that such temporary support, structure, or facility meets the applicable standards under the Ontario Building Code and under other applicable legislation or regulations.

ARTICLE 16 – SUPERVISOR

- 16.1 The Design-Build Team's project supervisor shall be responsible to ensure the full performance of the terms and provisions of this Contract on behalf of the Design-Build Team. The City relies upon the Design-Build Team's expertise and shall rely upon the Work performed by the Design-Build Team if the same should ever become the subject of any evidence provided to an administrative tribunal, court, private court, or in arbitration.

- 16.2 The Design-Build Team shall employ a competent supervisor and necessary assistants who shall be in attendance at the Place of Work while work is being performed. The supervisor shall not be changed, except with written notice to and approval by the City.
- 16.3 The supervisor shall represent the Design-Build Team at the Place of Work and notices and instructions given to the supervisor by the City shall be deemed to have been received by the Design-Build Team.

ARTICLE 17 – CONSTRUCTION SAFETY

- 17.1 The Design-Build Team shall be solely responsible for construction safety at the Place of Work and for compliance with the rules, regulations, and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work.
- 17.2 The Design-Build Team shall protect the Work, the City's property, and property adjacent to the Place of Work from damage which may arise as a result of the Design-Build Team's operations under this Contract, and shall be responsible for such damage, except damage which occurs as a result of acts or omissions by the City, other contractors, their agents and employees.

ARTICLE 18 – SHOP DRAWINGS

- 18.1 Shop drawings, which are drawings, diagrams, illustrations, schedules, performance charts, brochures, product and other data which the Design-Build Team provides to illustrate details to a portion of the Work, shall be provided as required.
- 18.2 The Design-Build Team shall review all shop drawings prior to submission to the City. The Design-Build Team represents by this review that the Design-Build Team has determined and verified all field measurements and field construction conditions, or will do so; product requirements, catalogue numbers, and similar data; and that the Design-Build Team has checked and coordinated each shop drawing with the requirements of the Work and of the Contract Documents. The Design-Build Team shall confirm this review of each shop drawing by stamp, date, and signature of the person responsible. At the time of submission the Design-Build Team shall notify the City in writing of any deviations in the shop drawings from the requirements of the Contract Documents.
- 18.3 The Design-Build Team shall submit shop drawings to the City to review in orderly sequence and sufficiently in advance so as to cause no delay in the Work or in the work of other contractors. Upon request of the Design-Build Team or the City, they jointly shall prepare a schedule of the dates for submission and return of shop drawings. Shop drawings, which require approval of any legally

constituted authority having jurisdiction, shall be submitted to such authority by the Design-Build Team for approval.

- 18.4 The Design-Build Team shall submit shop drawings in the form specified or as the City may direct. The City shall review and return shop drawings in accordance with the schedule agreed upon, or otherwise with reasonable promptness so as to cause no delay. The City's review is for conformity to the design concept and for general arrangement only. The City's review shall not relieve the Design-Build Team of responsibility for errors or omissions in the shop drawings or for meeting all requirements of the Contract Documents unless the City expressly notes the acceptance of a deviation on the shop drawings.
- 18.5 Upon the City's request, the Design-Build Team shall revise and resubmit shop drawings, which the City rejects as inconsistent with the Contract Documents, unless otherwise directed by the City. The Design-Build Team shall notify the City in writing of any revisions to the resubmission other than those requested by the City.
- 18.6 All drawings, schematics, specifications, and other design models furnished by the Design-Build Team are their property. Such documents, schematics, and specifications are not to be used on any other Work. Documents are not to be copied or revised in any manner without the written authorization of the parties. Upon Substantial Completion of the subject Work and upon certification thereto, the drawings and specifications shall become the property of the City, and the Design-Build Team shall assign ownership thereto to the City.

ARTICLE 19 – SUB-CONTRACTORS AND SUPPLIERS

- 19.1 The Design-Build Team shall hold and save harmless the City from liability arising from agreements made between the Design-Build Team and sub-contractors and suppliers.
- 19.2 The Design-Build Team shall provide the City with a list of proposed sub-contractors and suppliers before executing agreements for the provision of goods and/or services.
- 19.3 In the event the City objects to the use of a proposed sub-contractor or supplier and provides reasons for same, the Design-Build Team shall choose another sub-contractor or supplier. Any such change in sub-contractor or supplier shall not result in an increase of the Contract price hereunder.

ARTICLE 20 – REVIEW AND INSPECTION OF THE WORK

- 20.1 The City shall have access to the Work at all times. The Design-Build Team shall provide sufficient, safe, and proper facilities at all times for the review of the Work by the City and the inspection of the Work by authorized agencies. If parts of the

Work are in preparation at locations other than the Place of Work the City shall be given access to such Work whenever it is in progress.

- 20.2 If Work is designated for tests, inspections, or approvals in this Contract or the law or ordinances of the City, the Design-Build Team shall give the City reasonable notice of when the Work will be ready for review and inspection. The Design-Build Team shall arrange for and shall give the City reasonable notice of the date and time of inspections by other authorities.
- 20.3 If the Design-Build Team covers, or permits to be covered, Work that has been designated for special tests, inspections, or approvals before such special tests, inspections, or approvals are made, given or completed, the Design-Build Team shall, if so directed by the City, uncover such Work, have the inspections or tests satisfactorily completed and make good covering Work at the Design-Build Team's expense.
- 20.4 The City may order any portion or portions of the Work to be examined to confirm that such Work is in accordance with the requirements of this Contract. If the Work is not in accordance with the requirements of this Contract, the Design-Build Team shall correct the Work and pay the cost of the examination and the correction.
- 20.5 The Design-Build Team shall render all necessary assistance to the City and, if required, shall take and furnish levels, other measurements, or anything necessary to enable the City's review and inspection to be completed.

ARTICLE 21 – DEFECTIVE WORK

- 21.1 The Design-Build Team shall promptly remove from the Place of Work and replace or re-execute defective Work that is rejected by the City as failing to conform to this Contract whether or not the defective work has been incorporated into the Work and whether or not the defect is the result of poor workmanship, use of defective products, or damage through carelessness or other act or omission of the Design-Build Team.
- 21.2 The Design-Build Team shall promptly make good any Work destroyed or damaged by such removals or replacements at the Design-Build Team's expense.
- 21.3 If in the opinion of the City it is not expedient to correct defective Work or Work not performed or provided in this Contract, the City may deduct from the amount otherwise due to the Design-Build Team, the difference in value between the Work as performed and that called for in this Contract. If the City and the Design-Build Team do not agree on the difference in value they shall refer the matter to an arbitrator for a determination.

- 21.4 No payment by the City, nor partial or entire use or occupancy of the Work by the City shall constitute an acceptance of any portion of the Work or products, which are not in accordance with the requirements of this Contract.

ARTICLE 22 – PERMITS AND APPROVALS

- 22.1 The Design-Build Team shall be responsible for obtaining, at their expense, all necessary governmental or other permits and approvals for the Work. Where the Work is subject to the approval or review of an authority, department, agency, tribunal, or government, other than the City, then any application for approval shall first be submitted to the City for the City's authorization. The City's Contract Administrator shall review the Proposal or application and provide such authorization if it:

22.1.1 Conforms to the Contract; and

22.1.2 Does not contravene any applicable law or City policy.

- 22.2 In all respects the Work shall be executed in accordance with the by-laws and regulations in force in the City and all materials included in the Work shall be new and meet all relevant codes and legislative requirements.

ARTICLE 23 – CITY'S RIGHT TO TERMINATE CONTRACT

- 23.1 Without limiting the City's rights or remedies upon default by the Design-Build Team pursuant to this agreement, the City may terminate this Contract on written notice to the Design-Build Team in the event that:

23.1.1 The Design-Build Team makes an assignment for the benefit of creditors or becomes bankrupt or insolvent, or an order is made for the winding-up of the Design-Build Team;

23.1.2 The Design-Build Team refuses or fails to supply sufficient properly skilled workers or proper materials at all times to perform the Work in the manner and to the standards required under this Contract, or it fails to observe and comply with any provisions of law, including, without limiting the generality of the foregoing, all requirements of all governmental authorities including federal, provincial and municipal legislative enactments, by-laws and other regulations now or hereafter in force which pertain to or affect the Work or the conduct of the Design-Build Team's business at the Place of Work; or

23.1.3 The Design-Build Team fails to institute appropriate corrective action forthwith after written notification by the City of any failure on the part of the Design-Build Team to comply with any of the terms and specifications of this Contract.

ARTICLE 24 – SUCCESSORS AND ASSIGNMENT

- 24.1 This Contract shall enure to the benefit of, and be binding upon, the parties hereto, and except as hereinafter otherwise provided, the executors, administrators, successors and assigns of the parties.
- 24.2 If the Design-Build Team is dissolved before their services hereunder have been completed, this Contract shall automatically terminate as of the date of its dissolution and the City shall pay for the services rendered and disbursements made to the date of such termination.
- 24.3 Except as aforesaid, neither party shall assign this Contract without the consent in writing of the other.

ARTICLE 25 – ARBITRATION/ DISPUTES

- 25.1 All matters in difference between the parties hereto in relation to this Contract may be referred to arbitration.
- 25.2 No person shall be appointed or act as arbitrator or judge who is in any way interested, financially or otherwise, in the conduct of the Work or in the business or other affairs of either the City or the Design-Build Team.
- 25.3 The award of the arbitrator or judge shall be final and binding upon the parties.
- 25.4 The provisions of the **Arbitrations Act**, R.S.O. 1990, c. A.24, shall apply to the arbitration if this agreement is submitted to arbitration.
- 25.5 The matter in dispute shall be submitted to arbitration unless the parties agree on the terms of submission and hearing in a private court.
- 25.6 Notwithstanding Articles 25.1 to 25.5 inclusive, if the dispute or difference between the parties hereto arises out of any ambiguity between the terms and conditions of this Contract and **Sections 6.0** and **7.0** of RFP # **P-07-13**, then the parties agree that the City shall reasonably resolve such ambiguity and the Design-Build Team shall perform the work in accordance with the City's reasonable direction before referring the matter to arbitration;

ARTICLE 26 – NOTICES

- 26.1 Any notice provided for under this Contract shall be served by personal service, registered mail, or facsimile transmission:
- 26.1.1 to the Design-Build Team at:
- Company X
Address
City, Province, Postal Code

Telephone:
Facsimile:

26.1.2 to the City at:
500 George Street North
Peterborough, Ontario K9H 3R9
Attention: City Clerk
Telephone: 705-742-7777 Extension 1820
Facsimile: 705-742-4138

ARTICLE 27 – SCHEDULES

27.1 The following Schedules form part of this Contract:
SCHEDULE A: **P-07-13** and Design-Build Team’s Proposal submission
SCHEDULE B: Proposed Change/Change Order
SCHEDULE C: Additional Work Instruction
SCHEDULE D: Certificate of Payment

1.4.1 ARTICLE 28 – CHOICE OF LAW

28.1 The applicable law of this Contract and any agreements subsequent to this Contract is that of the Province of Ontario.

IN WITNESS WHEREOF the parties hereto have hereunto set their respective hands and seals.

SIGNED, SEALED AND DELIVERED)
In the presence of:)

DESIGN-BUILD TEAM

Name:
Office:
I have authority to bind the Corporation

**THE CORPORATION OF THE
CITY OF PETERBOROUGH**

Brian Horton, Chief Administrative Officer

John Kennedy, City Clerk

SCHEDULE A

(Copy of RFP # **P-07-13** and Design -Build Team's Proposal submission)

SCHEDULE B

PROPOSED CHANGE / CHANGE ORDER	
Project: _____	Proposed Change Order #: _____
Design-Build Team: _____	Date: _____
This notification requests the Design-Build Team to price the Work, as specified in the Details below. DO NOT PROCEED with the proposed changes until this Change Order is signed by the City. Unless otherwise stated herein, the pricing includes all material, labour, shipping, rentals, taxes, overhead, and profit necessary to complete the Work.	
Details: _____	
The Contract Price is increased / decreased by the sum of \$ _____	
The Term of Performance is increased / decreased by _____ working days.	
Authorized for the Design-Build Team by:	
Signed: _____	Date: _____
Position: _____	
Change Order details, price, and terms accepted for the City by:	
Signed: _____	Change Order #: _____
Position: _____	Date: _____
Original Contract Price: \$ _____	
Total Additions to Date: \$ _____	
Total Deductions to Date: \$ _____	
Revised Contract Price: \$ _____	
Distributed to: DESIGN-BUILD TEAM ARCHITECT CONSULTANT CITY FILE	

SCHEDULE C

ADDITIONAL WORK INSTRUCTION

Project: _____

Additional Instruction #: _____

Design-Build Team: _____

Date: _____

This notification gives the Design-Build Team the authorization to add or delete Work, as specified in the Details below, and it is NOT INTENDED that a change to the Contract Price shall result.

Details: _____

Additional Term of Performance in Working days: _____

Issued for the City by:

Signed: _____

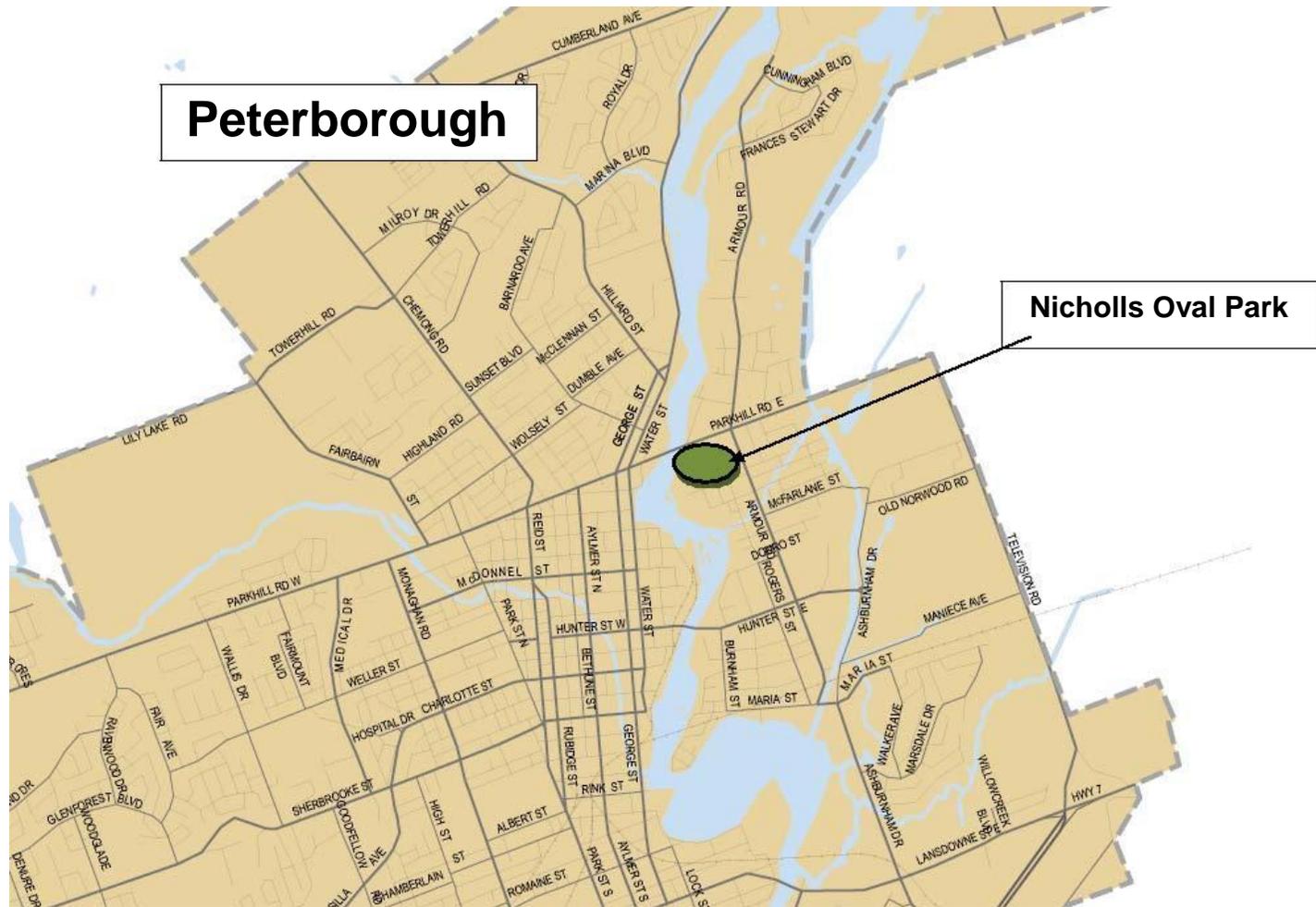
Position: _____

Distributed to: DESIGN-BUILD TEAM CONSULTANT CITY FILE

SCHEDULE D

CERTIFICATE OF PAYMENT		
Project: _____		Certificate of Payment #: _____
Design-Build Team: _____		Date: _____
Original Contract Price	_____	_____
Total Additions to Date	_____	
Total Deductions to Date	_____	
Amended Contract Price	_____	
Amount Authorized to Date	_____	_____
Less Holdback	_____	
Amended Authorization to Date	_____	
Less Holdback	_____	
Holdback Previously Released	_____	
Holdback Released this Payment	_____	
Total Holdback Released	_____	
Balance of Holdback	_____	
Total Amount Authorized	_____	_____
Less Amount Previously Authorized	_____	
Total	_____	
Total Payment Authorized by this Certificate # _____ : \$ _____		
By law, the amount of this Certificate is subject to reduction by the amount of any lien of which the City has received written notice. This Certificate is not negotiable and is payable only to the payee named in it. Issuance, payment, and acceptance are without prejudice to any rights of the City or the Design-Build Team under their Agreement.		
Proposed Change Notice details, price, and terms authorized by:		
Signed: _____		Date: _____
Position: _____		
Owner: THE CORPORATION OF THE CITY OF PETERBOROUGH		
Distributed to: DESIGN-BUILD TEAM ARCHITECT CONSULTANT CITY FILE		

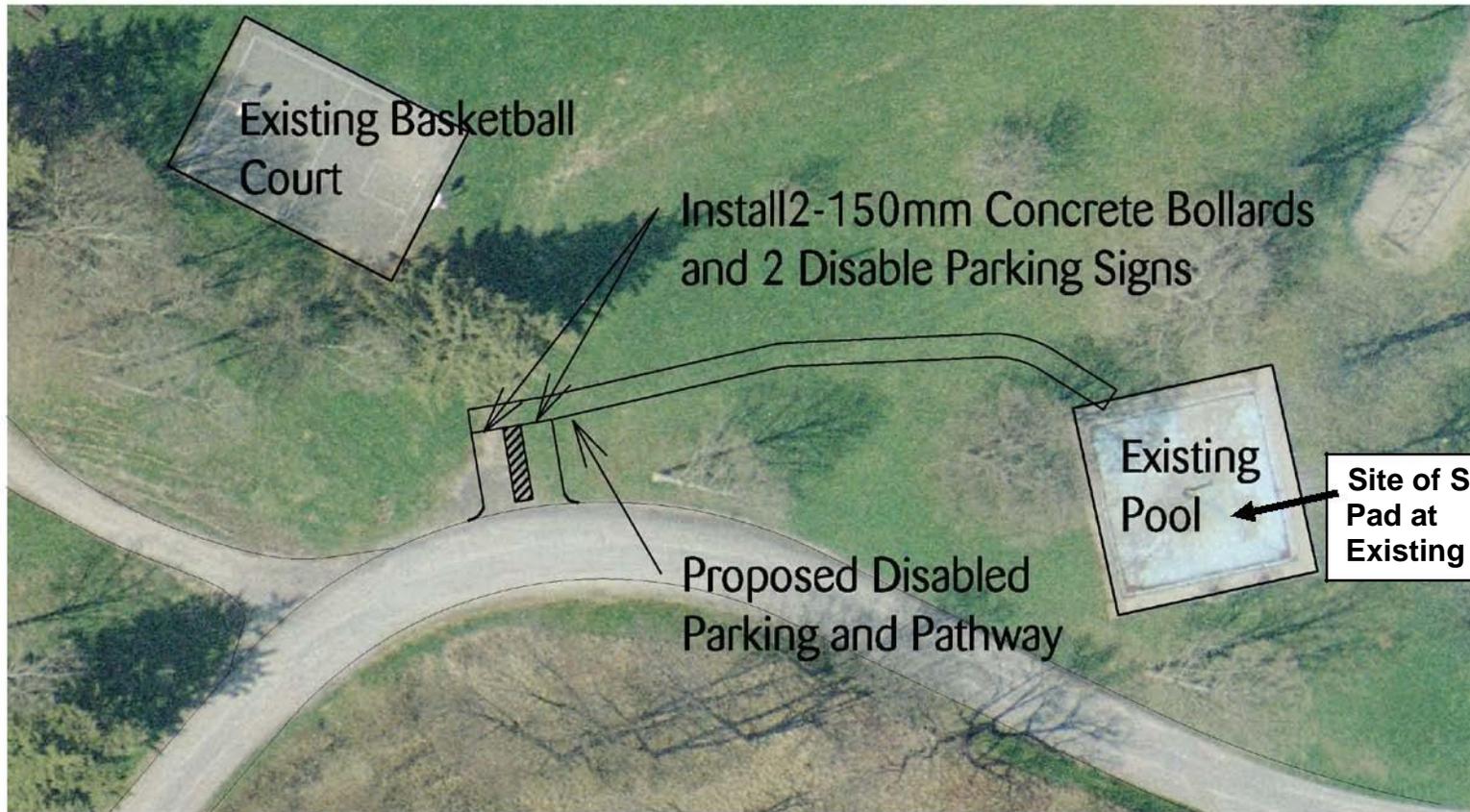
Attachment 3: Park Location Map



Attachment 4: Aerial Map of Park



Attachment 5: Accessible Parking and Pathway Specifications



CITY OF PETERBOROUGH

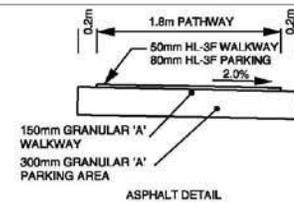
**Rehabilitation of
Nicholl's Oval Splash Pad**



SCALE: 1 : 500
ALL MEASUREMENTS IN METERS

Notes:

1. Parking spaces to be 2.7m x 7.0m each with a 1.5m aisle between the spaces.
2. Asphalt pathway to be 1.8m wide. Maximum grade to be 1 in 20 (5%).
3. Signs and bollards to be centred at the end of each parking space.
4. All works and materials to be in accordance with City Standards and Specifications.
5. Accessible parking and pathway to be constructed to meet all conditions of the AODA Built Environment Guidelines.



Attachment 6

**REPRESENTATION, WARRANTY AND
ACKNOWLEDGEMENT REGARDING
ACCESSIBLE CUSTOMER SERVICE TRAINING**

(Insert Company name)

Hereby represents and warrants that:

1. My/Our employees, agents, volunteers, or others for whom I/We are responsible, will have successfully completed Accessible Customer Service Training prior to commencement of the Work on behalf of the Corporation of the City of Peterborough, in accordance with the award of RFP # P-07-13 Design-Build Services for Nichols Oval Splash Pad and,
2. The Accessible Customer Service Training provided will encompass the following training content:
 - a. A review of the purposes of the Accessibility for Ontarians with Disabilities Act, 2005 and the requirements of the customer service standard;
 - b. How to interact and communicate with people with various types of disability;
 - c. How to interact with people with disabilities who use an assistive device, service animal or a support person;
 - d. How to use the equipment or assistive devices available on City premises or that are otherwise provided that may help with the provision of goods or services to people with disabilities;
 - e. What to do if a person with a particular type of disability is having difficulty accessing the City's goods or services; and
 - f. The City's accessible customer service policies, procedures and practices governing the provision of goods or services to people with disabilities.

ACKNOWLEDGEMENT

I/We, the undersigned, acknowledge and agree that this representation and warranty will be relied upon by the Corporation of the City of Peterborough and as such I/We solemnly provide this representation and warranty as if it were given under oath.

Company Name

Signature(s)

Name(s)

Title(s)

Date

I/WE HAVE THE AUTHORITY TO BIND THE COMPANY

Appendix A

SUBMISSION COVER PAGE AND CHECKLIST



City of
Peterborough

**REQUEST FOR
PROPOSALS**

DOCUMENT NO. P-07-13

DESIGN-BUILD SERVICES FOR NICHOLLS OVAL SPLASH PAD

SUBMIT TO: City of Peterborough
Corporate Services, Main Floor City Hall
500 George Street North
Peterborough, Ontario K9H 3R9
Attn: Sandra Clancy,
Director of Corporate Services

SUBMITTED BY:

Company Name

Address

Appendix A –cont'd**CHECKLIST**

The Proponent shall include all items with an “X” in the "City Required" column in their Submission and **in the order shown below**. Failure to provide the items required may result in the rejection of the Proposal submission as incomplete. “N/A” shall mean not applicable to Stage 1 of this RFP. The Proponent shall mark an “X” in the “**Proponent Included**” column to indicate the items that are included in their Proposal Submission.

City Required	Requirement	Proponent Included
X	Proposal Deposit (Item 5.1.1) – Provide with Original ONLY	
X	One (1) Original and five (5) hard copies of Proposal Submission (Items 5.3.2 and 5.3.3) to also include one (1) Original and five (5) hard copies of colour renderings of EACH option submitted (Item 5.3.3.1)	
Provide the Following with Original and all Copies		
X	Appendix A - Submission Cover Page and Checklist (Item 5.3.1)	
X	Appendix B – Acknowledgements (Item 5.2 and Item 5.10.1)	
X	Appendix C – Pricing and Taxes (Item 6.6)	
X	Appendix D – Sub-Contractors (Item 6.4)	
X	Company Profile (Item 5.10.2)	
X	Competencies (Item 5.10.3)	
X	Experience (Item 5.10.4)	
X	Key Personnel (Item 5.10.5)	
X	Project Schedule (Item 5.10.6)	
X	Meets requirements and specifications (Item 5.10.7)	
X	Warranty (Item 5.10.8)	
X	Meets CSA Guidelines (Item 5.10.9)	
X	Company Health & Safety Policy (Item 5.10.10)	
X	Proof of insurance (Item 5.5.3)	
X	Clearance Certificate from WSIB (Item 5.6)	
X	Agreement to Bond (Item 5.7.1)	

Appendix B

ACKNOWLEDGEMENTS

I/WE ACKNOWLEDGE that this Proposal is made without any connection, knowledge, comparison of figures or arrangements with any other company, firm or person making a Proposal for the provision of the same goods/services and is in all respects fair and without collusion or fraud.

I/WE ACKNOWLEDGE that all matters stated in the submitted Proposal are in all respects true.

I/WE ACKNOWLEDGE that, having read RFP #P -07-13, I/WE have satisfied ourselves as to the Terms, Conditions and Specifications and do hereby submit a Proposal, including Pricing as set out in **Appendix C**, to undertake Design-Build Services for the Work for Nicholls Oval Splash Pad.

I/WE ACKNOWLEDGE that addenda have been issued for this RFP and that I/We understand it is the Proponents' ultimate responsibility to ensure all addenda issued have been received. **NOTE:** failure to include the correct number of addenda in this Appendix may, at the discretion of the City, result in disqualification of the Proposal submission.

I/WE ACKNOWLEDGE that acceptance of this Proposal and the issuance of a Purchase Order shall be considered a binding contract upon both parties. If specified at any time by the City, it is agreed that the terms and conditions and any representations made in reference to this RFP shall be incorporated in a Contract to be executed by the parties once the City has formally accepted the Proposal.

Dated at _____ this ____ day of _____ 2013.

Firm or Organization Name

Signing Authority

Street Address

Signature

City

Postal Code

Telephone and Fax Number

Email

Appendix C**PRICING****1. Pricing**

Guaranteed Maximum Price		
Line	Item	Cost
1.	Design and Construction (includes all geotechnical investigation, testing and inspection, permits and certificates, as required)	\$
2.	Allowance for water and drain lines (Item 7.4):	\$ 10,000.00
3.	Allowance for Fencing (Item 7.5 e)	\$ 8,000.00
4.	Total Guaranteed Maximum Price (excluding taxes, not to exceed budget of \$230,000)	\$
5.	HST	\$
6.	GRAND TOTAL	\$

Appendix D

SUB-CONTRACTORS

Submit a list of sub-contractors to be used for the supply of the goods/services, or indicate "Not Applicable".

Contact	Sub-Contractor
Name:	Company Name:
	Type of Goods/Services provided:
Phone:	Address:
Email:	Years in Business:
Name:	Company Name:
	Type of Goods/Services provided:
Phone:	Address:
Email:	Years in Business:
Name:	Company Name:
	Type of Goods/Services provided:
Phone:	Address:
Email:	Years in Business:
Name:	Company Name:
	Type of Goods/Services provided:
Phone:	Address:
Email:	Years in Business:

Note:

If insufficient space is provided in this Appendix, please provide the required information in the same format on a separate form and attach to this Appendix.