

*Request for Proposals for Operation of the  
Hyde Park Ice Pavilion  
for the City of Niagara Falls, New York*



*RFP No. 2020-13  
Proposals Due: Friday, June 5, 2020 at 2:00 p.m.*

## Section 1 - Introduction and Instructions

### Purpose of the RFP

This Request for Proposal (RFP) is issued by the City of Niagara Falls, New York (hereinafter referred to as the "City"). The City is seeking proposals for the performance of all aspects of the operations and management of the Hyde Park Ice Pavilion. The successful vendor shall act as an independent contractor and will be expected to provide, without the City's assistance, all staffing, equipment, amenities, marketing, routine maintenance, repairs and services for the complete operation of the Hyde Park Ice Pavilion while keeping it an affordable municipal facility.

### Contact Person(s), Address, Telephone and Fax Number

David Kinney  
Director of Public Works  
1785 New Road  
Niagara Falls, New York 14304  
Phone: (716) 286-4841  
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Purchasing Agent  
745 Main Street, Room 214  
Niagara Falls, New York 14301  
Phone: (716) 286-4372  
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### RFP Schedule

This schedule represents the City's best estimate of the schedule that will be followed for this RFP. If a component of this schedule such as the deadline for receipt of proposals is delayed, the rest of the schedule will be shifted by the same number of days.

The approximate RFP schedule (subject to change as required by the City) is as follows:

RFP issued: May 8, 2020  
Site Visit: May 27, 2020 at 10:30 a.m.  
Written Clarification Questions Deadline: May 29, 2020  
City's Response to Written Clarification Questions: June 2, 2020  
Proposals due: June 5, 2020 at 2:00 p.m.

### General Instructions

The City will officially distribute submission package documents from the Division of Purchasing. Submission package documents are also available on the Purchasing Division's website, [www.niagarafallsusa.org/government/city-departments/purchasing](http://www.niagarafallsusa.org/government/city-departments/purchasing). Copies from any other source are not considered official copies. Only those vendors who obtain documents from the sources listed are guaranteed to receive addendum information, if such information is issued. If you have obtained this document from a source other than the sources listed, it is recommended that you obtain an official copy.

The envelope or packing container containing the submission must bear the vendor name and address, be sealed and must be clearly marked in the LOWER LEFT CORNER with the submission number. Submissions which are received in a packing envelope or container should also bear the submission number in a conspicuous place. Failure to do this may necessitate the premature opening of the submission which may compromise its confidentiality.

## **General Instructions (continued)**

Vendor(s) must submit or deliver one (1) original and five (5) paper copies, together with one copy in PDF format on a USB/thumb drive of the proposal to:

CITY OF NIAGARA FALLS, NEW YORK  
DIVISION OF PURCHASING  
City Hall, Room 214  
745 Main Street  
PO Box 69  
Niagara Falls, NY 14302-0069

Vendors will not be permitted to enter City Hall during the time in which it is closed to the public. Vendors should make every effort to deliver RFP packages via USPS, UPS, FedEx or a similar delivery service. Please note that those deliveries must still be received by the Purchasing Division no later than the scheduled time set forth on Page 1 herein. Vendors who are unable to utilize a delivery service may call 716-286-4371 and make an appointment to drop off a package to a member of the Purchasing Division staff at the parking lot entrance door to City Hall. Calls to schedule an appointment should be made no later than 4:00 p.m. the day before the scheduled opening. The City takes no responsibility for the late arrival of RFP packages due to delivery failure or the failure to leave adequate time for an appointment to be scheduled.

Proposals will not be publicly read at the opening. Proposals may not be delivered orally, by facsimile transmission, by other telecommunication, or electronic means. Vendors assume the risk of the method of dispatch chosen. Postmarking by the due date will not substitute for actual proposal receipt by the City. A vendor's failure to submit its proposal prior to the deadline will cause the proposal to be rejected. Late proposals or amendments will not be opened or accepted for evaluation.

The total number of pages contained in this package should be **twenty-three (23)**. If any pages are missing, please contact the Purchasing Division.

## **Section 2 – Hyde Park and the Ice Pavilion**

Hyde Park, centrally located in the City of Niagara Falls, is the second largest city-owned park in the State of New York, behind only Central Park. Providing activities for people of all ages and walks of life, it is the epicenter of recreation for western Niagara County.

Hyde Park is roughly bordered by the boulevard bearing its name to the west, New Road to the east, a CSX rail right of way to the north and the City's traditional commercial hub, Pine Avenue, to the south. Robbins Drive traverses a path through the central part of the park allowing access to dozens of recreational activities.

Nestled in the heart of the park at 911 Robbins Drive is the Hyde Park Ice Pavilion ("Pavilion"). Constructed in 1970, the Pavilion houses two ice rinks, a lobby, lounge area, locker rooms, food/concession area and office space. It has seen approximately \$9 million dollars in renovations and upgrades in the last decade and has become a premier destination for ice hockey activity in the region.

Under the right stewardship, the Pavilion can continue to be a jewel of the Western New York/Southern Ontario hockey scene.

## **Section 3 – City Organizational Overview**

The City of Niagara Falls, New York is a duly formed City with a Mayor and five-member City Council. The Mayor is the chief executive officer and does not sit on the City Council. The Mayor and all members of the City Council are elected at large and serve the entire City. The Mayor appoints a City Administrator who manages the day to day affairs of the City.

The City Council is vested with final legislative authority over all agreements. The successful vendor shall report to and provide reports to the City Administrator on a regular and scheduled basis.

## **Section 4 – Vendor’s Scope of Responsibility**

### **General Responsibilities**

The successful vendor will act as an independent contractor and will be expected to provide, without the City’s assistance, all staffing, equipment, amenities, marketing, routine maintenance, repairs and services for the complete operation and maintenance of the property.

The City will negotiate the use of, or ownership of, existing equipment, inventories or other capital assets required, with set procedures to be followed for approval and procurement.

The successful vendor will adhere to all services and responsibilities as specified in this RFP, including those set forth under this section.

The successful vendor will, as requested, attend scheduled meetings with City officials and employees to provide updates on operations and maintenance.

It is up to each vendor to fully describe their approach to the specific services outlined in this RFP. Said written proposal should acknowledge and address briefly how the vendor will be responsible for and manage, upon execution of the contract, all operations and management aspects of the facility including the duties and responsibilities described in this section.

### **Scope of Work**

The scope of work covered by these specifications consists of providing labor, services, materials, supplies, furniture, fixtures, equipment, inventory for sale and other items as may be required to support the operation and management of a quality municipal ice pavilion facility. Services according to these specifications shall commence at a time necessary for the vendor to adequately prepare for the start of revenue producing operations and will continue until termination of the agreement between the successful vendor and the City.

### **Agreement Terms**

The duties and responsibilities as specified herein shall be part of the agreement between the City and the vendor. It is anticipated that the City wishes to enter into a three (3) year agreement with the successful vendor commencing on or about August 1, 2020, but the City is open to the possibility of a longer term and/or mutual options to extend the agreement beyond the initial three (3) year term.

## **Agreement Terms (continued)**

As part of the agreement, vendor will be responsible for all expenses including, but not limited to, payroll and payroll expenses, outside services, materials, utilities, equipment and supplies necessary to perform the scope of work. The City reserves the right from time to time, as conditions warrant, to hire outside operations consultants at City's expense to inspect the facility and vendor agrees to carry out all reasonable recommendations of the City made as a result of the inspection(s).

Upon entering into an agreement with City, vendor shall become responsible for payment of all capital improvements or repairs (incident/occurrence), which occur to the facility, buildings, fixtures, and structures. Vendor and City shall discuss the current condition of all buildings, fixtures and structures prior to signing an agreement, and set forth a plan for the completion of and payment for currently-needed major repairs or improvements thereto.

The Corporation Counsel of the City of Niagara Falls will prepare an agreement with the successful vendor that will incorporate all terms and conditions of the license, including any agreed upon provisions that are not contained in this request for proposals.

Vendor shall provide all applicable insurance coverage necessary for operation of the Pavilion as well as name the City as additional insured to all applicable coverage where appropriate (with the exception of workers compensation insurance). Vendor must also comply with the City's standard insurance requirements as set forth in Exhibit A hereto.

## **Personnel and Supervision**

Vendor will be responsible for determining and maintaining the necessary number of personnel for the performance of the work according to these specifications and other terms contained in the agreement documents.

Vendor will be responsible for all personnel aspects including but not limited to hiring, training, managing, scheduling, compensation, and all required local, state and federal reporting.

It will be the responsibility of the Vendor to ensure compliance to all local, state and federal labor laws. Vendor shall provide all necessary staff to prepare and provide services and adhere to any and all relevant regulations and standards, including but not limited to Health Department regulations.

Vendor shall provide a competent supervisor, who shall have no less than three (3) years of experience in ice pavilion/ice rink/ice arena management.

Vendors shall provide the City with the resumes and other relevant experience for each principal, partner, member and supervisor who will take part in the management of the Pavilion. Past experience and overall qualifications will be part of the evaluation of the proposal.

Vendor shall not be permitted to hire or utilize any current City personnel as part of its operations. Additionally, vendor shall not be permitted to utilize any former City personnel as part of its operations unless and until said former City personnel shall have been retired, discharged or otherwise ceased employment with the City for a period of at least one (1) year. Vendor shall provide City with an initial list of employees when it commences operations and shall update said list whenever there is a change to same no later than ten (10) days after said change occurs.

## **Hours of Operation**

The vendor will be responsible for proposing the appropriate number of hours necessary to efficiently operate. Hours of operation are to be approved by the City Administrator, which approval shall not be unreasonably withheld.

The vendor shall be required to maintain the facility as an ice skating arena with both rinks open from September until Mid-April at a minimum. Vendor will be expected to offer open skating opportunities on Friday evenings, Saturday mornings and Sunday mornings on at least one rink. Skate and Shoot opportunities shall be scheduled for at least 2 hours per day on Monday through Thursday on at least one rink.

The food and beverage operations are expected to operate when the facility is open for business, in a casual environment, as is determined and agreed upon between vendor and City to meet the needs of patrons. At a minimum the food and beverage operations are expected to be open when the ice rinks are in use.

## **Capital Improvements**

The vendor shall assist in identifying capital projects needed to improve the overall operation and maintenance of the Pavilion as well as assist in developing a capital improvement budget, to be updated each fiscal year. The budget shall identify the projects, the costs, funding method and the proposed dates of initiation and completion of the projects. Proposals shall also include a description of the projects believed will be necessary to maintain the long-term viability of the Pavilion.

No changes in the structure or use of the facility shall be made without the express written permission of the City Administrator. Permanent improvements and fixtures added to the facility by the successful vendor shall become the property of the City immediately upon completion/installation.

## **Marketing**

Vendor shall develop and implement marketing strategies for promotion of special group and tournament play, particularly on days, and during periods, of low demand. Vendor should also explain how it will promote the Pavilion and skating-related activities in cooperation with existing vendors, organizations and the City. Marketing strategies should include opportunities to partner with other local enterprises.

## **Required Operating Responsibilities**

The vendor will be responsible for providing all services at the Pavilion including, at a minimum, the following services and activities:

- Manage equipment rentals.
- Supervise and control the reservation process, i.e. ice times, tournaments, etc.
- Collect and deposit all daily revenues, including, but not limited to, monies from ice rental fees, merchandise sales, equipment rentals, lessons, tournaments, and gift certificate sales.
- Promote ice skating and hockey-related activities in cooperation with existing teams, clubs, organizations, tourist development organizations and the City.
- Schedule and facilitate tournaments, clinics and promotions that meet with the City's image and priorities.
- Attend meetings, as requested, with the City to provide updates on Pavilion-related matters.

## **Required Operating Responsibilities (continued)**

- Work cooperatively and collaboratively with the City management staff to provide a positive experience for all users.
- Clean and maintain the facility in a manner such that it is attractive to guests and the public.
- Maintain appropriate food and beverage services while the facility is open to the public.

## **Equipment Rental**

The vendor may provide and maintain for rental an inventory of quality hockey and/or ice skating equipment, sufficient to meet the demand.

## **Reservations and Group Tournament Services**

The vendor shall provide group event, tournament and outing scheduling services without discrimination consistent with the City standards and image. Any special requirements for group/tournament play will be established by the vendor, conveyed when reservations are booked and communicated by operations staff as groups are checked in. The vendor may negotiate fees for group/tournament activity or other special uses.

The vendor may promote the use of all other fee services and sale of goods.

Existing tournament schedules and annual tournaments will have preferred scheduling.

It shall be the responsibility of the vendor to work cooperatively and collaboratively with other organizations to coordinate, develop and schedule events that are mutually beneficial to both parties and that promote play.

Group and tournament events shall be handled efficiently and professionally.

Non-skating events will be welcome but shall be secondary and subordinate to skating events.

## **Fees and Charges**

Vendor shall keep current a comprehensive schedule of fees for use and rentals. Standard fees shall be displayed and posted where appropriate. A proposed fee schedule for the 2020/2021 winter season should be included with the proposal.

The vendor may run fee discounts and special pricing packages at their discretion.

## **Food and Beverage Requirements**

The successful vendor shall have the exclusive right to sell food and beverages in the facility, including via vending machine. All appropriate licenses, permits and permissions must be obtained by vendor prior to the commencement of food and/or beverage sales.

Alcohol may only be served within the lounge area (known as the “Stone Room” or “Stone House”) with the express written permission of the City Administrator and only after obtaining all appropriate permits, licenses and insurance coverages. Alcohol shall not be served anywhere else in the facility.

## **Food and Beverage Requirements (continued)**

Vendor must demonstrate a working knowledge of beverage service management.

Vendor must obtain and keep current all relevant licenses and permits necessary to run any indoor and outdoor food and beverage service. Vendor shall also be responsible to maintain all required New York State Liquor Authority permits and licenses throughout the term of the agreement. The Vendor shall be held responsible for the legal serving of all patrons and customers, in accordance with all applicable rules, statutes and the Alcoholic Beverage Code.

Vendor will be responsible for ensuring the availability of all merchandise and supplies necessary for the production of the food and beverage menu, ensuring that an adequate level of supplies are kept stocked at all times and accounting for all revenues and expenses. The vendor is responsible for maintaining an accurate perpetual inventory system of all items held for food or beverage consumption. Such inventory levels will be verified on a regular basis as deemed appropriate and shall be reported to the City.

### **Signage**

The City reserves the right to sell the naming rights to the Pavilion and to sell advertising space on the dasher boards. All revenue for any such sales shall accrue to the City. Vendors may post appropriate signage and/or sell signage space in other areas of the facility; however, provided that City shall have final say over the placement, size and content of any and all signage which is not directly related to ice skating and hockey activities (i.e. advertisements, solicitations, etc.)

### **Facility Maintenance**

All restrooms and locker rooms shall be maintained in a manner so as to provide a clean and sanitary facility for public use. Soap and paper towel/hand drying materials shall be in adequate supply at all times.

Vendor shall maintain all structural areas and fixtures of all buildings as needed to ensure proper function and appearance, including, but not limited to: air conditioning units, power tools, appliances, hardware, building structures, fixtures, painting, carpentry, plumbing and electrical repairs.

### **Paths, Walkways, Etc.**

Vendor shall maintain all porches, walks, delivery areas, entries, walkways and paths in a clean and generally good state of repair.

### **Trash and Debris Removal**

Trash and debris shall be removed at the vendor's expense. Trash and debris removal shall be performed on a regular basis so as to prevent the accumulation of trash and debris.

### **Animal Control**

Vendor shall be responsible for ensuring that animals (other than appropriate trained service animals) do not enter onto and/or damage the facility. In the event animals enter onto and/or damage the facility, vendor shall be responsible for, and bear all costs of, immediately removing said animals and repairing any damage caused by the same.

## **Parking**

The City shall provide and maintain access and parking for the Pavilion as it currently exists. City shall also conduct snow removal activities in the parking lot area at no cost to the vendor.

## **Reporting Requirements and Auditing**

Vendor shall submit monthly reports to the City Administrator, which shall include, but not be limited to, the items listed below. Describe the methods you will incorporate to provide the following reports:

- Reports of Promotional Events, Past and Future
- Inventory Report
- Maintenance Conditions Report
- Status of Any Unresolved or Additional Issues

Vendor agrees to cooperate fully in the conduct of any audit or investigation, including providing any and all records requested.

## **Licensing and Reporting Requirements**

Vendor shall be responsible for obtaining all licenses, permits, etc., or hiring a contractor with same, to perform all tasks associated with facility maintenance. Vendor shall also perform all required reporting to the New York State Department of Environmental Conservation or any other State agency as required.

## **COVID-19 Related Requirements**

There are currently Federal, State and Local laws, regulations and guidelines related to the COVID-19 crisis. The successful vendor will be responsible for fully complying with all such existing laws, regulations and/or guidelines, present and future. Vendors should submit, as part of their technical plan, details related to how vendor plans to comply with such measures, including social distancing, disinfecting and other related measures.

## **Section 6 – Operations Fees, Lease Payments, Capital Improvements and Security Deposit**

Proposals should include a schedule of payments made by vendor to the City in exchange for the right to operate the Pavilion and collect the revenues therefrom. Said payments should consist of: 1) annual operation fees (paid in four quarterly installments each year); 2) all utility costs for the facility; and 3) the amount vendor intends to invest in capital improvements (labor and material costs, excluding any “soft costs”, engineering, design or architectural costs) over the three (3) year term.

Proposals which fail to provide for an annual operation fee and/or payment of all utility costs shall not be considered for award. Additionally, the amounts of the payments listed in the paragraph above contained in vendors proposals shall be taken into consideration in determining which vendor is awarded this RFP as set forth in Section 8 herein.

## **Section 6 (Continued)**

Currently, the utilities for the Pavilion are sub-metered as part of the City's utilities at Hyde Park. If, in the future, the City decides to separately meter said utilities, the vendor shall assume responsibility for payment of the costs for those separate meters for the duration of the agreement. The City and the successful vendor shall work out the procedures relative to reimbursing the City for the costs of the currently sub-metered utilities as part of the operating agreement for the facility, but the successful vendor will be responsible for reimbursing City for all utilities costs of the facility.

The City will also expect the successful vendor to provide a security deposit to be held by the City in escrow for the duration of the agreement, and any extensions thereto. The Security deposit will be utilized by City to cover damage to the leased premises which are not timely rectified by the vendor.

## **Section 7 - Proposal Guidelines**

### **Executive Summary**

The vendor must include an Executive Summary that states how they view this opportunity and provides an overview of their approach. Also included should be vendor's description of past experience, past performance and capacity to deliver the proposed services.

Proposals should include background and historical information about the vendor, including identities and experience of principals, years vendor has been in business, etc.

Proposals should include a list of three (3) references that can describe your previous performance in the management, operations and facility maintenance for services comparable to those described in this RFP. For each reference, please include name and address of entity; name, title, e-mail address, telephone number for a contact for the entity; the number of years vendor serviced the entity; a brief summary of the scope of services provided and a brief summary of measures of success of those operations.

Proposals should include a legal history of the vendor, including, but not limited to:

- List any history of claims, litigation, arbitration and termination for cause associated with any work within the scope of this RFP in the past ten (10) years.
- List any contracts terminated for default by vendor in the past ten (10) years.
- List any lawsuits, arbitration requests or any litigation activity commenced by vendor in the past ten (10) years.
- Does the vendor have any judgments, claims, arbitration proceedings or lawsuits pending?
- Has the vendor filed for bankruptcy protection in the past ten (10) years?

### **Transition Plan**

Vendors should submit a transition plan indicating how vendor will assume the services from the current vendor in a smooth and orderly manner. The vendor should discuss its approach and methodology and should include interviews that may be conducted with the current vendor, City staff, any rate changes contemplated, etc.

## **Management Approach**

This section details the components to be included in the vendor's business plan describing the services to be performed and the manner in which they will be performed. Such description should, at a minimum, provide the following information:

- Vendor's understanding of the project;
- Examples of measurable goals and objectives that can be incorporated into an agreement;
- A list of any exceptions taken to the provisions of this RFP; and
- A detailed description of the overall operations and maintenance program for the Pavilion.

## **Marketing Approach**

The vendor shall outline the components of a marketing plan summary regarding its intent to increase ice skating and hockey demand and therefore revenue. Marketing plans will be provided to the City for approval on a regular basis to ensure the accurate portrayal of the City's image and identity.

### **Authorized Signature**

An individual authorized to bind the vendor to the terms of the RFP must sign the proposal.

### **City Not Responsible for Preparation Costs**

The City will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal. The City shall also not be responsible for any of vendor's costs associated with a vendor's participation in any oral interview or any of vendor's costs associated with any negotiations.

### **Proposal/Bid Bond Required**

Each proposal must be accompanied by a bid bond in the amount of \$1,000.00, or in lieu thereof a certified check, cashier's check, or bank draft in the amount of \$1,000.00. All such guaranties shall be made payable to "City Controller". Bonds shall be issued by a surety authorized to do business in New York State. Checks shall be certified or issued by a state or national bank. **Guaranties other than those mentioned will not be accepted by the City.** Guaranties of unsuccessful bidders shall be returned within thirty (30) days following issuance of the notice of award. Bid guaranty of the successful bidder shall be retained until the contract is executed and a performance bond has been submitted. Should a successful bidder fail to enter into contract, the bid guaranty shall be forfeited to the City to compensate for administrative expenses of making a re-award or issuing a new request for proposals.

### **Certifications Required**

Vendors shall complete and return the "Vendor's Certification & Assignment of Claim", the "Affidavit of Non-Collusive Submission Certification" and the "Certification of Compliance with the Iran Divestment Act" attached hereto as Exhibit B. Failure to complete, sign and have notarized the aforementioned certifications may result in the submission being rejected.

### **No Contact Policy**

Any contact with any City representatives, related officials, or representatives other than those outlined in the RFP is prohibited. Such unauthorized contact may disqualify the vendor from this procurement.

## **Site Visit**

A site visit will be held on **WEDNESDAY, MAY 27, 2020 at 10:30 A.M.** at the Pavilion. At that time a tour of the facility shall be conducted and City staff will be available to answer questions. It is strongly recommended that anyone interested in submitting a proposal attend this meeting. Vendors entering onto the site do so at their own risk and assume any and all liability for any damages or injuries suffered as a result of their presence at the site. Appropriate social distancing measures, including the wearing of masks, will be required for anyone wishing to make the site visit.

## **Auditing**

Vendor shall make available to the City, on a quarterly basis, a detailed profit and loss statement for operations at the facility. Additional, the City Controller, or his designee, shall have the right to review the vendor's audited financials and/or conduct his own independent audit of the vendor's financials once per year during the duration of the agreement.

## **Special Conditions**

The City reserves the right to reject any and all proposals, to waive formalities, and to select the proposal and developer(s) that, in the City's sole discretion, are in the best interests of the City of Niagara Falls, New York.

The City further reserves the right to:

1. Amend, modify, or withdraw this RFP.
2. Revise any requirements under this RFP.
3. Require supplemental statements of information from any responding party.
4. Extend the deadline for submission of responses hereto.
5. Negotiate or hold discussions with any bidder to correct insufficient responses that do not completely conform to the instructions contained herein.
6. Waive any nonconformity with this RFP.
7. Cancel, in whole or in part, this RFP if the City deems it is in its best interest to do so.
8. Request additional information or clarification of information provided in the response without changing the terms of the RFP.
9. Waive any portion of the selection process in order to accelerate the selection and negotiation with the top-ranked vendor.
10. Not award a contract as a part of, or result of, this RFP process.

The City may exercise the foregoing rights at any time without notice and without liability to any bidder, or any other party, for expenses incurred in the preparation of responses hereto or otherwise.

## **Section 8 – Evaluation Method and Award Guidelines**

### **Evaluation of Proposals**

The City Administrator shall appoint an Evaluation Team to evaluate proposals, considering responses to criteria set forth in this offering. Upon completion of the evaluations, the Evaluation Team shall make a recommendation to the Mayor as to which vendor offers the best value to the City of Niagara Falls, New York, taking into consideration the importance of the evaluation factors set forth below.

## Section 8 (Continued)

The Evaluation Team shall review each proposal received and evaluate each for the purpose of ranking them in relative position based upon how fully each proposal meets the criteria for each category. The City shall be the sole judge of its best interests and in the evaluation of proposals. The City's decision shall be final and the ranking of the proposals shall be at the sole discretion of the Evaluation Team.

In ranking/scoring the proposal, the following categories and percentages shall be utilized:

<u>Percentage Of Score</u>	<u>Evaluation Criteria</u>
40%	Extent that the proposal demonstrates the ability to successfully manage the Pavilion facilities, including a proven record of accomplishment at other facilities.
25%	Quality of the overall financial plan, including fees and the marketing plan
15%	Amount paid to the City in annual fees and proposed investment in capital improvements
10%	Creativity and quality of overall proposal
10%	Utilization and operation of the food/beverage facilities, including the "Stone Room"

The City reserves the right to negotiate a contract with the highest evaluated vendor as determined by the City as to the exact terms and conditions of the contract. Should negotiations with the highest evaluated vendor not produce an acceptable contract, the City reserves the right to begin negotiations with the second highest evaluated vendor, and so on, until an acceptable contract is negotiated, or to break off negotiations with all vendors and not award a contract. The responsibility for final award of a contract rests solely with the City Council which has sole discretion as to what best meets the needs of the community.

The City further reserves the right to accept or reject any or all proposals with or without cause, to waive technicalities or any informalities, or to accept a proposal, which, in its sole judgment, best serves the interest of the City. In the event a contract is awarded, it will be to a vendor that demonstrates, in the City's opinion, the highest degree of compliance with the evaluation criteria, who will, after that, enter into a written agreement with City. Vendor shall understand that this RFP does not constitute an agreement or contract between City and Vendor.

### **Award**

If awarded, the bid award is intended to be made by July 1, 2020, however the City Council reserves the right to take additional time as needed. The award shall be based upon the evaluation of information as the City may request. No award will be made until after investigation(s) are made as to the qualifications of the highest evaluated vendor. Further, the City reserves the right to enter into any contract deemed to be in the best interest of the City, or to not enter into an agreement at all.

## **SECTION 9 – MISCELLANEOUS PROVISIONS**

### **Assignment or Sublease Prohibited**

The license and/or agreement between City and the successful vendor may not be assigned or subleased without the express written approval of the City.

### **Performance Bond**

A performance bond will be required of the successful vendor in form and substance with sureties approved by the City's Corporation Counsel in the amount of Three Hundred Thousand Dollars (\$300,000.00). Said bond must be received by the Purchasing Division no later than ten (10) business days following the date of notification of award. Failure to do so may result in the award being negated.

### **Termination of Contract**

This contract shall be terminated for cause if the vendor defaults in the performance of any of the terms hereof including, but not limited to, unsatisfactory job performance or progress, defective work, disputed work, failure to comply with material provisions of the contract, third-party claims filed or reasonable evidence that a claim will be filed, or other reasonable cause, or otherwise fails to cure any other deficiency identified by the City within 24 hours of delivery of notice of said deficiency. The City retains all other legal or equitable rights or remedies existing as a result of said default, including, but not limited to, any legal process necessary to obtain any sureties securing this contract. Any reasonable attorney's fee incurred in enforcing this contract will not exceed 5 percent of said contract price.

If vendor abandons or defaults in its performance and the City is caused to procure goods and/or services elsewhere, vendor shall be charged, and agrees to pay, the difference in cost and may not be considered in future solicitations.

The City reserves the right to cancel the agreement or contract for default if the vendor breaches any of the terms hereof or of said agreement or contract including warranties or becoming insolvent or committing acts of bankruptcy. Such right of cancellation is in addition to, and not in lieu of, any remedies which City may have in law or equity.

### **Governing Law and Venue**

The construction and validity of the contract shall be governed by the laws of the State of New York and venue for any legal action commenced hereunder shall be in the Supreme Court of the State of New York located in and for the County of Niagara.

### **Damage Claims**

The vendor shall be responsible for damage to the City's equipment, property, the facility and its contents by vendor's work, negligence in work, its personnel or equipment. Vendor shall be responsible and liable for the safety, injury and health of its working personnel while its employees are performing work on City property.

## **Indemnification and Insurance Requirements**

To the fullest extent permitted by New York law, the vendor, its subcontractors, agents, servants, officers, or employees, shall indemnify and hold harmless the City, including, but not limited to, its elected and appointed officials, officers, employees, and agents from any and all claims brought by any person or entity whatsoever, arising from any act, error, or omission of the provider during the vendor's performance of the agreement or any other agreements of the vendor, entered into by reason thereof. The vendor shall indemnify and defend the City, including, but not limited to, its elected and appointed officials, officers, employees, and agents with respect to any claim arising, or alleged to have arisen from negligence, and/or willful, wanton, or reckless acts or omissions of the vendor, its subcontractors, agents, servants, officers, or employees, and any and all losses or liabilities resulting from any such claims, including, but not limited to, damages awards, costs, and reasonable attorney's fees. The indemnification shall not be affected by any other portions of the agreement relating to insurance requirements.

The vendor agrees that it will procure and keep in force at all times at its own expense insurance in accordance with the requirements set forth in Exhibit A hereto.

## **Independent Contractor Status**

The parties agree that the vendor operates an independent business and is contracting to do work according to its own methods, without being subject to the control of the City. The vendor shall be an independent contractor and nothing contained herein shall create an employer-employee relationship.

## **Compliance with Laws**

The vendor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations affecting the performance of the contract, including (if applicable) worker's compensation laws, minimum wage laws, licensing laws and regulations. When required, vendor shall provide City with proof of its compliance.

**Exhibit A –**

**Insurance Requirements**

**INSTRUCTIONS FOR**  
**CITY OF NIAGARA FALLS STANDARD INSURANCE CERTIFICATE**

Standard Insurance Requirements apply to the following classifications:

Construction and Maintenance  
Purchase of, or lease of merchandise or equipment  
Professional Services  
Property Leased to others or Use of Facilities or grounds  
Concessionaire Services  
Livery Services  
All Purpose Public Entity Contracts

The Provider of any of the above classifications shall obtain, at his own costs and expense, the following insurance coverage with insurance companies licensed in the State of New York with a Best Rating of at least B+ and shall provide a Certificate of Insurance as evidence of such coverage to the City of Niagara Falls before commencement of work and/or lease or delivery of merchandise or equipment.

Certificate should be delivered to the City of Niagara Falls, New York, 745 Main Street, Room 242, P.O. Box 69, Niagara Falls, New York 14302-0069 and should reference the contract, bid, quote, RFP or operation being performed.

Prior to non-renewal, cancellation of insurance policies, or material change, at least 30 days advance written notice shall be given to the Certificate Holder.

All Certificates of Insurance shall be approved by the Risk Management Department prior to the inception of any work.

Minimum coverage with limits and provisions are as follows:

**A. Comprehensive General Liability**

With a minimum combined single limit of liability for Bodily Injury and Property Damage of \$1,500,000.00 per occurrence and \$3,000,000.00 annual aggregate. The coverage shall include:

- \* Premises and Operations
- \* Products and Completed Operations
- \* No exclusion for X C U coverage (explosion, collapse and underground)
- \* Independent Contractors
- \* Broad Form Property Damage
- \* Contractual Liability
- \* Fire Legal Liability (Covered by a standalone limit of \$1,000,000)
- \* Personal Injury Liability (Cov. A, B and C)
- \* Liquor Liability (if alcoholic beverages are to be dispensed under NYS License.)
- \* If the work to be performed is undertaken pursuant to a home improvement contract and a City right-of-way permit is required only by reason of the installation, repair or replacement of a driveway, apron, or sidewalk within the City right-of-way, then the limits of liability for comprehensive general liability set forth in this section shall be \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

The City of Niagara Falls shall be named as an Additional Insured on the General Liability Policy with the following provisions:

1. The insurance company or companies issuing the policies shall have no recourse against the City of Niagara Falls for payment of any premiums or for assessments under any form of policy.
2. The insurance shall apply separately to each insured (except with respect to the limit of liability).

B. **Auto Liability:** (if licensed vehicles are to be used in the operation) With a combined single limit for Bodily Injury and Property Damage of \$1,000,000.00 each occurrence, the coverage shall include Owned, Hired and Non-owned autos (Symbol 1 should be designated for Liability Coverage on Business Auto Policy).

C. **Excess Umbrella Liability:** If General Liability and/or auto limits are lower than required in the above sections, Umbrella Liability or Excess Liability to the required limit is acceptable.

D. **Owners Protective Liability:** (on contracts for construction which exceed a cost of \$100,000) With a minimum limit of \$1,500,000.00 each occurrence and \$3,000,000.00 aggregate. Named insured shall be the City of Niagara Falls, New York.

E. **Professional Liability:** If the contract includes professional services (engineers, architects, etc.,) contractor will carry professional liability insurance with a minimum limit of one million dollars (\$1,000,000.00).

F. **Property Insurance:** (if applicable) Contractor shall purchase and maintain property insurance upon the work at or off the site to 100% of the contract completed value. This insurance shall include the interest of the Owner, Contractor and Subcontractors in the work; shall insure against the perils of fire and extended coverage; shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage. All such insurance required by this paragraph shall remain in effect until the work is completed and accepted by the Owner.

G. **Statutory Workers' Compensation and Employers Liability:** All contractors doing business with or vendors entering upon City of Niagara Falls property shall carry the above insurance, in compliance with the Workers' Compensation Law of the State of New York.

H. **Performance and Payment Bond: (if specified in bid request)** A performance and payment bond shall be issued by a Surety company who is licensed by the Insurance Department of the State of New York in favor of the City of Niagara Falls in the amount of not less than \$300,000.00 and shall be delivered before commencement of lease or assumption of operations under contract.

**NOTE: IF THE CONTRACT IS FOR PROFESSIONAL SERVICES ONLY, (ENGINEERS, ARCHITECTS, ETC.) PARAGRAPHS D, F AND H WILL NOT APPLY.**

**Revised 02-16-2018**

# **Exhibit B –**

## **Certifications**

## **VENDOR'S CERTIFICATION & ASSIGNMENT OF CLAIM**

**THIS FORM MUST BE COMPLETED IN INK, BE TYPED OR BE COMPUTER GENERATED,**  
**BE CLEARLY LEGIBLE AND BE SIGNED AND DATED WITH EITHER BLUE OR BLACK INK,**  
**FAILURE TO DO THIS MAY RESULT IN REJECTION.**

I/We, the undersigned, herewith propose and agree to furnish to the City any one or all of the items upon which we have submitted, for the prices indicated herein, in accordance with the instructions, General Conditions and Specific Terms, Conditions and Specifications and any other related formal documents.

The undersigned individual certifies to having read these Instructions, General Conditions, Specific Terms, Conditions and Specifications and any other related formal documents and offers to furnish the articles specified to the City in exact accordance with same at the prices herein stated.

Vendor hereby assigns to the City and the State of New York any and all of its claim(s) for overcharges associated with this contract/agreement which arise under the antitrust laws of the United States, 15 U.S.C. Section 1, et seq. and the antitrust laws of the State of New York, G.B.L. Section 340, et seq.

VENDOR NAME

ADDRESS

CITY, STATE, ZIP

TELEPHONE NUMBER

EMAIL ADDRESS

NAME & TITLE OF AUTHORIZED CONTACT

AUTHORIZED SIGNATURE

DATE

## **AFFIDAVIT OF NON-COLLUSIVE SUBMISSION CERTIFICATION**

I hereby attest and certify that I am the person responsible within my firm for the final decision as to price(s) and amount of this submission, or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on behalf of my firm. I further attest and certify that:

1. The price(s) and amount(s) of this submission have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition with any other contractor, vendor, bidder, or potential bidder.
2. Neither the price(s) nor the amount(s) of this submission have been disclosed to any other vendor, firm or person who is submitting or potentially submitting on this project, and will not so be disclosed prior to submission opening.
3. No attempt has been made or will be made to solicit, cause or induce any vendor, firm or person to refrain from submitting on this project, or to submit a higher price than the submission of this firm, or any intentionally high or non-competitive submission or other form of complementary submission.
4. The submission of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any vendor, firm or person to submit a complementary submission.
5. My firm has not offered or entered into a subcontract or agreement regarding the purchase of materials or services from any vendor, firm or person, or offered, promised or paid cash or anything of value to any vendor, firm or person, whether in connection with this or any other project in consideration for an agreement or promise by any vendor, firm or person to refrain from submitting or to submit a complementary submission on this project.
6. My firm has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any vendor, firm or person, and has not been promised or paid cash or anything of value by any vendor, firm or person, whether in connection with this or any other project, in consideration for my firm's submitting a complementary submission, or agreeing to do so, on this project.
7. I have made a diligent inquiry of all members, officers, employees and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's submission on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made.

**SUBMISSION IS NOT ACCEPTABLE WITHOUT THE ABOVE AFFIDAVIT  
SIGNED AND CERTIFIED BY A NOTARY PUBLIC**

\_\_\_\_\_  
VENDOR NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY, STATE, ZIP

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
NAME & TITLE

Sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 2018

\_\_\_\_\_  
Notary Public

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

## **CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT**

As a result of the Iran Divestment Act of 2012 (the “Act”), Chapter 1 of the 2012 Laws of New York, a new provision has been added to State Finance Law (SFL) § 165-a and New York General Municipal Law § 103-g, both effective April 12, 2012. Under the Act, the Commissioner of the office of General Services (OGS) will be developing a list of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law) (the “Prohibited Entities List”). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act’s effective date at which time it will be posted on the OGS website.

By making a submission in response to this offering or by assuming the responsibility of an contract/agreement hereunder, each Vendor/Bidder/Contractor, any person signing on behalf of any Vendor/Bidder/Contractor and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the OGS website that to the best of its knowledge and belief that each Vendor/Bidder/Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to SFL § 165-a(3)(b).

Additionally, Vendor/Bidder/Contractor is advised that once the Prohibited Entities List is posted on the OGS Website, any Vendor/Bidder/Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this offering must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the agreement or contract, should the City receive information that a Vendor/Bidder/Contractor is in violation of the above-referenced certification, the City will offer the person, vendor or entity an opportunity to respond. If the person, vendor or entity fails to demonstrate that he/she/it has ceased engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then the City shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the Vendor/Bidder/Contractor in default.

The City reserves the right to reject any bid or request for assignment for a Vendor/Bidder/Contractor that appears on the Prohibited Entities List prior to the award of a contract and to pursue a responsibility review with respect to any Vendor/Bidder/Contractor that is awarded a contract and subsequently appears on the Prohibited Entities List.

I, \_\_\_\_\_, being duly sworn, depose and say that I am the \_\_\_\_\_  
of \_\_\_\_\_,  
the vendor making this submission and that neither Vendor/Bidder/Contractor nor any proposed subcontractor is identified on the Prohibited Entities List.

\_\_\_\_\_  
Authorized Signature

Sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

## **NON-SUBMISSION CERTIFICATE**

### **Instructions**

1. Place an X on the appropriate line(s) below.
2. Complete and return ONLY this page of the package.
3. Make sure to place your submission number on your envelope and return it to the Purchasing Division

NOTE: It is required that you indicate your reason for not making a submission.

We are not making a submission.

We request that you remove our name from the mailing list for this offering only.

We request that you remove our name from the mailing list for all future offerings made by the City.

VENDOR NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE and ZIP CODE: \_\_\_\_\_

REASON FOR NOT MAKING A SUBMISSION:

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SIGNATURE: \_\_\_\_\_