



**The City of Saint John**

**Request for Proposals**

**2022-781002P – LICENSING OF OFF-SEASON ICE**

**Saint John, New Brunswick**

Request for Proposals No.: 2022-781002P – Licensing of Off-Season Ice

Issued: March 1, 2022

Submission Deadline: Thursday, March 17, 2022, 4:00:00 p.m., AST

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## **PART 1 – INTRODUCTION**

### **1.1 Invitation to Proponents**

- (1) This Request for Proposals (“RFP”) is an invitation by The City of Saint John (the “City”) to prospective proponents to submit proposals for the licensing of off-season ice as further described in Part 2 – The Deliverables (the “Deliverables”).

### **1.2 RFP Contact Person**

- (1) For the purposes of this procurement process, the “City Contact” shall be:

Mike Lewis, SCMP  
Procurement Specialist  
Supply Chain Management  
City of Saint John  
Email: [supplychainmanagement@saintjohn.ca](mailto:supplychainmanagement@saintjohn.ca)

### **1.3 Type of Contract for Deliverables**

- (1) The City will issue licensing agreements to the successful proponent(s) for the scope of services detailed in this request for proposal.

### **1.4 No Guarantee of Volume of Work or Exclusivity of Contract**

- (1) The City makes no guarantee as to the value or volume of the Deliverables. The contract to be entered with the selected proponent will not be an exclusive contract for the provision of the described Deliverables. The City may contract with others for same or similar to the Deliverables or may obtain the same or similar to the Deliverables internally.

### **1.5 Canadian Free Trade Agreement (CFTA)**

- (1) Proponents should note that procurements falling within the scope of Chapter 5 of the Canadian Free Trade Agreement (CFTA) are subject to that chapter but that the rights and obligations of the parties shall be governed by the specific terms of this RFP. For further reference, please see the Internal Trade Secretariat website at <https://www.cfta-alec.ca/>.

**[End of Part 1]**

## **PART 2 – THE DELIVERABLES**

### **2.1 Description of Deliverables**

- (1) This RFP is an invitation to submit proposals for the licensing of off-season ice as further described in Appendix D – RFP Particulars – Section A - The Deliverables.

**[End of Part 2]**

## PART 3 – EVALUATION OF PROPOSALS

### 3.1 Timetable

- (1) The RFP timetable is tentative only and may be changed by the City at any time.

Issue Date of RFP	March 1, 2022
Deadline for Questions	Monday, March 7, 2022, 4:00:00 pm, AST
Deadline for Issuing Addenda	Tuesday, March 8, 2022, 4:00:00 pm, AST
Submission Deadline	Thursday, March 10, 2022, 4:00:00 pm, AST
Rectification Period	3 Business Days
Evaluation	Complete within 2 weeks of closing
Anticipated Deadline for Selection of Highest Ranked Proponent	March 21, 2022

### 3.2 Submission Instructions

#### (A) **Proposals Should Be Submitted at Prescribed Location**

- (1) Proposals should be submitted at:

The City of Saint John  
Supply Chain Management, 1<sup>st</sup> Floor  
175 Rothesay Avenue  
Saint John, New Brunswick, E2J 2B4 (the “**Prescribed Location**”)

Attention: Mike Lewis, SCMP

#### (B) **Proposals Should Be Submitted in Prescribed Manner**

- (1) Proponents should submit one (1) signed original and three (3) bound copies of the technical proposal and supporting information, one (1) signed original copy and three (3) bound copies of the financial proposal and supporting information, and one (1) electronic copy of each proposal on a flash drive.
- (2) The technical proposal should be sealed in an envelope, clearly indicating the proponent’s name and address and marked: “Technical Proposal: **2022-781002P – Licensing of Off-Season Ice.**”
- (3) The financial proposal should be sealed in a separate envelope, clearly indicating the proponent’s name and address and marked: “Financial Proposal: **2022-781002P – Licensing of Off-Season Ice.**”
- (4) Proposals sent by fax or email will be rejected.

**(C) Proposals Should Be Submitted on Time**

- (1) Proposals shall be submitted at the Prescribed Location on or before the Submission Deadline. Proposals submitted after the Submission Deadline will be rejected.
- (2) Immediately following the Submission Deadline, proposals will be publicly opened in the office of the City Contact, at the Prescribed Location. Only the names and addresses of the proponents will be made public.

**(D) Amendment of Proposals**

- (1) Proponents may amend their proposals prior to the Submission Deadline by submitting the amendment in a sealed package to the Prescribed Location. The sealed package shall be prominently marked with the RFP title and number and the full legal name and return address of the proponent. Any amendment should clearly indicate which part of the proposal the amendment is intended to affect.

**(E) Withdrawal of Proposals**

- (1) At any time throughout the RFP process, a proponent may withdraw a submitted proposal. To effect a withdrawal, a notice of withdrawal must be sent to the City Contact and must be signed by an authorized representative. The City is under no obligation to return withdrawn proposals.

**3.3 Stages of Proposal Evaluation**

- (1) The City will conduct the evaluation of proposals and selection of the highest ranked proponent in the following three stages described in further detail below:
  - (a) Stage I – Mandatory Requirements and Rectification
  - (b) Stage II – Evaluation of Rated Criteria and Revenue
  - (c) Stage III – Selection and Final Negotiation

**(A) Stage I – Mandatory Requirements and Rectification**

**Submission and Rectification Period**

Stage I will consist of a review to determine which proposals comply with all of the mandatory requirements. Proposals failing to satisfy the mandatory requirements as of the Submission Deadline will be provided an opportunity to rectify any deficiencies. Proposals satisfying the mandatory requirements during the Rectification Period, as described in Part 3 – Section 3.1 – Timetable will proceed to Stage II. Proposals failing to satisfy the mandatory requirements within the Rectification Period will be excluded from further consideration. The Rectification Period will begin to run from the date and time that the City issues its rectification notice to the proponents.

## **Mandatory Submission Forms**

Other than inserting the information requested on the mandatory submission forms set out in this RFP, a proponent may not make any changes to any of the forms.

### **Submission Form (Appendix A)**

Each proponent must complete the Submission Form and include it with their technical proposal. The Submission Form must be signed by an authorized representative of the proponent.

### **Revenue Form (Appendix B)**

Each proponent must complete the Revenue Form and include it with their financial proposal. The Revenue Form must be completed according to the instructions contained in the form. Fees must be provided in Canadian funds, inclusive of all costs, applicable duties, overhead, and insurance costs, except for HST/GST.

### **Reference Form (Appendix C)**

Each proponent must complete the Reference Form and include it with its technical proposal.

## **Other Mandatory Requirements**

Each proposal must:

- (a) Be in English.
- (b) Be for the entire scope of work as described in Appendix D – Section A - The Deliverables. Incomplete proposals or proposals for only part of the Deliverables described in Appendix D shall be disqualified.

### **(B) Stage II – Evaluation of Rated Criteria and Revenue**

Stage II will consist of a scoring by the City of each qualified proposal on the basis of the rated criteria and the revenue in accordance Appendix D – Section B – Evaluation Criteria. The City intends to shortlist to up to Three (3) proponents, however, should the City deem it to be in its best interest, it may expand this number accordingly.

### **(C) Stage III – Selection and Final Negotiation**

Once the proposals have been evaluated as per Stage II, the top-ranked proponent may be selected to enter into direct negotiations.

During the negotiation, the City may provide the top-ranked proponent with any additional information and may seek further information and proposal improvements. After the negotiation, the top-ranked proponent may be invited to revise its initial proposal and submit its Best and Final Offer (BAFO) to the City.

**[End of Part 3]**

## **PART 4 – TERMS AND CONDITIONS OF THE RFP PROCESS**

### **4.1 General Information and Instructions**

#### **(A) Proponents to Follow Instructions**

- (1) Proponents should structure their proposals in accordance with the instructions in this RFP. Where information is requested in this RFP, any response made in a proposal should reference the applicable part, section, subsection or paragraph numbers of this RFP.

#### **(B) Information in RFP Only an Estimate**

- (1) The City and its representatives shall not be liable for any information or advice or any discrepancies or errors or omissions that may be contained in this RFP or an Addenda, appendices, data, materials or documents (electronic or otherwise) attached or provided to the proponents pursuant to this RFP.
- (2) The City and its advisors make no representation, warranty or guarantee as to the accuracy of the information contained in this RFP or issued by way of addenda. Any quantities shown or data contained in this RFP or provided by way of addenda are estimates only and are for the sole purpose of indicating to proponents the general scale and scope of the work. It is the proponent's responsibility to obtain all the information necessary to prepare a proposal in response to this RFP.

#### **(C) Proponents Shall Bear Their Own Costs**

- (1) The proponent shall bear all costs associated with or incurred in the preparation and presentation of its proposal, including, if applicable, costs incurred for interviews, and/or presentations.

### **4.2 Communication after Issuance of RFP**

#### **(A) Proponents to Review RFP**

- (1) Proponents shall promptly examine all of the documents comprising this RFP, and
  - (a) Shall report any errors, omissions or ambiguities; and
  - (b) May direct questions or seek additional information in writing by email to the City Contact on or before the Deadline for Questions. All questions submitted by proponents by email to the City Contact shall be deemed to be received once the email has entered into the City Contact's email inbox. No such communications are to be directed to anyone other than the City Contact. The City is under no obligation to provide additional information, and the City shall not be responsible for any information provided by or obtained from any source other than the City Contact.



- (2) It is the responsibility of the proponent to seek clarification from the City Contact on any matter it considers to be unclear. The City shall not be responsible for any misunderstanding on the part of the proponent concerning this RFP or its process.

**(B) All New Information to Proponents by Way of Addenda**

- (1) This RFP may be amended only by an addendum in accordance with this subsection. If the City, for any reason, determines that it is necessary to provide additional information relating to this RFP, such information will be communicated to all proponents by addenda. Each addendum forms an integral part of this RFP.
- (2) Such addenda may contain important information, including significant changes to this RFP. Proponents are responsible for obtaining all addenda issued by the City. Addenda may be obtained from the City's website ([www.saintjohn.ca](http://www.saintjohn.ca)) under the menu option "Tender and Proposals". In Appendix A, proponents should confirm their receipt of all addenda by setting out the number of each addendum in the space provided.

**(C) Post-Deadline Addenda and Extension of Submission Deadline**

- (1) If any addendum is issued after the Deadline for Issuing Addenda, the City may at its discretion extend the Submission Deadline for a reasonable period of time.

**(D) Verify, Clarify and Supplement**

- (1) When evaluating responses, the City may request further information from the proponent or third parties in order to verify, clarify, or supplement the information provided in the proponent's proposal. The City may revisit and re-evaluate the proponent's response or ranking on the basis of any such information.

**(E) No Incorporation by Reference**

- (1) The entire content of the proponent's proposal should be submitted in a fixed form, and the content of websites or other external documents referred to in the proponent's proposal will not be considered to form part of its proposal.

**(F) Proposal to Be Retained by the City**

- (1) The City will not return the proposal or any accompanying documentation submitted by a proponent.

**4.3 Debriefing**

**(A) Debriefing – Following Award**

- (1) Upon written request from any proponent, the City may provide a more detailed oral debriefing either by phone or in person, as required by the proponent. The written request shall be submitted to the City Contact no later than 15 calendar days after notification of award.

- (2) The acceptance of the successful proposal shall not be discussed during a debriefing.

#### **4.4 Prohibited Conduct**

##### **(A) Proponent Not to Communicate with Media**

- (1) A proponent may not at any time directly or indirectly communicate with the media in relation to this RFP or any agreement entered into pursuant to this RFP without first obtaining the written permission of the City Contact.

##### **(B) No Lobbying**

- (1) A proponent may not, in relation to this RFP or the evaluation and selection process, engage directly or indirectly in any form of political or other lobbying whatsoever to influence the selection of the successful proponent.

##### **(C) Illegal or Unethical Conduct**

- (1) Proponents shall not engage in any illegal business practices, including but not limited to, activities such as bid-rigging, price-fixing, bribery, fraud or collusion. Proponents shall not engage in any unethical conduct, including but not limited to, other inappropriate communications, offering gifts to members of Common Council, employees, officers or other representatives of the City, deceitfulness, submitting proposals containing misrepresentations or other misleading or inaccurate information, or any other conduct that compromises or maybe seen to compromise the competitive process provided for in this RFP.

##### **(D) Past Performance or Inappropriate Conduct**

- (1) The City may prohibit a proponent from participating in the procurement process based on past performance or based on inappropriate conduct in a prior procurement process.
- (2) Such inappropriate conduct shall include, but not be limited to the following:
  - (a) All the conducts as described in Part 4 – Section 4.4;
  - (b) The refusal of the proponent to honour its revenue or other commitments made in its proposal; or
  - (c) Any other conduct, situation or circumstance determined by the City, in its sole and absolute discretion, to constitute a Conflict of Interest.

#### **4.5 Confidential Information**

##### **(A) Confidential Information of City**

- (1) All information provided by or obtained from the City in any form in connection with this RFP either before or after the issuance of this RFP:

- (a) Is the sole property of the City and must be treated as confidential;
- (b) Is not to be used for any purpose other than replying to this RFP and the performance of any subsequent Contract;
- (c) Must not be disclosed by the proponent to any person, other than persons involved in the preparation of the proponent's proposal or the performance of any subsequent contract, without prior written authorization from the City; and
- (d) Shall be returned by the proponents to the City immediately upon the request of the City.

**(B) Confidential Information of Proponent**

- (1) A proponent should identify any information in its proposal or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the City. The confidentiality of such information will be maintained by the City, except as otherwise required by law or by order of a court or tribunal. Proponents are advised that their proposals will, as necessary, be disclosed, on a confidential basis, to the City's advisors retained for the purpose of evaluating or participating in the evaluation of their proposals. If a proponent has any questions about the collection and use of personal information pursuant to this RFP, questions are to be submitted to the City Contact.

**4.6 Procurement Process Non-Binding**

**(A) No Contract A and No Claims**

- (1) The procurement process is not intended to create and shall not create a formal legally binding bidding process and shall instead be governed by law applicable to direct commercial negotiations.
- (2) For greater certainty and without limitation:
  - (a) Neither the proponent nor the City shall have the right to make any claims (in contract, tort, equity or otherwise) against the other with respect to the award of a contract, failure to award a contract or failure to honour a response to this RFP.

**(B) No Contract until Execution of Written Contract**

- (1) The RFP process is intended to identify the highest ranked proponent for the purposes of entering into a contract. No legal relationship or obligation regarding the procurement of any good or service shall be created between the proponent and the City by the RFP process until the issuance of a purchase order for the acquisition of such goods and/or services.

**(C) Non-Binding Price Estimates**

- (1) While the revenue information provided in responses will be non-binding prior to the issuance of a purchase order, such information will be assessed during the evaluation of the responses and the ranking of the proponents. Any inaccurate, misleading or incomplete information, including

withdrawn or altered revenue, could adversely impact any such evaluation, ranking or contract award.

**(D) Disqualification for Misrepresentation**

- (1) The City may disqualify the proponent or rescind a contract subsequently entered into if the proponent's response contains misrepresentations, omissions, or any other inaccurate, misleading or incomplete information.

**(E) Cancellation**

- (1) The City may cancel or amend the RFP process without liability at any time.

**4.7 Governing Law and Interpretation**

**A. Governing Law**

- (1) The terms and conditions in this Part 4:
  - (a) Are included for greater certainty and are intended to be interpreted broadly and separately (with no particular provision intended to limit the scope of any other provision);
  - (b) Are non-exhaustive (and shall not be construed as intending to limit the pre-existing rights of the parties to engage in pre-contractual discussions in accordance with the common law governing direct commercial negotiations); and
  - (c) Are to be governed by and construed in accordance with the laws of the province of New Brunswick and the federal laws of Canada applicable therein.

**[End of Part 4]**

## APPENDIX A – SUBMISSION FORM

**(A) Proponent Information**

Please fill out the following form, and name one person to be the contact for your response to this RFP response and for any clarifications or amendments that might be necessary.	
Full Legal Name of Proponent:	
Any Other Relevant Name under Which the Proponent Carries on Business:	
Street Address:	
City, Province/State:	
Postal Code:	
Phone Number:	
Fax Number:	
Company Website (If Any):	
RFP Contact Person and Title:	
RFP Contact Phone:	
RFP Contact Facsimile:	
RFP Contact E-mail:	

**(B) Acknowledgment of Non-Binding Procurement Process**

The proponent acknowledges that the RFP process will be governed by the terms and conditions of this RFP, and that, among other things, such terms and conditions confirm that this procurement process does not constitute a formal legally binding bidding process, and that there will be no legal relationship or obligations created until the City and the selected proponent have executed a Licensing Agreement.

**(C) Ability to Provide Deliverables**

The proponent has carefully examined this RFP documents and has a clear and comprehensive knowledge of the Deliverables required under this RFP. The proponent represents and warrants its ability to provide the Deliverables required under this RFP in accordance with the requirements of this RFP for the prices set out in the Revenue Form.

**(D) Mandatory Forms**

The proponent encloses as part of the proposal the mandatory forms set out below:

FORM	INITIAL TO ACKNOWLEDGE
<b>Submission Form</b>	
<b>Revenue Form</b>	
<b>Reference Form</b>	

**Notice to proponents:** There may be forms required in this RFP other than those set out above. See the Mandatory Requirements section of this RFP for a complete listing of mandatory forms.

**(E) Non-Binding Price Estimates**

The proponent has submitted its fees in accordance with the instructions in this RFP and in the Revenue Form set out in Appendix B. The proponent confirms that the revenue information provided is accurate. The proponent acknowledges that any inaccurate, misleading or incomplete information, including withdrawn or altered revenue, could adversely impact the acceptance of its quotation or its eligibility for future work.

**(F) Addenda**

The proponent is deemed to have read and accepted all addenda issued by the City prior to the Deadline for Issuing Addenda. The onus remains on proponents to make any necessary amendments to their proposal based on the addenda. The proponent confirms that it has received all addenda by listing the addenda numbers, or, if no addenda were issued, by writing the word "None", on the following line: \_\_\_\_\_ . Proponents who fail to complete this section will be deemed to have received all posted addenda.

**(G) No Prohibited Conduct**

The proponent declares that it has not engaged in any conduct prohibited by this RFP.

**(H) Disclosure of Information**

The proponent hereby agrees that any information provided in this proposal, even if it is identified as being supplied in confidence, may be disclosed where required by law or if required by order of a court or tribunal. The proponent hereby consents to the disclosure, on a confidential basis, of this proposal by the City to the City's advisers retained for the purpose of evaluating or participating in the evaluation of this proposal.

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Proponent Representative

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

I have the authority to bind the proponent.



## APPENDIX C – REFERENCE FORM

Each proponent is requested to provide three references from clients who have obtained similar goods or services to those requested in this RFP from the proponent in the last two years.

### Reference #1

<b>Company Name:</b>	
<b>Company Address:</b>	
<b>Contact Name:</b>	
<b>Contact Telephone Number:</b>	
<b>Date Work Undertaken:</b>	
<b>Nature of Assignment:</b>	

### Reference #2

<b>Company Name:</b>	
<b>Company Address:</b>	
<b>Contact Name:</b>	
<b>Contact Telephone Number:</b>	
<b>Date Work Undertaken:</b>	
<b>Nature of Assignment:</b>	

### Reference #3

<b>Company Name:</b>	
<b>Company Address:</b>	
<b>Contact Name:</b>	
<b>Contact Telephone Number:</b>	
<b>Date Work Undertaken:</b>	
<b>Nature of Assignment:</b>	



## APPENDIX D – RFP PARTICULARS

### (A) The Deliverables

#### (1) SCOPE

The City of Saint John ('City') is soliciting proposals for licensing agreements for off-season ice at a City of Saint John arena as per the enclosed specifications, terms and conditions.

#### (2) SPECIFICATIONS

- Off-season ice will be available in 2022 at an arena owned and operated by the City of Saint John. The arena will be available to be licensed by a third party during the timeframe of April 1, 2022, to September 30, 2022.
- Proposals may be submitted to request a licensing agreement for the full timeframe or for a portion of the timeframe, depending on the needs of the proponent.
- Should multiple proposals be received for non-overlapping timeframes, the City may enter into multiple licensing agreements for the period. Should multiple proposals be received with a modest overlap of timeframes, the City reserves the right to discuss with proponents their potential flexibility with regard to start and end dates for a licensing agreement, with the goal of maximizing use of the facility and the associated licensing revenue for the City.
- During the licensing period, the arena facility and ice therein will be maintained by CUPE Local 18 employees of the City of Saint John. The proponent will be responsible for scheduling and coordinating ice time usage taking place during the dates and times specified in the license agreement, as well as for ensuring all parties have appropriate insurance in place.
- The proponent will be solely responsible for the safety of their staff, volunteers, participants, and spectators during those times.
- Should there be dates/times during the period of a licensing agreement when the proponent will not require the facility, the City of Saint John reserves the right to book other user groups and to retain 100% of any revenue associated with those bookings. If this is applicable, the proponent should specify in their proposal which days/times would be available for booking by the City of Saint John during the period of a licensing agreement.
- The proponent shall make use of the facility for the purposes of ice sports and recreational activities only.
- Should the proponent resell ice to another party, they must commit to abiding by the ice allocation prioritization outlined in the City of Saint John's 'Ice Allocation and Management Policy' (Appendix).
- The City retains the right to explore the proponent's records of bookings during the period of the licensing agreement at any point during the term of the agreement, or at any point thereafter, for the purposes of ensuring adherence to the terms of the agreement relating to ice allocation. Discovery of failure to adhere to these terms could result in immediate action, including the potential for immediate termination of the licensing agreement.

- Although the Peter Murray Arena has been identified by the City as the preferential facility for the purposes of entering into a licensing agreement, should more than one (1) City arena be available during the off-season period, the City may explore the option of entering into licensing agreements for multiple facilities.
- The sale of food, beverages, or commercial goods will be prohibited within the facility during the period of a licensing agreement (excluding any existing City-managed vending machines in the facility).
- All space (storage or other) currently occupied within the facility by other parties will be excluded from the scope of the licensing agreement and the proponent will not have access to said space.
- The daily timeframe during which the facility would be available for use by the successful proponent would fall within the hours of 7:30am-11:30pm, Sunday to Saturday. The proponent should specify which specific hours within that timeframe would be requested for a license agreement.
- The proponent shall confirm in their proposal that all required proof of insurance and other documentation (e.g., COVID-19 Operational Plan) outlined in a licensing agreement would be submitted prior to the start date of the agreement.
- All activities taking place within the facility must adhere to any restrictions or requirements of the Province of New Brunswick (COVID-19 related or otherwise) that are in place within the timeframe of a licensing agreement.
- Should the Government of New Brunswick continue to require the verification of COVID-19 vaccination documentation upon entry to the arena, the full cost of 'Safety Ambassadors' to carry out that function would be the sole responsibility of the proponent during the period of their agreement.

**(3) DURATION**

- This licensing agreement will for a term that will include all or a portion of time between April 1, 2022, and September 30, 2022.
- Confirmation of a possible extension option for a licensing agreement cannot be provided due to the fluctuating nature of facility availability and maintenance requirements from one year to the next.

**(4) PAYMENT**

- Full terms for payment will be indicated in the licensing agreement. 50% of the total licensing fee will be due prior to the start of the agreement and the remaining 50% will be due at the midway point of the term of the licensing agreement.

**(5) TERMINATION OF THE CONTRACT**

- The City of Saint John reserves the right to terminate the contract at any time during the course of the licensing agreement. In such an event, payment required from the proponent will be prorated to cover the timeframe of the start of the agreement until the date of termination.

- Reasons for termination of the contract by the City may include, but are not exclusive to, conduct by the proponent and/or their representatives that is deemed by the City of Saint John to be inappropriate or abusive toward City employees and/or members of the public.
- Should restrictions from the Province of New Brunswick prohibit all of the proponent's intended activity outlined in a licensing agreement, fees will be prorated to exclude the timeframe during which the restrictions were in place.

**(6) BASIS FOR AWARD**

- The City does not bind itself to accept the highest or any proposal submitted, but reserves the right to accept any proposal deemed to be in its best interest.
- The City reserves the enter into licensing agreements with two or more proponents based upon the overall best value to the City.
- The City will reject any proposals that do not cover the City's operational costs, plus a contingency, for staffing and maintaining the arena facility during the period of the licensing agreement.

**(7) NO GUARANTEE**

- The City makes no guarantee as to the perceived quality of arena ice or condition of the overall facility; however, both the ice and the facility will be maintained by City employees in accordance with all safety standards.
- The available timeframe for a licensing agreement is based on information known at the date of issue of this RFP; however, the City reserves the right to change the dates of availability based on unforeseen circumstances (e.g., unplanned maintenance, COVID-19 restrictions).
- In the event the facility should become unavailable for use by the proponent during a portion or all of the timeframe of a licensing agreement, payment required from the proponent will be prorated to exclude that period of time.

**(8) RESERVED RIGHTS**

The City reserves the right to:

- a) Reject an unbalanced Proposal. For the purpose of this section, an unbalanced Proposal is a Proposal containing a unit price which deviates substantially from, or does not fairly represent, reasonable and proper compensation for the unit of work bid or one that contains prices which appear to be so unbalanced as to adversely affect the interests of the City. The City reserves the right to use Proposals submitted in response to other like or similar Requests for Proposals as a guideline in determining if a proposal is unbalanced.
- b) Amend or modify the scope of a project, and/or cancel or suspend the Proposal Solicitation at any time for any reason.
- c) Require proponents to provide additional information after the Closing Date for the Proposal Solicitation to support or clarify their proposals.

- d) Not accept any or all proposals.
- e) Not accept a proposal from a proponent who is involved in litigation, arbitration or any other similar proceeding against the City.
- f) Reject any or all proposals without any obligation, compensation or reimbursement to any proponent or any of its team members.
- g) Withdraw a Proposal Solicitation and cancel or suspend the Proposal Solicitation process.
- h) Extend, from time to time, any date, any time period or deadline provided in a Proposal Solicitation (including, without limitation, the Proposal Solicitation Closing Date), upon written notice to all proponents.
  - i) Assess and reject a proposal on the basis of
    - i. Information provided by references;
    - ii. The proponent's past performance on previous contracts;
    - iii. Information provided by a proponent pursuant to the City exercising its clarification rights under the Proposal Solicitation process;
    - iv. The proponent's experience with performing the type and scope of work specified including the proponent's experience;
    - v. Other relevant information that arises during a Proposal Solicitation process.
- j) Waive formalities and accept proposals which substantially comply with the requirements of the Proposal Solicitation.
- k) Verify with any proponent or with a third party any information set out in a proposal.
- l) Disqualify any proponent whose proposal contains misrepresentations or any other inaccurate or misleading information.
- m) Disqualify any proponent who has engaged in conduct prohibited by the Proposal Solicitation documents.
- n) Make changes including substantial changes to the proposal documents provided that those changes are issued by way of an addendum in the manner set out in the Proposal Solicitation documents.
- o) Select any proponent other than the proponent whose proposal reflects the lowest cost to the City.
- p) Cancel a Proposal Solicitation process at any stage.
- q) Cancel a Proposal Solicitation process at any stage and issue a new Proposal Solicitation for the same or similar deliverable.
- r) Accept any proposal in whole or in part.

And these reserved rights are in addition to any other express rights or any other rights

which may be implied in the circumstances and the City shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any proponent or any third party resulting from the City exercising any of its express or implied rights under a Proposal Solicitation.

**(9) LIMITATION OF LIABILITY AND WAIVER**

In every Proposal Solicitation, the City shall draft the documents such that each proponent, by submitting a proposal, agrees that:

- a) Neither the City nor any of its employees, agents, advisers or representatives will be liable, under any circumstances, for any claims arising out of a Proposal Solicitation process including but not limited to costs of preparation of the proposal, loss of profits, loss of opportunity or any other claim.
- b) The proponent waives any claim for any compensation of any kind whatsoever including claims for costs of preparation of the proposal, loss of profit or loss of opportunity by reason of the City’s decision to not accept the proposal submitted by the proponent, to award a contract to any other proponent or to cancel the Proposal Solicitation process, and the proponent shall be deemed to have agreed to waive such right or claim.

**(B) Evaluation Criteria**

- (1) The following is an overview of the categories and weighting for the rated criteria relevant to the evaluation of proposals under this RFP.

STAGE II OF EVALUATION PROCESS	SCORING (POINTS)
<p><b>Quality and Completeness:</b></p> <ul style="list-style-type: none"> <li>• Has the proponent clearly outlined the requested timeframe for a licensing agreement, including dates, days of the week, and times of day?</li> <li>• Does the proposal clearly indicate the amount of financial revenue for the City of Saint John that would result from payments from the proponent as per a licensing agreement?</li> <li>• Has the proponent clearly described the intended use or nature of activities that will take place within the facility during the timeframe of a license agreement?</li> <li>• Is the proposal presented in an organized and professional manner?</li> </ul>	20

<p><b>Specifications:</b></p> <ul style="list-style-type: none"> <li>• Meet/exceed Specifications outlined.</li> <li>• Length of proposed timeframe for licensing agreement.</li> </ul>	30
<p><b>Revenue:</b></p> <ul style="list-style-type: none"> <li>• Proposed revenue (in the form of payment to the City per a licensing agreement) will be a factor; however, neither the only factor nor the determined factor, in the evaluation of the proposals.</li> <li>• The financial proposal shall include the total licensing fee to be paid by the proponent to the City.</li> </ul>	50
<b>TOTAL POINTS FOR STAGE II</b>	<b>100</b>