



Invitation to Tender

CITY OF KENORA

INVITATION TO TENDER / ADVERTISEMENT

Sealed Tenders
for:

Supply and Delivery of (2) Four-Wheel Drive Regular Cab Pickup Trucks
(the "Project")
Tender Number: 453-001-25A

Will be received
by:

City of Kenora
(the "City")

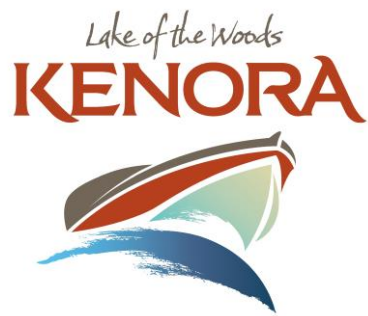
at:

1 Main Street South
Kenora, ON P9N 3X2
Attention: City Clerk

Time and date for Tender Closing is:

11:00:00 a.m. CST/CDT on **September 4, 2025**
(the "Tender Closing")

1. The work to be undertaken generally involves, but is not necessarily limited to: **Supply and Delivery of (2) Four-Wheel Drive Regular Cab Pickup Trucks** (the "Work") as set out on the **Instructions to Tenderers Appendix A – Specifications**.
2. The specifications for the Project can be obtained from Shalene Haney, shaney@kenora.ca.
3. All written inquiries regarding the technical aspects of the drawings and specifications for the Work shall be emailed to shaney@kenora.ca, however the bidder(s) acknowledge and agree that the CITY does not have an obligation to provide a response to any written inquiry and that it is in the sole and unfettered discretion of the CITY to provide any written response to a written inquiry. Telephone inquiries and fax inquiries will not be replied to.
4. Submission of a tender by a Bidder gives the CITY the right to require the Bidder to execute the contract to perform the Work as set out within the tender documents. Tenders may not be withdrawn after the Tender Closing and will be irrevocable and open for acceptance by the CITY for a period of sixty (60) days following the end of the day of the Tender Closing. The Successful Bidder will be notified in writing of the award of the Tender when the CITY delivers a letter of intent to the Successful Bidder.



INSTRUCTIONS TO TENDERERS

CITY OF KENORA

RFT# 453-001-25A

INSTRUCTIONS TO TENDERERS

1 BACKGROUND

- 1.1 The City of Kenora (the "CITY") is seeking tenders for **the supply and delivery of Two (2) Four-Wheel Drive Regular Cab Pickup Trucks** (the "Work") as more particularly set out in Appendix "A" attached to these Instructions to Tenderers
- 1.2 The CITY will receive sealed tenders until 11:00:00 a.m. CST/CDT on **September 4, 2025** ("Tender Closing"). Faxed tenders will not be accepted and will be returned to the Tenderer.

2 SUBMISSION OF TENDERS

- 2.1 Each Tender shall be addressed to the CITY in a sealed envelope clearly marked with the Tenderer's name, address and tender number. The sealed envelope containing the Tender shall be delivered before the Tender Closing to the CITY in accordance with the Invitation to Tender and the Instructions to Tenderers at:

**City of Kenora
1 Main Street South
Kenora, ON P9N 3X2
Attention: Heather Pihulak, City Clerk**

- 2.2 In the event of a dispute or issue about whether or not a tender complies with the Instructions to Tenderers, the CITY reserves the right to retain and open a copy of the tender in question in order to seek and obtain a legal opinion in relation thereto. The opening of a tender does not in any way constitute an admission by the CITY as to the compliance, or not, of the subject tender.

3 TENDER FORM

- 3.1 Each Tenderer shall submit a complete tender on the Tender Form which forms part of the Tender Documents with the blank spaces filled in. The tender sum must be written in words as well as figures, and must be for a sum in Canadian Dollars including all tariffs, freight, duties and taxes other than the Goods and Services Tax which must be shown as a separate amount unless otherwise specifically stipulated (hereinafter referred to as the "Tender Sum"). In the event of a discrepancy between an amount written in words and an amount written in figures, the amount written in words shall be deemed the intended amount. Tenders shall be written in English.
- 3.2 Notwithstanding the foregoing, the CITY shall be entitled to accept a Tender in such form as the CITY in its sole and unfettered discretion deems acceptable irrespective of irregularities whether of a trivial nature, or whether the Tender is noncompliant in a trivial manner.
- 3.3 The CITY shall not be obligated to accept Tenders that are unsigned, incomplete, conditional, illegible, unbalanced, obscure, contain irregularities of any kind, or contain mathematical or calculation errors of any kind. On Unit Price Tenders, if there is a discrepancy found between the unit price and the extended amount, the

unit price shall be deemed to represent the intention of the Tenderer. Discrepancies between words and figures will be resolved in favour of the words. Discrepancies between the indicated sum of any figures and the correct sum thereof will be resolved in favour of the correct sum. Any discrepancies between the Tender Form and a post Tender Closing submission required by the Tender Documents will be resolved in favour of the post Tender Closing submission.

- 3.4 Tenders shall not be withdrawn, modified or clarified after being delivered in accordance with the Tender Documents unless such withdrawal, modification or clarification is made in writing and actually received by Heather Pihulak, City Clerk prior to the Tender Closing. Any withdrawal, modification or clarification of the Tender must be followed by a letter of confirmation signed and sealed in the same manner as the Tender and delivered to the address for the CITY in the Invitation to Tender within 48 hours of the Notice of the Withdrawal, Modification or Clarification.

4 THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

- 4.1 All documents submitted to the CITY will be subject to the protection and disclosure provisions of Ontario's *Freedom of Information and Protection of Privacy Act* ("FOIP"). FOIP allows persons a right of access to records in the CITY's custody or control. It also prohibits the CITY from disclosing the Tenderer's personal or business information where disclosure would be harmful to the Tenderer's business interests or would be an unreasonable invasion of personal privacy as defined in sections 17 and 21 of FOIP. Tenderers are encouraged to identify what portions of their submissions are confidential and what harm could reasonably be expected from its disclosure. However, the CITY cannot assure Tenderers that any portion of the Tenderer's documents can be kept confidential under FOIP.

5 TENDER DOCUMENTS

- 5.1 The documents for the Tender are:

- Invitation to Tender
- Instructions to Tenderers
- Tender Form
- Appendix A – Specification
- Appendix B – Draft Purchase Agreement

(hereinafter collectively referred to as the "Tender Documents")

By submitting its Tender, the Tenderer acknowledges and agrees that it has received and reviewed the Tender Documents.

6 VARIATION IN TENDER DOCUMENTS AND NO IMPLIED OBLIGATIONS

- 6.1 The Tenderer shall carefully examine the Tender Documents. Any errors, omissions, discrepancies or clauses requiring clarification shall be reported in writing to the CITY at least 10 calendar days prior to the Tender Closing. Where necessary the CITY shall respond to reported errors, omissions, discrepancies or clauses requiring clarification by way of Addenda.

- 6.2 Should a Tenderer fail to report any such errors, omissions, discrepancies or clauses requiring clarification at least 10 calendar days prior to the Tender Closing, the CITY shall be the sole judge as to the intent of the Tender Documents.
- 6.3 No implied obligation of any kind by or on behalf of the CITY shall arise from anything in the Tender Documents, and the express covenants and agreements contained in the Tender Documents and made by the CITY, are and shall be the only covenants and agreements that apply.
- 6.4 Without limiting the generality of Article 6.3, the Tender Documents supercede all communications, negotiations, agreements, representations and warranties either written or oral relating to the subject matter of the Tender made prior to the Tender Closing, and no changes shall be made to the Tender Documents except by written Addenda.

7 ADDENDA

- 7.1 Any changes to the Tender shall be in writing in the form of Addenda. Any Addenda issued to the Tender shall form part of the Tender Documents, whether or not the receipt of same has been acknowledged by a Tenderer, and the cost for doing the work therein shall be included in the Tender Sum. Verbal representations shall not be binding on the CITY nor form part of the Tender Documents. Technical inquiries into the meaning or intent of the Tender Documents must be submitted in writing to the person identified in Article 2.1 of the Instructions to Tenderers.

8 TENDER

- 8.1 Tenderers submitting Tenders shall be actively engaged in the line of work required by the Tender Documents and shall be able to refer to work of a similar nature performed by them. They shall be fully conversant with the general technical phraseology in the English language of the lines of work covered by the Tender Documents.
- 8.2 Each Tenderer shall review the Tender Documents provided by the CITY and confirm that it is in possession of a full set of Tender Documents when preparing its Tender.
- 8.3 Tenders shall be properly executed in full compliance with the following requirements:
 - 8.3.1 The signatures of persons executing the Tender must be in their respective handwriting; and
 - 8.3.2 If the Tender is made by a limited company, the full name of the company shall be accurately printed immediately above the signatures of its duly authorized officers and the corporate seal shall be affixed;
 - 8.3.3 If the Tender is made by a partnership, the firm name or business name shall be accurately printed above the signature of the firm and the Tender shall be signed by a partner or partners who have authority to sign for the partnership;

8.3.4 If the Tender is made by an individual carrying on business under the name other than its own, its business name together with its name shall be printed immediately above its signature or

8.3.5 If the Tender is made by a sole proprietor who carries on business in its own name, the proprietor shall print its name immediately below its signature.

8.4 Tenders received from agents representing principals must be accompanied by a Power of Attorney signed by the said principals showing that the agents are duly authorized to sign and submit the Tender and have full power to execute the Contract on behalf of their principals. The execution of the Contract will bind the principals and have the same effect as if it were duly signed by the principals.

9 TENDER DEPOSIT – Not Used

9.1 N/A

9.2 N/A

9.3 N/A

9.4 N/A

10 PERFORMANCE AND LABOUR AND MATERIAL PAYMENT BONDS – Not Used

10.1 N/A

10.2 N/A

10.3 N/A

10.4 N/A

10.5 N/A

10.6 N/A

10.7 N/A

10.8 N/A

10.9 N/A

11 INSURANCE

11.1 The Tender shall be accompanied by a Certificate of Insurance, certifying that the insurance as required by the Contract, is in place or, if the required insurance is not in place, by a Letter of Insurability or Undertaking of Insurance in standard form from the Tenderer's Insurance Broker certifying that the required insurance will be issued to the Tenderer if the Tenderer is the Successful Tenderer.

- 11.2 The Successful Tenderer shall be required to secure and maintain at its own expense the insurance provided for in the Contract.
- 11.3 The Successful Tenderer shall provide all required insurance to the CITY no later than 10 working days after receipt of a Letter of Intent from the CITY provided in accordance with Article 16.

12 COMMENCEMENT AND COMPLETION OF WORK

- 12.1 The Successful Tenderer shall commence the Work within 10 working days after receipt of the Letter of Intent from the CITY and shall complete the Work by the dates specified in the Contract.

13 SITE CONDITIONS – Not Used

- 13.1 N/A
- 13.2 N/A
- 13.3 N/A

14 PRIME COST AND CONTINGENCY SUMS

- 14.1 The Tenderer shall include in its Tender Sum any prime cost sums or contingency sums. The Goods and Services Tax shall be shown as a separate amount.

15 PERMITS AND INSPECTIONS

- 15.1 The Tenderer shall include in its Tender Sum the cost of permits and inspections required by any governmental or other authority having jurisdiction or as required to fully perform the Work in accordance with the Contract.

16 SUCCESSFUL TENDERER

- 16.1 Award of Contract by the CITY occurs once the Tenderer receives a Letter of Intent duly executed by **Jerry Derouard, Fleet Maintenance Manager** of the CITY after **Jerry Derouard** has been duly and legally authorized by the CITY to send such Letter of Intent.
- 16.2 Following the receipt of the Letter of Intent, the Successful Tenderer shall provide the Performance Bond and Labour and Material Payment Bond within the time required in Article 10.7. The Successful Tenderer shall also provide a Certificate of Insurance unless previously provided.
 - 16.2.1 N/A
 - 16.2.2 N/A
 - 16.2.3 N/A
- 16.3 Within 10 working days of receipt of the Contract from the CITY, the Successful Tenderer shall duly execute the Contract and return the Contract to the CITY.

16.4 N/A

17. TENDER EVALUATION CRITERIA

17.1 Each Tender will be evaluated on the basis of the criteria listed below and the CITY will have the sole and unfettered discretion to award up to the maximum number of points for each criteria as listed below. By submitting a Tender, the Tenderer acknowledges and agrees that the CITY has, and it is hereby entitled to exercise, the sole and unfettered discretion to award the points for the evaluation of the noted criteria.

17.2 By submitting its Tender, each Tenderer acknowledges and agrees that it waives any right to contest in any legal proceedings, the decision of the CITY to award points in respect of the criteria noted below. The criteria and the maximum number of points for each criteria are as follows:

1. Compliance with Specifications, then Price	100 points
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Total Points	100 points
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18 WORKERS' COMPENSATION – Not Used

18.1 N/A.

18.2 N/A

18.3 N/A

18.4 N/A

18.5 N/A.

19 REGISTRATION

19.1 Prior to commencing the Work, the Successful Tenderer shall obtain all authorizations required by the laws of the Province of Ontario and of the Country of Canada enabling it to carry on business to complete the Work required under the Contract. Failure to be properly authorized shall entitle the CITY to forthwith terminate the Contract without compensation.

20 TENDERS EXCEEDING BUDGET

20.1 In addition to the rights contained within Article 20 herein, if the Tender Sum of every Tenderer exceeds the amount the CITY has budgeted for the Work, the CITY may reject all Tenders or attempt to negotiate a lower price with the Tenderer who, in the sole and unfettered discretion of the CITY, has submitted the most advantageous Tender.

20.2 Each Tenderer acknowledges and agrees that the CITY has the sole and unfettered discretion to employ any criteria in order to determine the Tender most advantageous to the CITY, that the CITY has no obligation to neither disclose such

criteria nor employ the criteria listed outlined in Article 17 Tender Evaluation Criteria.

20.3 By submitting its Tender, each Tenderer waives its right to contest in any action, application, case or legal proceeding in any court, the decision which the CITY may pursue under Article 20.1 and 20.2 herein.

20.4 If the Tender Sum of every Tenderer exceeds the amount budgeted for the Work and the CITY negotiates with the Tenderer who has submitted the Tender considered most advantageous to the CITY:

20.4.1 All statements made by either side in the course of negotiation are without prejudice and confidential;

20.4.2 In particular, the CITY's attempt to negotiate with such Tenderer does not constitute a rejection of its Tender; and

20.4.3 The CITY will not attempt to obtain a lower price for the same work that the Tenderer originally bid on, but may attempt to obtain a lower price for an altered scope of work. In no event will the CITY be obliged to disclose the amount budgeted for the Work.

21 CERTIFICATE OF RECOGNITION ("C.O.R.") SAFETY PROGRAM REQUIREMENT – Not Used

21.1 N/A

21.2 N/A

21.3 N/A

21.4 N/A

21.5 N/A

22 CANADIAN FREE TRADE AGREEMENT

22.1 The provisions of the Canadian Free Trade Agreement ("CFTA") apply to this Tender.

23 ACCEPTANCE OR REJECTION OF TENDERS

23.1 As it is the purpose of the CITY to obtain the Tender most suitable and most advantageous to the interests of the CITY, and notwithstanding anything else contained within the Tender Documents, the CITY reserves the right, in its sole and unfettered discretion, to reject or accept any Tender, including the right to reject all Tenders. Without limiting the generality of the foregoing, any Tender which

a) is incomplete, obscure, irregular or unrealistic;

b) is non-compliant in a trivial/immaterial or substantial/material manner, or conditional;

- c) has erasures or corrections;
- d) omits a price on any one or more items in the Tender;
- e) fails to complete the information required in the Tender;
- f) is accompanied by an insufficient certified cheque, irrevocable letter of credit or by a Bid Bond in an unsatisfactory form,

may at the CITY's sole and unfettered discretion be rejected or accepted. Further, a Tender may be rejected or accepted on the basis of the CITY's unfettered assessment of its best interest, which includes the CITY's unfettered assessment as to a Tenderer's past work performance for the CITY or for anyone else or as to a Tenderer's financial capabilities, completion schedule, or ability to perform the Work, or the CITY's desire to reduce the number of different contractors on the location of the Work at any given time. The CITY reserves the right to negotiate after Tender Closing time with the Tenderer that the CITY deems has provided the most advantageous Tender; in no event will the CITY be required to offer any modified terms to any other Tenderer prior to entering into a Contract with the successful Tenderer and the CITY shall incur no liability to any other Tenderers as a result of such negotiation or modification.

24 LAW AND FORUM OF TENDER

24.1 The law to be applied in respect of the Tender Documents and the Contract shall be the law of the Province of Ontario and all civil actions commenced in relation to the Tender Documents or Contract shall be adjudicated by the Courts of the Province of Ontario and by submitting Tenders, Tenderers are taken to have agreed to attorn to the jurisdiction of the Courts of the said Province.

25 ACCEPTANCE PERIOD

25.1 The Tender shall be irrevocable and open for acceptance by the CITY for the period of time contained in the Invitation to Tender, namely, sixty (60) days following the end of the day of the Tender Closing. The time and date of the Tender Closing is as defined in the Invitation to Tender.

TENDER FORM

Tender Number: 453-001-25A
 Tender Title: Supply and Delivery of (2) Four-Wheel Drive Regular Cab Pickup Trucks

We, _____
(Company)

of _____
(Business Address)

(Contact Name, Phone Number and Email Address)

having examined the Tender Documents as issued by: the City of Kenora (the "City"), and having visited the site(s) of where the Work is required to be undertaken; hereby offer to enter into a Contract to perform the Work required by the Tender Documents for the Tender Sum as follows:

1. Sub-Total (including STD Warranty, excluding HST)	\$ _____
2. HST	\$ _____
3. Total	\$ _____
4. License Fee	\$ _____
5. Total Price include License Fee	\$ _____

in Canadian funds, which price includes any specified cash and contingency allowances and the applicable taxes in force at this date and except as may be otherwise provided in the Tender Documents.

Appendices to Tender Form:

The information required by the Instructions to Tenderers is provided in the attached Appendices and forms an integral part of this Tender.

- **Completed Appendix A**

Declarations:

We hereby acknowledge and declare that:

- (a) we agree to perform the Work in compliance with the required completion schedule stated in the Contract;
- (b) no person, firm or corporation other than the undersigned has any interest in this Tender or in the proposed Contract for which this Tender is made;
- (c) we hereby acknowledge and confirm that the City has the right to accept any tender or to reject any or all tenders in accordance with the Instructions to Tenderers;
- (d) this Tender is open to acceptance for a period of sixty (60) days from the date of Tender Closing.

Signatures:

Signed, sealed and submitted for and on behalf of:

Company:

(Name)

(Street Address or Postal Box Number)

(City, Province & Postal Code)

(Apply SEAL above)

Signature:

Name & Title:

(Please Print or Type)

Witness:

Dated at _____ this _____ day of _____, 20____

APPENDIX A – SPECIFICATIONS

1. Intent

1.1.	It is the intent of these specifications to describe a four wheel-drive regular cab pickup truck. The Unit will be used by solid waste staff for everyday operations of collecting garbage and recyclables in the designated downtown areas, transporting staff and other operations as required.
1.2.	The unit shall be the manufacturer's latest model. The unit shall be furnished complete and ready for use. Any parts not specifically mentioned but which are required to complete the unit, and all parts thereof, shall conform in strength and quality of material and workmanship, to the best standards and engineering practice of the industry
1.3.	The ratings specified herein merely state the minimum values acceptable to the City. There is no intent of implying that these values are sufficient for the design of the unit being bid by the vendor

2. Other specification and standards

2.1.	All applicable SAE standards form an integral part of these specifications and shall have precedence in any conflict concerning minimum acceptable standards
2.2.	The cab and chassis shall comply with the Canada Motor Vehicle Safety Act (C.M.V.S.S.) and the Ontario Highway Traffic Act and all regulations hereunder

3. Instructions for Completion of Specifications

3.1.	All items in these specifications must be answered indicating compliance and/or non-compliance. Deviations shall be clearly stated and fully detailed. Alternatives will be considered, subject to evaluation.
3.2.	Each bidder is required to fill in every blank . Failure to do so may be basis for rejection of bid.

4. Type

4.1.	State make and model being bid: Make: _____ Model: _____ Year : _____
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5. Engine: Gasoline

5.1.	Engine Cylinders	State:
5.2.	Net hp – 355 hp minimum	State:
5.3.	Displacement – 5.0 liters minimum	State:
5.4.	Net torque – 305lbs/ft. minimum	State:
5.5.	Fuel consumption	City: L/100km
		Highway: L/100km

6. Power Plant Parts:

6.1.	Air Cleaner - replaceable dry element type	Yes	No
6.2.	Oil Filter – Full flow Replaceable (spin-on)	Yes	No
6.3.	Alternator - 120-amp minimum	Yes	No
6.4.	Battery – 800 CCA 12-volt min	Yes	No
		State:	
6.5.	Block Heater to be supplied	Yes	
6.6.	Transmission - automatic, 6 speed with O.D.	Yes	No
		State:	
6.7.	Factory transmission cooler	Yes	No
6.8.	Transfer case to be shift-on-the-fly capable	Yes	No
		State:	

7. Fuel:

7.1.	Tank – approximately 100 liters	State:
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8. Body:

8.1.	Spray in box liner, tailgate, top of box rails, line X brand quality	Yes	No
		State:	
8.2.	Box size 96" (inches) minimum floor length	Yes	No
8.3.	Front and Rear wheel will have a composite "Inner Fender Liner"	Yes	No
8.4.	Front suspension, Transfer case skid plate	Yes	No
8.5.	Mud-flaps front and rear	Yes	No
8.6.	Full steel front and rear bumpers	Yes	No
8.7.	Tailgate to incorporate an easy controlled lowering rate	Yes	No

8.8.	OEM running boards	Yes	No
		State:	

9. Chassis:

9.1.	Wheelbase – 3380mm approximately	State:	
9.2.	Heavy duty shock absorbers front and rear	Yes	No
9.3.	Gross Vehicle Weight Rating (GVWR) Minimum 2990kgs	State: kgs	
9.4.	Gross Combination Weight Rating (GCWR)	State: kgs	
9.5.	Tow capacity	State: kgs	

10. Cab:

10.1.	Regular Cab (2 door)	Yes	No
10.2.	Seats – Front, 60-40 split or 40/20/40 split, heavy duty, with springs and passing, cloth covered, complete with driver adjustable lumbar support. (3 occupants)	Yes	No
		State:	
10.3.	Seats – must have additional removable seat covers	Yes	No
10.4.	Rubber floor covering	Yes	No
10.5.	Floor Mats – removable rubber floor mats, Weather Tec Brand or equivalent to	Yes	No
		State:	
10.6.	Power windows	Yes	No
10.7.	Power door locks	Yes	No
10.8.	Mirrors- one inside and two outside	Yes	No
10.9.	Outside mirrors shall be “below eye level” Type approximately 7” x 10” in size	Yes	No
		State:	
10.10.	Mirrors- heated	Yes	No
10.11.	AM-FM stereo radio with clock	Yes	No
10.12.	Radio to be “Blue Tooth” capable	Yes	No
10.13.	Factory installed air conditioning	Yes	No
10.14.	2 (two) 12- volt power points	Yes	No
10.15.	Cargo light to illuminate box interior	Yes	No
10.16.	3 (Three) sets of keys	Yes	No
10.17.	Remote keyless entry	Yes	No
10.18.	Illuminated 4-wheel drive engaged light	Yes	No
10.19.	Factory installed auxiliary switches	Yes	No

11. Steering:

11.1.	Power steering	Yes	No
11.2.	Steering wheel shall be adjustable	Yes	No

12. Axles:

12.1.	Limited slip rear axle or Auto locking rear axle	Yes	No
		State:	
12.2.	Front axle to have automatic front hubs	Yes	No

13. Brakes:

13.1.	Service brakes – power assisted	Yes	No
13.2.	Front and rear disc brakes	Yes	No

14. Wheels and Tires:

14.1.	Ten ply mud/snow, radial tubeless, on/off road tread – P265/70R-17, includes spare wheel and tire to match	Yes	No
SPECIFY SIZE, BRAND MAKE:			

15. Attachments:

15.1.	Under body receiver hitch supplied mounted with 2" ball and receiver matched to truck capacity	Yes	No
15.2.	Tire jack shall be supplied	Yes	No
15.3.	2.5lb fire extinguisher installed in cab	Yes	No
15.4.	7 wire round trailer plug (Flat pin, RV) mounted in rear bumper, wired to standard specifications, all wiring to be soldered and shrink tube sealed	Yes	No
15.5.	Factory electric trailer brake controller	Yes	No
15.6.	Backup alarm -Brigade brand, Model #SA-BBS-97 A1399 (white noise)	Yes	No
15.7.	OEM back up camera installed	Yes	No

16. Paint:

16.1.	Standard White	State:	
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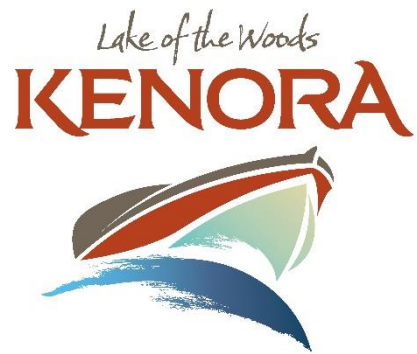
17. Warranty:

17.1.	State standard included warranty:	
17.2.	Extended warranty options:	
17.3.	State optional 60-month warranty terms:	
17.4.	Extended warranty option cost	\$

DELIVERY DATE:

State delivery date with all tendered components installed as a complete unit from execution of agreement contract. State date_____

APPENDIX B



**CITY OF KENORA
PURCHASE AGREEMENT**

RFT#453-001-25-A

**SUPPLY AND DELIVERY OF
Two (2) FOUR WHEEL-DRIVE REGULAR CAB PICKUP
TRUCKS**

PURCHASE AGREEMENT

THIS AGREEMENT dated the ____ day of _____, 20__

BETWEEN:

CORPORATION OF THE CITY OF KENORA

(hereinafter called the "**City**")

OF THE FIRST PART

AND:

(hereinafter called the "**Supplier**")

OF THE SECOND PART

WHEREAS the Supplier has agreed to provide to the City the Goods and the City has agreed to pay to the Supplier certain sums in consideration of the Goods.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the covenants herein contained, the City and the Supplier covenant and agree each with the other as follows:

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

1.1 The following terms have the meanings ascribed to them below:

- (a) **Acceptance** means the City's acceptance of the Goods as set out in Section 4.
- (b) **Change Order** is a document used to modify an existing Purchase Agreement. The Change Order shall specify, as applicable: the changes made to the original Purchase Agreement, the number of the original Purchase Agreement, the number of the Change Order, and the date of the Change Order.
- (c) **Controlled Products** are controlled products as defined by the *Hazardous Products Act* (Canada), as amended from time to time.
- (d) **Delivery Point** means the place for delivery specified in this Purchase Agreement as the ship to location and, if not specified in the Purchase Agreement, means the City's corporate office located at 1 Main St. S, Kenora, ON;
- (e) **Goods** means all goods, materials and equipment that are to be provided by the Supplier to the City as set out in **Schedule "A"** hereto.

- (f) **HST** means the harmonized provincial and federal goods and services tax as may be applicable from time to time.
- (g) **MSDS** means the “material safety data sheets” to be provided to the City for Goods that are Controlled Products.
- (h) **Price** means the price of the Goods as set out in **Schedule “A”**.
- (i) **Purchase Agreement** means collectively, these Purchase Agreement terms and conditions, all schedules attached hereto and includes all descriptions of the Goods and the specifications and drawings attached to or referenced in those documents.
- (j) **Scheduled Delivery Date** means the date, or dates, upon which the Goods are to be delivered to the Delivery Point as set out in this Purchase Agreement and, if not specified in the Purchase Agreement, means a reasonable time, in accordance with industry practice, after the execution of the Purchase Agreement.
- (k) **Supplier** means the party identified as the Supplier in this Purchase Agreement.

2. SUPPLIER’S OBLIGATIONS

- 2.1 The Supplier acts solely as an independent contractor in the manufacture, provision, or maintenance of the Goods. Nothing herein shall create an agency, employment, joint-venture, or partnership relationship between the Supplier and the City.
- 2.2 The Supplier shall provide all Goods to the Delivery Point in strict compliance with this Purchase Agreement and all applicable law.
- 2.3 If a particular purpose for or use of the Goods is specified in this Purchase Agreement, the Supplier represents and warrants that the Goods will, upon delivery to the City, be fit for that purpose or use.
- 2.4 The Supplier represents and warrants that:
 - (a) the Goods will conform with all requirements of this Purchase Agreement and the law;
 - (b) the Goods will be free and clear of any encumbrances;
 - (c) the Goods will be merchantable, of good quality and free from defects in material and workmanship; and
 - (d) the Supplier shall comply with all applicable laws, regulations, by-laws and codes and shall obtain all necessary licenses, permits or approvals required in connection with the delivery of the Goods.
- 2.5 The Supplier warrants that the shipping and handling of controlled products or hazardous materials will be made in accordance with the applicable laws in force at the time of shipment.

3. SCHEDULED DELIVERY DATE AND METHOD OF SHIPMENT

- 3.1 If a Scheduled Delivery Date is specified, delivery of the Goods by the Scheduled Delivery Date is critical to the City. For greater certainty, time is of the essence in respect of this Agreement.
- 3.2 If the Supplier anticipates or has knowledge that it will be unable to deliver the Goods by the Scheduled Delivery Date, the Supplier shall promptly notify the City in writing of this and include in such notice, any new information about the delivery date for the Goods.
- 3.3 Failure on the part of the Supplier to deliver the Goods within sixty (60) days of the original Scheduled Delivery Date will entitle the City to terminate this Agreement, without any liability to the City, upon which the City shall receive a full reimbursement of the Price, or any portion thereof, paid to the Supplier.
- 3.4 Shipments must be made according to the shipping instructions in this Purchase Agreement and to the Delivery Point.
- 3.5 The Supplier is responsible for delivering the Goods to the Delivery Point and is responsible for all costs associated with bringing the Goods to the Delivery Point, including, but not limited to, any import duties and taxes.
- 3.6 No charges for freight, transportation, insurance, shipping, storage, handling, demurrage, cartage, packaging or similar charges will be allowed, unless specified in this Purchase Agreement or otherwise agreed to in writing by the City.
- 3.7 All packing cases, bales, cartons and other containers in which the Goods may be shipped shall become, without charge, the City's property upon acceptance, unless otherwise stipulated in this Purchase Agreement.

4. ACCEPTANCE

- 4.1 The Supplier bears all risk of loss or damage to the Goods until Acceptance of the Goods by the City. Title to and risk of the Goods shall only transfer to the City upon the Acceptance of the Goods by the City.
- 4.2 The Goods shall be subject to inspection by the City upon delivery. The City shall not be deemed to have accepted the Goods unless and until the City actually receives and inspects the Goods to its satisfaction.

5. CHANGES

- 5.1 The City shall be entitled to make changes to this Purchase Agreement where agreed to in writing with the Supplier. Changes to Purchase Agreements will only be effective when authorized by a signed Change Order issued by the City and signed by the Supplier.

6. RETURN OF GOODS

- 6.1 In the event that the City determines that the quality of the Goods is deficient, or that the Goods are in any way non-compliant with this Agreement, as determined in its sole discretion, the City may, upon notice to the Supplier, return the Goods, at the Supplier's expense and risk of loss, whereupon the Supplier shall, acting on the City's direction, either:

- (a) provide the City with replacement Goods of acceptable quality, at no additional charge to the City; or
- (b) reimburse the City in an amount equal to the original purchase Price of the returned Goods within sixty (60) days of receiving notice of the deficiency or non-compliance of the Goods from the City.

7. PRICING

- 7.1 The Supplier accepts the Price as the final, all-inclusive price for the Goods (excluding HST). HST, as applicable, must be shown separately on all invoices together with a valid business registration number.
- 7.2 Any variance from this Price must be negotiated and approved by a Change Order.

8. PAYMENT

- 8.1 The Supplier shall issue invoices to the City in accordance with **Schedule “A”** and shall only be entitled to invoice for the Price and shall not invoice at higher prices. Subject to the terms of this Agreement, and the verification of the invoice by the City, the City shall pay the Supplier the amount set out in the invoice within thirty (30) days of receipt of the same
- 8.2 The Supplier must submit invoices in relation to this Purchase Agreement to:

City of Kenora
1 Main Street South
Kenora ON
P9N 3X2

*Invoice shall include the City purchaser’s name

- 8.3 Payment discounts will be calculated from the date the invoice is received or the date the Goods are received, whichever occurs later.
- 8.4 Unless otherwise indicated in this Purchase Agreement, all sums of money payable hereunder shall be paid in lawful money of Canada.
- 8.5 The City may set-off any amount owed by the Supplier to the City, for any reason, from any amount owing to the Supplier under this Purchase Agreement. This right is in addition to, and not in substitution for, any other right at law or in equity which the City may have. The exercise by the City of the rights set out in this Section shall not limit or prejudice any other rights of the City, howsoever arising and the City’s rights set out in this section shall survive the expiry or termination of this Purchase Agreement.

9. CUSTOMS AND TAXES

- 9.1 All HST and Canadian customs duty entitlements and tax or custom duty rate decreases and exemptions resulting from amendments, re-classifications, remissions, or clarifications thereof on tax and duty-included goods and materials, whether recognized or not, shall be passed on to the City, excluding any taxes based upon or determined by reference to the Supplier’s income which are the responsibility of the Supplier.

10. INDEMNIFICATION

- 10.1 The Supplier shall at all times and without limitation, be fully liable for, and shall indemnify and save harmless the City, its elected officials, designated officers, employees, personnel, volunteers, insurers and agents from and against all liabilities, losses, injuries, costs, damages, legal fees (on a solicitor and his own client full indemnity basis), disbursements, fines, penalties, expenses, all manner of actions, causes of action, claims, demands and proceedings, all of whatever nature and kind, which any of the City, its elected officials, designated officers, employees, personnel, volunteers, insurers and agents may sustain, pay or incur or which may be brought or made against all or any of them, and whether or not incurred in connection with any action or other proceedings or claims or demands made by third parties with respect to any occurrence, event, incident or matter caused by, and/or arising as a direct or indirect result of:
- (a) the misconduct, negligent action or negligent failure to act, as the case may be, of the Supplier and/or any of those persons for whom the Supplier is responsible at applicable law (including, without limitation, any of its employees or subcontractors); or
 - (b) the costs of repairs, clean-up or restoration paid by the City and any fines levied against the City or the Supplier; or
 - (c) any breach, violation or non-performance of any representation, warranty, obligation, covenant, condition or agreement in this Purchase Agreement set forth and to be fulfilled, kept, observed or performed, as the case may be; or
 - (d) any damages to third parties caused by, resulting at any time from, arising out of or in consequence of the misconduct, breach of contract, negligent action or failure to act of the Supplier and/or any of those persons for whom the Supplier is responsible at applicable law (including, without limitation, any of its employees or subcontractors).
- 10.2 The provisions of this Section are in addition to and shall not prejudice any other rights the City has at law or in equity. This Section shall survive the termination or expiry of this Purchase Agreement for any reason whatsoever.
- 10.3 The City is not liable for loss of or damage to personal property belonging to the Supplier however caused. The Supplier hereby releases the City from any claims resulting directly or indirectly from such property damage.

11. SAFETY

- 11.1 While delivering the Goods, the Supplier will comply with all applicable statutes, regulations, codes, by-laws, rules, order, policies and procedures enacted by the City as amended from time to time, howsoever enacted or imposed by a jurisdiction having authority.
- 11.2 All applicable MSDS' must be provided, prior to or with the delivery of the Goods, for any controlled products. If the MSDS' have not been received by the City prior to or with the delivery of Goods that are Controlled Products, the Goods may be shipped back to the Supplier at the Supplier's expense.
- 11.3 If applicable, the Goods must be transported by the Supplier or Supplier's agent in accordance with all applicable law governing the handling and transportation of Controlled Products or dangerous goods.

12. ETHICAL BUSINESS PRACTICES

- 12.1 A Supplier shall not allow gifts, gratuities, discounts, special services or personal benefits to be provided or offered to any employee, representative, official or consultant of the City from the Supplier or any of its employees or representatives.
- 12.2 The Supplier shall report to the City any attempt by any employee, representative, official or consultant of the City to obtain any gifts, gratuities, discounts, special services or personal benefits.

13. ROYALTIES AND PATENTS

- 13.1 The Supplier shall pay any applicable royalties, patent, license fees and other similar fees required for the supply of the Goods under this Purchase Agreement.
- 13.2 The Supplier shall, at its own expense, defend all suits and proceedings against the City and indemnify the City against any award of damages, demands, losses or costs made against the City if such suits or proceedings are based on any claim that any of the Goods constitute an infringement of a third party's intellectual property rights.
- 13.3 If any of the Goods constitute an infringement of any third party's intellectual property rights and the use of the goods is enjoined, the Supplier shall, at its own expense, procure for the City the right to continue using the Goods, or, if that is not possible, shall, at the City's option, replace or modify the Goods so the Goods become non-infringing and meet the City's requirements or pay the City for loss of use of the Goods and for damages (both direct and consequential) which the City incurs or suffers as a result of the infringement.

14. INSURANCE REQUIREMENTS

- 14.1 The Supplier shall, at its own expense, maintain and carry insurance policies with such coverage and limits as would be maintained and carried by a prudent supplier of the Goods.

15. WARRANTY

- 15.1 The Supplier shall provide a one (1) year warranty, or such longer period as may be specified for certain materials, products, or features of the Goods, effective as of the date the Goods are Accepted by the City, during which the Supplier expressly warrants that the Goods shall be:
 - (a) of merchantable quality and free from defects in workmanship and materials;
 - (b) fit for their intended purpose;
 - (c) in conformity with any samples, specifications, and drawings, as applicable;
 - (d) new, unless otherwise agreed to by the City;
 - (e) free and clear of any liens, charges or encumbrances; and
 - (f) compliant with all applicable federal, provincial and municipal laws, regulations, standards and codes. With this Purchase Agreement, the law, and good workmanship in every respect.

- 15.2 During the warranty period, all materials and labour or replacement goods, including shipping, will be provided promptly at the Supplier's sole cost, including any cost to remove and replace any other affected work or property, to ensure that the Goods comply with this Purchase Agreement, the law, and good workmanship in every respect.
- 15.3 The Supplier shall assign to the City any manufacturer warranties for Goods supplied to the City under this Agreement that were not manufactured by or for Supplier, and shall take all necessary steps as required to affect the assignment of such warranties to City.
- 15.4 Nothing in this Purchase Agreement negates any warranty or condition applicable pursuant to *Sale of Goods Act* (Ontario).

16. DEFAULT

- 16.1 If the Supplier should be adjudged bankrupt, or makes a general assignment for the benefit of creditors, or is insolvent, or if a receiver is appointed, the City may, without prejudice to any other right or remedy the City may have at law or equity, by giving the Supplier notice in writing, terminate this Purchase Agreement, in whole or in part.
- 16.2 If the City terminates this Purchase Agreement, in whole or in part, as provided in Section 16.1, the City shall be entitled to do the following without prejudice to any other right or remedy the City may have under this Purchase Agreement at law or equity:
- (a) take possession of finished Goods not yet delivered to the City and complete, or have completed by others and by whatever method the City may consider appropriate or expedient, the performance of this Purchase Agreement, and
 - (b) charge the Supplier the amount by which the full cost of finishing the performance of this Purchase Agreement, and a reasonable allowance to cover the cost of corrections to work performed by the Supplier that may be required, exceeds the unpaid balance of the price indicated in this Purchase Agreement.

17. NO ASSIGNMENT OF PURCHASE AGREEMENT

- 17.1 This Purchase Agreement may not be assigned or transferred by the Supplier without the prior written consent of the City.

18. PRECEDENCE

- 18.1 This Purchase Agreement, shall, when accepted by the Supplier and the City, constitute the contract between the Supplier and the City and shall not be altered, amended or supplemented without the City's written approval.
- 18.2 The City does not accept the Supplier's terms and conditions of sale, if any. Any terms and conditions proposed by the Supplier that are inconsistent with or in addition to the terms and conditions of this Agreement are void and of no effect, whether provided in an invoice, confirmation of purchase or other document.

19. APPLICABLE LAW

- 19.1 This Purchase Agreement is governed by the laws of the Province of Ontario and the parties agree to submit to the exclusive jurisdiction of the courts in the Province of Ontario in all matters relating to this Purchase Agreement.

20. SEVERABILITY

- 20.1 If any provision, or part thereof, of this Purchase Agreement including, without limitation, these terms and conditions, is determined to be invalid or unenforceable for any reason whatsoever, that unenforceability or invalidity shall not affect the enforceability or validity of the remainder of such Purchase Agreement and such provision or part thereof shall be severed from such Purchase Agreement.

21. SURVIVAL

- 21.1 The terms and provisions of this Purchase Agreement which, by their context, are meant to survive the completion of the supply of Goods or the termination of this Purchase Agreement, shall so survive and shall not be merged therein or therewith.

22. WAIVER

- 22.1 Failure by either party to enforce any of its rights under these Terms and Conditions in a particular instance shall neither constitute a waiver of its rights under these Terms and Conditions, nor shall it constitute a continuing waiver or preclude subsequent enforcement thereof.

23. NOTICES

- 23.1 The execution of these Terms and Conditions, or any acceptance or ancillary documents thereto, may be communicated by facsimile transmission or email and documents executed and/or delivered by electronic means shall be deemed to be an original document.

24. COUNTERPARTS

- 24.1 This Agreement may be executed and delivered in any number of counterparts, by facsimile copy, by electronic or digital signature or by other written acknowledgement of consent and agreement to be legally bound by its terms. Each counterpart when so executed and delivered will be considered an original but all counterparts taken together constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have executed this Purchase Agreement on the day and year first written above.

CORPORATION OF THE CITY OF KENORA

Per: _____

Per: Andrew Poirier, Mayor

Per: _____

Per: Heather Pihulak, City Clerk

[INSERT NAME OF SUPPLIER]

Per: _____

Per: _____

SCHEDULE "A"

GOODS, PRICE

Intentionally left blank