



# 971-2022 ADDENDUM 5

## REHABILITATION OF ROUTE 90 CULVERT OVER OMAND'S CREEK

### URGENT

**PLEASE FORWARD THIS DOCUMENT TO WHOEVER IS IN POSSESSION OF THE BID/PROPOSAL**

ISSUED: March 27, 2023  
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**THIS ADDENDUM SHALL BE INCORPORATED INTO THE BID/PROPOSAL AND SHALL FORM A PART OF THE CONTRACT DOCUMENTS**

Template Version: Add 2021-03-05

**Please note the following and attached changes, corrections, additions, deletions, information and/or instructions in connection with the Bid/Proposal, and be governed accordingly. Failure to acknowledge receipt of this Addendum in Paragraph 10 of Form A: Bid/Proposal may render your Bid/Proposal non-responsive.**

### PART D – SUPPLEMENTAL CONDITIONS

Add: D1.2 Notwithstanding C17.1, the Contractor shall save harmless and indemnify the City **in the amount of twice the Contract Price or five million dollars (\$5,000,000), whichever is greater**, against all costs, damages or expenses arising from actions, claims, demands and proceedings, by whomsoever brought, made or taken as a result of **negligent** acts or omissions of the Contractor, his Subcontractors, employees or agents in the performance or purported performance of the Work, and more particularly from:

- (a) accidental injury to or death of any person whether retained by or in the employ of the Contractor or not, arising directly or indirectly by reason of the performance of the Work, or by reason of any trespass on or damage to property;
- (b) damage to any property owned in whole or in part by the City, or which the City by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain;
- (c) damage to, or trespass or encroachment upon, property owned by persons other than the City;
- (d) any claim for lien or trust claim served upon the City pursuant to The Builders' Liens Act;
- (e) failure to pay a Workers Compensation assessment, or Federal or Provincial taxes;
- (f) unauthorized use of any design, device, material or process covered by letters patent, copyright, trademark or trade name in connection with the Work;
- (g) inaccuracies in any information provided to the City by the Contractor.

Replace: D35 to read:

#### **D35 DISPUTE RESOLUTION**

- D35.1 If the Contractor disagrees with any opinion, determination, or decision of the Contract Administrator, the Contractor shall act in accordance with the Contract Administrator's opinion, determination, or decision unless and until same is modified by the process followed by the parties pursuant to D35.
- D35.2 The entire text of C21.4 is deleted, and amended to read: "Intentionally Deleted"
- D35.3 The entire text of C21.5 is deleted, and amended to read: "**Intentionally Deleted**"

Delete D35.3(a)

D35.4 Further to C21, prior to the Contract Administrator's issuance of a Final Determination, the following informal dispute resolution process shall be followed where the Contractor disagrees with any opinion, determination, or decision of the Contract Administrator ("Dispute"):

(a) In the event of a Dispute, attempts shall be made by the Contract Administrator and the Contractor's equivalent representative to resolve Disputes within the normal course of project dealings between the Contract Administrator and the Contractor's equivalent representative.

(b) Disputes which in the reasonable opinion of the Contract Administrator or the Contractor's equivalent representative cannot be resolved within the normal course of project dealings as described above shall be referred to a without prejudice escalating negotiation process consisting of, at a minimum, the position levels as shown below and the equivalent Contractor representative levels:

(i) The Contract Administrator;

(ii) Supervisory level between the Contract Administrator and applicable Department Head;

(iii) Department Head.

D35.4.1 Names and positions of Contractor representatives equivalent to the above City position levels shall be determined by the Contractor and communicated to the City at the pre-commencement or kick off meeting.

D35.4.2 As these negotiations are not an adjudicative hearing, neither party may have legal counsel present during the negotiations.

D35.4.3 Both the City and the Contractor agree to make all reasonable efforts to conduct the above escalating negotiation process within twenty (20) Business Days, unless both parties agree, in writing, to extend that period of time.

D35.4.4 If the Dispute is not resolved to the City and Contractor's mutual satisfaction after discussions have occurred at the final escalated level as described above, or the time period set out in D35.4.3, as extended if applicable, has elapsed, the Contract Administrator will issue a Final Determination as defined in C1.1(v), at which point the parties will be governed by the Dispute Resolution process set out in C21.

### Appeals & Requests for Appeals

Add D35.5 The entire text of C21.1 is deleted, and amended to read:

If the Contractor disagrees with a Final Determination of the Contract Administrator he may, within **ten (10) Business Days** after receiving notice of the Contract Administrator's Final Determination, submit a properly completed **Appeal Form, in the format set out on the City's Materials Management Website, to the Chief Administrative Officer, and to the Contract Administrator and email it to [disputeresolution@winnipeg.ca](mailto:disputeresolution@winnipeg.ca) copying the Contract Administrator. The Contractor may not raise any other disputes other than the Disputed Matter in his Appeal Form.**

Add D35.6 The entire text of C21.2 is deleted, and amended to read: "Intentionally Deleted"

Add D35.7 The entire text of C21.3 is deleted, and amended to read: "Intentionally Deleted"

Add D35.8 The entire text of C21.4 is deleted, and amended to read: "Intentionally Deleted"

Add D35.9 The entire text of C21.5 is deleted, and amended to read: "Intentionally Deleted"

Add D35.10 The entire text of C21.6 is deleted, and amended to read:

The Contract Administrator shall submit an Appeal Form identifying his Department's position to the Chief Administrative Officer and to the Contractor within ten (10) Business Days of the Contract Administrator's receipt of the Contractor's Appeal Form submitted pursuant to **D35.5**.

Add D35.11 The entire text of C21.7 is deleted, and amended to read:

The Contractor and Contract Administrator's respective Appeal Forms, and documents appended by reference, must contain all information, known to that party to be relevant to the Disputed Matter, including relevant excerpts of the Contract. For the avoidance of doubt, sections of the Contract which are not relevant to the Disputed Matter, or any other irrelevant information or documents, should not be submitted in either Appeal Form.

Add D35.12 The entire text of C21.8 is deleted, and amended to read:

The City's Chief Administrative Officer shall review the Appeal Forms submitted by the Contractor and Contract Administrator, and shall issue a written decision on the Disputed Matter contained therein ("CAO's Determination") within thirty (30) Business Days of his receipt of the Contract Administrator's Appeal Form ("CAO Review Period"). The Chief Administrative Officer may request additional documents or information once from either party at any time during the CAO Review Period, and may extend the CAO Review Period by up to thirty (30) Business Days following receipt of new information or documents, up to a maximum period of sixty (60) Business Days after the Chief Administrative Officer's receipt of the Contract Administrator's Appeal Form. If the Chief Administrative Officer has requested additional information or documentation from one party during the CAO Review Period, the other party shall also receive such additional information or documentation, and may issue a response thereto; however, each party is limited to one (1) additional response during the CAO Review Period.

Add D35.13 The entire text of C21.9 is deleted, and amended to read:

There is no opportunity for the parties to appear in person, or to present oral submissions to the Chief Administrative Officer.

Add D35.14 The entire text of C21.10 is deleted, and amended to read:

The CAO's Determination may not be further appealed. If the Contractor disagrees with the CAO's Determination he may request that the Disputed Matter be referred to arbitration in accordance with C21.11, by providing notice to the Chief Administrative Officer within seven (7) Calendar Days after receiving notice of the Chief Administrative Officer's determination.