



THE CITY OF WINNIPEG

REQUEST FOR PROPOSAL

RFP NO.636-2010

**PROFESSIONAL CONSULTING SERVICES FOR SHOAL LAKE AQUEDUCT ASSET
PRESERVATION PROGRAM**

Proposals shall be submitted to:

**The City of Winnipeg
Corporate Finance Department
Materials Management Division
185 King Street, Main Floor
Winnipeg MB R3B 1J1**

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PART B - BIDDING PROCEDURES

B1. CONTRACT TITLE

B1.1 PROFESSIONAL CONSULTING SERVICES FOR SHOAL LAKE AQUEDUCT ASSET PRESERVATION PROGRAM

B2. SUBMISSION DEADLINE

B2.1 The Submission Deadline is 4:00 p.m. Winnipeg time, October 27, 2010.

B2.2 Proposals determined by the Manager of Materials to have been received later than the Submission Deadline will not be accepted and will be returned upon request.

B2.3 The Project Manager or the Manager of Materials may extend the Submission Deadline by issuing an addendum at any time prior to the time and date specified in B2.1.

B3. SITE INVESTIGATION AND PROPONENTS CONFERENCE

B3.1 Proponents interested in a site investigation of the work areas are required to make an appointment with the Project Manager.

B3.2 The Proponent shall not be entitled to rely on any information or interpretation received at the Site investigation unless that information or interpretation is the Proponent's direct observation, or is provided by the Project Manager in writing.

B4. ENQUIRIES

B4.1 All enquiries shall be directed to the Project Manager identified in D2.

B4.2 If the Proponent finds errors, discrepancies or omissions in the Request for Proposal (RFP), or is unsure of the meaning or intent of any provision therein, the Proponent shall promptly notify the Project Manager of the error, discrepancy or omission at least five (5) Business Days prior to the Submission Deadline.

B4.3 If the Proponent is unsure of the meaning or intent of any provision therein, the Proponent should request clarification as to the meaning or intent prior to the Submission Deadline.

B4.4 Responses to enquiries which, in the sole judgment of the Project Manager, require a correction to or a clarification of the RFP will be provided by the Project Manager to all Proponents by issuing an addendum.

B4.5 Responses to enquiries which, in the sole judgment of the Project Manager, do not require a correction to or a clarification of the RFP will be provided by the Project Manager only to the Proponent who made the enquiry.

B4.6 The Proponent shall not be entitled to rely on any response or interpretation received pursuant to B4 unless that response or interpretation is provided by the Project Manager in writing.

B4.7 Proponents questions will be placed in three different categories:

- (a) proponent Conference Questions;
- (b) general Proponent Questions; and
- (c) confidential Questions.

B4.7.1 Proponents must submit their questions in writing in accordance B5.1. Questions not marked "Confidential" will be considered "General".

B4.7.2 The Project Manager may determine that a "Confidential" question requires clarification to all Proponents. In that case, the Project Manager will notify the Proponent who submitted

the question and request that they revise the "Confidential" label to read "General". If the question remains "Confidential", the Project Manager reserves the right to not provide an answer.

- B4.7.3 Questions in B4.7(a) and B4.7(b) will be answered by Addenda. Questions in B4.7(c) will be answered, in writing, to the Proponent that issued the Question.
- B4.8 Proponents shall submit questions to the Project Manager at least five (5) Business Days prior to the Submission Deadline.
- B4.9 The Project Manager will issue each Addendum in accordance with B6.2.

B5. CONFIDENTIALITY

- B5.1 Information provided to a Proponent by the City or acquired by a Proponent by way of further enquiries or through investigation is confidential. Such information shall not be used or disclosed in any way without the prior written authorization of the Project Manager. The use and disclosure of the confidential information shall not apply to information which:
- (a) was known to the Proponent before receipt hereof; or
 - (b) becomes publicly known other than through the Proponent; or
 - (c) is disclosed pursuant to the requirements of a governmental authority or judicial order.
- B5.2 The Proponent shall not make any statement of fact or opinion regarding any aspect of the Request for Proposals to the media or any member of the public without the prior written authorization of the Project Manager.

B6. ADDENDA

- B6.1 The Project Manager may, at any time prior to the Submission Deadline, issue addenda correcting errors, discrepancies or omissions in the Request for Proposal, or clarifying the meaning or intent of any provision therein.
- B6.2 The Project Manager will issue each addendum at least two (2) Business Days prior to the Submission Deadline, or provide at least two (2) Business Days by extending the Submission Deadline.
- B6.2.1 Addenda will be available on the Bid Opportunities page at The City of Winnipeg, Corporate Finance, Materials Management Division website at <http://www.winnipeg.ca/matmgt/bidopp.asp>
- B6.2.2 The Proponent is responsible for ensuring that he has received all addenda and is advised to check the Materials Management Division website for addenda regularly and shortly before the Submission Deadline, as may be amended by addendum.
- B6.3 The Proponent shall acknowledge receipt of each addendum in Paragraph 9 of Form A: Proposal. Failure to acknowledge receipt of an addendum may render a Proposal non-responsive.
- B6.4 Proponents are entirely responsible for disseminating information regarding Addenda to any person(s) involved in this Project.

B7. PROPOSAL SUBMISSION

- B7.1 The Proposal shall consist of the following components:
- (a) Form A: Proposal (Section A);
 - (b) Technical Proposal (Section B);
 - (c) Management Proposal (Section C);
 - (d) Experience of Proponent and Key Personnel; (Section D)

- (e) Project Schedule (Section E); and
- (f) Fee Proposal (Section F).

- B7.2 Further to B7.1, all components of the Proposal shall be fully completed or provided in the order indicated, and submitted by the Proponent no later than the Submission Deadline, with all required entries made clearly and completely, to constitute a responsive Proposal.
- B7.3 Proponents should submit one (1) unbound original (marked "original"), one (1) electronic copy in PDF format and six hard (6) copies for sections identified in B7.1.
- B7.4 The Proposal shall be limited to a maximum of thirty (30) pages of Project specific material and a maximum of twenty (20) pages of support documentation including curriculum vitae and related information.
- B7.5 Proposals should be presented in the sections identified above with a minimum font size of 10. Proponents are encouraged to use their creativity to submit a Proposal which provides the requested information for evaluation and other information which illustrates the strength of their team.
- B7.6 Proponents are advised that inclusion of terms and conditions inconsistent with the Request for Proposal will be evaluated in accordance with B20.1(a).
- B7.7 The Proposal shall be submitted enclosed and sealed in an envelope/package clearly marked with the RFP number and the Proponent's name and address.
- B7.8 Proposals submitted by facsimile transmission (fax) or internet electronic mail (e-mail) will not be accepted.
- B7.9 Proposals shall be submitted to:
The City of Winnipeg
Corporate Finance Department
Materials Management Division
185 King Street, Main Floor
Winnipeg MB R3B 1J1
- B7.10 Any cost or expense incurred by the Proponent that is associated with the preparation of the Proposal shall be borne solely by the Proponent.

B8. PROPOSAL (SECTION A)

- B8.1 The Proponent shall complete Form A: Proposal, making all required entries.
- B8.2 Paragraph 2 of Form A: Proposal shall be completed in accordance with the following requirements:
- (a) if the Proponent is a sole proprietor carrying on business in his own name, his name shall be inserted;
 - (b) if the Proponent is a partnership, the full name of the partnership shall be inserted;
 - (c) if the Proponent is a corporation, the full name of the corporation shall be inserted; and
 - (d) if the Proponent is carrying on business under a name other than his own, the business name and the name of every partner or corporation who is the owner of such business name shall be inserted.
- B8.2.1 If a Proposal is submitted jointly by two or more persons, each and all such persons shall identify themselves in accordance with B8.2.
- B8.3 In Paragraph 3 of Form A: Proposal, the Proponent shall identify a contact person who is authorized to represent the Proponent for purposes of the Proposal.

- B8.4 Paragraph 11 of Form A: Proposal shall be signed in accordance with the following requirements:
- (a) if the Proponent is a sole proprietor carrying on business in his own name, it shall be signed by the Proponent;
 - (b) if the Proponent is a partnership, it shall be signed by the partner or partners who have authority to sign for the partnership;
 - (c) if the Proponent is a corporation, it shall be signed by its duly authorized officer or officers and the corporate seal, if the corporation has one, should be affixed; and
 - (d) if the Proponent is carrying on business under a name other than his own, it shall be signed by the registered owner of the business name, or by the registered owner's authorized officials if the owner is a partnership or a corporation.
- B8.4.1 The name and official capacity of all individuals signing Form A: Proposal should be printed below such signatures.

B8.5 If a Proposal is submitted jointly by two or more persons, the word "Proponent" shall mean each and all such persons, and the undertakings, covenants and obligations of such joint Proponents in the Proposal and the Contract, when awarded, shall be both joint and several.

B9. TECHNICAL PROPOSAL (SECTION B)

B9.1 The Technical Proposal shall specifically address the requirements outlined in D5. It should clearly identify and explain work activities and identify all significant assumptions and interpretations, examples of which include but are not limited to activities and services to be undertaken by the City and equipment and supplies to be provided by the City.

B9.2 The Technical Proposal should address:

- (a) the Proponent's understanding of the Project and objectives;
- (b) the Proponent's approach and methodology to complete the objectives; and
- (c) any initiative and innovation to be used to perform the Services.

B9.3 Project methodology should be presented in accordance with the following Scope of Service phases:

- (a) preliminary design;
- (b) detailed design (assume 99% design); and
- (c) contract administration.

B9.4 Refer to Appendix B for definition of standard consulting engineering services

B9.5 For each person identified list the percent of time to be dedicated to the Project. Provide information in accordance with the Scope of Work identified in D5.

B10. MANAGEMENT PROPOSAL (SECTION C)

B10.1 Describe your firm's Project management approach and team organization during the performance of Services, so that the evaluation committee has a clear understanding of the methods the Proponent will use in the delivery of this Project.

B10.2 The Management Proposal should identify:

- (a) job function for each identified individual and group of individuals (committee, team, etc.);
- (b) time estimates by work activity and in total for each identified individual;
- (c) cumulative workload distributions by work activity and in total for the prime and each Subconsultant; and
- (d) include an organizational chart for the Project.

B10.3 The Management Proposal should identify all activities to be performed outside the City of Winnipeg by either the Proponent's staff or by Subconsultants. Proposed arrangements involving out-of-town staff to participate in coordination and review functions shall be identified.

B10.4 Proponents are encouraged to identify any programs, procedures, systems, or techniques used to demonstrate sophisticated levels of management, cost control or quality control normally used or proposed to be used for the Project

B11. EXPERIENCE OF PROPONENT AND KEY PERSONNEL (SECTION D)

B11.1 The Proposal should include general firm profile information, including years in business, average volume of work, number of employees and other pertinent information for the Proponent and all Subconsultants.

B11.2 Include details demonstrating the history and experience of the Proponent and Subconsultants in providing design, management of construction and contract administration services on up to **three** Projects of similar size and complexity to the scope of work identified in D5.

B11.3 For each Project listed in B11.2, the Proponent should submit:

- (a) description of the Project;
- (b) role of the Consultant;
- (c) Project's original contracted construction cost and final construction cost;
- (d) design and construction schedule (anticipated Project schedule and actual Project delivery schedule, showing design and construction separately);
- (e) Project owner; and
- (f) reference information (two current names with telephone numbers per Project).

B11.3.1 Where applicable, information should be separated into Proponent and Subconsultant Project listings.

B11.4 Submit the experience and qualifications of the key personnel assigned to the Project. Include educational background and degrees, professional recognition, job title, years of experience in current position, years of experience in design and construction, and years of experience with existing employer.

B11.5 For each person identified, list at least two to a maximum of four comparable Projects in which they have played a primary role. If a Project selected for a key person is included in B11.3, provide only the Project name and the role of the key person. For other Projects provide the following:

- (a) brief description of Project;
- (b) role of the person;
- (c) Project owner; and
- (d) reference information (two current names with telephone numbers per Project).

B12. PROJECT SCHEDULE (SECTION E)

B12.1 Proponents should present a carefully considered Critical Path Method schedule using Microsoft Project or similar Project management software, complete with resource assignments (key designers), durations (weekly timescale) and milestone dates or events. The schedule should address each work area identified in D5 and each phase of the Consultant Scope of Services.

B12.2 The Proponent's schedule should include critical dates for review and approval processes by the City and other organizations anticipated during the design and tendering phases of the Project. Reasonable times should be allowed for completion of these processes.

B12.3 The Project schedule shall include progress meetings for presentation of Project information for each scope of service identified in D5.

B12.4 The Proponent shall allow for weekly meetings during the construction phase.

B13. FEE PROPOSAL (SECTION F)

B13.1 Fee Proposals shall conform to the "Association of Professional Engineers and Geoscientists of the Province of Manitoba (APEGM) - Guide for the Engagement of a Consulting Professional Engineer", January 2008; Rate Revised January 2010.

B13.2 The Proposal shall include a fixed fee for all disciplines, identified and necessary, for each Scope of Service identified in D5.

B13.2.1 Adjustments to the fixed fee will only be considered based on increases to the Scope of Services.

B13.2.2 The City will not consider an adjustment to the fixed fee based on changes in the Project budget.

B13.3 Each area of work shall be presented in preliminary design, detailed design or contract administration as indicated in the Scope of Services..

B13.4 Details of the Scope of Services are provided under D5.

B13.4.1 All fees are to be quoted in **2011 Canadian dollars**. Fee estimates shall detail hourly rates, work activity costs, total cost for each work area identified in D5 and total costs for each year of the Project.

B13.4.2 Annual cost of living increases to the annual fee subtotals will be permitted.

B13.5 The Fee Proposal shall also include an allowance for Allowable Disbursements as defined in C1.1(b), but shall exclude the costs of any materials testings, soils and hazardous materials investigations during construction.

B13.6 The City is prepared to pay directly to the provider of large disbursements such as equipment rentals and testing services from outside suppliers or agencies.

B13.7 As an option to paying rental charges, the City may choose to purchase any new equipment (including computer software) as a disbursement for the proponent's use in this Project. The City would then take possession of the equipment at the end of the Project.

B13.8 The City will take possession of all non-consumable disbursement items either during the course of the Project or at Project completion and to this end an inventory of these items including their disposition shall be prepared and maintained. As this assignment may require the loaning of City records in original form, an inventory of these items shall be prepared and maintained.

B13.9 Notwithstanding C10.1, fees submitted shall not include the Goods and Services Tax (GST) or Manitoba Retail Sales Tax (MRST, also known as PST), which shall be extra where applicable.

B13.10 Payments to Non-Resident Consultants are subject to Non-Resident Withholding Tax pursuant to the Income Tax Act (Canada).

B13.11 For cost tracking and control purposes, invoices shall relate actual costs as a minimum to each work area and phase specified in D5.

B14. QUALIFICATION

B14.1 The Proponent shall:

- (a) undertake to be in good standing under The Corporations Act (Manitoba), or properly registered under The Business Names Registration Act (Manitoba), or otherwise properly

- registered, licensed or permitted by law to carry on business in Manitoba, or if the Proponent does not carry on business in Manitoba, in the jurisdiction where the Proponent does carry on business;
- (b) be financially capable of carrying out the terms of the Contract;
 - (c) have all the necessary experience, capital, organization, and equipment to perform the Services in strict accordance with the terms and provisions of the Contract; and
 - (d) have or establish and staff an office in Winnipeg for the duration of the Project.
- B14.2 The Proponent and any proposed Subconsultant (for the portion of the Services proposed to be subcontracted to them) shall:
- (a) be responsible and not be suspended, debarred or in default of any obligations to the City. A list of suspended or debarred individuals and companies is available on the Information Connection page at The City of Winnipeg, Corporate Finance, Materials Management Division website at <http://www.winnipeg.ca/matmgt/debar.stm>
- B14.3 The Proponent and/or any proposed Subconsultant (for the portion of the Services proposed to be subcontracted to them) shall:
- (a) have successfully carried out services for the design, management of construction and contract administration for engineering Projects of similar complexity, scope and value; and to those required for this Project;
 - (b) be fully capable of performing the Services required to be in strict accordance with the terms and provisions of the Contract;
 - (c) have a written workplace safety and health program, if required, pursuant to The Workplace Safety and Health Act (Manitoba);
 - (d) have the knowledge and resources to administer the requirements of The Workplace Safety and Health Act (Manitoba) during the construction works associated with this Contract; and
 - (e) undertake to meet all licensing and regulatory requirements of the appropriate governing authorities and associations in the Province of Manitoba.
- B14.4 The Proponent shall submit, within three (3) Business Days of a request by the Project Manager, further proof satisfactory to the Project Manager of the qualifications of the Proponent and of any proposed Subconsultant.
- B14.5 The Proponent shall provide, on the request of the Project Manager, full access to any of the Proponent's equipment and facilities to confirm, to the Project Manager's satisfaction, that the Proponent's equipment and facilities are adequate to perform the Services.
- B15. OPENING OF PROPOSALS AND RELEASE OF INFORMATION**
- B15.1 Proposals will not be opened publicly.
- B15.2 After award of Contract, the name(s) of the successful Proponent and the Contract Amount(s) will be available on the Closed Bid Opportunities (or Public/Posted Opening & Award Results) page at The City of Winnipeg, Corporate Finance, Materials Management Division website at <http://www.winnipeg.ca/matmgt>
- B15.3 To the extent permitted, the City shall treat all Proposal Submissions as confidential. However, the Proponent is advised that any information contained in any Proposal may be released if required by City policy or procedures, by The Freedom of Information and Protection of Privacy Act (Manitoba), by other authorities having jurisdiction, or by law.
- B15.4 Following the award of Contract, a Proponent will be provided with information related to the evaluation of his submission upon written request to the Project Manager.

B16. IRREVOCABLE OFFER

- B16.1 The Proposal(s) submitted by the Proponent shall be irrevocable for the time period specified in Paragraph 10 of Form A: Proposal.
- B16.2 The acceptance by the City of any Proposal shall not release the Proposals of the other responsive Proponents and these Proponents shall be bound by their offers on such Services until a Contract for the Services has been duly executed as herein provided, but any offer shall be deemed to have lapsed unless accepted within the time period specified in Paragraph 10 of Form A: Proposal.

B17. WITHDRAWAL OF OFFERS

- B17.1 A Proponent may withdraw his Proposal without penalty by giving written notice to the Manager of Materials at any time prior to the Submission Deadline.
- B17.1.1 The time and date of receipt of any notice withdrawing a Proposal shall be the time and date of receipt as determined by the Manager of Materials.
- B17.1.2 The City will assume that any one of the contact persons named in Paragraph 3 of Form A: Proposal or the Proponent's authorized representatives named in Paragraph 11 of Form A: Proposal, and only such person, has authority to give notice of withdrawal.
- B17.1.3 If a Proponent gives notice of withdrawal prior to the Submission Deadline, the Manager of Materials will:
- (a) retain the Proposal until after the Submission Deadline has elapsed;
 - (b) open the Proposal to identify the contact person named in Paragraph 3 of Form A: Proposal and the Proponent's authorized representatives named in Paragraph 11 of Form A: Proposal; and
 - (c) if the notice has been given by any one of the persons specified in B17.1.3(b), declare the Proposal withdrawn.
- B17.2 A Proponent who withdraws his Proposal after the Submission Deadline but before his offer has been released or has lapsed as provided for in B16.2 shall be liable for such damages as are imposed upon the Proponent by law and subject to such sanctions as the Chief Administrative Officer considers appropriate in the circumstances. The City, in such event, shall be entitled to all rights and remedies available to it at law.

B18. INTERVIEWS

- B18.1 The Project Manager may, in his sole discretion, interview Proponents during the evaluation process.

B19. NEGOTIATIONS

- B19.1 The City reserves the right to negotiate details of the Contract with any Proponent. Proponents are advised to present their best offer, not a starting point for negotiations in their Proposal Submission.
- B19.2 The City may negotiate with the Proponents submitting, in the City's opinion, the most advantageous Proposals. The City may enter into negotiations with one or more Proponents without being obligated to offer the same opportunity to any other Proponents. Negotiations may be concurrent and will involve each Proponent individually. The City shall incur no liability to any Proponent as a result of such negotiations.
- B19.3 If, in the course of negotiations pursuant to B19.2 or otherwise, the Proponent amends or modifies a Proposal after the Submission Deadline, the City may consider the amended Proposal as an alternative to the Proposal already submitted without releasing the Proponent from the Proposal as originally submitted.

B20. EVALUATION OF PROPOSALS

B20.1 Award of the Contract shall be based on the following evaluation criteria:

- (a) compliance by the Proponent with the requirements of the Request for Proposal or acceptable deviation therefrom; (pass/fail)
- (b) qualifications of the Proponent and the Subconsultants, if any, pursuant to B14; (pass/fail)
- (c) Technical Proposal;(Section B) 30%
- (d) Management Proposal; (Section C) 5%
- (e) Experience of Proponent and Key Personnel; (Section D) 30%
- (f) Project Schedule; (Section E) 5%
- (g) Fee Proposal. (Section F) 30%

B20.2 Further to B20.1(a), the Award Authority may reject a Proposal as being non-responsive if the Proposal Submission is incomplete, obscure or conditional, or contains additions, deletions, alterations or other irregularities. The Award Authority may reject all or any part of any Proposal, or waive technical requirements or minor informalities or irregularities if the interests of the City so require.

B20.3 Further to B20.1(b), the Award Authority shall reject any Proposal submitted by a Proponent who does not demonstrate, in his Proposal or in other information required to be submitted, that he is responsible and qualified.

B20.4 Further to B20.1 (c), the Technical Proposal shall be evaluated considering the information submitted in accordance with B7.1 and B9.

B20.5 Further to B20.1 (d), the Management Proposal shall be evaluated considering the information submitted in accordance with B7.1 and B10.

B20.6 Further to B20.1 (e), the Experience of Key Personnel assigned to the Project shall be evaluated considering the information submitted in accordance with B7.1 and B11.

B20.7 Further to B20.1 (f), the Project Schedule shall be evaluated considering the information submitted in accordance with B7.1 and B12; and the Proponents ability to comply with the requirements of D10.

B20.8 Further to B20.1 (g), Fee Proposal shall be evaluated considering the information submitted in accordance with B7.1 and B13.

B20.9 Notwithstanding B20.1(c) to B20.1 (g), where Proponents fail to provide responses to B7.1(b) to B7.1(f), the score of zero will be assigned to that Section.

B21. AWARD OF CONTRACT

B21.1 The City will give notice of the award of the Contract, or will give notice that no award will be made.

B21.2 The City will have no obligation to award a Contract to a Proponent, even though one or all of the Proponents are determined to be responsible and qualified, and the Proposals are determined to be responsive.

B21.2.1 Without limiting the generality of B21.2, the City will have no obligation to award a Contract where:

- (a) the prices exceed the available City funds for the Services;
- (b) the prices are materially in excess of the prices received for similar services in the past;

- (c) the prices are materially in excess of the City's cost to perform the Services, or a significant portion thereof, with its own forces;
- (d) only one Proposal is received; or
- (e) in the judgment of the Award Authority, the interests of the City would best be served by not awarding a Contract.

B21.3 Where an award of Contract is made by the City, the award shall be made to the responsible and qualified Proponent submitting the most advantageous offer.

B21.4 The form of Contract with the City of Winnipeg will be based on the Contract as defined in C1.1(n).

B21.5 Following the award of Contract, a Proponent will be provided with information related to the evaluation of his Proposal upon written request to the Project Manager.

B21.5.1 The City may, at its discretion, award the Contract in phases.

B21.6 If, after the award of Contract, the Project is cancelled, the City reserves the right to terminate the Contract. The Consultant will be paid for all Services rendered up to time of termination.

PART C - GENERAL CONDITIONS

C0. GENERAL CONDITIONS

- C0.1 The *General Conditions for Consultant Services* (Revision 2010/06/18) are applicable to the Services of the Contract.
- C0.1.1 The *General Conditions for Consultant Services* are attached as Appendix A.
- C0.2 A reference in the Request for Proposal to a section, clause or subclause with the prefix “**C**” designates a section, clause or subclause in the *General Conditions for Consultant Services*.

PART D - SUPPLEMENTAL CONDITIONS

GENERAL

D1. GENERAL CONDITIONS

D1.1 In addition to the *General Conditions for Consultant Services*, these Supplemental Conditions are applicable to the Services of the Contract.

D2. PROJECT MANAGER

D2.1 The Project Manager is: Ron Sorokowski, P.Eng.

Email: rsorokowski@winnipeg.ca

Telephone No. (204) 986-4472

Facsimile No. (204) 224-0032

D2.2 All correspondence or contact by Proponents with the City in respect of this RFP must be directly and only with the City's Project Manager. Failure to restrict correspondence and contact to the Project Manager may result in the rejection of the Proponent's Proposal Submission.

D2.3 At the pre-commencement meeting, the Project Manager will identify additional personnel representing the Project Manager and their respective roles and responsibilities for the Services.

D3. INTRODUCTION

D3.1 Professional consulting services are required for the Shoal Lake Aqueduct Asset Preservation Program. The scope of work identifies the services required and provides a guideline for Proposal preparation. The scope of work described in D5 is intended to be a general outline of the activities considered appropriate to meet the Project objectives. Proponents are encouraged to use their initiative when developing their Proposals to refine the scope of work activities and propose alternative activities, which they consider appropriate or beneficial to the Project.

D4. BACKGROUND

D4.1 The Shoal Lake Aqueduct, which has been in continuous service since 1910, delivers water to Winnipeg from Shoal Lake, a distance of 156 kilometres. A comprehensive condition assessment and rehabilitation of the Aqueduct commenced in 1988 and was substantially completed in 2004. While the Aqueduct rehabilitation project has resulted in an increase of the Aqueduct's service life by 50 years, ongoing monitoring and inspection programs will identify future works.

D4.2 Works which have been identified include the rehabilitation of drainage siphons crossing the aqueduct, replacement of corroded boathouse access doors and broken vent pipes, re-establishment of a boathouse in proximity of the Whitemouth River and condition inspection and cleaning of the Aqueduct underdrain.

D4.3 The Aqueduct is usually dewatered during periods of inspection and rehabilitation. In order to enhance the dewatering of the Aqueduct, aluminum stop logs are used in strategic locations within the aqueduct to provide dry working conditions. These aluminum stop logs were manufactured by the Water and Waste Department but require structural design verification.

D4.4 Specially constructed manholes exist on various locations along the Aqueduct. These manholes do not accommodate the typical confined entry support equipment. The Water and Waste Department manufactured a safety hoist to suit the existing manholes and is being used on these manholes. The safety hoist requires structural design verification.

D5. SCOPE OF SERVICES

- D5.1 The Shoal Lake Aqueduct Asset Preservation Program includes seven work areas. It is required that these areas of work be described and priced separately. It should be noted that the work areas will not be awarded separately. The seven areas of work shall constitute one contract and shall be awarded as such.
- D5.1.1 Refer to Appendix C for relevant documents.
- D5.2 Detailed design and contract administration are required for the reconstruction of two drainage siphons located at Mile 35.38 and Mile 37.59 along the Shoal Lake Aqueduct.
- D5.2.1 Development of bid opportunity documents, preliminary bid estimate, as-constructed drawings, safety operating protocol for working within or outside the Aqueduct, operating protocol for the Aqueduct are deliverables for this area of work
- D5.3 Preliminary design, detailed design and contract administration are required for the reconstruction of the boathouse located at Mile 83.02 along the Shoal Lake Aqueduct. The works shall include:
- (a) detailed inspection of the existing boathouse;
 - (b) implementation plan for reconstruction of the boathouse. This would include salvaging some or the entire existing superstructure; or construction of a new boathouse superstructure;
 - (c) detailed plan for a temporary support for the electrical and flow monitoring panels. The temporary support shall be functional during the reconstruction of the boathouse;
 - (d) sealing and ventilation of the Aqueduct openings into the boathouse. The Aqueduct openings shall be properly ventilated through the roof of the boathouse;
 - (e) the reconstructed boathouse shall be flood proof as the area is prone to flooding from the Boggy River;
 - (f) changing of the boathouse door to an environmentally suitable option. Security items located on the boathouse shall be re-established;
 - (g) discussions with the security consultant of the Water System Security Upgradings Project currently ongoing. The discussions shall be with respect to the reconstruction of the Mile 83.02 boathouse; and
 - (h) development of road access to the boathouse from an existing road at Mile 82.44 which includes:
 - (i) consulting with Manitoba Hydro regarding the possible relocation of Hydro lines parallel to the Aqueduct within the City's property;
 - (ii) load analysis of the area where the proposed road crosses the Aqueduct; and
 - (iii) insulation and bridging detail where the proposed road crosses the Aqueduct.
- D5.3.1 A preliminary design report, preliminary bid estimate, development of bid opportunity documents, safety operating protocol for working within or outside the Aqueduct and as-constructed drawings are deliverables for this area of work.
- D5.4 Preliminary design, detailed design and contract administration are required for the construction of a new boathouse superstructure at Mile 64.14 along the Shoal Lake Aqueduct. The works shall also include:
- (a) inspection of the adjacent energy dissipation chamber and outfall to the Whitemouth River for condition and required repair of the chamber and outfall ; and
 - (b) possibility of establishing a low level drain pipe from the Aqueduct drain pipe to the energy dissipation chamber or outfall.
- D5.4.1 Preliminary design report, preliminary bid estimate, development of bid opportunity documents, safety operating protocol for working within or outside the Aqueduct, operating

protocol for the Aqueduct and as-constructed drawings are deliverables for this area of work

- D5.5 Inspection of the Aqueduct Underdrain from west of the Floodway to the Tache Booster Pumping Station. This work includes:
- (a) evaluation of the condition and performance of the underdrain;
 - (b) assessment of the condition of the underdrain pipe;
 - (c) recommendation of access upgrades, monitoring and maintenance program;
 - (d) cleaning of underdrains; and
 - (e) closed circuit television inspection of the underdrain pipe in accordance with The City of Winnipeg Standard Construction Specifications.
- D5.5.1 Technical memorandum, preliminary bid estimate, bid opportunity documents are deliverables for this area of work.
- D5.6 Preliminary design and contract administration are required for the supply and installation of all Boathouse doors located at Mile 17.05, Mile 39.39, Mile 42.05, Mile 64.08, Mile 73.63, Mile 73.69, Mile 77.63, Mile 77.67, Mile 82.06, Mile 96.69 and Mile 96.77.
- D5.6.1 The doors shall be environmentally suitable.
- D5.6.2 Consultation with the security consultant on the ongoing Water System Security Upgradings Project is required.
- D5.6.3 Technical memorandum complete with door alternatives and recommendations, preliminary bid estimate, bid opportunity documents, safety operating protocol for working within or outside the Aqueduct, are deliverables for this area of work.
- D5.7 Stop log design verification.
- D5.7.1 Structural detailed design of the stop log with the appropriate safety factor is required.
- D5.7.2 Detailed drawings stamped and sealed by a professional engineer registered in Manitoba are deliverables for this area of work.
- D5.8 Safety hoist design verification.
- D5.8.1 Structural detailed design of the safety hoist with the appropriate safety factor is required to ensure the fabricated hoist is structurally sound.
- D5.8.2 Detailed drawings stamped and sealed by a professional engineer registered in Manitoba are deliverables for this area of work.

SUBMISSIONS PRIOR TO START OF SERVICES

D6. AUTHORITY TO CARRY ON BUSINESS

- D6.1 The Consultant shall be in good standing under The Corporations Act (Manitoba), or properly registered under The Business Names Registration Act (Manitoba), or otherwise properly registered, licensed or permitted by law to carry on business in Manitoba, or if the Consultant does not carry on business in Manitoba, in the jurisdiction where the Consultant does carry on business, throughout the term of the Contract, and shall provide the Project Manager with evidence thereof upon request.

D7. INSURANCE

- D7.1 The Consultant shall procure and maintain, at its own expense and cost, insurance policies with limits no less than those shown below.

- D7.2 As a minimum, the Consultant shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:
- (a) Comprehensive or Commercial General Liability Insurance including:
 - (i) an inclusive limit of not less than \$2,000,000 for each occurrence or accident with a minimum \$2,000,000 Products and Completed Operations aggregate and \$5,000,000 general aggregate;
 - (ii) all sums which the Consultant shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to the Service or any operations carried on in connection with this Contract;
 - (iii) coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, Employees as Additional Insureds, and Non-Owned Automobile Liability;
 - (iv) a Cross Liability clause and/or Severability of Interest Clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder in respect to any claim, demand, suit or judgment made against any other Insured;
 - (v) if applicable, Automobile Liability Insurance covering all motor vehicles, owned and operated and used or to be used by the Consultant directly or indirectly in the performance of the Service. The Limit of Liability shall not be less than \$2,000,000 inclusive for loss or damage including personal injuries and death resulting from any one accident or occurrence.
 - (b) Professional Errors and Omissions Liability Insurance including:
 - (i) an amount not less than 5,000,000 per claim and 5,000,000 in the aggregate.
- D7.2.1 The Consultant's Professional Errors and Omissions Liability Insurance shall remain in force for the duration of the Project and for twelve (12) months after total performance.
- D7.3 The policies required by section D7.2 above shall provide that the City is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.
- D7.4 The Consultant shall require each of its Subconsultants to provide comparable insurance to that set forth under section D7.2(a) and D7.2(b).
- D7.5 The Consultant shall provide the Project Manager with a certificate(s) of insurance for itself and for all of its Subconsultants, in a form satisfactory to the City Solicitor, at least two (2) Business Days prior to the commencement of any Service, but in no event later than the date specified in C4.1 for the return of the executed Contract. Such Certificates shall state the exact description of the Service and provide for written notice in accordance with D7.10.
- D7.6 The Consultant may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City.
- D7.7 All insurance, which the Consultant is required to obtain with respect to this contract, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of Manitoba.
- D7.8 If the Consultant fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to affect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from the Consultant.
- D7.9 The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Consultant or any Subconsultants shall not be held to waive or release the Consultant or Subconsultants from any of the provisions of the insurance requirements or this Contract. Any insurance deductible maintained by the Consultant or any Subconsultants under any of the

insurance policies is solely for their account and any such amount incurred by the City will be recovered from the Consultant as stated in D7.8.

- D7.10 The Consultant shall not cancel, materially alter, or cause any policy to lapse without providing at least thirty (30) Calendar Days prior written notice to the City.

D8. SECURITY CLEARANCE

- D8.1 Each individual proposed to perform Work under the Contract shall be required to obtain a Criminal Record Search Certificate from the police service having jurisdiction at his place of residence.
- D8.2 Prior to the commencement of any Work, and during the term of the Contract if additional or replacement individuals are proposed to perform Work, the Contractor shall supply the Contract Administrator with a Criminal Record Search Certificate obtained not earlier than one (1) year prior to the Submission Deadline, or a certified true copy thereof, for each individual proposed to perform the Work.
- D8.3 Any individual for whom a Criminal Record Search Certificate is not provided, or for whom a Criminal Record Search Certificate indicates any convictions or pending charges related to property offences or crimes against another person, will not be permitted to perform any Work.
- D8.4 Any Criminal Record Search Certificate obtained thereby will be deemed valid for the duration of the Contract subject to a repeated records search as hereinafter specified.
- D8.5 Notwithstanding the foregoing, at any time during the term of the Contract, the City may, at its sole discretion and acting reasonably, require an updated criminal records search. Any individual who fails to provide a satisfactory Criminal Record Search Certificate as a result of a repeated criminal records search will not be permitted to continue to perform any Work.

SCHEDULE OF SERVICES

D9. COMMENCEMENT

- D9.1 The Consultant shall not commence any Services until he is in receipt of a notice of award from the City authorizing the commencement of the Services.
- D9.2 The Consultant shall not commence any Services until:
- (a) the Project Manager has confirmed receipt and approval of:
 - (i) evidence of authority to carry on business specified in D6;
 - (ii) evidence of the insurance specified in D7; and
 - (iii) the security clearances specified in D8.
 - (b) the Consultant has attended a meeting with the Project Manager, or the Project Manager has waived the requirement for a meeting.
- D9.3 The City intends to award this Contract by December 8, 2010.

D10. CRITICAL STAGES

- D10.1 The Consultant shall achieve critical stages of the Services, for this Contract as follows:
- (a) these areas of work shall be completed in the year 2011:
 - (i) reconstruction of Mile 83.02 boathouse along the Aqueduct;
 - (ii) supply and installation of boathouse doors located at Mile 17.05, Mile 39.39, Mile 42.05, Mile 64.08, Mile 73.63, Mile 73.69, Mile 77.63, Mile 77.67, Mile 82.06, Mile 96.69 and Mile 96.77; and
 - (iii) inspection of the Aqueduct Underdrain from west of the floodway to the Tache Booster Pumping Station.

- (b) These areas of work shall be completed in the year 2012:
 - (i) construction of a new boathouse at Mile 64.14 and
 - (ii) reconstruction of two drainage siphons located at Mile 35.38 and Mile 37.59 along the Aqueduct.

APPENDIX A – GENERAL CONDITIONS FOR CONSULTANT SERVICES

GENERAL CONDITIONS FOR CONSULTANT SERVICES

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GENERAL CONDITIONS FOR CONSULTANT SERVICES

C1. DEFINITIONS

C1.1 For the purposes of the Contract the following expressions shall have the following meanings:

- (a) **“Acceptance”** means:
 - (i) when in reference to a Proposal, a Letter of Intent sent by the Chief Administrative Officer or his/her delegated authority notifying the Consultant that a contract for Services has been awarded to the Consultant; or
 - (ii) when in reference to the Services provided by the Consultant to the City, a letter of acceptance of the particular report, recommendation, program project or totally completed project, or other related matter proposed by the Consultant requiring acceptance, endorsement, confirmation or other appropriate form of approval or consent from the Project Manager prior to continuance by the Consultant of the previously agreed upon Services or the conclusion of same;
- (b) **“Allowable Disbursements”** means the cost of out of town travel and related meals and accommodations, specialized software, rental rates for specialized equipment, printing and reproduction, drilling, sampling, laboratory testing and any other out-of-pocket expenses, excluding normal overhead, directly related to the Services provided. Overhead shall include any items included in day to day operations and shall include, but not be limited to, word processor costs, communication costs, administrative fees and items incidental to the Services, except as provided herein, and is expressly excluded;
- (c) **“Award Authority”** means the authority having the jurisdiction to award the Contract according to the City’s by-laws, policies or procedures;
- (d) **“Bidding Procedures”** means the portion of the Request for Proposal by that name which sets out the terms and conditions governing the Offer, and a reference to a section, clause or subclause with the prefix “B” designates a section, clause or subclause in that portion of the Request for Proposal;
- (e) **“Business Day”** means any Calendar Day, other than a Saturday, Sunday or statutory or civic holiday;
- (f) **“C”** designates a section, clause or subclause in these General Conditions;
- (g) **“Calendar Day”** means the period from one midnight to the following midnight;
- (h) **“Change in Services”** means an addition, deletion or modification to the Services as described in the Contract and which have been approved by the Project Manager;
- (i) **“Chief Administrative Officer”** means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- (j) **“City”** means The City of Winnipeg as continued under The City of Winnipeg Act, Statutes of Manitoba 1989-90, c.10, and any subsequent amendments thereto;
- (k) **“City Solicitor”** means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- (l) **“Consultant”** means the Person undertaking the performance of the Services under the terms of the Contract;
- (m) **“Consultant Representative”** means the Consultant's representative throughout the duration of the Contract who has the authority to act on behalf of the Consultant to the extent expressly provided for in this Contract;
- (n) **“Contract”** means all documents which form the basis of the formal contract or contracts and shall include these General Conditions, Request for Proposal, Schedule of Prices, Time Schedule, Consultant Services Proposal, Consultant's Statement of Qualifications, Bid and Performance Bonds, where applicable, all information provided to the Consultant

for development of its Proposal, Letter of Intent, and all schedules, attachments and amendments to the aforementioned documents;

- (o) “**Contract Price**” means the price agreed upon for the Services and any adjustments thereto which may be required or agreed to pursuant to the Contract;
- (p) “**contractor**” is any party or parties, other than the Consultant, contracting with the City for work associated with the Project;
- (q) “**Council**” means the Council of The City of Winnipeg;
- (r) “**Deliverables**” means all reports, drawings, calculations, designs, plans, leading practices, specifications, and other data, information and all material utilized, collected, compiled, drawn and produced (including computer printouts) to carry out the Services contemplated in this Contract;
- (s) “**Drawings**” means drawings, diagrams, illustrations, schedules, performance charts, technical brochures and other data, electronic or otherwise, which are to be created or provided by the Consultant and/or Subconsultant;
- (t) “**Final Total Construction Cost**” means the cost to the City for work associated with the Project, or sections of the Project, as applicable, including such sums as are paid to the various contractors and approved additions thereto, provided that the following shall not be included:
 - (i) Goods and Services tax;
 - (ii) administration, interest charges, management and legal costs incurred by the City;
 - (iii) fees paid by the City for soil borings and material testing;
 - (iv) the cost of installation or relocation of public utilities or other works when the installation or relocation is not designed and administered by the Consultant;
 - (v) cost of acquisition of real property or any interest therein;
 - (vi) professional fees and payment to the Consultant; and
 - (vii) settlements to Consultants or contractors.
- (u) “**Hourly Rate**” means direct salary cost plus provision for statutory holidays, vacations with pay, employment insurance, health, medical and accidental insurance, group life insurance, Canada Pension Plan, Company Pension Plan, sick leave allowance, compensation and overhead and shall apply to all hours that are billed in performance of the Services;
- (v) “**Letter of Intent**” means the letter sent by the Chief Administrative Officer or his/her delegated authority notifying the Consultant that a contract for Services has been awarded to the Consultant;
- (w) “**Manager of Materials**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- (x) “**may**” indicates an allowable action or feature which will not be evaluated;
- (y) “**must**” or “**shall**” indicates a mandatory requirement which will be evaluated on a pass/fail basis;
- (z) “**Party**” means the City of Winnipeg, the Consultant or both the City of Winnipeg and the Consultant;
- (aa) “**Person**” means an individual, firm, partnership, association or corporation, or any combination thereof, and includes heirs, administrators, executors or legal representatives of a person;
- (bb) “**Project**” shall refer to the project or sections of the project described in the Scope of Services;

- (cc) "**Project Manager**" means the City's representative throughout the duration of the Contract who has the authority to act on behalf of the City to the extent expressly provided for in this Contract;
- (dd) "**Proponent**" means any Person or Persons submitting a Proposal for the Work;
- (ee) "**Proposal**" means the offer contained in the Proposal Submission;
- (ff) "**Proposal Submission**" means that portion of the Request for Proposal which must be completed or provided and submitted by the Submission Deadline in order to constitute a responsive Proposal;
- (gg) "**Request for Proposal**" means the Proposal Submission, the Bidding Procedures, these General Conditions, the Supplemental Conditions, the Specifications, and all addenda;
- (hh) "**Services**" means carrying out and doing of all things of every kind, either expressly or impliedly required, that are to be done by the Consultant in accordance with the terms of this Contract and Appendices and Schedules attached hereto and includes all work, testing, analysis, equipment, matters and things necessary for or incidental to the fulfilment of the requirements of the Contract, and all Changes in Services which may be approved as herein provided;
- (ii) "**should**" indicates a desirable action or feature which will be evaluated on a relative scale;
- (jj) "**Site**" means the lands and other places, including structures, on, under, in or through which the Service is applicable to but does not include a Consultant's Facility;
- (kk) "**Subconsultant**" means a person contracting with the Consultant to perform a part or parts of the Services to be provided by the Consultant pursuant to the Contract;
- (ll) "**Submission**" means any document, shop drawing or specification received by the Consultant with respect to performance of the Services;
- (mm) "**Submission Deadline**" means the time and date set out in the Bidding Procedures for final receipt of Bids;
- (nn) "**Supplemental Conditions**" means the portion of the Bid Opportunity/RFP/Contract by that name which sets out terms and conditions specific to the Contract and supplements or modifies the General Conditions; and "D" designates a section, clause or sub-clause in that portion of the Contract;
- (oo) "**Termination Expenses**" means expenses incurred by the Consultant which are directly attributable to termination of the Services;
- (pp) "**Total Performance**" means that the entire Services have been completed in accordance with the requirements of the Contract and upon determination of the Project Manager.

C2. INTERPRETATION

- C2.1 The provisions of this Contract shall supersede all previous agreements, arrangements or understandings, whether written or oral, between the City and the Consultant in connection with and incidental to the Services, and it is agreed that this Contract constitutes the sole and entire agreement between the City and the Consultant relating to the Services, and no other terms, conditions, representations, covenants or warranties, whether expressed or implied, shall form a part hereof.
- C2.2 Where the Consultant consists of more than one Person, the liability to perform the Services herein contained to be performed by the Consultant shall be joint and several.
- C2.3 The Contract has been entered into in the Province of Manitoba and shall be governed by and construed, performed and enforced according to the laws of the Province of Manitoba and of Canada, as applicable, and is subject to the exclusive jurisdiction of the Courts of Manitoba.

- C2.4 Headings, titles and marginal notes in this Contract are inserted for convenience of reference only and shall not be used as explanatory of the clauses or paragraphs below or opposite which they appear.
- C2.5 Wherever the singular or masculine is used in this Contract, it shall be considered as the feminine, plural or neuter as being used where the context so requires.
- C2.6 If there is any conflict or inconsistency between portions of the Contract, the following order of precedence shall apply:
- (a) the executed agreement between the City and Consultant shall govern over all schedules or other documents forming part of the Contract;
 - (b) the Letter of Intent shall govern over the Proposal;
 - (c) the Proposal shall govern over the Supplemental Conditions;
 - (d) the Supplemental Conditions shall govern over the General Conditions;
 - (e) the General Conditions shall govern over Specifications;
 - (f) Specifications of a later date shall govern over Specifications of an earlier date;
- C2.7 The City and the Consultant acknowledge and agree that the Consultant is an independent Consultant and neither the Consultant, nor any officer, servant or agent of the Consultant, shall be deemed to be an employee, agent, representative or servant of the City.
- C2.8 Any provision of the Contract may be waived only by express waiver in writing by the Project Manager. No express waiver of any provision shall imply the waiver of any other provision. The waiver by any Party of the strict observance or performance of any term of this Contract or of any breach of it on the part of any Party shall not be held or deemed to be a waiver of any subsequent failure to observe or perform the same or any other term of this Contract.
- C2.9 All obligations under this Contract that necessarily extend beyond termination of this Contract in order to fully achieve their intended purpose shall survive termination of this Contract, including without limiting the generality of the foregoing, all indemnification provisions, intellectual property provisions, and confidentiality provisions.

C3. DECLARATIONS

Investigation

- C3.1 The Consultant declares that, in bidding for the Services and in entering into the Contract, he:
- (a) has investigated the nature of the Service to be done and all conditions that might affect his Proposal or his performance of the Service; or
 - (b) has not investigated the nature of the Service to be done or conditions;

and, in either event, assumes all risk for conditions now existing or arising in the course of the Service which have been or could have been determined through such investigation, and that he did not and does not rely upon information furnished by the City or any of its servants or agents other than information furnished in writing for or in connection with the Proposal or the Contract by the Project Manager.

No Conflict

- C3.2 The Consultant hereby declares that this Contract is entered into in good faith on the part of the Consultant, that no member of City Council, administrative or financial officer, director or any other officer of the City has any pecuniary interest, direct or indirect, in this Contract or any other agreement or part of an agreement, contract or commission made pursuant to this Contract or to any benefit to arise therefrom, and agrees that it shall forfeit all claims for

payment or otherwise under this Contract if it shall appear that any member of City Council, administrative or financial officer, director or any other officer of the City is at any time interested therein or if any interest therein is given or agreed to be given to it and as well shall refund to the City any monies paid to the Consultant by the City under this Contract.

- C3.3 The Consultant declares that it has not participated in any collusive scheme or combine in connection with this Contract and agrees that it shall forfeit all claims under this Contract if it should ever be established that this declaration is false and as well shall refund the City any monies paid to the Consultant under this Contract.

C4. EXECUTION OF CONTRACT

- C4.1 The Consultant shall execute the Contract in the manner stipulated by the City Solicitor and return the Contract, within seven (7) Calendar Days of receipt of the Contract, to the attention of the City Solicitor at the address indicated in C16.4.

- C4.2 No payments will be made by the City to the Consultant until the Consultant has executed and returned the Contract as set out in C4.1.

C5. AUTHORITY OF PROJECT MANAGER

- C5.1 If more than one Project Manager is appointed, each Project Manager shall be designated for a particular stage or stages of the Project, and each Project Manager shall be authorized to act on behalf of the City to the extent provided for in the Contract with respect to the particular stage or stages that the Project Manager has been assigned.

- C5.2 The Project Manager shall provide the Consultant with the following information and documents relating to the Project, except insofar as the Consultant is expressly instructed by the Project Manager to furnish same under the terms hereof:

(a) any information, plans and specifications regarding existing or proposed activities or works relevant to the Services to be performed, which the City has in its possession, or has reasonable access to.

- C5.2.1 The City does not represent or warrant the accuracy or completeness of the said information, and the Consultant shall so determine and rectify any errors or omissions therein.

- C5.3 The Project Manager shall give prompt consideration to all documents submitted by the Consultant including all sketches, Drawings, specifications, tenders, proposals, contracts, agreements, reports and correspondence and shall provide written decisions, instructions, Acceptances and any other information required as soon as reasonably possible in order to enable the Consultant to comply with the agreed time schedule.

- C5.4 Performance Review - The Project Manager shall conduct a performance review of Services provided by the Consultant annually or upon Total Performance, with the results of the review being communicated to the Consultant.

- C5.5 The Project Manager may give instructions or orders to the Consultant to the extent necessary to ensure that the Services are performed in an orderly manner and meet the requirements of the Contract.

- C5.6 The Project Manager may order the Consultant to remove any individual employed or retained by the Consultant or a Subconsultant in the performance of the Services, who the Project Manager determines is incompetent, negligent or guilty of misconduct.

- C5.7 The Project Manager shall determine whether Total Performance is achieved and shall certify the date thereof.

C6. PROJECT MANAGER'S DECISION

C6.1 Every certificate, decision or approval of the Project Manager in any matter or question specifically referred to him under the terms of this Contract or the schedules hereto shall not be effective unless in writing and shall be final and binding on the Consultant.

C7. CONSULTANT'S SERVICES AND RESPONSIBILITIES

C7.1 The Consultant shall appoint a Project Supervisor or Project Supervisors for the Project. Where more than one Project Supervisor is appointed, each shall be designated for a particular stage or stages of the Project and each Project Supervisor shall be authorized to transmit instructions to and accept information and advice from the City.

C7.2 The Consultant shall perform, to the satisfaction of the Project Manager, all services of every kind, either expressly or impliedly required for the Project, including those identified in the Scope of Work, as well as any Change in Services.

C7.3 After giving notice to the Consultant, the Project Manager may, in writing at any time after the execution of the Contract or the commencement of the Services, delete, extend, increase, vary or otherwise alter the Services, and if such action by the Project Manager necessitates additional staff or Services, the Consultant shall be paid in accordance with C10 for such additional staff employed directly thereon, together with such disbursements as may be allowed under C10. In the case of a reduction in the requirement for Services, the Consultant's fee shall be reduced accordingly and confirmed in writing.

C7.4 The Consultant shall submit to the Project Manager for approval, a detailed time schedule for the performance of its Services for the Project. The Consultant must comply with the approved time schedule which forms an integral part of this Contract. If a change in the approved time schedule becomes necessary, the Consultant shall promptly submit a report to the Project Manager and obtain prior written approval for any change in the time schedule.

C7.5 The Consultant, if requested in writing to do so by the Project Manager, shall make any required changes in the Project notwithstanding its previous approval and the Consultant shall advise the Project Manager of any effect on the time schedule, budget and other implications of the changes, but nothing done by the Consultant to remedy design errors or other problems attributable to shortcomings of the Consultant, including persons consulted, employed or supervised by it, shall entitle it to additional fees.

C7.6 The Consultant shall provide competent, suitably qualified personnel to perform the Services.

C7.7 Where required, before any additional Services are commenced, the Consultant shall submit to the Project Manager for approval the name, address and a resume of the qualifications and experience of all personnel together with the Hourly Rate for those individuals it intends to employ to perform Services on the Project.

C7.8 The Consultant shall remove, within ten (10) Calendar Days, any personnel performing Services on the Project upon receipt of written notice from the City. Any individual so removed shall not be re-employed on the Project.

C7.9 No Subconsultant shall be engaged by the Consultant for the performance of Services in connection with the Project without approval by the Project Manager. When a Subconsultant has been identified for parts of the Services they must be used for those parts of the Services unless the prior approval of the Project Manager has been obtained.

C7.10 The Consultant shall notify and obtain the approval of the Project Manager for all significant additions and changes to staff.

- C7.11 The Consultant shall have the duty to coordinate the Services to be performed by the Consultant, Subconsultants, contractors, and the City's own forces throughout the Project.
- C7.12 The Consultant shall keep the Project Manager fully advised and informed during each stage of the Project.
- C7.13 The Consultant's status reports shall be made at the times and in the manner as required by the Project Manager, consistent with the Contract.
- C7.14 The Consultant shall keep and maintain accurate time sheets and cost invoice records of its Services performed under this Contract including Services performed on its behalf by any Subconsultant and, when required, shall make such material available for inspection and audit by the Project Manager. The Consultant shall keep and preserve the said material for a period of at least two (2) years following Total Performance or termination of its Services under this Contract.
- C7.15 The Consultant shall ensure that the Services comply with all relevant federal, provincial and municipal legislation, codes, bylaws and regulations. Where there are two or more laws, by-laws, regulations or codes applicable to the Services, the most restrictive shall apply.
- C7.16 The Consultant and all professional individuals conducting Services pursuant to the Contract shall be members in good standing with the applicable professional association in the Province of Manitoba.
- C7.17 The Consultant shall obtain and pay for all necessary permits or licences required for the execution of the Services.
- C7.18 Any Project identification signs proposed for the Site must be approved by the Project Manager.
- C7.19 If the Consultant performs the Services contrary to any laws, by-laws, regulations, codes and orders of any authority having jurisdiction, the Consultant shall be responsible for and shall correct any violations thereof and shall bear all resulting costs, expenses and damages.
- C7.20 In the event the Consultant fails to comply with any legislation or any regulations thereunder and the City is required to do anything or take any steps or pay any sums to rectify such non-compliance, the City may set-off the cost of such rectifications from any monies owed to the Consultant. Any such set-off is not be construed as liquidated damages.
- C7.21 Drawings and specifications shall be issued in metric notation unless directed otherwise.

C8. CHANGES IN SERVICE

General

- C8.1 The City shall have the right to order a Change in Service at any time after award of the Contract.
- C8.2 If, at any time after award of the Contract, the Consultant is of the opinion that a Change in Service is necessary to accomplish the result intended by the Contract or if the Consultant considers it desirable that a Change in Service be approved, he shall promptly provide notice thereof to the Project Manager, including:
- (a) the reason for the proposed Change in Service;
 - (b) a detailed description of the proposed Change in Service;
 - (c) the Consultant's proposed method(s) to determine the adjustment, if any, in Contract Price pursuant to C8.4.
- C8.2.1 Without limiting the generality of C8.2, if the Consultant observes:

- (a) any substantial difference in the nature of the Services required from those set out in the Contract; or
- (b) that the Contract is at variance with any laws, ordinances, rules, regulations or codes of authorities having jurisdiction, or if changes are made to any laws, ordinances, rules, regulations and codes subsequent to the Submission Deadline which require modifications to the Contract;

the Consultant shall immediately notify the Project Manager.

- C8.3 The Project Manager shall determine whether a Change in Service is necessary or desirable and whether a corresponding adjustment to the Contract Price is required.
- C8.3.1 If the Project Manager determines that no Change in Service is necessary or desirable, he will issue a notice stating his determination.
- C8.3.2 If the Project Manager determines that a Change in Service is necessary or desirable but no corresponding adjustment to the Contract Price is required, he will issue a notice approving the Change in Service and stating his determination.
- C8.3.3 If the Project Manager determines that a Change in Service is necessary or desirable, which requires a corresponding adjustment to the Contract Price, and he is able to determine such adjustment based on the available information, he shall issue a notice approving the Change in Service and stating his determination regarding the method(s) to be used to determine the adjustment in Contract Price pursuant to C8.4.
- C8.3.4 If the Project Manager determines that a Change in Service is necessary or desirable, which requires a corresponding adjustment to the Contract Price, and he requires further information to determine such adjustment, he shall issue a notice stating his determination and requiring the Consultant to submit the Consultant's proposed method(s) to determine the adjustment in Contract Price pursuant to C8.4, and upon receipt and evaluation of such information, he shall issue a notice in accordance with C8.3.3.

Valuation of a Change in Service

- C8.4 The adjustment in Contract Price resulting from a Change in Service shall be determined by one or more of the following methods:
- (a) by estimate in a lump sum;
 - (b) by the unit prices and methods of measurement set out in the Contract or subsequently agreed upon;
 - (c) by the actual cost of the Change in Service to the Consultant plus a fixed fee;
- C8.4.1 For the purposes of C8.4(c), "actual cost" on any portion of the Change in Service undertaken by the Consultant's own forces shall mean the direct cost of labour plus an allowance for direct supervision and payroll burden (including Employment Insurance, Canada Pension, Payroll Tax, Workers Compensation assessments and vacation pay) and any other payments made by the Consultant with the prior approval of the Project Manager that are necessary for the performance of the Change in Service.
- C8.4.2 For the purposes of C8.4(c), "actual cost" on any portion of the Change in Service undertaken by a Subconsultant shall mean the amount invoiced by the Subconsultant and paid by the Consultant, net of any discounts and excluding any late payment interest or penalties.
- C8.5 If a Change in Service results in a reduction in the Contract Price, no claim may be made for damages on the ground of loss of anticipated profit on Service so diminished or on any other ground provided that the aggregate reduction in the Contract Price does not exceed twenty percent (20%) of the price agreed upon for the Service as of the date of the award of the Contract.

C8.5.1 Reductions in the Contract Price as a result of:

- (a) Changes in Service requested by the Consultant;
- (b) a deduction for defective or deficient Service;
- (c) a decrease due to a change in tax; or
- (d) the City's application of a remedy for an event of default;

shall not be considered in calculating the aggregate reduction in the Contract Price for the purposes of C8.5.

C8.6 If a Change in Service diminishes the Service, or any part thereof, resulting in:

- (a) extra cost to the Consultant, directly attributable to the diminution, for which he would not be entitled to payment on a unit price basis; or

the Consultant shall be compensated therefor by the City in the sum or sums determined by the Project Manager.

C8.7 If the method of valuation or measurement or the adjustment to the Contract Price cannot be promptly agreed upon and the Project Manager requires the Change in Service to proceed, then the Project Manager will determine the method of valuation and measurement and the adjustment to the Contract Price. The Project Manager shall issue a notice approving the Change in Service and setting out the method of valuation, measurement, and any approved adjustments to the Contract Price.

C8.8 If the Consultant disputes a determination made by the Project Manager, the Consultant shall act in accordance with the Project Manager's determination. The Consultant may concurrently appeal the determination of the Project Manager to the Chief Administrative Officer as provided for in C16.3.

Cost Records

C8.9 If a valuation is required pursuant to C8.4 or C8.6, the Consultant shall provide the Project Manager with:

- (a) detailed and accurate statements showing:
 - (i) rate of pay and hours of work for each of the persons employed by the Consultant; and
- (b) access to any cost records (including payroll records, time books and invoices) or other data necessary to verify the accuracy of such statements.

C9. INTELLECTUAL PROPERTY

C9.1 All reports, drawings, calculations, designs, plans, leading practices, specifications, and other data, information and all material utilized, collected, compiled, drawn and produced (including computer printouts) to carry out the Services contemplated in this Agreement ("Deliverables") are solely the property of the City, with the exception of the materials and information in the possession of the Consultant prior to the commencement of this project, and the Consultant's copyright in such property, if any, is hereby assigned to the City.

C9.2 Upon completion of the Services or termination of this Contract, all of the Deliverables shall be delivered by the Consultant to the City on demand by the City. The Consultant may retain one complete set of the Deliverables for its records and the City shall make the originals, or a reasonable reproduction thereof, available to the Consultant for all proper and reasonable purposes during the period of five (5) years following the completion or termination of the Consultant's Services under this Contract.

- C9.3 Without prejudice to any rights which may exist in the City by virtue of any prerogative rights and powers or by virtue of the Copyright Act of Canada, as amended from time to time, the Consultant assigns all present and future rights in the copyright in the Deliverables absolutely and immediately to the City. Furthermore, the City may use the Deliverables or any part thereof for, or apply it to, other studies or projects without the Consultant's consent and without any payment or compensation whatsoever. If the City elects to so use or apply the Deliverables, it does so at its own risk and the Consultant shall not be liable in any way for such other use or application or any adverse consequences flowing therefrom.
- C9.4 The Consultant expressly waives any claim to moral rights, as provided for in the law of copyright, over the Deliverables or any part thereof, created by the Consultant and the Consultant shall ensure that any agent or employee of the Consultant shall have waived all moral rights, as provided for in the law of copyright, over the Deliverables or any part thereof.
- C9.5 All concepts, products or processes produced by or resulting from the Services rendered by the Consultant in connection with the Project, or which are otherwise developed or first reduced to practise by the Consultant in the performance of Services, and which are patentable, capable of trademark or otherwise, shall be the property of the City.
- C9.6 The Consultant shall have a permanent, non-exclusive, royalty-free licence to use any concept, product or process, which is patentable, capable of trademark or otherwise, produced by or resulting from the Services rendered by the Consultant in connection with the Project, for the life of the Project, and for no other purpose or project.
- C9.7 The Consultant shall not infringe any copyright, trademark, patent, industrial design, trade secret, moral or other proprietary right of a third party and shall indemnify the City from all claims arising out of such an infringement.
- C9.8 If the City or the Consultant is served with a claim or notice of an infringement or alleged infringement of any patent, copyright, trademark or trade name, the Party so served shall immediately give notice thereof to the other Party.
- C9.9 The Consultant shall assist the City in every reasonable way, at the City's expense, to secure, maintain and defend for the City's benefit all copyrights, patent rights, trade secret rights and other proprietary rights in and to the Deliverables.
- C9.10 If the City or the Consultant is prevented by injunction from using any design, device, material or process covered by letters patent, copyright, trademark or trade name, the Consultant shall, at its own cost, substitute an equally suitable design, device, material or process, all subject to the prior approval of the Project Manager.

Confidentiality and Ownership of Information

- C9.11 During the course of this Contract, the Consultant may acquire access to information concerning the City that is confidential. The Consultant shall not disclose or appropriate to its own use, or to the use of any third party, at any time during or subsequent to the term of this Contract, any confidential information of the City of which the Consultant has been or hereafter becomes informed, whether or not developed by the Consultant, including without limitation, information pertaining to this Project and the resulting report, if any, to be provided. This clause shall not apply to information the Consultant may necessarily be required to disclose or use in connection with the Services which it is obligated to perform under this Contract or as required by law.
- C9.12 The Contract, all Deliverables produced or developed, and information provided to or acquired by the Consultant are the property of the City. The Consultant shall not disclose or appropriate to its own use, or to the use of any third party, all or any part thereof without the prior written consent of the Project Manager.

- C9.12.1 Further to C9.12 and in accordance with C9.4, the Consultant expressly waives any claim to moral rights, as provided for in the law of copyright.
- C9.13 The Consultant shall not make any statement of fact or opinion regarding any aspect of the Contract to the media or any member of the public without the prior written authorization of the Project Manager.
- C9.14 The Consultant hereby agrees to execute such other documentation as may be reasonably requested by the City to evidence their respective intellectual property rights in and to the Deliverables.

C10. TERMS OF PAYMENT

- C10.1 The City shall pay the Consultant, as consideration for the execution of the Services as follows:
- (a) Fixed fees shall be paid in accordance with the Contract;
 - (b) Time based fees shall be paid for Services actually performed and based on the Hourly Rate and the hours actually worked to a maximum of the amount stipulated in the Contract;
 - (c) Percentage based fees shall be calculated by multiplying the appropriate percentage stipulated in the Contract with the applicable Final Total Construction Cost. The percentage fee plus Goods and Services Tax shall provide full compensation for Services provided for percentage fee services. Where Services are reimbursed on a percentage fee basis, the percentage fee should be all-inclusive except as specifically excluded as an Allowable Disbursement.
- C10.2 Additional Services shall be paid in accordance with the method described for those Services authorized in writing by the Project Manager.
- C10.3 The City shall pay the Consultant, as consideration for Allowable Disbursements described herein, the actual cost of the disbursement to the Consultant, with no administrative mark-ups.

Taxes and Other Government Charges

- C10.4 Consultant shall be responsible for its own income taxes, Canada Pension Plan contributions, Workers' Compensation assessments, Employment Insurance premiums and all other taxes, levies or charges payable to any governmental or public authority with respect to the consideration paid by the City to the Consultant under this Contract.
- C10.5 The Consultant shall indemnify the City, against all costs and expenses incurred by the City as a result of it not withholding income tax, Canada Pension Plan contributions, Workers' Compensation assessments and Employment Insurance premiums from the consideration paid by the City to the Consultant including, without limiting the generality of the foregoing, any income tax, interest or penalties that may be assessed against the City for failure to withhold tax or for any other amounts whatsoever which may be charged to it, levied against it or otherwise claimed from it on account of Canada Pension Plan contributions, Workers' Compensation assessments or Employment Insurance premiums in respect of such consideration.
- C10.6 The City shall withhold from any and all payments of fees such amounts in respect of non-resident withholding taxes as it may be required to withhold under the terms of the Income Tax Act (Canada) or the terms of any International Tax Convention and shall remit same as required pursuant thereto.

Payment of Fees and Allowable Disbursements

- C10.7 Invoices shall clearly identify:
- (a) the billing period;

- (b) Fixed fees - statement of fees for Services rendered in accordance with the Contract;
 - (i) Time based fees - personnel names, hours charged, Hourly Rate and total cost for time based services for the billing period;
 - (ii) Percentage based fees - percentage of Services completed for the billing period based on the estimated Final Total Construction Cost;
 - (c) tabulation of Allowable Disbursements by category with proof of purchase or expenditure for Allowable Disbursements within the billing period; and
 - (d) a summary table identifying approved budgets, billing period charges and total cumulative charges for each category of service.
- C10.8 No payment will be made for charges exceeding an agreed to budget or resulting from a revision to the method of payment for any category of Service unless approved in writing by the Project Manager.
- C10.9 The Consultant agrees that Allowable Disbursements shall not exceed the maximums stated within the Contract unless approved in writing by the Project Manager. The Consultant shall obtain the written consent of the Project Manager prior to incurring any disbursements not previously identified in the Contract.
- C10.10 The City shall endeavour to make payment in Canadian funds to the Consultant within thirty (30) Calendar Days after receipt and approval of the Consultant's invoice.
- C10.11 It is understood by the City and agreed by the Consultant that the fees are only payable when the Services have been performed to the satisfaction of the Project Manager and any partial payment in respect of a phase or part of a phase is not to be deemed a waiver of the City's rights of set-off at law under this Contract for costs or expenses arising from default or the negligence of the Consultant.
- C10.12 The City may, at its option, pay the Consultant by direct deposit to the Consultant's banking institution.
- C11. FORCE MAJEURE/SUSPENSION**
- C11.1 Either Party shall not be liable to the other Party for any loss, damage or other claim whatsoever, including direct or indirect losses, loss of profits, or compensation for any inconvenience, nuisance or discomfort, arising out of a force majeure as defined below, or if either Party is prevented from having access to and/or from the premises arising out of a force majeure as defined below, provided that the Party claiming a force majeure hereunder shall promptly notify the other specifying the cause and probable duration of the delay. In the case of a continuing delay, only one claim for an extension shall be necessary.
- C11.2 "Force majeure" means any circumstances beyond the reasonable control of the affected Party and not caused by its default or act of commission or omission and not avoidable by the exercise of reasonable effort or foresight by such Party. Without restricting the generality of the foregoing, force majeure shall include any one or more of the following: any act of God; embargo, confiscation, acts or restraints of governments or public authorities; wars, sabotage, act of public enemy or riot; strikes, slow-downs, lockouts or other labour or employee interruptions or disturbances, whether involving employees of that Party or of any other person over which that Party has no reasonable control; explosion, fire, radioactive contamination, flood or natural disaster. Lack of finances shall in no event be deemed to be a cause beyond a Party's reasonable control.
- C11.3 The performance of any obligation suspended or delayed due to force majeure shall resume as soon as reasonably possible after the force majeure ends and the work schedule shall be adjusted by a period of time equal to the time lost due to such delays.

C12. INDEMNITY

- C12.1 The Consultant shall use due care in the performance of the obligations under this Contract to ensure no person is injured, no property is damaged or lost, and no rights are infringed.
- C12.2 The Consultant shall indemnify and save harmless the City from and against all claims, losses, damages, costs, expenses and fees, actions and other proceedings made, sustained, brought or prosecuted in any manner based upon, occasioned by or attributable to any injury, infringement or damage arising from any negligent act, defect, error or omission of the Consultant, its servants or agents or persons for whom it has assumed responsibility, including Subconsultants, in the performance or purported performance of this Contract to a maximum of the Contract Price or two million dollars, whichever is greater.
- C12.3 Subject to C12.4, the City has the right, acting reasonably and upon notice to the Consultant, to settle any such action, proceeding, claim or demand and charge the Consultant with the amount so paid or to be paid in effecting a settlement.
- C12.4 The City and the Consultant agree that the applicable insurer will have a priority right to defend insured claims. Within fourteen (14) Calendar Days after the date on which the insurer is provided with a copy of the notice of claim, the insurer must advise the City and the Consultant if it intends to exercise its priority right to defend the claim.
- C12.5 In the event that the claim is settled by the insurer, all costs incurred in effecting the settlement are the responsibility of the Consultant and not the City.
- C12.6 In the event that the claim is unsuccessfully defended, either in whole or in part, then the City may charge the Consultant with the amount to be paid to satisfy the judgment or order.
- C12.7 The Consultant shall pay to the City the value of all reasonable legal fees and disbursements required to settle any such claim or to defend the City against any such action, proceeding, claim or demand, notwithstanding that the settlement or defence of the said action, proceeding, claim or demand was undertaken on behalf of the City by a salaried employee of the City.
- C12.8 If the Consultant fails to make any payment required to be made to the City pursuant to the foregoing, the City shall be entitled to deduct the amount of such payment from any payment required to be made by the City to the Consultant under the Contract and/or take whatever other remedies against the Consultant that the City may have at law.

C13. DEFAULT, SUSPENSION AND TERMINATION

- C13.1 An event of default will be deemed to have occurred if the Consultant:
- (a) discontinues providing the Services; or
 - (b) is adjudged bankrupt or files for bankruptcy, becomes insolvent, makes a general assignment for the benefit of its creditors, or has a receiver or liquidator appointed in respect of its assets; or
 - (c) is not performing or has not been performing the Services, or any part thereof in the City's best interests, in a competent and workmanlike manner and in all respects in strict conformity with the Contract; or
 - (d) is not progressing continuously with the Services or any part thereof, and in such a manner as to ensure the completion of the Services or any part thereof, in accordance with the time schedule referred to herein; or
 - (e) fails to comply with any laws, by-laws or statutory regulations; or
 - (f) fails to submit any schedules, documents or information required by the Project Manager;
or

- (g) refuses or neglects to comply with an order given by the Project Manager; or
- (h) commits any other breach of this Contract.

- C13.2 If in the opinion of the Project Manager an event of default has occurred, the City may by written notice require the default to be corrected. If within thirty (30) Calendar Days after receipt of such notice by the Consultant, such default has not been corrected, the City may do any one or more of the following:
- (a) withhold or retain the whole or part of any payment;
 - (b) take the whole of the Services, or any part or parts thereof out of the hands of the Consultant;
 - (c) demand payment for any amount owed to the City;
 - (d) terminate this Contract.
- C13.3 In addition, the City shall have the right to terminate this Contract due to a lengthy suspension or interruption of the Project as a consequence of a Force Majeure.
- C13.4 In addition, the City shall have the right to terminate this Contract for any reason whatsoever upon giving thirty (30) Calendar Days prior written notice to the Consultant.
- C13.5 Upon receipt of written notice of termination of this Contract, the Consultant shall perform no further services other than those reasonably necessary to close out its Services and pursuant to instructions provided by the Project Manager.
- C13.6 In the event that the City terminates this Contract as provided in C13.2, the City shall, upon completion of Close Out Services pursuant to C13.5, pay the Consultant only for the cost of the Services rendered and disbursements incurred by the Consultant in accordance with the terms of this Contract and remaining unpaid as of the effective date of such termination.
- C13.7 In the event that the City terminates this Contract as provided in C13.3 and C13.4, the City shall, upon completion of Close Out Services pursuant to C13.5, pay the Consultant for the cost of the Services rendered and disbursements incurred by the Consultant pursuant to the terms of this Contract and remaining unpaid as of the effective date of such termination, plus the Consultant's reasonable Termination Expenses as defined in C1.1(oo).

Set-Off

- C13.8 It is expressly understood and agreed that the City shall reserve a right of set-off for any default by the Consultant arising from the termination of this Contract, in addition to any other remedies that it may have at law.

C14. SUCCESSORS AND ASSIGNMENT

- C14.1 This Contract shall inure to the benefit of and be binding upon the parties hereto and upon their respective successors and permitted assigns.
- C14.2 The Consultant shall not, without first obtaining the prior written approval of the Project Manager, assign this Contract or any payments thereunder.
- C14.3 Further to C7.9, if the Consultant proposes to engage a Subconsultant for any portion(s) of the Project, then the following information must be provided to the Project Manager, for his prior approval:
- (a) the name and address of the Subconsultant;
 - (b) the services to be undertaken by the Subconsultant and how these relate to the Services of the Consultant;

- (c) the personnel of the Subconsultant along with their qualifications who will perform the Services; and
- (d) the fee of the Subconsultant for performing the Services.

- C14.4 Should the Consultant, upon obtaining the written consent of the Project Manager, enter into any Sub-Contract, the Consultant shall ensure that the new Subconsultant agrees in writing that all Services done by the Subconsultant shall be subject in all respects to the provisions of this Contract.
- C14.5 The Consultant shall obtain the written approval of the City before changing any Subconsultant previously approved by the City, or performing Services with its own forces, and must provide the Project Manager with the information detailed in C14.3 as well as outlining the reason(s) for the change.

C15. ARBITRATION

- C15.1 If, at any time during the term or this Contract, any dispute, difference or question shall arise between the City and the Consultant regarding the Services, then every such dispute, difference or question may, with the consent of both the City Solicitor, on behalf of the City, and the Consultant, be referred to arbitration
- C15.2 The party desiring arbitration (the "Requesting Party") shall request the consent of the other party (the "Other Party") to refer a particular dispute, difference or question to arbitration.
- C15.3 The Other Party shall reply to the request within seven (7) Calendar Days of receiving same.
- C15.4 If the Other Party has consented to arbitration, the Requesting Party shall nominate an arbitrator (the "Requesting Party's Nominee") within seven (7) Calendar Days of receiving the reply. The Other Party shall have seven (7) Calendar Days after receiving notice of the nomination to accept or reject the Requesting Party's Nominee.
- C15.5 If the Other Party accepts the Requesting Party's Nominee, the dispute, difference or question shall be promptly referred to him or her.
- C15.6 If the Other Party rejects the Requesting Party's Nominee, it shall, within seven (7) Calendar Days of rejection, appoint its own arbitrator.
- C15.7 The Requesting Party shall, within seven (7) Calendar Days of receiving the Other Party's rejection, appoint its own arbitrator.
- C15.8 The arbitrators appointed under the foregoing sub-clauses (i) and (ii) shall, within seven (7) Calendar Days of the date on which the last of them was appointed, appoint a third arbitrator (the "Panel Chair") who will act as chair of the arbitration panel.
- C15.9 The Arbitration Act (Manitoba) or any successor legislation thereto shall apply to the arbitration in all respects except as expressly otherwise provided in these General Conditions.
- C15.10 The single arbitrator or the Panel Chair, as the case may be, shall determine the procedure to be followed in the arbitration, which shall be consistent with The Arbitration Act (Manitoba) or any successor legislation thereto.
- C15.11 Where the matter proceeds with a single arbitrator, each Party shall be responsible for its own legal expenses, expenses to produce expert evidence or other expenses voluntarily incurred, and for an equal share of the fees and expenses of the single arbitrator and of any other expenses related to the arbitration.

- C15.12 Where the matter proceeds with an arbitration panel, each Party shall be responsible for its own legal expenses, expenses to produce expert evidence or other expenses voluntarily incurred, for the fees and expenses of the arbitrator appointed by it, and for an equal share of the fees and expenses of the Panel Chair and of any other expenses related to the arbitration.
- C15.13 The duties and obligations imposed upon the Consultant by the Contract and the rights and remedies available to the City hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed upon the Consultant or available to the City at law.
- C15.14 The determination that any provision of this Contract is invalid or unenforceable shall not invalidate this Contract. If any court of appropriate jurisdiction deems any provisions hereof unenforceable, such provision shall be modified only to the extent necessary to render it enforceable and this Contract shall be valid and enforceable and the parties hereto agree to be bound by and perform same as thus modified.
- C15.15 This Contract may be modified by the parties hereto only by mutual agreement in writing and executed by both parties.

C16. NOTICES

- C16.1 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications required or permitted to be given under the Contract shall be in writing and shall be delivered by hand, by facsimile transmission (fax) or by mail.
- C16.2 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications to the City, except as expressly otherwise required in C16.3 or C16.4, or elsewhere in the Contract, shall be sent to the attention of the Project Manager.
- C16.3 All notices of appeal to the Chief Administrative Officer shall be sent to the attention of the Chief Financial Officer at the following address or facsimile number:
The City of Winnipeg
Office of the Chief Administrative Officer
Attn: Chief Financial Officer
Administration Building, 3rd Floor
510 Main Street
Winnipeg MB R3B 1B9
Facsimile No.: (204) 949-1174
- C16.4 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications required to be submitted or returned to the City Solicitor shall be sent to the following address or facsimile number:
The City of Winnipeg
Legal Services
Attn: City Solicitor
185 King Street, 3rd Floor
Winnipeg MB R3B 1J1
Facsimile No.: (204) 947-9155
- C16.4.1 Either party may, by giving notice, designate another address or addresses at which it will accept delivery of notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications.
- C16.4.2 Delivery to the Consultant's designated supervisor at the Site shall constitute delivery to the Consultant.

- C16.5 Any notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications given as provided herein shall:
- (a) if delivered by hand, be deemed to have been received on the day of receipt;
 - (b) if delivered by facsimile transmission, be deemed to have been received on the day of transmission, if a Business Day, or if not a Business Day, on the Business Day next following the day of transmission; and
 - (c) if delivered by mail, be deemed to have been received on the second Business Day on which mail is delivered by Canada Post following the date of mailing.

APPENDIX B – DEFINITION OF PROFESSIONAL CONSULTANT SERVICES (CONSULTING ENGINEERING SERVICES)

DEFINITION OF PROFESSIONAL CONSULTANT SERVICES (CONSULTING ENGINEERING SERVICES)

B1. INTRODUCTION

- B1.1 It is the intent of the City of Winnipeg, in defining Professional Consultant Services (Consulting Engineering Services), to clarify the role required of consulting Engineers; to more fully identify the services to be rendered by consulting Engineers to the City and to other parties on behalf of the City; and to provide a more clearly determined basis of obligation in respect thereof by consulting Engineers to the City and to third parties in the provision of such services.
- B1.2 The services shall be performed in the City of Winnipeg, unless otherwise authorized by the City, under direct supervision of a professional Engineer. All drawings, reports, recommendations and other documents, originating therefrom involving the practice of professional engineering, shall bear the stamp or seal and signature of a qualified Engineer as required by the Engineering and Geoscientific Professions Act of the Province of Manitoba and By-laws of the Association of Professional Engineers and Geoscientists of the Province of Manitoba. Other reports and documents not involving the "practice of professional engineering", such as letters of information, minutes of meetings, construction progress reports, may be originated and signed by other responsible personnel engaged by the consulting Engineer and accepted by the City. Progress estimates, completion certificates and other reports related to the technical aspects of a project, must be endorsed by the Engineer in a manner acceptable to the City.

B2. ADVISORY SERVICES

- B2.1 Advisory services are normally not associated with or followed by preliminary design and/or design services, and include, but are not limited to:
- (a) Expert Testimony;
 - (b) Appraisals;
 - (c) Valuations;
 - (d) Rate structure and tariff studies;
 - (e) Management services other than construction management;
 - (f) Feasibility studies;
 - (g) Planning studies;
 - (h) Surveying and mapping;
 - (i) Soil mechanics and foundation engineering;
 - (j) Inspection, testing, research, studies, or reports concerning the collection, analysis, evaluation; and
 - (k) Interpretation of data and information leading to conclusions and recommendations based upon specialized engineering experience and knowledge.

B3. PRELIMINARY DESIGN

- B3.1 Preliminary design services are normally a prelude to the detailed design of a project and include, but are not limited to:
- (a) Preliminary engineering studies;
 - (b) Engineering investigation;
 - (c) Surface and subsurface site explorations, measurements, investigations, and surveys;
 - (d) Operations studies including drainage studies, traffic studies, etc.;
 - (e) Functional planning;

- (f) Physical, economical (capital and operating) and environmental studies including evaluation, comparison, and recommendation regarding alternative preliminary designs;
- (g) Preparation and submission of a report and appropriate drawings to the City, fully documenting data gathered, explaining adequately the assessment made, stating with clarity the resulting conclusions, and containing all recommendations which are relevant to this stage of project implementation;
- (h) Special applications to public agencies for necessary authorizations, preparation and submission of reports and drawings thereto and appearance before same in support of the application.

B4. DETAILED DESIGN

B4.1 Detailed design services normally involve preparation of detailed designs, tender specifications and drawings, and analysis of bids and recommendations for contract award, and include, but are not limited to:

- (a) Addressing alternative methods of accommodating; relocating; avoiding, and/or avoiding injury to Utilities and railways; proposing alternative methods of solution, reviewing same with the appropriate Regulatory approval agencies and stakeholders;
- (b) Application to public agencies for necessary authorizations, preparation and submission of reports and drawings thereto, and appearance before same in support of the application;
- (c) Preparation and submission of detailed engineering calculations, drawings, and criteria employed in the design(s), securing review of and an acceptance by the City;
- (d) Preparation of detailed engineering drawings, specifications and tender documents consistent with the standards and guidelines of the City, securing review of acceptance by the City;
- (e) Preparation and provision to the City in written form, a fully detailed formal construction contract estimate;
- (f) Provision of appropriate response to bidders and advice to the City during the bid period and, subject to acceptance by the City, issuing addenda to the tender documents;
- (g) Submission of a review, analysis, comparison, tabulation, calculation, and evaluation of the bids received, to the City;
- (h) Preparation of a report including revised contract estimate, identifying and explaining variations from the earlier formal estimate, and containing recommendation regarding contract award identifying the reasons therefore.

B5. CONTRACT ADMINISTRATION SERVICES

B5.1 Contract administration services are associated with the construction of a project and include the office and field services required to ensure the conduct of the project in accordance with the intent of the City and in conformance with the particulars of the drawings and specifications; and include but are not limited to:

NON-RESIDENT SERVICES

- (a) Consultation with and advice to the City during the course of construction;
- (b) Review and acceptance of shop drawings supplied by the contractor or supplier to ensure that the drawings are in conformance with the drawings and specifications, without relieving the contractor of his contractual and other legal obligations in respect thereof;
- (c) Review and report to the City upon laboratory, shop and other tests conducted upon materials and/or equipment placed or installed by the contractor to ensure to the City conformance with the drawings and specifications, without relieving the contractor of his contractual and other legal obligations in respect thereof;

- (d) Acceptance of alternate materials and methods, subject to prior acceptance by the City, without relieving the contractor of his contractual and other legal obligations in respect thereof;
- (e) Provision to the City of a complete current report on the project status on a monthly basis;
- (f) Provision to the City a current update of revised contract-end cost estimate on a monthly basis, or more frequently if found necessary, with explanation and justification of any significant variation from the preceding contract-end cost estimate;
- (g) Definition and justification of and estimate of cost for additions to or deletions from the contract for authorization by the City;
- (h) Furnishing the City with a copy of all significant correspondence relating directly or indirectly to the project, originating from or distributed to, parties external to the consulting Engineer, immediately following receipt or dispatch of same by the consulting Engineer;
- (i) Provision of adequate and timely direction of field personnel by senior officers of the Consultant;
- (j) Establishment prior to construction and submission to the City of written and photographic records of, and assessment of the physical condition of adjacent buildings, facilities, and structures sufficient to equip the consulting Engineer to provide valid evidence and relevant testimony in settlement of any claim involving the City by any court of law, or by any other party for damages thereto arising from the project;
- (k) Arranging and attending pre-construction meetings and on-site or off-site review meetings, which meetings shall include representatives of the contractor and the City;
- (l) The preparation and submission of:
 - (i) a detailed design notes package including items such as structural, geotechnical, hydraulic and heating, air-conditioning and ventilation design calculations; mechanical and electrical design calculations related to process equipment and building services; process design calculations; and instrumentation and process control design calculations;
 - (ii) approved related shop drawings and equipment process manuals all within one (1) month of completion of each separate installation contract required to complete the Works.

RESIDENT SERVICES

- (a) Provision of qualified resident personnel acceptable to the City present at the project site to carry out the services as specified immediately below, without relieving the contractor of his contractual and other legal obligations in respect thereof:
 - (i) inspection of all pipe prior to installation;
 - (ii) inspection and acceptance of excavation for, and full time inspection at the time of bedding placement, pipe laying and backfilling in respect of installation of watermains, land drainage sewers, and wastewater sewers;
 - (iii) inspection of installation of all connections to watermains, sewers, manholes, valves, hydrants or house services, and excavation and/or exposing of all underground services, structures, or facilities;
 - (iv) "full time inspection" and/or testing of watermains and sewers;
 - (v) inspection of all excavations to determine soil adequacy prior to installation of base and subbase courses for sidewalks, public back lanes, and street pavements.

It is to be understood that "full time inspection" will require assignment of a qualified person to each specific location when the referenced work is being undertaken by the contractor.
- (b) Without relieving the contractor of his contractual and other legal obligations in respect thereof, conduct detailed inspection of construction sufficient to ensure that the construction carried out by the contractor is in conformance with the drawings and specifications;

- (c) Co-ordination and staging of all other works on the project site including traffic signal installations, hydro, telephone, and gas utility work, railway work forces and City or developer work;
- (d) In conjunction with the City, provision of notice to adjacent residents and businesses of those stages of construction of the project that will interrupt public services or access thereto, sufficiently in advance of same to permit preparation therefore;
- (e) Enforcement of contractor conformance with the City of Winnipeg Manual of Temporary Traffic Control in Work Areas on City Streets and with reasonable standards of safety for motorists and pedestrians, without relieving the contractor of his contractual and other legal obligations in respect thereof;
- (f) Provision of reference line and elevation to the contractor and checking upon the contractor's adherence thereto, without relieving the contractor of his contractual and other legal obligations in respect thereof;
- (g) Responsible, sensitive, and prompt reaction to the reasonable requests and complaints of citizens regarding the conduct of the project, acting in the interest of the City;
- (h) Arranging for and carrying out of testing of materials utilized by the contractor to ensure conformance with the drawings and specifications, without relieving the contractor of his contractual and other legal obligations in respect thereof;
- (i) Preparation, certification, and prompt submission of progress estimates to the City for payment to the contractor for construction performed in accordance with the drawings and specifications;
- (j) Arrange, attend and prepare and distribute records of and minutes for, regularly held on-site or offsite project review meetings including representatives of the contractor and the City;
- (k) Promptly reporting to the City upon any significant and unusual circumstances;
- (l) Promptly arranging for and taking part in a detailed final inspection of the project with the contractor and the City prior to commencement of the period of contractor maintenance guarantee specified in the contract for the project and providing to the City in written form an appropriate recommendation of acceptance of the constructed or partially constructed project;
- (m) Act as Payment Certifier and administer all contracts as required under the Builder's Liens Act of Manitoba;
- (n) Prepare a Certificate of Substantial Performance;
- (o) Preparation and submission to the City of "as-constructed" drawings for the project within 1 month of project completion;
- (p) Prepare a Certificate of Total Performance;
- (q) Provision of inspection services during the maintenance guarantee period of the contract;
- (r) Undertake a detailed inspection of the project with the contractor and the City prior to the end of the period of contractor maintenance guarantee specified in the contract for the project;
- (s) Keep a continuous record of working days and days lost due to inclement weather during the course of contract works;
- (t) Prepare a Certificate of Acceptance.

B6. ADDITIONAL SERVICES

- B6.1 Additional services are in addition to those specified in other Types of Services and may or may not be associated with a construction project, but are not in place of or in substitution for those services elsewhere specified in the Definition of Standard Consulting Engineering Services in respect of other Types or Categories of Services.
- (a) Revision of completed, or substantially completed, drawings and/or specifications that were in conformance with the original intent of the City or had been accepted by the City;

- (b) Preparation of operating manuals and/or training of operating personnel;
- (c) Startup and/or operation of operating plants;
- (d) Procurement of materials and equipment for the City;
- (e) Preparation for and appearance in litigation on behalf of the City;
- (f) Preparation of environmental studies and reports and presentation thereof in public hearings.