



THE CITY OF WINNIPEG

REQUEST FOR PROPOSAL

RFP NO. 720-2010

**FOR PROFESSIONAL CONSULTING SERVICES FOR CONCEPTUAL DESIGN,
PRELIMINARY DESIGN, DETAILED DESIGN AND CONTRACT ADMINISTRATION FOR
REPLACEMENT OF RAW SEWAGE PUMP P3 – PERIMETER ROAD PUMPING STATION**

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 FOR PROFESSIONAL CONSULTING SERVICES FOR CONCEPTUAL DESIGN, PRELIMINARY DESIGN, DETAILED DESIGN AND CONTRACT ADMINISTRATION FOR REPLACEMENT OF RAW SEWAGE PUMP P3 – PERIMETER ROAD PUMPING STATION

B2. SUBMISSION DEADLINE

B2.1 The Submission Deadline is 4:00 p.m. Winnipeg time, October 5, 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 should contact the Project Manager if they wish to conduct a site investigation.

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. AVAILABLE INFORMATION

B4.1 The City maintains an FTP site (File Transfer Protocol) for documents (drawings and reports) related to this Project.

B4.2 Access to the FTP site is available **only** to Persons who register with the Project Manager.

B4.2.1 The City's Project Manager may, acting reasonably, decline requests for registration.

B4.3 Bidders are advised that the forwarding of the FTP Site link or the information on the site is strictly prohibited.

B4.4 The City makes no representations or warranties with respect to the accuracy or sufficiency of information made available on its FTP Site.

B5. ENQUIRIES

B5.1 All enquiries shall be directed to the Project Manager identified in D2.

B5.2 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.

B5.3 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.

B5.4 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.

- B5.5 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.
- B5.6 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.
- B5.7 Proponents questions will be placed in two different categories:
- (a) General Proponent Questions;
 - (b) Confidential Questions.
- B5.7.1 Proponents must submit their questions in writing in accordance B5.1. Questions not marked "Confidential" will be considered "General".
- B5.7.2 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.
- B5.7.3 Questions in B5.7(a) and B5.7(b) will be answered by Addenda. Questions in B5.7(b) will be answered, in writing, to the Proponent that issued the Question.
- B5.8 Proponents shall submit questions to the Project Manager at least five (5) Business Days prior to the Submission Deadline.
- B5.9 The Project Manager will issue each Addendum in accordance with B7.2.

B6. CONFIDENTIALITY

- B6.1 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.
- B6.2 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.

B7. ADDENDA

- B7.1 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.
- B7.2 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.
- B7.2.1 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>
- B7.3 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.

B7.4 Proponents are entirely responsible for disseminating information regarding Addenda to any person(s) involved in this Project.

B8. PROPOSAL SUBMISSION

B8.1 The Proposal shall consist of the following components:

- (a) Form A: Proposal (Section A) in accordance with B9;
- (b) Fees (Section B) in accordance with B10;

B8.2 The Proposal should also consist of the following components:

- (a) Experience of Proponent and Subconsultants (Section C) in accordance with B11;
- (b) Experience of Key Personnel Assigned to the Project (Section D) in accordance with B12;
- (c) Project Understanding and Methodology (Section E) in accordance with B13; and
- (d) Project Schedule (Section F) in accordance with B14.

B8.3 Further to B8.1, 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.

B8.4 Proponents should submit one (1) unbound original (marked "original") and eight (8) copies for sections identified in B8.1 and B8.2.

B8.5 Proposal should be presented in the Sections identified in B8.1 and B8.2. Proponents are requested to limit the number of pages in their Submission to a maximum of 50 pages (single sided) or 25 pages (double sided).

B8.6 Proponents are advised that inclusion of terms and conditions inconsistent with the Request for Proposal, will be evaluated in accordance with B21.1(a).

B8.7 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.

B8.8 Proposals submitted by facsimile transmission (fax) or internet electronic mail (e-mail) will not be accepted.

B8.9 Proposals shall be submitted to:

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

B8.10 Any cost or expense incurred by the Proponent that is associated with the preparation of the Proposal shall be borne solely by the Proponent.

B9. PROPOSAL (SECTION A)

B9.1 The Proponent shall complete Form A: Proposal, making all required entries.

B9.2 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;

- (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.

B9.2.1 If a Proposal is submitted jointly by two or more persons, each and all such persons shall identify themselves in accordance with B9.2.

B9.3 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.

B9.4 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;
- (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.

B9.4.1 The name and official capacity of all individuals signing Form A: Proposal should be printed below such signatures.

B9.5 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.

B10. FEES (SECTION B)

B10.1 The Proposal shall include a **Fixed Fee** for all disciplines, identified and necessary, for the following Scope of Service phases of the Project:

- (a) Project Management;
- (b) Detailed Design;
- (c) Contract Administration;

B10.2 The Proposal shall include a fee schedule calculated on a **Time Basis** for all disciplines, identified and necessary, for the following Scope of Service phases of the Project:

- (a) Conceptual Design;
- (b) Preliminary Design;

B10.2.1 Adjustments to the Fees will only be considered based on increases to the Scope of Services.

B10.2.2 The City will not consider an adjustment to the Fees based on changes in the Project budget.

B10.3 Details of the Scope of Services are provided under D4.

B10.3.1 Notwithstanding C1.1(b), the Fees shall include costs for out of town travel, related meals and accommodations for the duration of the Project and shall not be considered an Allowable Disbursement.

- B10.4 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 testing, soils and hazardous materials investigation during construction.
- B10.5 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.
- B10.6 Payments to Non-Resident Consultants are subject to Non-Resident Withholding Tax pursuant to the Income Tax Act (Canada).

B11. EXPERIENCE OF PROPONENT AND SUBCONSULTANTS (SECTION C)

- B11.1 Proposals should include:
- (a) details demonstrating the history and experience of the Proponent and Subconsultants in providing programming; design, management of construction and contract administration services on up to three projects of similar size and complexity.
- B11.2 For each Project listed in B11.1(a), 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;
 - (f) reference information (two current names with telephone numbers per project).
- B11.2.1 Where applicable, information should be separated into Proponent and Subconsultant project listings.
- B11.3 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.

B12. EXPERIENCE OF KEY PERSONNEL ASSIGNED TO THE PROJECT (SECTION D)

- B12.1 Describe your approach to overall team formation and coordination of team members.
- B12.1.1 Include an organizational chart for the Project.
- B12.2 Submit the experience and qualifications of the Key Personnel assigned to the Project for Projects of comparable size and complexity, including the principals-in-charge, the Consultants Representative, managers of the key Disciplines and lead designers. 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. Roles of each of the key participants in the Project should be identified in the organizational chart referred to in B12.1.1.
- B12.3 For each person identified, list at least two comparable projects in which they have played a primary role. If a project selected for a key person is included in B11, provide only the project name and the role of the key person. For other projects provide the following:
- (a) Description of project;
 - (b) Role of the person;
 - (c) Project Owner;
 - (d) Reference information (two current names with telephone numbers per Project).

B13. PROJECT UNDERSTANDING AND METHODOLOGY (SECTION E)

- B13.1 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.
- B13.2 Methodology shall be presented in accordance with the Scope of Services as presented in D4.
- B13.3 Describe the collaborative process/method to be used by the key design professionals of the team in the various design phases of the Project.
- B13.4 Provide a Work Breakdown Structure detailing all tasks, who will be working on these tasks and for what duration.
- B13.5 Proposals should address:
- (a) the team's understanding of the broad functional and technical requirements;
 - (b) the team's understanding and familiarity of the municipal infrastructure, mechanical piping and equipment, electrical equipment and controls.
 - (c) the City's Project methodology with respect to the information provided within this RFP; and
 - (d) any other issue that conveys your team's understanding of the Project requirements.

B14. PROJECT SCHEDULE (SECTION F)

- B14.1 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 phase of the Consultant Scope of Services and tasks from the Work Breakdown Structure referred to in B12.4.
- B14.2 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. The schedule should include the following minimum times for the City to review and comment on deliverables.
- (a) Conceptual Design Report 3 weeks
 - (b) Preliminary Design Report and Preliminary Design Drawings 4 weeks
 - (c) Detailed Design Drawings and Tender Package 4 weeks

B15. QUALIFICATION

- B15.1 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; and
 - (b) be financially capable of carrying out the terms of the Contract; and
 - (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;
 - (d) have or establish and staff an office in Winnipeg for the duration of the Project.
- B15.2 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>

- B15.3 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 programming; design, management of construction and contract administration for architectural and/or engineering projects of similar complexity, scope and value; and to those required for this Project; and
 - (b) be fully capable of performing the Services required to be in strict accordance with the terms and provisions of the Contract; and
 - (c) have a written workplace safety and health program, if required, pursuant to The Workplace Safety and Health Act (Manitoba); and
 - (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;
 - (e) undertake to meet all licensing and regulatory requirements of the appropriate governing authorities and associations in the Province of Manitoba.
- B15.4 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.
- B15.5 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.

B16. OPENING OF PROPOSALS AND RELEASE OF INFORMATION

- B16.1 Proposals will not be opened publicly.
- B16.2 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>
- B16.3 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.
- B16.4 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.

B17. IRREVOCABLE OFFER

- B17.1 The Proposal(s) submitted by the Proponent shall be irrevocable for the time period specified in Paragraph 10 of Form A: Proposal.
- B17.2 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.

B18. WITHDRAWAL OF OFFERS

- B18.1 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.

- B18.1.1 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.
- B18.1.2 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.
- B18.1.3 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 B18.1.3(b), declare the Proposal withdrawn.
- B18.2 A Proponent who withdraws his Proposal after the Submission Deadline but before his offer has been released or has lapsed as provided for in B17.2 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.

B19. INTERVIEWS

- B19.1 The Project Manager may interview Proponents during the evaluation process.

B20. NEGOTIATIONS

- B20.1 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.
- B20.2 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.
- B20.3 If, in the course of negotiations pursuant to B20.2 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.

B21. EVALUATION OF PROPOSALS

- B21.1 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 B15: (pass/fail)
 - (c) Fees; (Section B) 30%
 - (d) Experience of Proponent and Subconsultants; (Section C) 10%
 - (e) Experience of Key Personnel Assigned to the Project; (Section D) 30%
 - (f) Project Understanding and Methodology (Section E) 25%
 - (g) Project Schedule. (Section F) 5%

- B21.2 Further to B21.1(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.
- B21.3 Further to B21.1(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.
- B21.4 Further to B21.1(c), Fees will be evaluated based on Fees submitted in accordance with B10.
- B21.5 Further to B21.1(d), Experience of Proponent and Subconsultants will be evaluated considering the experience of the organization on engineering Projects for projects of similar size and complexity.
- B21.6 Further to B21.1(e), Experience of Key Personnel Assigned to the Project will be evaluated considering the experience and qualifications of the Key Personnel and Subconsultant personnel on Projects of comparable size and complexity.
- B21.7 Further to B21.1(f), Project Understanding and Methodology will be evaluated considering your firm's understanding of the City's Project, project management approach and team organization.
- B21.8 Further to B21.1(g), Project Schedule will be evaluated considering the level of detail, achievability, and completeness.
- B21.9 Notwithstanding B21.1(d) to B21.1(g), where Proponents fail to provide responses to B8.2 the score of zero or fail will be assigned to that Section.

B22. AWARD OF CONTRACT

- B22.1 The City will give notice of the award of the Contract, or will give notice that no award will be made.
- B22.2 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.
- B22.2.1 Without limiting the generality of B22.2, 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.
- B22.3 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.
- B22.4 The form of Contract with the City of Winnipeg will be based on the Contract as defined in C1.1(o).**
- B22.5 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.
- B22.5.1 The City may, at its discretion, award the Contract in phases.

B22.6 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:

Mr. Chris Carroll

Email: ccarroll@winnipeg.ca

Telephone No. (204) 986-7435

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 Proponents 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. BACKGROUND

D3.1 The Perimeter Road Pump Station (PRPS) is the raw wastewater pumping facility for the Westend Water Pollution Control Centre (WEWPCC). The PRPS is located approximately 1.2 km east of the WEWPCC. The PRPS is approximately 45 years old and has recently undergone a reliability upgrade of its forcemain, mechanical, structural and electrical components.

D3.2 The PRPS is configured to accommodate four pumps. At the present time only three pumps are operating; one medium sized electric variable capacity pump (P2) to handle average dry weather flows as well as night time low flows, one large electric pump (P1) to handle wet weather flows and one large diesel pump (P4) for emergency pumping.

D3.3 Existing pump (P3) has been disabled and needs to be removed and replaced. A new medium sized electric variable capacity pump (new P3) is required to provide redundancy and continuous pumping for the average and night time low flows. The new Biological Nutrient Removal (BNR) treatment process at the WEWPCC may be susceptible to process upsets if existing variable capacity pump P2 is out of service.

D4. SCOPE OF SERVICES

D4.1 Provide consulting engineering and contract administration services necessary to facilitate replacement of pump P3 and ancillary works.

D4.2 The scope of services shall include but not necessarily limited to:

(a) Project Management

(i) Plan, organize, secure and manage resources to bring about the successful completion of specific project goals and objectives.

(ii) Create a Project Management Plan.

- ◆ Submit one (1) hard copy and one (1) electronic PDF copy of the "draft Project Management Plan".

- ◆ Upon receipt of City review comments submit eight (8) hard copies and one (1) electronic copy of the “final Project Management Plan”.
 - (iii) Structure the Project into manageable sub-entities and prepare a Work Breakdown Structure (WBS).
 - (iv) Develop a Project schedule identifying Project activities, milestones, responsibility, time lines for each and links to other project activities and deliverables.
 - (v) Establish protocol for all communication issues throughout the Project including change management.
 - (vi) Establish appropriate levels of review and approvals for all Project deliverables.
 - (vii) Guide the Project team in the identification of risks and, where appropriate, contingency plans.
 - (viii) Ensure Project team members, including the Project Manager, understand the established project methodology and gain commitment from all team members on activities and deliverables identified in the plan.
 - (ix) Identify to the Project Manager the impact (time, quality, cost) of proposed changes, so that the Project Manager may make well-informed decisions whether or not to proceed with the proposed changes.
 - (x) Continuously review and assess the status of the actual cost, projected costs to completion, and schedule.
 - Submit a monthly project status report outlining project cost, schedule and scope. Monthly report shall include: an updated project schedule, line charts detailing budget, actual cost, and projected costs for tasks defined in the WBS. Monthly status reports shall be limited to a maximum of three (3) pages including charts.
 - Submit one (1) electronic PDF copy of the “Monthly Project Status Report” within three (3) working days of months end.
 - (xi) Chair regular Project meetings and provide Minutes.
 - Once per month meet in-person with the City’s Project Manager to discuss the Monthly Project Status Report and other project management related issues.
 - (xii) Resolve Project disputes in a timely manner.
- (b) Conceptual Design
- (i) Collect and review all available existing information about the site including files, reports, drawings, condition assessments, sewer flows, pump control strategy, etc. Where necessary conduct field surveys and investigations to verify existing conditions and to supplement available information.
 - (ii) Review collection system, pumping station and sewage treatment plant hydraulics and develop a pump system curve to suit flows, hydraulic conditions, and pump control strategy. It is anticipated that new pump P3 should have a pumping capacity between the pumping capacities of pumps P2 and P4. Further assessment is required to determine actual size of new pump P3.
 - (iii) Relative to replacement of pump P3 perform a condition assessment of all ancillary components. Provide recommendations for upgrading and/or replacement of existing components and recommendations for installation of new components as required. This shall include but not limited to:
 - Steel piping: review thickness inspection report prepared by UMA. Assess requirements for potential upsizing of existing piping.
 - Valves: review valve condition report prepared by UMA relative to P3 valves. It is anticipated valves P3-01, P3-02, P3-03 will need to be replaced.
 - Motor control centre: new MCC is required for P3 and for existing pump P2
 - VFD drive: new VFD is required for pump

- Power supply
 - Electrical components
 - Instrumentation and controls
 - Vibration and Temperature monitoring is required for new pump P3.
 - Structural supports (e.g. pedestals)
- (iv) Examine site constraints and develop installation strategies for new pump P3 considering:
- required shutdowns of pumping station
 - site access
 - lead times for delivery of new equipment
 - seasonal variation in sewer flows (pumping station shutdowns can only be accommodated during dry weather flows)
- (v) Supplementary Work
- Inspect valve FM-03 (30 inch diameter), P1-02 (20 inch diameter), P1-03 (20 inch diameter) and provide recommendation for repair and/or replacement.
 - Review structural capacity of existing support pedestal for pump P1 and provide recommendations for any necessary strengthening.
 - The City would like to install a new flow meter immediately downstream of FM-01. Assess work required and provide cost estimate.
 - Examine feasibility of installing new jib crane(s) on level 100 to facilitate lifting pumps off existing support pedestals
- (vi) Prepare concept level designs for installation of new pump P3, ancillary work, and supplementary work. Design options should consider shaft driven pump and close-coupled pump. Provide recommendations from the concepts considered.
- (vii) Prepare concept level cost estimates and project schedules for all the conceptual design options and supplementary work.
- (viii) Throughout conceptual design meet with City Steering Committee to discuss findings, obtain input from City personnel, and discuss design options. A minimum of three (3) formal meetings will be required: 1. project kickoff, 2. interim status update, and 3. present and review draft conceptual report. Additional formal meetings can be accommodated to suit proponents' requirements.
- (ix) Prepare a comprehensive Conceptual Design Report documenting investigations performed, findings, conceptual designs, recommendations, cost estimates and project schedules.
- (x) Submit ten (10) hard copies and two (2) electronic PDF copies of the "Draft Conceptual Design Report"
- (xi) Upon receipt of City review comments submit ten (10) hard copies and three (3) electronic PDF copies of the "Final Conceptual Report".
- (c) Preliminary Design
- (i) Perform further engineering assessment and design of pump P3, ancillary work, and supplementary work based on the preferred option selected from conceptual design.
 - (ii) Prepare preliminary design drawings and tender package including technical specifications.
 - (iii) Identify all permits necessary for construction.
 - (iv) Identify required instrumentation, controls, and programming. Define work needed to install new instrumentation and controls within the plants existing distributed control system (DCS).
 - (v) Develop a construction work plan addressing site constraints identified from conceptual design.
 - (vi) Prepare preliminary level cost estimate and project schedule.

- (vii) Throughout preliminary design meet with City Steering Committee to discuss findings, obtain input from City personnel, and discuss design. A minimum of four (4) formal meetings will be required: 1. interim status update, 2. interim status update, 3. present and review draft functional report, 4. review preliminary design drawings and tender package. Additional formal meetings can be accommodated to suit proponents' requirements.
 - (viii) Prepare a comprehensive Preliminary Design Report documenting investigations performed, findings, functional design, recommendations, cost estimates and project schedule.
 - (ix) Submit ten (10) hard copies and two (2) electronic PDF copies of the "Draft Preliminary Design Report"
 - (x) Upon receipt of City review comments submit ten (10) hard copies and three (3) electronic PDF copies of the "Final Functional Design Report".
 - (xi) Submit ten (10) hard copies of the "Draft Preliminary Design Drawings" and "Draft Preliminary Tender Package".
 - (xii) Upon receipt of City review comments submit ten (10) hard copies and three (3) electronic PDF copies of the "Final Preliminary Design Drawings" and "Final Preliminary Tender Package".
- (d) Detailed Design
- (i) Make application to public agencies (e.g permits) for necessary authorizations, prepare and submit reports and drawings thereto, and appear before the same in support of all applications.
 - (ii) Submit 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; detailed engineering calculations, drawings, and criteria employed in the design(s).
 - (iii) Prepare detailed engineering drawings and tender package including technical specifications.
 - (iv) Submit detailed drawings and tender package to Materials Management for public bidding.
 - (v) Prepare a detailed engineer's cost estimate.
 - (vi) Provide appropriate response to bidders and advice to the City during tender call and issue addenda to the contract documents as necessary.
 - (vii) Arrange for and attend bidder's site visit(s).
 - (viii) Submit a review, analysis, comparison, tabulation, calculation, and evaluation of the tenders received. Make recommendation for award of Contract.
 - (ix) Conduct a pre-award meeting with Contractor.
 - (x) Throughout detailed design meet with City Steering Committee to discuss findings, obtain input from City personnel, and discuss design. A minimum of two (2) formal meetings will be required: 1. interim status update, 2. review detailed design drawings and tender package. Additional formal meetings can be accommodated to suit proponents' requirements.
 - (xi) Submit two (2) hard copies and two (2) electronic PDF copies of the "Detailed Design Notes Package".
 - (xii) Submit ten (10) hard copies of the "Draft Detailed Design Drawings" and "Draft Tender Package".
 - (xiii) Upon receipt of City review comments submit ten (10) hard copies and three (3) electronic PDF copies of the "Final Detailed Design Drawings" and "Final Tender Package".
- (e) Contract Administration

- (i) Administer construction contract.
- (ii) Conduct a pre-construction meeting.
- (iii) Prior to construction prepare and submit a written and photographic record of the physical condition of work area, existing facilities, and structures sufficient to equip the City 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.
- (iv) Review and accept shop drawings supplied by the contractor or supplier to ensure the drawings are in conformance with the drawings and specifications, without relieving the contractor of his contractual and other legal obligations in respect thereof.
 - ◆ Submit one (1) hardcopy and three (3) electronic PDF copies of all final shop drawings.
- (v) Arrange for, review and report laboratory, field, shop and other tests conducted upon materials and/or equipment placed or installed 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.
- (vi) Review and provide recommendations for requests for alternate materials and methods. No alternates shall be approved without written authorization from the City.
- (vii) Consult and advise City during the course of construction.
- (viii) Furnish the City with a copy of all correspondence relating directly or indirectly to the project, originating from or distributed to, parties external to the consultant, immediately following receipt or dispatch of same by the consultant.
- (ix) Arrange and chair regularly held on-site or off-site review meetings, which meetings shall include representatives of the Contractor and the City. Prepare and distribute records of meeting minutes, shop drawing submission log, and change management log.
- (x) Provide full time inspection services when the Contractor is on-site to ensure that the construction carried out in conformance with the drawings and specifications.
- (xi) Visit and inspect work at fabrication shops, staging areas, manufacturing facilities as necessary.
- (xii) Keep a continuous record of project activities including but not limited to daily reports, photographic record of construction work and equipment, working days, teleconferences, emails, inspections and observations sufficient to equip the City 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.
- (xiii) Co-ordinate all work by third parties including but not limited to traffic signal installations, hydro, telephone, and gas utility work, railway work, and City personnel. Prepare and submit applications, reports, drawings, and other information as required in support of work by third parties.
- (xiv) Provide a reference line and elevation to the Contractor and check the Contractor's adherence thereto.
- (xv) Prepare, certify and submit progress estimates to the City for payment to the Contractor for construction performed in accordance with the drawings and specifications.
- (xvi) Co-ordinate and manage training sessions for City personnel for the operation and maintenance of new facilities and equipment. This includes but not limited to planning and scheduling of training sessions, review of training procedures and training documents prepared by the Contractor.
- (xvii) Co-ordinate and manage start-up and commissioning of new equipment and facilities. This includes but not limited to preparing a commissioning plan, planning and scheduling of commissioning work, co-ordination of City personnel, full time

- site inspection during commissioning work, review of contractor submissions, and record keeping.
- (xviii) Perform a detailed inspection of the project with the Contractor and the City prior to commencement of substantial performance and prior to total performance. Provide written appropriate recommendation of acceptance of the constructed or partially constructed project.
- (xix) Prepare and submit "as-built" drawings for the project within 1 month of Total Performance.
- ◆ Submit five (5) hard copies of 11 x 17 size "draft as-builts" and one (1) electronic copy of PDF and AutoCAD files.
 - ◆ Upon receipt of City review comments submit five (5) hard copies of 11 x 17 size, one (1) hard copy of 24 x 36 size Mylar and three (3) electronic copies of PDF and AutoCAD files of "final as-builts".
- (xx) Operation and Maintenance manuals: review, co-ordinate and manage the submission of Operation and Maintenance manuals prepared by the Contractor.
- ◆ Submit four (4) hard copies and one (1) electronic PDF copy of the "draft Operation and Maintenance Manual".
 - ◆ Upon receipt of City review comments submit four (4) hard copies and four (4) electronic copies of the "final Operation and Maintenance Manual".
- (xxi) WEWPCC Operations Manual: Prepare and submit updated descriptions, photographs, sketches and diagrams to reflect the new construction and equipment.
- ◆ Submit four (4) hard copies and one (1) electronic PDF copy of the "draft Updates for Operations manual".
 - ◆ Upon receipt of City review comments submit four (4) hard copies and four (4) electronic copies of the "Final Updates for Operations manual".
- (xxii) Provide inspection services during the maintenance guarantee period of the Contract.
- (xxiii) Provide a detailed inspection of the project with the Contractor and the City prior to the end of the period of Contractor warranty period.

SUBMISSIONS PRIOR TO START OF SERVICES

D5. AUTHORITY TO CARRY ON BUSINESS

- D5.1 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.

D6. INSURANCE

- D6.1 The Consultant shall procure and maintain, at its own expense and cost, insurance policies with limits no less than those shown below.
- D6.2 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.
- D6.2.1 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.
- D6.3 The policies required by section D6.2 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.
- D6.4 The Consultant shall require each of its Subconsultants to provide comparable insurance to that set forth under section D6.2(a) and D6.2(b).
- D6.5 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 D6.10.
- D6.6 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.
- D6.7 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.
- D6.8 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.
- D6.9 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 D6.8.
- D6.10 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.

SCHEDULE OF SERVICES

D7. COMMENCEMENT

- D7.1 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.
- D7.2 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 D5;
 - (ii) evidence of the insurance specified in D6;
 - (b) the Consultant has attended a meeting with the Project Manager, or the Project Manager has waived the requirement for a meeting.

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.