

**PART D**

**SUPPLEMENTAL CONDITIONS**

## **PART D - SUPPLEMENTAL CONDITIONS**

### **GENERAL**

#### **D1. GENERAL**

- D1.1 In addition to the General Conditions for Construction Contracts, these Supplemental Conditions are applicable to the Work of the Contract.
- D1.2 The General Conditions are amended by striking out "The City of Winnipeg Act" wherever it appears in the General Conditions and substituting "The City of Winnipeg Charter".
- D1.3 The General Conditions are amended by deleting GC:6.16 and G.C:6.17.  
*The City of Winnipeg is now within the jurisdiction of the Manitoba Ombudsman pursuant to The Ombudsman Act.*

#### **D2. SCOPE OF WORK**

- D2.1 The Work to be done under the Contract shall consist of providing year round hauling and land application services for the disposal of biosolids dewatered by the Biosolids Dewatering Facility at the North End Water Pollution Control Centre located at 2230 Main Street in the City of Winnipeg.
- D2.2 The major components of the Work are as follows:
- D2.2.1 Hauling Biosolids from:
- (a) the Biosolids Dewatering Facility to agricultural lands;
  - (b) the Biosolids Dewatering Facility to City of Winnipeg Biosolids storage pad located in the Rural Municipality of West St. Paul;
  - (c) the Biosolids storage pad to agricultural lands; and
  - (d) the Biosolids Dewatering Facility to City of Winnipeg Brady Road Landfill site.
- D2.2.2 Biosolids storage pad operation including loading on to haulage vehicles
- D2.2.3 Spreading and incorporation of biosolids on agriculture lands
- D2.2.4 Supply of all personnel, equipment and necessary materials to properly haul, spread and incorporate the biosolids as described in these Specifications.

#### **D3. THE CONTRACT ADMINISTRATOR IS:**

Dwight Gibson, P. Eng.  
Senior Project Engineer  
Water and Waste Department  
1500 Plessis Road  
Winnipeg, MB R2C 5G6

Telephone No. (204) 986-5350  
Facsimile No. (204) 224-0032

- D3.1 At the pre-construction meeting, the Contract Administrator will identify additional personnel representing the Contract Administrator and their respective roles and responsibilities for the Work.

**D4. CONTRACTOR'S SUPERVISOR**

- D4.1 At the pre-construction meeting, the Contractor shall identify his designated supervisor and any additional personnel representing the Contractor and their respective roles and responsibilities for the Work.

**D5. NOTICES**

- D5.1 Except as provided for in GC:23.2.2, all notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications to the Contractor shall be sent to the address or facsimile number identified by the Contractor in Paragraph 2 of Form A: Tender.
- D5.2 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications to the City, except as expressly otherwise required in D5.3, D5.4 or elsewhere in the Contract, shall be sent to the attention of the Contract Administrator at the address or facsimile number identified in D3.11.
- D5.3 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  
Chief Administrative Officer Secretariat  
Administration Building, 3rd Floor  
510 Main Street  
Winnipeg MB R3B 1B9  
Facsimile No.: (204) 949-1174

- D5.4 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  
Corporate Services Department  
Legal Services Division  
185 King Street, 3rd Floor  
Winnipeg MB R3B 1J1  
Facsimile No.: (204) 947-9155

**D6. FURNISHING OF DOCUMENTS**

- D6.1 Upon award of the Contract, the Contractor will be provided with five (5) complete sets of the Tender Package. If the Contractor requires additional sets of the Tender Package, they will be supplied to him at cost.

**SUBMISSIONS**

**D7. PERFORMANCE SECURITY**

- D7.1 The Contractor shall provide and maintain performance security until the expiration of the warranty period in the form of:

- (a) Performance Bonds of a company registered to conduct the business of a surety in Manitoba in the forms attached to these Supplemental Conditions (Form H1: Performance Bonds); the first ("Initial Performance Security") for three years in the amount of fifty percent (50%) of the annual value of the Contract, and subsequent performance bonds ("Renewal Performance Security"). Each such Renewal Performance Security shall be no less than one (1) year in duration and in the amount of fifty percent (50%) of the annual value of the Contract.; or
- (b) an irrevocable Standby Letter of Credit issued by a bank or other financial institution registered to conduct business in Manitoba, in the form attached to these Supplemental Conditions (Form H2: Irrevocable Standby Letter of Credit), in the amount of fifty percent (50%) of the annual value of the Contract; or
- (c) a certified cheque or draft payable to "The City of Winnipeg", drawn on a bank or other financial institution registered to conduct business in Manitoba, in the amount of fifty percent (50%) of the annual value of the Contract.

D7.2 If the bid security provided in this Tender Submission was not a certified cheque or draft pursuant to B13.1(c), the Contractor shall provide the City Solicitor with the required performance security within seven (7) Calendar Days of notification of the award of the Contract by way of letter of intent and prior to the commencement of any Work on the Site but in no event later than the date specified in GC:4.1 for the return of the executed Contract.

D7.3 Further to D7.1 (a), the Renewal Performance Security shall be provided to the City no later than sixty (60) days prior to expiry of the Current Performance Security.

## **D8. INSURANCE**

D8.1 The Contractor shall provide and maintain the following insurance coverage:

- (a) commercial general liability insurance, in the amount of at least two million dollars (\$2,000,000.00) all inclusive, with The City of Winnipeg being added as an additional insured, with a cross-liability clause, such liability policy to also contain a contractual liability, an unlicensed motor vehicle liability and a products and completed operations endorsement to remain in place at all times during the performance of the Work and throughout the warranty period;
- (b) automobile liability insurance for owned and non-owned automobiles used for or in connection with the Work in the amount of at least two million dollars (\$2,000,000.00) at all times during the performance of the Work and until the date of Total Performance;
- (c) all risks course of construction insurance in the amount of one hundred percent (100%) of the total Contract Price, written in the name of the Contractor and The City of Winnipeg, at all times during the performance of the Work and until the date of Total Performance.

D8.2 Deductibles shall be borne by the Contractor.

D8.3 The Contractor shall provide the City Solicitor with a certified true copy or a certificate of insurance of each policy, in a form satisfactory to the City Solicitor, at least two (2) Business Days prior to the commencement of any Work on the Site but in no event later than the date specified in GC:4.1 for the return of the executed Contract.

D8.4 The Contractor shall not cancel, materially alter, or cause each policy to lapse without providing at least fifteen (15) Calendar Days prior written notice to the Contract Administrator.

**SCHEDULE OF WORK****D9. COMMENCEMENT**

- D9.1 The Contractor shall not commence any Work until he is in receipt of a letter of intent from the Award Authority authorizing the commencement of the Work.
- D9.2 The Contractor shall not commence any Work on the Site until:
- (a) the Contract Administrator has confirmed receipt and approval of:
    - (i) evidence that the Contractor is 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;
    - (ii) evidence of the workers compensation coverage specified in GC:6.14;
    - (iii) the performance security specified in D7;
    - (iv) evidence of the insurance specified in D8;
  - (b) the Contractor has attended a pre-construction meeting with the Contract Administrator, or the Contract Administrator has waived the requirement for a pre-construction meeting.
- D9.3 The Contractor shall commence the biosolids hauling portion of the Work on July 1, 2004. The Contractor shall commence the field set-up portion of the Work June 21, 2004..

**D10. TOTAL PERFORMANCE**

- D10.1 The Contractor shall achieve Total Performance by June 30, 2009.
- D10.2 When the Contractor or the Contract Administrator considers the Work to be totally performed, the Contractor shall arrange, attend and assist in the inspection of the Work with the Contract Administrator for purposes of verifying Total Performance. Any defects or deficiencies in the Work noted during that inspection shall be remedied by the Contractor at the earliest possible instance and the Contract Administrator notified so that the Work can be reinspected.
- D10.3 The date on which the Work has been certified by the Contract Administrator as being totally performed to the requirements of the Contract through the issue of a certificate of Total Performance is the date on which Total Performance has been achieved.

**D11. LIQUIDATED DAMAGES**

- D11.1 In the event the Contractor is unable to transport amount of biosolids and in the opinion of the Contract Administrator, storage volumes on site will be exceeded, the City will immediately take whatever steps are necessary to remove and apply the biosolids. All costs in this regard will be charged to the Contractor and deducted from his payment for work actually done.
- D11.2 If the Contractor deposits biosolids on an unapproved or undesignated site, or hauls to a storage area other than that which is stated on the load ticket, the Contractor will not be paid for the load in question and will be responsible for removal and all other cleanup, repair or remediation costs. The removal and cleanup shall be completed within twenty-four (24) hours of notification from the City to do so. The unapproved delivery of biosolids may at the City's option, result in the termination of the Contract and the City reserves the right to take legal action against the Contractor for violations of the law.
- D11.3 Biosolids deposited on unapproved or undesignated sites shall be removed and transported to an approved location as advised by the Contract Administrator. All costs for this operation to be paid for by the Contractor.

- D11.4 Any spillage must be cleaned up within four (4) hours of spillage occurring. The Contractor is expected to immediately clean up his own spillage; if the City is forced to clean up spillage, the Contractor will be assessed such costs. Two (2) major incidents in any twelve (12) month period of the contract shall be cause for termination of the contract. The Contractor shall prepare and furnish the City a copy of a contingency plan for dealing with accidental spillage of sludge of any biosolids.
- D11.5 Special care shall be taken to avoid damage to existing adjacent structures and/or property (public or private), including drives, fields, fences, as a result of any act or omission on the part of his employees or agents during the course of these works. Any damages caused by the Contractor or his agents during the execution of this Contract shall be repaired by the Contractor to a condition similar and equal to that existing before such damage or injury was done, within ninety-six (96) hours. The City and Contractor shall agree to a schedule of repairs within twenty-four (24) hours of the occurrence. If the Contractor fails to make repairs on schedule, the City shall repair the damage, and deduct the cost as damages thereof from the Contractor's monthly payments accordingly.
- D11.6 The Contractor shall be responsible for any other costs incurred by the City due to the Contractor's failure to carry out the Work in accordance with these documents.
- D11.7 Any costs or other damages provided for herein shall be deducted from the Contractor's monthly payments. Times and assessments will be documented and presented to the Contractor in writing from the City at the time of infraction or as soon thereafter as the City becomes aware of the violation of contract provisions.
- D11.8 The aforementioned liquidated damages will be strictly enforced by the City. Interpretation of these clauses shall rest solely with the Contract Administrator.

## **CONTROL OF WORK**

### **D12. JOB MEETINGS**

- D12.1 Regular weekly job meetings will be held at the Site. These meetings shall be attended by a minimum of one representative of the Contract Administrator, one representative of the City and one representative of the Contractor. Each representative shall be a responsible person capable of expressing the position of the Contract Administrator, the City and the Contractor respectively on any matter discussed at the meeting including the Work schedule and the need to make any revisions to the Work schedule. The progress of the Work will be reviewed at each of these meetings.
- D12.2 The Contract Administrator reserves the right to cancel any job meeting or call additional job meetings whenever he deems it necessary.

### **D13. DURATION OF CONTRACT**

- D13.1 The duration of this Contract shall be from July 1, 2004 to June 30, 2009.

### **D14. DELAYS CAUSED BY THE CITY**

- D14.1 In view of the nature of the Form B: Prices (ie. the Contractor is paid on a time basis for fixed capital and labour costs), no compensation will be paid to the Contractor in the event of delays caused by the city's operations.

**D15. EQUIPMENT PURCHASED BY THE CITY**

D15.1 Further to GC:19.11 the City shall have the right to purchase the Contractor's specialized equipment consisting of the biosolids applicators at a price equivalent to seventy-five percent (75%) of the then current fair market value of the equipment as determined by a knowledgeable, mutually agreed upon third party, costs for whom would be paid jointly and equally by the City and the Contractor.

**D16. COOPERATION WITH PLANT OPERATORS**

D16.1 Further to GC:6, the Contractor shall cooperate with the North End Water Pollution Control Centre operators in every way and not interfere with the day-to-day operation of the plant and ensure continuous plant operation.

D16.2 The Contract Administrator may direct the work schedule in any way he deems necessary in order to avoid interference.

**D17. COOPERATION WITH OTHER CONTRACTORS**

D17.1 Further to GC:6, other Contracts have been and may be awarded by the City that may require interaction with other Contractors during the course of carrying out this Contract. In particular, other Contracts may include:

D17.1.1 Liquid Sludge hauling from the South End Water Pollution Control Centre (SEWPCC) and the West End Water Pollution Control Centre (WEWPCC) to the North End Water Pollution Control Centre (NEWPCC).

D17.1.2 Grit hauling from the NEWPCC to landfill sites.

D17.1.3 Various construction contracts at the NEWPCC.

D17.1.4 Septage and leachate haulage.

D17.2 The Contractor shall cooperate and make suitable working arrangements with other Contractors to ensure satisfactory prosecution of the Work

D17.3 All arrangements shall have the approval of the Contract Administrator in writing and should disagreement occur or should Contractors be unable to reach a satisfactory working arrangement for carrying out the Work, the Contract Administrator shall determine the manner for carrying out the Work or the arrangements necessary for proper protection or prosecution of the Work. The Contractor shall not be entitled to any additional payment for work required or delays caused by interaction between contractors or on instructions from the Contract Administrator. The Contractor, however, shall assume full responsibility for work so arranged or so directed by the Contract Administrator.

**D18. PRIME CONTRACTOR – THE WORKPLACE SAFETY AND HEALTH ACT (MANITOBA)**

D18.1 Further to GC:6.26, the Contractor shall be the Prime Contractor and shall serve as, and have the duties of the Prime Contractor in accordance with The Workplace Safety and Health Act (Manitoba).

**MEASUREMENT AND PAYMENT****D19. UNIT PRICE ESCALATION FORMULA**

D19.1 A unit price escalation formula will be applied to all of the unit prices included in the Tender Submission except Equipment to calculate unit prices in years 2 through 5 of the Contract.

- D19.2 Unit prices as bid shall be in effect through June 30, 2005 at which time the unit prices shall be re-computed for the following contract year.
- D19.3 At the very end of every twelve (12) months, the unit prices shall be revised for the next year to the difference between the Winnipeg Consumer Price Index (12 month average) for June, 2004 and the Winnipeg Consumer Price Index for June of the current year. The index will be found in the Statistics Canada Publication "The Consumer Price Index", Catalogue 62-001 Monthly. If the Consumer Price Index is not available in time to adjust the prices for July of the next billing period, the adjustment will be made in the following month. No interest will be paid on monies outstanding as a result of this delay.
- D19.4 The percent increase or decrease in the unit prices shall be computed as follows:

$$B = \frac{D}{C} \times A$$

- D19.4.1 Where:

A = Unit Price in tender submission  
B = Revised Unit Price for next year  
C = Consumer Price Index, Winnipeg, June 2004, base year  
D = Consumer Price Index, Winnipeg, June previous year  
(Assumes that calculation performed in July of year in question)  
The unit price for hauling from the Dewatering Facility to agricultural lands shall be computed to the nearest one tenth of a cent.

- D19.5 The Contractor should note that this formula will be applied for both price escalation and price reductions as calculated by the formula.



**FORM H1: PERFORMANCE BOND - INITIAL PERFORMANCE SECURITY**  
(See D7)

KNOW ALL MEN BY THESE PRESENTS THAT

\_\_\_\_\_ ,  
(hereinafter called the "Principal"), and

\_\_\_\_\_ ,  
(hereinafter called the "Surety"), are held and firmly bound unto **THE CITY OF WINNIPEG** (hereinafter called the "Obligee"), in the sum of

\_\_\_\_\_ dollars (\$\_\_\_\_\_.)

of lawful money of Canada to be paid to the Obligee, or its successors or assigns, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has entered into a written contract with the Obligee dated the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for:

TENDER NO. 569-2003

HAULING AND LAND APPLICATION OF BIOSOLIDS FROM THE NEWPCC BIOSOLIDS DEWATERING FACILITY

which is by reference made part hereof and is hereinafter referred to as the "Contract".

NOW THEREFORE the condition of the above obligation is such that if the Principal shall:

- (a) carry out and perform the Contract and every part thereof in the manner and within the times set forth in the Contract and in accordance with the terms and conditions specified in the Contract;
- (b) perform the Work in a good, proper, workmanlike manner;
- (c) make all the payments whether to the Obligee or to others as therein provided;
- (d) in every other respect comply with the conditions and perform the covenants contained in the Contract; and
- (e) indemnify and save harmless the Obligee against and from all loss, costs, damages, claims, and demands of every description as set forth in the Contract, and from all penalties, assessments, claims, actions for loss, damages or compensation whether arising under "The Workers Compensation Act", or any other Act or otherwise arising out of or in any way connected with the performance or non-performance of the Contract or any part thereof during the term of the Contract and the warranty period provided for therein;

THEN THIS OBLIGATION SHALL BE VOID, but otherwise shall remain in full force and effect. The Surety shall not, however, be liable for a greater sum than the sum specified above.

AND IT IS HEREBY DECLARED AND AGREED that the Surety shall be liable as Principal, and that nothing of any kind or matter whatsoever that will not discharge the Principal shall operate as a discharge or release of liability of the Surety, any law or usage relating to the liability of Sureties to the contrary notwithstanding.

IN WITNESS WHEREOF the Principal and Surety have signed and sealed this bond the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

SIGNED AND SEALED  
in the presence of:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Name of Principal)

Per: \_\_\_\_\_ (Seal)

Per: \_\_\_\_\_

\_\_\_\_\_  
(Name of Surety)

By: \_\_\_\_\_ (Seal)  
(Attorney-in-Fact)

**FORM H1: PERFORMANCE BOND - RENEWAL PERFORMANCE SECURITY**  
(See D7)

KNOW ALL MEN BY THESE PRESENTS THAT

\_\_\_\_\_ ,  
(hereinafter called the "Principal"), and

\_\_\_\_\_ ,  
(hereinafter called the "Surety"), are held and firmly bound unto **THE CITY OF WINNIPEG** (hereinafter called the "Obligee"), in the sum of

\_\_\_\_\_ dollars (\$\_\_\_\_\_.)

of lawful money of Canada to be paid to the Obligee, or its successors or assigns, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has entered into a written contract with the Obligee dated the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for:

TENDER NO. 569-2003

HAULING AND LAND APPLICATION OF BIOSOLIDS FROM THE NEWPCC BIOSOLIDS DEWATERING FACILITY

which is by reference made part hereof and is hereinafter referred to as the "Contract".

NOW THEREFORE the condition of the above obligation is such that if the Principal shall:

- (a) carry out and perform the Contract and every part thereof in the manner and within the times set forth in the Contract and in accordance with the terms and conditions specified in the Contract;
- (b) perform the Work in a good, proper, workmanlike manner;
- (c) make all the payments whether to the Obligee or to others as therein provided;
- (d) in every other respect comply with the conditions and perform the covenants contained in the Contract; and
- (e) indemnify and save harmless the Obligee against and from all loss, costs, damages, claims, and demands of every description as set forth in the Contract, and from all penalties, assessments, claims, actions for loss, damages or compensation whether arising under "The Workers Compensation Act", or any other Act or otherwise arising out of or in any way connected with the performance or non-performance of the Contract or any part thereof for the period from \_\_\_\_\_(dd/mm/yyyy) to and including \_\_\_\_\_(dd/mm/yyyy).

THEN THIS OBLIGATION SHALL BE VOID, but otherwise shall remain in full force and effect. The Surety shall not, however, be liable for a greater sum than the sum specified above. Notwithstanding the terms of the Contract, non-renewal of the bond shall not be considered a default hereunder.

AND IT IS HEREBY DECLARED AND AGREED that the Surety shall be liable as Principal, and that nothing of any kind or matter whatsoever that will not discharge the Principal shall operate as a discharge or release of liability of the Surety, any law or usage relating to the liability of Sureties to the contrary notwithstanding.

IN WITNESS WHEREOF the Principal and Surety have signed and sealed this bond the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

SIGNED AND SEALED  
in the presence of:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Name of Principal)

Per: \_\_\_\_\_ (Seal)

Per: \_\_\_\_\_

\_\_\_\_\_  
(Name of Surety)

By: \_\_\_\_\_ (Seal)  
(Attorney-in-Fact)

**FORM H2: IRREVOCABLE STANDBY LETTER OF CREDIT  
(PERFORMANCE SECURITY)  
(See D7)**

\_\_\_\_\_  
(Date)

The City of Winnipeg  
Corporate Services Department  
Legal Services Division  
185 King Street, 3rd Floor  
Winnipeg MB R3B 1J1

RE: PERFORMANCE SECURITY - 569-2003

HAULING AND LAND APPLICATION OF BIOSOLIDS FROM THE NEWPCC BIOSOLIDS  
DEWATERING FACILITY

Pursuant to the request of and for the account of our customer,

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

WE HEREBY ESTABLISH in your favour our irrevocable Standby Letter of Credit for a sum not exceeding in the aggregate

\_\_\_\_\_ Canadian dollars.

This Standby Letter of Credit may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you. It is understood that we are obligated under this Standby Letter of Credit for the payment of monies only and we hereby agree that we shall honour your demand for payment without inquiring whether you have a right as between yourself and our customer to make such demand and without recognizing any claim of our customer or objection by the customer to payment by us.

The amount of this Standby Letter of Credit may be reduced from time to time only by amounts drawn upon it by you or by formal notice in writing given to us by you if you desire such reduction or are willing that it be made.

Partial drawings are permitted.

We engage with you that all demands for payment made within the terms and currency of this Standby Letter of Credit will be duly honoured if presented to us at:

\_\_\_\_\_  
(Address)

and we confirm and hereby undertake to ensure that all demands for payment will be duly honoured by us.

All demands for payment shall specifically state that they are drawn under this Standby Letter of Credit.

Subject to the condition hereinafter set forth, this Standby Letter of Credit will expire on

\_\_\_\_\_  
(Date)

It is a condition of this Standby Letter of Credit that it shall be deemed to be automatically extended from year to year without amendment from the present or any future expiry date, unless at least 30 days prior to the present or any future expiry date, we notify you in writing that we elect not to consider this Standby Letter of Credit to be renewable for any additional period.

This Standby Letter of Credit may not be revoked or amended without your prior written approval.

This credit is subject to the Uniform Customs and Practice for Documentary Credit (1993 Revision), International Chamber of Commerce Publication Number 500.

\_\_\_\_\_  
(Name of bank or financial institution)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_  
(Authorized Signing Officer)