

**PART D**

**SUPPLEMENTAL CONDITIONS**

## **PART D - SUPPLEMENTAL CONDITIONS**

### **GENERAL**

#### **D1. GENERAL CONDITIONS**

- D1.1 In addition to the *General Conditions for Provision of Services*, 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 striking out "Board of Commissioners" or "Commissioner" wherever it appears in the General Conditions and substituting the "Chief Administrative Officer".
- D1.4 The General Conditions are amended by striking out "Tender Package" wherever it appears in the General Conditions and substituting "Bid Opportunity".
- D1.5 The General Conditions are amended by striking out "Tender Submission" wherever it appears in the General Conditions and substituting "Bid Submission".
- D1.6 The General Conditions are amended by striking out "Bidding Instructions" wherever it appears in the General Conditions and substituting "Bidding Procedures".

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

- D2.1 The Work to be done under the Contract shall consist of mechanical container collection and disposal of community solid wastes, as envisioned by Clause 7(a)iii of the Solid Waste By-law for all premises within the East Sector of the City of Winnipeg entitled therein for the period of February 1, 2005 to January 31, 2011 .
- D2.2 The major components of the Work are as follows:
- (a) Provision of regular garbage collection services to apartment and small commercial premises that utilize authorized metal containers suitable for front-loading overhead, or roll-off garbage collection vehicles. The frequency of collection is to be bi-weekly, once or twice per week on a site-specific basis as directed
  - (b) As commercial premises now pay for the garbage collection service, a provision to unlock garbage bins so as to empty the contents may also be required. This is an extra cost service on an as-requested basis by the commercial customer. The Contractor will provide a padlock and key to each location requesting the service with the customer responsible for maintenance and security of the lock and key
- D2.3 Notwithstanding D3.1, the type and quantity of Work to be performed under this Contract is subject to annual approval of monies therefore in a budget by Council. Bidders are advised that monies have been approved for work up to and including December 31, 2005.
- D2.4 Notwithstanding D3.1, in the event that operational changes result in substantial changes to the requirements for Work, the City reserves the right to alter the type or quantity of work performed under this Contract upon thirty (30) Calendar Days written notice by the Contract Administrator. In such an event, no claim may be made for damages on the ground of loss of anticipated profit on Work.

**D3. DURATION OF CONTRACT**

- D3.1 Notwithstanding GC.8.01, the Contractor shall perform the Work of this Contract during the period of February 1, 2005 to January 31, 2011 .
- D3.2 Notwithstanding D3.1, in the event that operational changes result in substantial changes to the requirements for Work, the City reserves the right to terminate the Contract upon thirty (30) Calendar Days written notice by the Contract Administrator. In such an event, no claim may be made for damages on the ground of loss of anticipated profit on Work.

**D4. CONTRACT ADMINISTRATOR**

- D4.1 The Contract Administrator is:  
Darryl E. Drohomerski, C.E.T.  
Solid Waste Process Coordinator  
2<sup>nd</sup> Floor, 1539 Waverley Street  
Winnipeg MB R3T 4V7  
Telephone No. (204) 986-4484  
Facsimile No. (204) 774-6729  
Email: [ddrohomerski@winnipeg.ca](mailto:ddrohomerski@winnipeg.ca)
- D4.2 At the pre-commencement meeting, the Contract Administrator will identify additional personnel representing the Contract Administrator and their respective roles and responsibilities for the Work.

**D5. CONTRACTOR'S SUPERVISOR**

- D5.1 At the pre- commencement meeting, the Contractor shall identify his designated supervisor and any additional personnel representing the Contractor and their respective roles and responsibilities for the Work.

**D6. NOTICES**

- D6.1 GC.7.06 is hereby amended to delete reference to "registered mail" and to replace same with "ordinary mail".
- D6.2 GC.7.06 is further amended hereby to include delivery by facsimile transmission (fax) as an acceptable means of delivering notices, consents, approvals, statements, authorizations, documents or other communications required or permitted to be given under this Contract. Deliveries by fax will be deemed to have been received on the day of delivery, if a business day, or if not a business day, on the business day next following the day of delivery.
- D6.3 Further to GC.7.06, all notices, consents, approvals, statements, authorizations, documents or other communications to the City, except as expressly otherwise required in D6.4, D6.5 or elsewhere in the Contract, shall be sent to the attention of the Contract Administrator at the address or facsimile number identified in D4.1.
- D6.4 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

- D6.5 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

## **SUBMISSIONS**

### **D7. AUTHORITY TO CARRY ON BUSINESS**

- D7.1 The Contractor 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 Contractor does not carry on business in Manitoba, in the jurisdiction where the Contractor does carry on business, throughout the term of the Contract, and shall provide the Contract Administrator with evidence thereof upon request.

### **D8. WORKERS COMPENSATION**

- D8.1 The Contractor shall be registered with the Workers Compensation Board of Manitoba, shall provide and maintain Workers Compensation coverage throughout the term of the Contract, and shall provide the Contract Administrator with evidence thereof upon request.

### **D9. PERFORMANCE SECURITY**

- D9.1 The Contractor shall provide and maintain Performance Security until one (1) month from the total performance of the Contract 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 Total Annual Bid Price, and subsequent performance bond(s) ("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 Total Annual Bid Price; 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 Total Annual Bid Price; 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 Total Annual Bid Price
- D9.2 If the Bid Security provided in the Tender Submission was not a certified cheque or draft pursuant to B10.1(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 and in no event later than the date specified in GC3.01 for the return of the executed Contract

### Renewal of Performance Security

D9.3 Further to D9.1(a), the Renewal Performance Security shall be provided to the City no later than sixty (60) calendar days prior to the expiry of the Current Performance Security.

## **D10. INSURANCE**

D10.1 The Contractor shall provide and maintain the following insurance coverage:

- (a) commercial general liability insurance, in the amount of at least five million dollars (\$5,000,000.00) 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 five million dollars (\$5,000,000.00) at all times during the performance of the Work and until the date of Total Performance.

D10.2 Deductibles shall be borne by the Contractor.

D10.3 The Contractor shall provide the Contract Administrator with a certified true copy or a certificate of insurance of each policy at least fourteen (14) Business Days prior to the commencement of any Work on the Site but in no event later than the date specified in GC.3.01 for the return of the executed Contract.

D10.4 The Contractor shall not cancel, materially alter, or cause each policy to lapse without providing at least thirty (30) Calendar Days prior written notice to the Contract Administrator.

## **CONTROL OF WORK**

### **D11. COMMENCEMENT**

D11.1 The Contractor shall not commence any Work until he is in receipt of a purchase order authorizing the commencement of the Work.

D11.2 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 D8;
  - (iii) evidence of the insurance specified in D10;
  - (iv) evidence of the equipment list as specified in E4;
  - (v) evidence of the routing lists as specified in E3.1.
- (b) the Contractor has attended a meeting with the Contract Administrator, or the Contract Administrator has waived the requirement for a meeting.

### **D12. PRIME CONTRACTOR – THE WORKPLACE SAFETY AND HEALTH ACT (MANITOBA)**

- (a) Further to GC.5.02, 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

### D13. INVOICES:

- D13.1 Payments to the Contractor will be made following the end of each month based on a certificate prepared by the Contract Administrator, indicating each payment item in Form B: Prices that were fully and properly serviced in accordance with the Specifications during the referenced monthly period. Month-end payments will be on the basis of one-twelfth (1/12) of the annual tendered unit price for each item collected fully, or added to the collection list during the previous month. No compensation will be applied for pick-up items deleted at any point during the previous month.
- D13.2 The Contractor will be allowed a thirty (30) day period after any payment certificate is initiated by the Contract Administrator for objection to the quantities therein, with such statement of objection, in writing, to be accompanied by a location pickup list showing the Contractor's quantity considerations. The decision of the Contract Administrator will be final following a review of such objection.

### D14. PAYMENT

- D14.1 Further to GC.9.03, payment shall be in Canadian funds net fifteen (15) Calendar Days after conclusion of the previous month's work.

### D15. ANNUAL REVIEW – INFLATIONARY ADJUSTMENT:

- D15.1 The unit prices specified in Form B: Prices will be adjusted on February 1, 2006 and each year thereafter, based on the percentage increase or decrease in unit prices for the Contract year, February 1, 2005 to January 31, 2006 = 50% of percentage change in Index A, plus 15% of percentage change in Index B, plus 15% of percentage change in Index C.
- D15.2 Index A, B and C:
- (a) Index "A"  
Average hourly earnings - employees paid by the hour in "Manufacturing" in the Province of Manitoba (Statistics Canada Reference Table 281-0029)
  - (b) Index "B"  
Industrial Product Price Index for motor vehicle industry (Statistics Canada Reference Table 329-0038)
  - (c) Index "C"  
Operation of automotive vehicles component (private transportation) of the Consumer Price Index for Canada (Statistics Canada Reference Table 326-0001)
- D15.3 The indices A, B and C will be those prepared by Statistics Canada. Since some of the indices are not available from Statistics Canada until some time after the adjustment date of February 1, the Contract Administrator will extrapolate the available data for each index to provide for an interim adjustment and will make final adjustments when the published index figures are available.

## **WARRANTY**

### **D16. WARRANTY**

- D16.1 Notwithstanding GC.10.01 and GC.10.02, the contractor shall, at his sole cost and expense, maintain the Work against any and all claims or deficiencies or otherwise that may arise, for a period of one (1) month from the date of the Certificate of Total Performance.
- D16.2 At least two (2) weeks prior to the expiration of the Warranty Period, or upon correction of all outstanding deficiencies, whichever is later, the contractor shall arrange, attend and assist in the acceptance of the Work. The Contract Administrator shall, on being satisfied that all outstanding deficiencies have been corrected, issue a Certificate of Acceptance for the Work to be dated not earlier than one (1) month after the date of Certificate of Total Performance or the date that the Contractor corrects the final deficiencies, whichever is the later, thereby terminating the Warranty Period. The Certificate of Acceptance will, subject to Clause GC.10.02, indicate acceptance of the due performance of the Contract

#### Extension of Warranty Period

- D16.3 Further to Clause GC.10.02 of the general Conditions, in the event that all outstanding deficiencies have not been corrected to the satisfaction of the Contract Administrator at least one (1) week prior to the expiration of the Warranty Period, the Contractor shall be required to provide and maintain, at his sole cost and expense, an extension of the Performance Bond for a further one (1) month term with regard to those items of work that have been identified as still being deficient. Failure to do so shall result in the City realizing on the Performance Security.

**FORM H1: PERFORMANCE BOND – INITIAL PERFORMANCE SECURITY**  
(See D9)

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:

**BID OPPORTUNITY NO. 224-2004**

**MECHANICAL COLLECTION OF SOLID WASTE FROM APARTMENT AND SMALL COMMERCIAL ESTABLISHMENTS (AREA C)**

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 first three (3) years of the Contract;

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 H1: PERFORMANCE BOND- RENEWAL PERFORMANCE SECURITY**

(See D9)

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:

**BID OPPORTUNITY NO. 224-2004**

**MECHANICAL COLLECTION OF SOLID WASTE FROM APARTMENT AND SMALL COMMERCIAL ESTABLISHMENTS (AREA C)**

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/YY) to and including \_\_\_\_\_( DD/MM/YY).

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 D9)**

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

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

RE: PERFORMANCE SECURITY - **224-2004**

MECHANICAL COLLECTION OF SOLID WASTE FROM APARTMENT AND SMALL COMMERCIAL ESTABLISHMENTS (AREA C)

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)