

PART D

SUPPLEMENTAL CONDITIONS

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GENERAL

D1. GENERAL CONDITIONS

- D1.1 In addition to the *General Conditions for the Supply and Delivery of Goods*, 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 the supply, delivery, in-warehouse testing and installation inspection of eight (8) butterfly valves and actuators..
- D2.2 The major components of the Work are as follows:
- (a) Supply and delivery of four (4) 2100 millimetre nominal diameter AWWA C504 Butterfly Valves, complete with electric actuators.
 - (b) Supply and delivery of six (6) 2100 millimetre nominal diameter AWWA C504 Butterfly Valves, complete with manual actuators.
 - (c) Supply and delivery of one (1) 2100 millimetre testing blind flange and appurtenances for in-warehouse pressure testing of valves.
 - (d) In-warehouse hydrostatic testing of valves.
 - (e) Provision of installation inspection services.
 - (f) Provision of City staff training and Operation and Maintenance Manuals.

D3. DEFINITIONS

- D3.1 When used in this Bid Opportunity:
- (a) "**Business Day**" means any Calendar Day, other than a Saturday, Sunday, or a Statutory or Civic Holiday.
 - (b) "**Submission Deadline**" and "**Time and Date Set for the Final Receipt of Bids**" mean the time and date set out in the Bidding Procedures for final receipt of Bids.
 - (c) "**Substantial Performance**" shall have the meaning attributed to it in the Builders' Lien Act (Manitoba), or any successor legislation thereto.

- (d) **"Installation Contractor" or "Installer"** means the General Contractor retained by the City, under a separate contract, to install the isolation and modulating valves and related equipment supplied under this contract.
- (e) **ANSI** means American National Standards Institute.
- (f) **ASME** means American Society of Mechanical Engineers.
- (g) **ASTM** means American Society for Testing and Materials.
- (h) **AWWA** means American Water Works Association.
- (i) **CSA** means Canadian Standards Association.
- (j) **IEC** means International Electrotechnical Commission.
- (k) **ISO** means International Organization for Standardization.
- (l) **NACE** means National Association of Corrosion Engineers.
- (m) **NEMA** means National Electrical Manufacturers Association.
- (n) **NSF** means National Sanitation Foundation.
- (o) **SAE** means Society of Automotive Engineers.

D4. CONTRACT ADMINISTRATOR

D4.1 The Contract Administrator is UMA Projects Ltd., represented by:

Mr. Larry Smith, C.E.T.
Assistant Construction Manager
1479 Buffalo Place
Winnipeg, MB. R3T 1L7

Telephone No. (204) 284-0580
Facsimile No. (204) 453-5172

D5. NOTICES

D5.1 GC.7.05 is hereby amended to delete reference to "registered mail" and to replace same with "ordinary mail".

D5.2 GC.7.05 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.

D5.3 Further to GC.7.05, all notices, consents, approvals, statements, authorizations, documents or other communications to the City, except as expressly otherwise required in D5.4, D5.5 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.

D5.4 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

D5.5 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

D6. SHOP DRAWINGS

D6.1 Submit Shop Drawings promptly to the Contract Administrator in an orderly sequence to prevent delay in the Work or in the work of other Contractors. Notify the Contract Administrator at the time of submission of any deviations in the Shop Drawings from the requirements of the Specifications.

D6.2 The Contract Administrator will review Shop Drawings promptly or in accordance with a schedule agreed upon in writing. Upon completion of review the Contract Administrator will communicate either acceptance or rejection of Shop Drawings. The Contract Administrator's review and acceptance will be for conformity to design concept of the Work and for compliance with the Specifications.

D6.3 Acceptance of Shop Drawings for a component or a subassembly does not constitute acceptance of the complete assembly of which it is a part.

D6.4 The Contract Administrator's review will not relieve responsibility for errors and omissions in Shop Drawings or of the responsibility for meeting requirements of the Specifications unless identified deviations on Shop Drawings have been approved by the Contract Administrator.

D6.5 Make changes to Shop Drawings as required by the Contract Administrator that are consistent with the Specifications and promptly resubmit Shop Drawings to the Contract Administrator for review and acceptance unless otherwise indicated by the Contract Administrator. Notify the Contract Administrator of any revisions other than those requested by the Contract Administrator when resubmitting Shop Drawings.

D6.6 Do not undertake work associated with Shop Drawings until the Contract Administrator's review is completed and Shop Drawings are accepted.

D6.7 Shop Drawings are to be in accordance with the following requirements.

- (a) Sheet size: appropriate for item and information being depicted.
- (b) Submit 5 prints or an electronic file in a format acceptable to the Contract Administrator.
- (c) Show the following information in lower right hand corner.
 - (i) Project Title.
 - (ii) Bid Opportunity or other project number assigned by the Contract Administrator.
 - (iii) Name of the depicted item in accordance with the Specifications and Drawings.
 - (iv) Project series number and location where the item is used if applicable.
 - (v) Specification section number if applicable.
 - (vi) Proposed option if applicable.
 - (vii) Name of Contractor.
 - (viii) Revise the drawing date for each resubmission.

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. PERFORMANCE SECURITY

D8.1 The Contractor shall provide and maintain performance security until the expiration of the warranty period in the form of:

- (a) a performance bond of a company registered to conduct the business of a surety in Manitoba, in the form attached to these Supplemental Conditions (Form H1: Performance Bond), in the amount of fifty percent (50%) of the Contract Price; or
- (b) an irrevocable standby letter of credit issued by a bank or other financial institution registered to conduct business in Manitoba and drawn on a branch located 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 Contract 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 Contract Price.

D8.2 If the bid security provided in his Bid 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 but in no event later than the date specified in GC.3.01 for the return of the executed Contract.

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.

D10. CRITICAL STAGES

D10.1 The Contractor shall achieve critical stages of the Work in accordance with the following requirements:

- (a) Supply and delivery of two (2) 2100 millimetre butterfly valves with electric actuators and three (3) 2100 millimetre butterfly valves with manual actuators to the City of Winnipeg warehouse at 1500 Plessis Road **by July 29, 2005.**
- (b) Successful in-warehouse testing of two (2) 2100 millimetre butterfly valves with electric actuators and three (3) 2100 millimetre butterfly valves with manual actuators **by August 15, 2005.**
- (c) Delivery of remaining 2100 millimetre butterfly valves and actuators to the City of Winnipeg warehouse at 1500 Plessis Road **by September 1, 2005.**

- (d) Successful in-warehouse testing of remaining butterfly valves with actuators **by September 15, 2005.**

D11. SUBSTANTIAL PERFORMANCE

- D11.1 The Contractor shall achieve Substantial Performance by December 31, 2005.
- D11.2 When the Contractor considers the Work to be substantially performed, the Contractor shall arrange, attend and assist in the inspection of the Work with the Contract Administrator for purposes of verifying Substantial 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.
- D11.3 The date on which the Work has been certified by the Contract Administrator as being substantially performed to the requirements of the Contract through the issue of a certificate of Substantial Performance is the date on which Substantial Performance has been achieved.

D12. TOTAL PERFORMANCE

- D12.1 The Contractor shall achieve Total Performance by January 31, 2006.
- D12.2 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.
- D12.3 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.

D13. LIQUIDATED DAMAGES

- D13.1 If the Contractor fails to achieve critical stages, Substantial Performance or Total Performance in accordance with the Contract by the days fixed herein for same, the Contractor shall pay the City the following amounts per Calendar Day for each and every Calendar Day following the days fixed herein for same during which such failure continues:
 - (a) Supply and delivery of two (2) 2100 millimetre butterfly valves with electric actuators and three (3) 2100 millimetre butterfly valves with manual actuators to the City of Winnipeg warehouse at 1500 Plessis Road **by July 29, 2005** – one thousand, five hundred dollars (\$1,500);
 - (b) Successful in-warehouse testing of two (2) 2100 millimetre diameter butterfly valves with electric actuators and three (3) 2100 millimetre butterfly valves with manual actuators **by August 15, 2005** – one thousand, five hundred dollars (\$1,500);
 - (c) Supply and delivery of remaining 2100 millimetre butterfly valves and actuators to the City of Winnipeg warehouse at 1500 Plessis Road **by September 1, 2005** - one thousand, five hundred dollars (\$1,500);
 - (d) Successful in-warehouse testing of remaining 2100 millimetre diameter butterfly valves and actuators **by September 15, 2005** - one thousand, five hundred dollars (\$1,500);
 - (e) Substantial Performance - one thousand, five hundred dollars (\$1,500);
 - (f) Total Performance – five hundred dollars (\$500).

D13.2 The amounts specified for liquidated damages in D13.1 are based on a genuine pre-estimate of the City's losses in the event that the Contractor does not achieve critical stages, Substantial Performance or Total Performance by the days fixed herein for same.

D13.3 The City may reduce any payment to the Contractor by the amount of any liquidated damages assessed.

D14. SCHEDULED MAINTENANCE

D14.1 The Contractor shall perform the following scheduled maintenance in the manner and within the time periods required by the Specifications:

(a) Training of City Operations and Maintenance staff as specified in E9;

D14.2 Determination of Substantial Performance and Total Performance shall be exclusive of scheduled maintenance identified herein. All scheduled maintenance shall be completed prior to the expiration of the warranty period. Where the scheduled maintenance cannot be completed during the warranty period, the warranty period shall be extended for such period of time as it takes the Contractor to complete the scheduled maintenance.

MEASUREMENT AND PAYMENT

D15. PAYMENT SCHEDULE

D15.1 Further to GC.9.03, payment shall be in accordance with the following payment schedule:

- (a) For Items 1 and 2, 2% of the bid prices will be paid upon acceptance of shop drawings.
- (b) For Items 1 and 2, an additional 73% of the bid prices will be paid upon issue of Form 200, Certificate of Equipment Delivery.
- (c) For Items 1 and 2, an additional 10% of the bid prices will be paid upon successful in-warehouse testing.
- (d) For Items 1 and 2, an additional 10% of the bid prices will be paid upon issue of Form 202, Certificate of Satisfactory Installation.
- (e) For Items 1 and 2, the final 5% of the bid prices will be paid upon issue of Form 203, Certificate of Equipment Satisfactory Performance.

D15.2 Further to GC.9.03:

- (a) any payment made by the City to the Contractor on account of a progress estimate shall be less any holdback required to be made by The Builders' Liens Act, and such holdbacks or other amounts which the City is entitled to withhold pursuant to the Contract;
- (b) payment on account of the final progress estimate, including the holdback made by the City pursuant to The Builders' Liens Act, shall be paid to the Contractor when the time for filing liens or trust claims has elapsed, unless the City is in receipt of a lien or trust claim.

WARRANTY

D16. WARRANTY

D16.1 Further to GC.10.01, if a defect or deficiency prevents the full and normal use or operation of the Work or any portion thereof, for purposes of calculating the warranty period, time shall be deemed to cease to elapse for the defective or deficient portion, and for any portion of the Work whose use or operation is prevented by such defect or deficiency, as of the date on which the defect or deficiency is observed or the use or operation is prevented and shall begin to run

again when the defect or deficiency has been corrected or the Work may be used or operated to the satisfaction of the Contract Administrator.

- D16.2 Notwithstanding GC.10.01, GC.10.02 and D16.1, if any law of Manitoba or of the jurisdiction in which the Work was manufactured requires, or if the manufacturer provides, a longer warranty period or a warranty which is more extensive in its nature, then the provisions of such law or manufacturer's warranty shall apply.
- D16.3 If a defect or deficiency prevents the full and normal use or operation of the Work or any portion thereof, for purposes of calculating the warranty period, time shall be deemed to cease to elapse for the defective or deficient portion, and for any portion of the Work whose use or operation is prevented by such defect or deficiency, as of the date on which the defect or deficiency is observed or the use or operation is prevented and shall begin to run again when the defect or deficiency has been corrected or the Work may be used or operated to the satisfaction of the Contract Administrator.
- D16.4 Notwithstanding GC.10.01, GC.10.02, and D16.3 if any law of Manitoba or of the jurisdiction in which the Work was manufactured requires, or if the manufacturer provides, a longer warranty period or a warranty which is more extensive in its nature, then the provisions of such law or manufacturer's warranty shall apply.

INDEMNITY

D17. INDEMNITY

- D17.1 Notwithstanding GC.7.03, the Contractor shall save harmless and indemnify the City for twice the contract price plus two (2) million dollars against all costs, damages or expenses arising from actions, claims, demands and proceedings, by whomsoever brought, made or taken as a result of acts or omissions of the Contractor, his/her Subcontractors, employees or agents in the performance or purported performance of the Work, and more particularly from:
- (a) accidental injury to or death of any person whether retained by or in the employ of the Contractor or not, arising directly or indirectly by reason of the performance of the Work, or by reason of any trespass on or damage to property;
 - (b) damage to any property owned in whole or in part by the City, or which the City by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain;
 - (c) damage to, or trespass or encroachment upon, property owned by persons other than the City;
 - (d) failure to pay and obtain a discharge of a notice of claim for lien served upon the City in accordance with the requirements of The Builder's Liens Act;
 - (e) failure to pay a Workers Compensation assessment, or Federal or Provincial taxes;
 - (f) unauthorized use of any design, device, material or process covered by letters patent, copyright, trademark or trade name in connection with the Work;
 - (g) inaccuracies in any information provided to the City by the Contractor.

FORM H1: PERFORMANCE BOND
(See D8)

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. 32-2005

WINNIPEG WATER TREATMENT PROGRAM –
SUPPLY OF BUTTERFLY VALVES FOR WATER TREATMENT PLANT YARD PIPING

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

(See D8)

(Date)

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

RE: PERFORMANCE SECURITY - 32-2005

WINNIPEG WATER TREATMENT PROGRAM –
SUPPLY OF BUTTERFLY VALVES FOR WATER TREATMENT PLANT YARD PIPING

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)