



**THE CITY OF WINNIPEG**

# **REQUEST FOR PROPOSAL**

**RFP NO. 944-2011**

**PROVISION OF WIRELESS DIGITAL ADVERTISING NETWORK  
IN RAPID TRANSIT STATIONS**

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### **Appendix A**

## **PART B - BIDDING PROCEDURES**

### **B1. CONTRACT TITLE**

- B1.1 PROVISION OF WIRELESS DIGITAL ADVERTISING NETWORK
- B1.2 IN RAPID TRANSIT STATIONS

### **B2. SUBMISSION DEADLINE**

- B2.1 The Submission Deadline is 4:00 p.m. Winnipeg time, January 13, 2012.
- 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 Contract Administrator 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. ENQUIRIES**

- B3.1 All enquiries shall be directed to the Contract Administrator identified in D5.1.
- B3.2 If the Bidder finds errors, discrepancies or omissions in the Request for Proposal, or is unsure of the meaning or intent of any provision therein, the Bidder shall promptly notify the Contract Administrator of the error, discrepancy or omission at least five (5) Business Days prior to the Submission Deadline.
- B3.3 If the Bidder is unsure of the meaning or intent of any provision therein, the Bidder should request clarification as to the meaning or intent prior to the Submission Deadline.
- B3.4 Responses to enquiries which, in the sole judgment of the Contract Administrator, require a correction to or a clarification of the Request for Proposal will be provided by the Contract Administrator to all Bidders by issuing an addendum.
- B3.5 Responses to enquiries which, in the sole judgment of the Contract Administrator, do not require a correction to or a clarification of the Request for Proposal will be provided by the Contract Administrator only to the Bidder who made the enquiry.
- B3.6 The Bidder shall not be entitled to rely on any response or interpretation received pursuant to B3 unless that response or interpretation is provided by the Contract Administrator in writing.

### **B4. CONFIDENTIALITY**

- B4.1 Information provided to a Bidder by the City or acquired by a Bidder 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 Contract Administrator.
- B4.2 The Bidder 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 Contract Administrator.

### **B5. ADDENDA**

- B5.1 The Contract Administrator 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.

- B5.2 The Contract Administrator 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.
- B5.2.1 Addenda will be available on the Bid Opportunities page at The City of Winnipeg, Corporate Finance, Materials Management Division website at <http://www.winnipeg.ca/matmgt/bidopp.asp>
- B5.2.2 The Bidder is responsible for ensuring that he has received all addenda and is advised to check the Materials Management Division website for addenda regularly and shortly before the Submission Deadline, as may be amended by addendum.
- B5.3 The Bidder shall acknowledge receipt of each addendum in Paragraph 9 of Form A: Proposal. Failure to acknowledge receipt of an addendum may render a Proposal non-responsive.

## **B6. SUBSTITUTES**

- B6.1 The Work is based on the Plant, Materials and methods specified in the Request for Proposal.
- B6.2 Substitutions shall not be allowed unless application has been made to and prior approval has been granted by the Contract Administrator in writing.
- B6.3 Requests for approval of a substitute will not be considered unless received in writing by the Contract Administrator at least five (5) Business Days prior to the Submission Deadline.
- B6.4 The Bidder shall ensure that any and all requests for approval of a substitute:
- (a) provide sufficient information and details to enable the Contract Administrator to determine the acceptability of the Plant, Material or method as either an approved equal or alternative;
  - (b) identify any and all changes required in the applicable Work, and all changes to any other Work, which would become necessary to accommodate the substitute;
  - (c) identify any anticipated cost or time savings that may be associated with the substitute;
  - (d) certify that, in the case of a request for approval as an approved equal, the substitute will fully perform the functions called for by the general design, be of equal or superior substance to that specified, is suited to the same use and capable of performing the same function as that specified and can be incorporated into the Work, strictly in accordance with the Contract;
  - (e) certify that, in the case of a request for approval as an approved alternative, the substitute will adequately perform the functions called for by the general design, be similar in substance to that specified, is suited to the same use and capable of performing the same function as that specified and can be incorporated into the Work, strictly in accordance with the Contract.
- B6.5 The Contract Administrator, after assessing the request for approval of a substitute, may in his sole discretion grant approval for the use of a substitute as an “approved equal” or as an “approved alternative”, or may refuse to grant approval of the substitute.
- B6.6 The Contract Administrator will provide a response in writing, at least two (2) Business Days prior to the Submission Deadline, only to the Bidder who requested approval of the substitute.
- B6.6.1 The Bidder requesting and obtaining the approval of a substitute shall be entirely responsible for disseminating information regarding the approval to any person or persons he wishes to inform.
- B6.7 If the Contract Administrator approves a substitute as an “approved equal”, any Bidder may use the approved equal in place of the specified item.
- B6.8 If the Contract Administrator approves a substitute as an “approved alternative”, any Bidder bidding that approved alternative may base his Total Bid Price upon the specified item but may

also indicate an alternative price based upon the approved alternative. Such alternatives will be evaluated in accordance with B18.

- B6.9 No later claim by the Contractor for an addition to the Total Bid Price because of any other changes in the Work necessitated by the use of an approved equal or an approved alternative will be considered.
- B6.10 Notwithstanding B6.2 to B6.9 and in accordance with B7.6, deviations inconsistent with the Request for Proposal document shall be evaluated in accordance with B18.1(a).

## **B7. PROPOSAL SUBMISSION**

- B7.1 The Proposal shall consist of the following components:
- (a) Form A: Proposal;
  - (b) Form B: Prices.
- B7.2 The Proposal should consist of the following components:
- (a) Industry Experience of Key Personnel;
  - (b) Business Plan.
- B7.3 Further to B7.1, the Bidder should include the written correspondence from the Contract Administrator approving a substitute in accordance with B6.
- B7.4 All components of the Proposal shall be fully completed or provided, and submitted by the Bidder no later than the Submission Deadline, with all required entries made clearly and completely, to constitute a responsive Proposal.
- B7.4.1 Bidders should submit one (1) unbound original (marked "original") and four (4) copies and one (PDF) copy.
- B7.5 Bidders are advised not to include any information/literature except as requested in accordance with B7.1.
- B7.6 Bidders are advised that inclusion of terms and conditions inconsistent with the Proposal document, including the General Conditions, will be evaluated in accordance with B18.1(a).
- B7.7 The Proposal should be submitted enclosed and sealed in an envelope clearly marked with the RFP number and the Bidder's name and address.
- B7.7.1 Samples or other components of the Proposal Submission which cannot reasonably be enclosed in the envelope may be packaged separately, but shall be clearly marked with the RFP number, the Bidder's name and address, and an indication that the contents are part of the Bidder's Proposal Submission.
- B7.8 Proposals submitted by facsimile transmission (fax) or internet electronic mail (e-mail) will not be accepted.
- B7.9 Proposals shall be submitted to:
- The City of Winnipeg  
Corporate Finance Department  
Materials Management Division  
185 King Street, Main Floor  
Winnipeg MB R3B 1J1

## **B8. PROPOSAL**

- B8.1 The Bidder shall complete Form A: Proposal, making all required entries.

- B8.2 Paragraph 2 of Form A: Proposal shall be completed in accordance with the following requirements:
- (a) if the Bidder is a sole proprietor carrying on business in his own name, his name shall be inserted;
  - (b) if the Bidder is a partnership, the full name of the partnership shall be inserted;
  - (c) if the Bidder is a corporation, the full name of the corporation shall be inserted;
  - (d) if the Bidder is carrying on business under a name other than his own, the business name and the name of every partner or corporation who is the owner of such business name shall be inserted.
- B8.2.1 If a Proposal is submitted jointly by two or more persons, each and all such persons shall identify themselves in accordance with B8.2.
- B8.3 In Paragraph 3 of Form A: Proposal, the Bidder shall identify a contact person who is authorized to represent the Bidder for purposes of the Proposal.
- B8.4 Paragraph 11 of Form A: Proposal shall be signed in accordance with the following requirements:
- (a) if the Bidder is a sole proprietor carrying on business in his own name, it shall be signed by the Bidder;
  - (b) if the Bidder is a partnership, it shall be signed by the partner or partners who have authority to sign for the partnership;
  - (c) if the Bidder 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 Bidder is carrying on business under a name other than his own, it shall be signed by the registered owner of the business name, or by the registered owner's authorized officials if the owner is a partnership or a corporation.
- B8.4.1 The name and official capacity of all individuals signing Form A: Proposal should be printed below such signatures.
- B8.5 If a Proposal is submitted jointly by two or more persons, the word "Bidder" shall mean each and all such persons, and the undertakings, covenants and obligations of such joint Bidders in the Proposal and the Contract, when awarded, shall be both joint and several.

## **B9. PRICES**

- B9.1 The Bidder shall state the minimum monthly revenue guarantee, the minimum annual revenue guarantee and the Percentage of Gross Billings payable to The City of Winnipeg for each item of the Work identified on Form B: Prices.
- B9.1.1 Notwithstanding C11.1.1, prices on Form B: Prices 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.
- B9.2 The quantities for which payment will be made to the City are to be determined by the Work actually performed and completed by the Contractor, to be measured as specified in the applicable Specifications.

## **B10. QUALIFICATION**

- B10.1 The Bidder 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 Bidder does not carry on business in Manitoba, in the jurisdiction where the Bidder 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 Work in strict accordance with the terms and provisions of the Contract.

B10.2 The Bidder and any proposed Subcontractor (for the portion of the Work 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>

B10.3 The Bidder and/or any proposed Subcontractor (for the portion of the Work proposed to be subcontracted to them) shall:

- (a) have successfully carried out work similar in nature, scope and value to the Work; and
- (b) be fully capable of performing the Work 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);

B10.4 The Bidder shall submit, within three (3) Business Days of a request by the Contract Administrator, proof satisfactory to the Contract Administrator of the qualifications of the Bidder and of any proposed Subcontractor.

B10.5 The Bidder shall provide, on the request of the Contract Administrator, full access to any of the Bidder's equipment and facilities to confirm, to the Contract Administrator's satisfaction, that the Bidder's equipment and facilities are adequate to perform the Work.

## **B11. INDUSTRY EXPERIENCE OF KEY PERSONNEL**

B11.1 The Bidder should provide a complete and accurate description of the Bidder's experience that is relevant to the Work must be provided. The Bidder should identify key personnel who will be assigned to the Work. The Bidder should provide the name and a resume or profile of each key person. The resume or profile should include industry experience and other relevant information about the key person(s).

## **B12. BUSINESS PLAN**

B12.1 The Bidder should provide a detailed Business Plan describing how the Bidder will meet the terms and conditions of the Work, examples include, but are not limited to:

- (a) Sales and Marketing;
- (b) Operations;
- (c) Scheduling;
- (d) Production.

B12.2 The Bidder should provide a detailed listing of hardware and equipment that would be recommended for the initial installation along with additional and supplemental equipment including software capability.

## **B13. OPENING OF PROPOSALS AND RELEASE OF INFORMATION**

B13.1 Proposals will not be opened publicly.

B13.2 After award of Contract, the name(s) of the successful Bidder(s) 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>



B13.3 To the extent permitted, the City shall treat all Proposal Submissions as confidential, however the Bidder 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.

B13.4 Following the award of Contract, a Bidder will be provided with information related to the evaluation of his submission upon written request to the Contract Administrator.

#### **B14. IRREVOCABLE OFFER**

B14.1 The Proposal(s) submitted by the Bidder shall be irrevocable for the time period specified in Paragraph 10 of Form A: Proposal.

B14.2 The acceptance by the City of any Proposal shall not release the Proposals of the other responsive Bidders and these Bidders shall be bound by their offers on such Work until a Contract for the Work has been duly executed and the performance security furnished 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.

#### **B15. WITHDRAWAL OF OFFERS**

B15.1 A Bidder may withdraw his Proposal without penalty by giving written notice to the Manager of Materials at any time prior to the Submission Deadline.

B15.1.1 Notwithstanding C22.5, 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.

B15.1.2 The City will assume that any one of the contact persons named in Paragraph 3 of Form A: Proposal or the Bidder's authorized representatives named in Paragraph 11 of Form A: Proposal, and only such person, has authority to give notice of withdrawal.

B15.1.3 If a Bidder 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 Bidder'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 B15.1.3(b), declare the Proposal withdrawn.

B15.2 A Bidder who withdraws his Proposal after the Submission Deadline but before his offer has been released or has lapsed as provided for in B14.2 shall be liable for such damages as are imposed upon the Bidder 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.

#### **B16. INTERVIEWS**

B16.1 The Contract Administrator may, in his sole discretion, interview Bidders during the evaluation process.

#### **B17. NEGOTIATIONS**

B17.1 The City reserves the right to negotiate details of the Contract with any Bidder. Bidders are advised to present their best offer, not a starting point for negotiations in their Proposal Submission.

B17.2 The City may negotiate with the Bidders submitting, in the City's opinion, the most advantageous Proposals. The City may enter into negotiations with one or more Bidders

without being obligated to offer the same opportunity to any other Bidders. Negotiations may be concurrent and will involve each Bidder individually. The City shall incur no liability to any Bidder as a result of such negotiations.

- B17.3 If, in the course of negotiations pursuant to B17.2 or otherwise, the Bidder 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 Bidder from the Proposal as originally submitted.

## **B18. EVALUATION OF PROPOSALS**

- B18.1 Award of the Contract shall be based on the following evaluation criteria:

- (a) compliance by the Bidder with the requirements of the Request for Proposal or acceptable deviation therefrom:
  - (i) mandatory requirements (pass/fail);
- (b) qualifications of the Bidder and the Subcontractors, if any, pursuant to B10:
  - (i) mandatory qualifications (pass/fail);
- (c) Form B: Prices 75%
- (d) Industry Experience 15%
- (e) Business Plan 10%

- B18.2 Further to B18.1(a), the Award Authority may reject a Proposal as being non-responsive if the Proposal 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.

- B18.3 Further to B18.1(b), the Award Authority shall reject any Proposal submitted by a Bidder who does not demonstrate, in his Proposal or in other information required to be submitted, that he is responsible and qualified.

- B18.4 Further to B18.1(c) Form B: Prices, the highest return to the City will receive the most points with all other Proposals being pro-rated accordingly.

- B18.5 Further to B18.1(d), Industry Experience of Key Personnel will be evaluated considering the information submitted in response to B7.2 and B11.

- B18.6 Further to B18.1(e), the Business Plan will be evaluated considering the information submitted in response to B7.2 and B12.

- B18.7 This Contract will be awarded as a whole.

- B18.8 If, in the sole opinion of the City, a Proposal does not achieve a pass rating for B18.1(a) and B18.1(b), the Proposal will be determined to be non-responsive and will not be further evaluated.

## **B19. AWARD OF CONTRACT**

- B19.1 The City will give notice of the award of the Contract, or will give notice that no award will be made.

- B19.2 The City will have no obligation to award a Contract to a Bidder, even though one or all of the Bidders are determined to be responsible and qualified, and the Proposals are determined to be responsive.

- B19.3 Where an award of Contract is made by the City, the award shall be made to the responsible and qualified Bidder submitting the most advantageous offer.

**B19.3.1** Following the award of contract, a Bidder will be provided with information related to the evaluation of his Proposal upon written request to the Contract Administrator.

## PART C - GENERAL CONDITIONS

### C0. GENERAL CONDITIONS

C0.1 These General Conditions are applicable to the Work of the Contract.

### C1. DEFINITIONS

C1.1 Where used in these General Conditions and in the other documents forming part of the Contract:

- (a) “**Award Authority**” means the authority having the jurisdiction to award the Contract according to the City’s by-laws, policies or procedures;
- (b) “**Bidder**” means any person submitting a Proposal for the Work;
- (c) “**Bidding Procedures**” means the portion of the Bid Opportunity by that name which sets out the terms and conditions governing the Bid, and a reference to a section, clause or subclause with the prefix “**B**” designates a section, clause or subclause in that portion of the Bid Opportunity;
- (d) “**Business Day**” means any Calendar Day, other than a Saturday, Sunday, or a statutory or civic holiday;
- (e) “**C**” designates a section, clause or subclause in these General Conditions;
- (f) “**Calendar Day**” means the period from one midnight to the following midnight;
- (g) “**Change in Work**” means an addition, deletion or modification to the Work as described in the Contract at the time that the Contract is awarded and includes modifications in quantity or nature of Plant, Material or labour, methods, location or work schedule;
- (h) “**Chief Administrative Officer**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- (i) “**City**” means The City of Winnipeg as continued under The City of Winnipeg Charter, Statutes of Manitoba 2002, c. 39, and any subsequent amendments thereto;
- (j) “**City Solicitor**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- (k) “**Contract**” means the combined documents consisting of either:
  - (i) the agreement forwarded to the Contractor pursuant to C4 and all schedules thereto (consisting of the Bid Opportunity and any documents and Drawings referred to and incorporated therein) together with the Proposal and any submissions required to be made by the Contractor after award, and all amendments to the foregoing; or
  - (ii) the Purchase Order prepared and forwarded to the Contractor which shall be deemed to include the Bid Opportunity and any documents and Drawings referred to and incorporated therein, together with the Proposal and any submissions required to be made by the Contractor after award and all amendments to the foregoing.
- (l) “**Contract Administrator**” means the person designated as such in the Supplemental Conditions;
- (m) “**Contract Price**” means the price agreed upon for the Work and any adjustments thereto which may be required or agreed to pursuant to the Contract;
- (n) “**Contractor**” means the person undertaking the performance of the Work under the terms of the Contract;
- (o) “**Contractor’s Facility**” means the lands and other places, including structures, provided by the Contractor for the performance of the Work;
- (p) “**Council**” means the Council of The City of Winnipeg;
- (q) “**Drawings**” means drawings which show the nature and scope of the Work to be performed and which have been prepared or approved by the Contract Administrator and are referred to in the Contract;

- (r) “**Manager of Materials**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- (s) “**Material**” means any things, including goods, parts and equipment, which are to form part of the permanent Work;
- (t) “**may**” indicates an allowable action or feature which will not be evaluated;
- (u) “**must**” or “**shall**” indicates a mandatory requirement which will be evaluated on a pass/fail basis;
- (v) “**Person**” means an individual, firm, partnership, association or corporation, or any combination thereof, and includes heirs, administrators, executors or legal representatives of a person;
- (w) “**Plant**” means any things brought to or constructed upon the Site by the Contractor for the performance of the Work, including goods, tools, equipment, consumable supplies, fuel, power and utility connections therefor, but does not include Material;
- (x) “**Proposal**” means the offer contained in the Proposal Submission;
- (y) “**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;
- (z) “**Request for Proposal**” means the Proposal Submission, the Bidding Procedures, these General Conditions, the Supplemental Conditions, the Specifications, the Drawings and all addenda;
- (aa) “**Shop Drawings**” means all drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Contractor, Subcontractor, manufacturer, supplier or distributor and which illustrate some portion of the Work;
- (bb) “**should**” indicates a desirable action or feature which will be evaluated on a relative scale;
- (cc) “**Site**” means the lands and other places, including structures, on, under, in or through which the Work is to be performed but does not include a Contractor’s Facility;
- (dd) “**Specifications**” means the portion of the Bid Opportunity by that name which sets out the written description of the physical or functional characteristics of the Work, or any part thereof, including without limitation any requirement for testing or inspection, and a reference to a section, clause or subclause with the prefix “**E**” designates a section, clause or subclause in that portion of the Bid Opportunity;
- (ee) “**SWRTC**” means Southwest Rapid Transit Corridor;
- (ff) “**Subcontractor**” means a person contracting with the Contractor for the performance of a part or parts of the Work or for the furnishing of Plant or Material and includes a Subcontractor’s subcontractor;
- (gg) “**Submission Deadline**” means the time and date set out in the Bidding Procedures for final receipt of Bids;
- (hh) “**Supplemental Conditions**” means the portion of the Bid Opportunity by that name which sets out terms and conditions specific to the Contract, and supplements or modifies the General Conditions, and a reference to a section, clause or subclause with the prefix “**D**” designates a section, clause or subclause in that portion of the Bid Opportunity;
- (ii) “**Total Performance**” means that the entire Work, except those items arising from the provisions of C12, have been performed in accordance with the Contract;
- (jj) “**User**” means an individual, department or other administrative unit of the City authorized by the Contract Administrator to order Work under this Contract;
- (kk) “**Work**” means the carrying out and the doing of all things, whether of a temporary or permanent nature, that are to be done by the Contractor pursuant to the Contract and, without limiting the generality of the foregoing, includes the furnishing of all Plant, Material, labour and services necessary for or incidental to the fulfilment of the requirements of the Contract, including all Changes in Work which may be ordered as herein provided.

- (II) **Working Day**” means any Calendar Day, other than a Saturday, Sunday, or a statutory or civic holiday, on which the Contract Administrator determines atmospheric and Site conditions are such that the Contractor is able to work at least seven (7) hours during the period between 7:00 a.m. Winnipeg time or the time the Contractor's operations normally commence, whichever is the earlier, and 7:00 p.m. Winnipeg time.

## **C2. INTERPRETATION**

- C2.1 Where the Contractor consists of more than one person, the obligations of the Contractor shall be joint and several.
- C2.2 Wherever the singular or masculine is used, it shall be construed to mean the plural or the feminine or the neuter as the context may reasonably require.
- C2.3 Headings, titles and margin notes in the Contract are inserted for convenience only and shall not be considered in any construction or interpretation of the Contract.
- C2.4 In the event of conflicts between portions of the Contract, the following shall apply:
- (a) the executed agreement between the City and Contractor shall govern over all schedules or other documents forming part of the Contract;
  - (b) the Supplemental Conditions shall govern over the General Conditions;
  - (c) the General Conditions shall govern over Specifications;
  - (d) Specifications of a later date shall govern over Specifications of an earlier date;
  - (e) Specifications shall govern over Drawings;
  - (f) Drawings of a later date shall govern over Drawings of an earlier date;
  - (g) Drawings of larger scale shall govern over those of smaller scale;
  - (h) figured dimensions shown on a Drawing shall govern over scaled or implied dimensions on the same Drawing; and
  - (i) Drawings shall govern over the Bid.
- C2.5 The various portions of the Contract are intended to be read together and complement each other, and what is called for by any one shall be deemed to be called for by all.
- C2.6 The City and the Contractor acknowledge and agree that the Contractor is an independent contractor and neither the Contractor, nor any officer, servant or agent of the Contractor, shall be deemed to be an employee, agent, representative or servant of the City.
- C2.7 The Contract shall constitute the entire agreement between the City and the Contractor. There are no representations, warranties, covenants or agreements other than those contained in the Contract.

## **C3. DECLARATIONS**

- C3.1 The Contractor declares that, in bidding for the Work and in entering into the Contract, he:
- (a) has investigated the nature of the Work to be done and all conditions that might affect his Proposal or his performance of the Work; or ,
  - (b) has not investigated the nature of the Work to be done or conditions;
- and, in either event, assumes all risk for conditions now existing or arising in the course of the Work 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 Contract Administrator.
- C3.2 The Contractor declares that, in bidding for the Work and in entering into the Contract, he:

- (a) does so in good faith and that to the best of his knowledge no member of Council or any officer or employee of the City has any pecuniary interest, direct or indirect, in the Contract which has not been disclosed to and approved by the authority having jurisdiction;
- (b) has not participated in any collusive scheme or combine;
- (c) shall forfeit all claims under the Contract as well as refund to the City any monies paid to him, beyond his actual proven expenses for Work done, if C3.2(a) or (b) are shown to be false.

#### **C4. EXECUTION OF CONTRACT**

- C4.1 The Contractor 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 City Solicitor at the address indicated in C22.4.
- C4.2 If the Contractor does not execute and return the Contract as set out in C4.1, the Contractor may be determined by the City to have abandoned the Contract, whereupon the acceptance of the offer by the City shall be null and void, and the City shall be entitled to retain the performance security accompanying the Bid as liquidated damages.
- C4.3 No payments will be made by the City to the Contractor until the Contractor has executed and returned the Contract as set out in C4.1.

#### **C5. AUTHORITY OF CONTRACT ADMINISTRATOR**

##### **General**

- C5.1 The Contract Administrator shall be the City's representative throughout the duration of the Contract and shall have authority to act on behalf of the City to the extent expressly provided for in the Contract.

##### **Contract**

- C5.2 The Contract Administrator shall interpret or clarify the Contract or any part thereof which appears indefinite, not clear or contradictory to the Contractor.
- C5.3 The Contract Administrator may at any time correct errors or omissions in the Contract or issue additional Drawings or Specifications further detailing, explaining or modifying the Work. Such Drawings or Specifications shall either supplement or supersede those forming part of the Contract at the time the Contract was executed.

##### **Inspection**

- C5.4 The Contract Administrator may examine or inspect the Work or any part thereof and determine whether the Work meets the requirements of the Contract. The Contract Administrator may reject the Work or any part thereof which does not meet the requirements of the Contract.

##### **Control**

- C5.5 The Contract Administrator may give instructions or orders to the Contractor to the extent necessary to ensure that the Work is performed in an orderly manner and meets the requirements of the Contract.
  - C5.5.1 The Contract Administrator may give instructions or orders to the Contractor's supervisor and such instructions or orders shall be deemed to have been given to the Contractor.
- C5.6 The Contract Administrator may order the Contractor to remove from the Work any person employed or retained by the Contractor or a Subcontractor in the performance of the Work who the Contract Administrator determines is incompetent, negligent or guilty of misconduct.

- C5.7 The Contract Administrator may order the Contractor to alter or improve his methods, to increase or improve his Plant, to furnish additional or more suitable Material, or to employ additional or more qualified labour if, at any time, the Contract Administrator determines that the Work is not being, or will likely not be, performed satisfactorily.
- C5.8 The Contract Administrator may order the Contractor to stop work or to take such remedial measures as the Contract Administrator considers necessary, if, at any time, the Contract Administrator determines that:
- (a) a danger to life or to property exists; or
  - (b) such stoppage or remedial measures may be necessary to ensure the performance of the Work in accordance with the requirements of the Contract.
- C5.9 Neither the giving of any orders by the Contract Administrator nor the carrying out of such orders by the Contractor shall entitle the Contractor to any extra payment, nor relieve the Contractor of his responsibilities under C6.
- C5.10 The Contract Administrator shall determine if and when Total Performance is achieved and shall certify the date thereof.
- C5.11 If the Contractor disputes a determination or order of the Contract Administrator on any of the foregoing matters, the Contractor shall act in accordance with the Contract Administrator's determination or order. The Contractor may concurrently appeal the determination or order of the Contract Administrator to the Chief Administrative Officer as provided for in C20.

## **C6. RESPONSIBILITIES OF CONTRACTOR**

### **General**

- C6.1 Except as otherwise provided in the Contract, the Contractor shall be solely responsible for means, methods, techniques, sequences and procedures, and for coordinating the various parts of the Work so as to ensure its proper completion in a sound and workmanlike manner, in all respects in strict conformity with the Contract and in accordance with the approved work schedule.
- C6.2 The Contractor shall have complete control over the methods of performing the Work and shall direct and supervise the Work so as to ensure conformance with the Contract.
- C6.3 The Contractor shall provide all Plant, Material, labour, services and incidentals necessary for the performance of the Work.
- C6.4 The Contractor shall be responsible for any Work not explicitly set out in the Contract but which may be reasonably implied for the proper completion of the Work.
- C6.5 Unless otherwise specified in the Specifications, all Material shall be new, fit for the purpose intended and shall meet or exceed the kind, quality and quantity of same specified in the Contract. If required, the Contractor shall provide evidence satisfactory to the Contract Administrator that the foregoing requirements have been met.

### **Contract**

- C6.6 The Contractor shall perform, complete and maintain the Work in strict accordance with the Contract.
- C6.7 If the Contract or any part thereof appears indefinite, not clear or contradictory, the Contractor shall refer such feature or features to the Contract Administrator for interpretation or clarification.
- C6.8 The Contractor shall obey, perform and comply with the Contract Administrator's orders, instructions, rules and procedures with respect to the Work or concerning the conduct thereof,



promptly, efficiently and to the satisfaction of the Contract Administrator and the Contractor will assist other contractors, their employees and agents to do the same.

- C6.9 The Contractor shall be responsible for conveying the interpretation or clarification of the Contract, as given by the Contract Administrator, to Subcontractors.
- C6.10 The Contractor shall prepare and submit all drawings, schedules, documents or information required by the Contract and such other drawings, schedules, documents or information as may reasonably be required by the Contract Administrator.

### **Laws and Regulations**

- C6.11 The Contractor shall comply with all laws, by-laws, ordinances, regulations, codes and orders of authorities having jurisdiction which are or come into force during the performance of the Work and which relate to the Work. Where there are two or more laws, by-laws, ordinances, regulations or codes applicable to the Work, the most restrictive shall apply.
- C6.12 The Contractor shall procure approvals, clearances, permits, licences and certificates required by law or by any by-laws, ordinances, regulations, codes or orders of the authorities having jurisdiction for the performance of the Work, but this shall not include the obtaining of permanent easements or rights of servitude.
- C6.13 The Contractor shall give any notices required by law or by by-laws, ordinances, regulations, codes or orders of the authorities having jurisdiction and which relate to the Work.
- C6.14 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.
- C6.15 The Contractor shall not be responsible for verifying that the Contract complies with the applicable laws, by-laws, ordinances, regulations, codes and orders relating to the Work.

### **Patents and Royalties**

- C6.16 If the Contract requires or the Contractor desires the use of any design, device, material or process covered by letters patent, copyright, trademark or trade name, the Contractor shall provide for such use by suitable legal agreement with the owner or licensee.
- C6.16.1 Upon request of the Contract Administrator, the Contractor shall provide the City with a copy of the said agreement.
- C6.17 If the City or the Contractor 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.
- C6.18 If the City or the Contractor is prevented by injunction from using any design, device, material or process covered by letters patent, copyright, trademark or trade name, the Contractor shall, at his own cost, substitute an equally suitable design, device, material or process, all subject to the prior approval of the Contract Administrator.

### **Personnel**

- C6.19 The Contractor shall provide competent, suitably qualified personnel to perform the Work.
- C6.20 If the Contract Administrator orders a person to be removed from the Work, the Contractor shall comply forthwith. Any person so removed shall not be re-employed on the Work by the Contractor or by a Subcontractor, without the written approval of the Contract Administrator.

### **Control**

- C6.21 The Contractor must arrange and carry on his Work so as not to conflict with the Work being carried on or to be carried on for the City by other contractors or by the City's employees. If the

Contractor finds it difficult to work in harmony with such parties, he shall notify the Contract Administrator promptly.

- C6.22 The Contractor shall perform the Work so as to progress continuously with the Work or any part thereof and in such a manner as to ensure the proper completion of the Work or any part thereof, within the time stipulated.
- C6.23 The Contractor shall be solely responsible for safety at the Site and for compliance with all laws, rules, regulations and practices required by the applicable safety legislation.

### **Subcontractors**

- C6.24 The Contractor shall not employ any Subcontractor to whom the Contract Administrator objects, acting reasonably.
- C6.24.1 The Contractor agrees that the Subcontractors identified in his Bid, or in any subsequent submission, are the Subcontractors proposed to be used to carry out those parts of the Work noted therein.
- C6.24.2 The Contractor shall not add, remove or replace any Subcontractor, or change the part of the Work to be performed by a Subcontractor, without the prior approval of the Contract Administrator.
- C6.25 The Contractor, with respect to Work to be performed under subcontract, shall:
- (a) enter into contracts or written agreements with his Subcontractors to require them to perform their work in complete conformance with and subject to the terms and conditions of the Contract; and
  - (b) be as fully responsible to the City for acts and omissions of his Subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by him.
- C6.26 The Contractor shall incorporate the terms and conditions of the Contract into all subcontract agreements he enters into with his Subcontractors.
- C6.27 The Contractor shall make prompt payment to his Subcontractors, his employees or on account of the purchase or rental of Plant or Material.
- C6.28 The Contractor shall promptly secure a discharge of a lien or trust claim served upon the City.

## **C7. CHANGES IN WORK**

### **General**

- C7.1 The City shall have the right to order a Change in Work at any time after award of the Contract.
- C7.2 If, at any time after award of the Contract, the Contractor is of the opinion that a Change in Work is necessary to accomplish the result intended by the Contract or if the Contractor considers it desirable that a Change in Work be approved, he shall promptly provide notice thereof to the Contract Administrator, including:
- (a) the reason for the proposed Change in Work;
  - (b) a detailed description of the proposed Change in Work;
  - (c) the Contractor's proposed method(s) to determine the adjustment, if any, in Contract Price pursuant to C7.4.
- C7.2.1 Without limiting the generality of C7.2, if the Contractor observes:
- (a) any substantial difference in the nature of the surface or subsurface conditions at the Site, or the location, nature, quality or quantity of the materials to be removed, 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 Contractor shall immediately notify the Contract Administrator.

- C7.3 The Contract Administrator shall determine whether a Change in Work is necessary or desirable and whether a corresponding adjustment to the Contract Price is required.
- C7.3.1 If the Contract Administrator determines that no Change in Work is necessary or desirable, he will issue a notice stating his determination.
- C7.3.2 If the Contract Administrator determines that a Change in Work is necessary or desirable but no corresponding adjustment to the Contract Price is required, he will issue a notice approving the Change in Work and stating his determination.
- C7.3.3 If the Contract Administrator determines that a Change in Work 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 Work and stating his determination regarding the method(s) to be used to determine the adjustment in Contract Price pursuant to C7.4.
- C7.3.4 If the Contract Administrator determines that a Change in Work 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 Contractor to submit the Contractor's proposed method(s) to determine the adjustment in Contract Price pursuant to C7.4, and upon receipt and evaluation of such information, he shall issue a notice in accordance with C7.3.3.

#### **Valuation of a Change in Work**

- C7.4 The adjustment in Contract Price resulting from a Change in Work 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 Work to the Contractor plus a fixed fee;
- (d) by the actual cost of the Change in Work to the Contractor plus fifteen percent (15%) on any portion of the Change in Work undertaken by the Contractor's own forces or plus ten percent (10%) on any portion of the Change in Work undertaken by a Subcontractor.
- C7.4.1 For the purposes of C7.4(c) or (d), "actual cost" on any portion of the Change in Work undertaken by the Contractor'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), purchase or rental of Plant and Material and any other payments made by the Contractor with the prior approval of the Contract Administrator that are necessary for the performance of the Change in Work.
- C7.4.2 For the purposes of C7.4(c) or (d), "actual cost" on any portion of the Change in Work undertaken by a Subcontractor shall mean the amount invoiced by the Subcontractor and paid by the Contractor, net of any discounts and excluding any late payment interest or penalties.
- C7.5 If a Change in Work results in a reduction in the Contract Price, no claim may be made for damages on the ground of loss of anticipated profit on Work 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 Work as of the date of the award of the Contract.
- C7.5.1 Reductions in the Contract Price as a result of:

- (a) Changes in Work requested by the Contractor;
- (b) a deduction, pursuant to C10.5(d), for defective or deficient Work;
- (c) 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 C7.5.

C7.6 If a Change in Work diminishes the Work, or any part thereof, resulting in:

- (a) extra cost to the Contractor, directly attributable to the diminution, for which he would not be entitled to payment on a unit price basis (e.g., loss of volume discounts); or
- (b) loss to the Contractor in respect of Material required by the City to be purchased by him for the Work but not used thereon as a direct result of the diminution (e.g., restocking charges);

the Contractor shall be compensated therefor by the City in the sum or sums determined by the Contract Administrator.

C7.7 If the method of valuation or measurement or the adjustment to the Contract Price cannot be promptly agreed upon and the Contract Administrator requires the Change in Work to proceed, then the Contract Administrator will determine the method of valuation and measurement and the adjustment to the Contract Price. The Contract Administrator shall issue a notice approving the Change in Work and setting out the method of valuation, measurement, and any approved adjustments to the Contract Price.

C7.8 If the Contractor disputes a determination made by the Contract Administrator, the Contractor shall act in accordance with the Contract Administrator's determination. The Contractor may concurrently appeal the determination of the Contract Administrator to the Chief Administrative Officer as provided for in C20.

### **Cost Records**

C7.9 If a valuation is required pursuant to C7.4 or C7.6, the Contractor shall provide the Contract Administrator with:

- (a) detailed and accurate statements showing:
  - (i) description, cost (including expenses for operation and maintenance) and time for Plant used by the Contractor;
  - (ii) description, cost and quantity for Material used by the Contractor;
  - (iii) rate of pay and hours of work for each of the persons employed by the Contractor; 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.

## **C8. RIGHT OF ENTRY**

C8.1 The Contractor shall not be entitled to exclusive possession of the Site.

C8.2 The City shall have the right, for itself, its agents, representatives or other persons, to enter, occupy or use any portion of the Site or the Work, at any time and for so long a time as the Contract Administrator may require.

C8.3 Such entry, occupation or use shall not constitute acceptance of the Work by the City nor shall it relieve the Contractor of responsibility to complete the Work.

## **C9. RISK AND RESPONSIBILITY**

C9.1 Plant or Material brought to the Site or the Work by the Contractor shall remain at the risk and the responsibility of the Contractor from the commencement of the Work until:

- (a) Material is incorporated into the Work; or
- (b) Plant or Material is removed from the Site or the Work by the Contractor.

C9.2 The Contractor shall be liable to the City for any loss of or damage to Plant or Material that is supplied to or placed in the care, custody and control of the Contractor by the City in connection with the Contract, whether or not that loss or damage is attributable to causes beyond the Contractor's control, from the commencement of the Work until:

- (a) Material is incorporated into the Work; or
- (b) Plant or Material is returned, in its original condition, to the City.

C9.3 The Work shall remain at the risk and the responsibility of the Contractor from the commencement of the Work until the date of Total Performance.

C9.4 The Contractor shall, at his own cost, be required to maintain the Work, make good all damage thereto and imperfections therein and to deliver the completed Work to the City in accordance with the provisions of the Contract.

## **C10. INSPECTION**

### **General**

C10.1 The Contractor shall provide the Contract Administrator access, whether at the Site or at the Contractor's Facility or the premises of any Subcontractor, to observe and inspect the Work and its progress.

C10.2 The Contractor shall provide the Contract Administrator any samples required to inspect the Work.

C10.3 The Contractor shall provide the Contract Administrator any and all assistance which he may require to observe and inspect the Work.

C10.4 The inspection herein provided for shall in no way relieve the Contractor of full responsibility for the quality, proper operation and performance of the Work.

### **Defective Work**

C10.5 If the Contract Administrator determines that the Work, or any part thereof, is defective or deficient, the City shall have the right to do any one or more of the following in addition to anything permitted elsewhere in the Contract or by law:

- (a) if the Contract Administrator determines that any Plant is defective, deficient or otherwise unfit for the purpose intended, the Contract Administrator may direct the Contractor to remove such Plant from the Site and promptly replace it with Plant which meets the requirements of the Contract and is fit for the purpose intended;
- (b) if the Contract Administrator determines that any Material which is not yet incorporated into the Work is defective, deficient or otherwise unfit for the purpose intended, the Contract Administrator may direct the Contractor to remove such Material from the Site and promptly replace it with Material which meets the requirements of the Contract and is fit for the purpose intended;
- (c) if the Contract Administrator determines that the Work or any portion thereof, including any Material which is incorporated therein, is defective, deficient or otherwise unfit for the purpose intended, the Contract Administrator may direct the Contractor to repair, redo, replace or otherwise remedy the defect or deficiency;
- (d) if the Contract Administrator determines that it is not expedient to correct defective or deficient Work, the City may deduct from the Contract Price the difference between the value of the Work as done and that called for by the Contract, the amount of which shall be determined by the Contract Administrator.

C10.6 The Contractor shall, without delay, carry out the directives of the Contract Administrator pursuant to C10.5. In addition, the Contractor shall be responsible for the cost of any additional inspections necessitated thereby.

C10.7 The City shall be entitled, in its sole discretion, to use the Work or any portion thereof notwithstanding that it may be defective or deficient, and such use shall not constitute acceptance of any defects or deficiencies nor shall it relieve the Contractor of responsibility to complete the Work.

## **C11. MEASUREMENT AND PAYMENT**

### **General**

C11.1 The amounts to be paid to the City by the Contractor shall be the sums certified by the Contract Administrator.

C11.1.1 For unit price Contracts, such sums shall be determined by the Contract Administrator upon the basis of the unit prices for the various classes of the Work stated on Form B: Prices. The total amount to be paid by the Contractor for the Work will be the amount arrived at by measuring the amount of each class of the Work listed on Form B: Prices and performed in accordance with the Contract, and pricing the same, in accordance with the unit prices stated thereon.

C11.1.2 For lump sum Contracts, such sums shall be determined by the Contract Administrator upon the basis of the lump sum price stated on Form B: Prices.

C11.1.3 Prices stated on Form B: Prices shall be deemed to include:

- (a) Federal and Provincial taxes [except the Goods and Services Tax (GST) and Manitoba Retail Sales Tax (MRST, also known as PST), which shall be extra where applicable] and all charges governmental or otherwise paid;

### **Final Payment**

C11.2 Approval by the City of final payment shall be subject to issuance by the Contract Administrator of a certificate of Total Performance.

C11.3 Neither the issuance of a certificate of Total Performance nor final payment shall relieve the Contractor from his responsibilities either under C12 or as a result of any breach of the Contract by the Contractor including, but not limited to, defective or deficient Work appearing after Total Performance, nor shall it conclude or prejudice any of the powers of the Contract Administrator or the Chief Administrative Officer hereunder.

## **C12. WARRANTY**

### **General**

C12.1 The Contractor warrants that the Work will be free of any and all defects or deficiencies during the warranty period.

### **Warranty Period**

C12.2 Unless specifically stated otherwise in the Supplemental Conditions, the warranty period shall begin on the start date of the Contract and expire on the end date of the Contract.

### **Warranty Work**

C12.3 The Contract Administrator shall notify the Contractor of observed defects or deficiencies and damage, if any, arising or resulting from such defects or deficiencies, within the warranty period.

C12.4 The Contractor shall correct, to the satisfaction of the Contract Administrator, all defects, deficiencies and damage identified by the Contract Administrator in the manner and within the time period(s) specified in the notice.

C12.5 If the Contractor disagrees with the Contract Administrator's determination under C12.3, he shall nonetheless comply with C12.4. The Contractor may concurrently appeal the determination of the Contract Administrator as provided for in C20.

### **Acceptance of the Work**

C12.6 The Contract Administrator shall certify acceptance of the Work upon:

- (a) the satisfactory performance of the Work during the warranty period;
- (b) the Contractor having fully complied with C12.4; and
- (c) the successful conclusion of any tests required under the Contract.

C12.7 Only certification of acceptance of the Work shall constitute:

- (a) acceptance of the Work; or
- (b) acceptance that the Work or any part thereof has been duly performed; or
- (c) acceptance of the accuracy of any claim of the Contractor.

C12.8 Certification of acceptance of the Work shall not, however, relieve the Contractor from his responsibilities for any breach of the Contract including, but not limited to, defective or deficient Work appearing after the date of such certification.

### **C13. GOVERNING LAW**

C13.1 The Contract has been entered into in the Province of Manitoba and shall be governed by and construed and enforced in accordance with the laws of the Province of Manitoba and of Canada as applicable therein. The parties hereby irrevocably and unconditionally agree to the exclusive jurisdiction of the Courts in the Province of Manitoba and all courts competent to hear appeals therefrom.

### **C14. ASSIGNMENT**

C14.1 The Contractor shall not assign the Contract or any payments thereunder without the prior consent of the City.

C14.2 The Contract shall inure to the benefit of and be binding on the respective heirs, executors, administrators, successors and assigns of the City and the Contractor.

### **C15. FORCE MAJEURE**

C15.1 If the Contractor is delayed in the performance of the Work by reason of strikes, lock-outs (including lock-outs decreed for its members by a recognized contractors' association of which the Contractor is a member), an act of God, or any other cause which the Contractor satisfies the Contract Administrator to be totally beyond his control, the work schedule shall be adjusted by a period of time equal to the time lost due to such delays.

C15.2 No extension for delay shall be approved unless a notice of the claim is received by the Contract Administrator from the Contractor within seven (7) Calendar Days of the date on which the cause of delay arose.

C15.3 Any delay or failure by the City to perform its obligations under this Contract shall be excused, to the extent that the delay or failure is caused by an event or occurrence beyond the reasonable control of the City and without its fault or negligence, such as by way of example and not by way of limitation, strikes, lock-outs, or acts of God, provided that written notice of the delay shall be given by the City within seven (7) Calendar Days of the date on which the cause of delay arose.

C15.4 Any notice or claim for extension must state the cause of delay and the length of extension requested.

C15.4.1 In the case of a continuing cause of delay, only one claim for an extension shall be necessary.

## **C16. INDEMNITY**

C16.1 The Contractor shall save harmless and indemnify the City in the amount of two million dollars (\$2,000,000), plus a minimum of twice the Contract value 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 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) any claim for lien or trust claim served upon the City;
- (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.

C16.2 The City has the right, acting reasonably and upon notice to the Contractor, to settle any such action, proceeding, claim or demand and charge the Contractor with the amount so paid or to be paid in effecting a settlement.

C16.3 The Contractor shall pay to the City the value of all legal fees and disbursements required to settle any such claim or to defend the City against any such claim, 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.

C16.4 If the Contractor fails to make any payment required to be made to the City pursuant to C16.2 and C16.3, the City shall be entitled to deduct the amount of such payment from any payment required to be made by the City to the Contractor under the Contract or take whatever other remedies against the Contractor that the City may have at law.

## **C17. EVENTS OF DEFAULT**

C17.1 An event of default will be deemed to have occurred if the Contractor:

- (a) abandons the Work; or
- (b) is adjudged bankrupt or files for bankruptcy, becomes insolvent, makes a general assignment for the benefit of his creditors, or has a receiver or liquidator appointed in respect of his assets; or
- (c) is not performing or has not been performing the Work, or any part thereof, in a sound and workmanlike manner and in all respects in strict conformity with the Contract; or
- (d) is not progressing continuously with the Work or any part thereof, and in such a manner as to ensure the completion of the Work or any part thereof, in accordance with the work schedule; or
- (e) fails to take down, repair, redo, replace or otherwise remedy any defective or deficient Work, or to remove any defective or deficient Material; or
- (f) fails to remedy defects or deficiencies during the warranty period in the manner and within the time periods specified by the Contract Administrator; or



- (g) fails to make prompt payment to his Subcontractors, his employees or on account of the purchase or rental of Plant or Material; or
- (h) fails to promptly secure a discharge of a claim for lien or trust claim served upon the City; or
- (i) fails to comply with any laws, by-laws or statutory regulations; or
- (j) fails to provide competent supervision at the Site; or
- (k) fails to submit any schedules, documents or information required by the Contract; or
- (l) refuses or neglects to comply with an order given by the Contract Administrator; or
- (m) commits any other breach of the Contract.

C17.2 Any provision of the Contract may be waived only by express waiver in writing by the Contract Administrator. No express waiver of any provision shall imply the waiver of any other provision.

## **C18. CITY'S RIGHTS AND REMEDIES**

### **General**

- C18.1 If an event of default has occurred, the City may do any one or more of the following:
- (a) take the whole of the Work, or any part or parts thereof out of the control of the Contractor;
  - (b) demand payment for any amount owed to the City.
- C18.2 The duties and obligations imposed upon the Contractor 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 Contractor or available to the City at law.

### **Taking the Work out of the Contractor's Control**

- C18.3 If an event of default has occurred, the City may, without process or action at law, upon giving the Contractor notice, take the whole of the Work, or any part or parts thereof out of the control of the Contractor.
- C18.4 Upon such notice being given to the Contractor, he shall immediately discontinue the Work or any part or parts thereof specified in the said notice.
- C18.5 The taking of the Work or any part thereof out of the Contractor's control pursuant to C18.3 shall not relieve or discharge the Contractor from any obligation under the Contract or imposed upon him by law except the obligation to complete the performance of that part of the Work that was taken out of the Contractor's control.
- C18.6 The City shall have the right, subject to C19, to complete, by contract or with its own forces, the Work taken out of the Contractor's control. The City shall not be required to obtain the lowest price to complete the Work taken out of the Contractor's control.
- C18.7 If the cost to the City of completing the Work or portion thereof as aforesaid is less than the amount to which the Contractor would have been entitled under the Contract for so doing, the Contractor shall have no claims in respect thereof against the City. If the cost of the Work performed by the City is more than the amount to which the Contractor would have been entitled under the Contract for the same Work, the City shall have a claim against the Contractor for such excess costs.
- C18.8 When any portion of the Work is being carried on by the City, by contract or otherwise, the Contractor shall continue to perform the remainder of the Work in accordance with the Contract, and in such manner as in no way to hinder or interfere with the persons performing the portion of the Work being carried on by the City.

### **Demand for Payment**

- C18.9 If an event of default has occurred, the City may demand payment from the Contractor for amounts paid or costs incurred by the City in connection with the event of default.
- C18.10 The Contractor shall, within seven (7) Calendar Days of receipt of a notice from the City, pay the City the amount set out in the notice.

### **C19. SURETY'S OPTION TO ASSUME THE CONTRACT**

- C19.1 Where the City has given notice to the Contractor that the Work or part thereof has been taken out of the Contractor's control, the City shall promptly provide the Surety with a copy of such notice.
- C19.2 The Surety may, at its option, assume the Contract in respect of the Work specified in the notice and proceed to perform same.
- C19.2.1 The Surety shall advise the City whether it intends to exercise such option within fourteen (14) Calendar Days after the date on which the Surety is provided with a copy of the notice given to the Contractor.
- C19.2.2 The said option shall expire if the Surety fails to so advise the City within the time specified.
- C19.3 If the Surety has exercised its option in accordance with the foregoing, it shall take the Contractor's place in all respects. The Surety shall be bound by all terms and conditions of the Contract and shall be paid in accordance with the terms of the Contract for all Work performed by it.
- C19.4 The Surety may, with the consent of the City, subcontract the Work so taken over or any portion thereof.

### **C20. CONTRACTOR'S RIGHT TO APPEAL**

- C20.1 If the Contractor disagrees with a determination or order of the Contract Administrator he may, within seven (7) Calendar Days after receiving notice of the Contract Administrator's determination or order, notify the Chief Administrative Officer of his appeal with respect thereto and request a determination thereon from the Chief Administrative Officer.
- C20.2 If the Contractor disagrees with the Chief Administrative Officer's determination he may request that the dispute be referred to arbitration in accordance with C21, by providing notice to the Chief Administrative Officer within seven (7) Calendar Days after receiving notice of the Chief Administrative Officer's determination.
- C20.3 If the Contractor neglects or fails to observe fully and faithfully the above conditions, he shall be deemed to have accepted the Contract Administrator's determination and to have waived any said claim, at law or otherwise.

### **C21. ARBITRATION**

#### **Requests for Arbitration**

- C21.1 If, at any time before the termination of the warranty period, any dispute, difference or question shall arise between the City and the Contractor regarding the Work, then any such dispute, difference or question may, with the consent of both the City Solicitor, on behalf of the City, and the Contractor, be referred to arbitration.
- C21.2 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.
- C21.3 The Other Party shall reply to the request within seven (7) Calendar Days of receiving same.

### **Referral to a Single Arbitrator**

- C21.4 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.
- C21.5 If the Other Party accepts the Requesting Party's Nominee, the dispute, difference or question shall be promptly referred to him or her.

### **Referral to a Panel of Arbitrators**

- C21.6 If the Other Party rejects the Requesting Party's Nominee, it shall, within seven (7) Calendar Days of rejection, appoint its own arbitrator.
- C21.7 The Requesting Party shall, within seven (7) Calendar Days of receiving the Other Party's rejection, appoint its own arbitrator.
- C21.8 The arbitrators appointed under C21.6 and C21.7 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.

### **General**

- C21.9 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.
- C21.10 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.
- C21.11 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.
- C21.12 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.

## **C22. NOTICES**

- C22.1 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.
- C22.2 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications to the City, except as expressly otherwise required in C22.3 or C22.4, or elsewhere in the Contract, shall be sent to the attention of the Contract Administrator.
- C22.3 All notices of appeal to the Chief Administrative Officer shall be sent to the following facsimile number:

The City of Winnipeg  
Chief Administrative Officer Secretariat  
Facsimile No.: (204) 949-1174

C22.4 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 Department  
Attn: Director of Legal Services  
185 King Street, 3rd Floor  
Winnipeg MB R3B 1J1  
Facsimile No.: (204) 947-9155

C22.4.1 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.

C22.4.2 Delivery to the Contractor's designated supervisor at the Site shall constitute delivery to the Contractor.

C22.5 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.

## PART D - SUPPLEMENTAL CONDITIONS

### GENERAL

#### D1. GENERAL CONDITIONS

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

#### D2. SCOPE OF WORK

D2.1 The Work to be done under the Contract shall include supply, installation, sales, maintenance and support of a Wireless Digital Advertising Network system at three (3) Winnipeg Rapid Transit Stations for the purposes of advertising and promotion for the period from April 1, 2012 until March 31, 2017, with the option of two (2) mutually agreed upon five (5) year extensions.

D2.1.1 The City may negotiate the extension option with the Contractor within ninety (90) Calendar Days prior to the expiry date of the Contract. The City shall incur no liability to the Contractor as a result of such negotiations.

D2.1.2 Changes resulting from such negotiations shall become effective on April 1<sup>st</sup> of the respective year. Changes to the Contract shall not be implemented by the Contractor without written approval by the Contract Administrator.

D2.2 In the event the City of Winnipeg (Winnipeg Transit) requires additional support of Wireless Digital Advertising Network systems the Work may be awarded to the Contractor.

D2.3 The major components of the Work are as follows:

- (a) The Contractor shall supply, install, maintain and support a minimum of twelve (12) LCD/LED Flat Screen monitors (size subject to location and installation clearances) with appropriate Digital Advertising software system at three (3) Winnipeg Rapid Transit Stations for the purposes of advertising and promotion. The system should be scalable and expandable.
- (b) The Contractor shall have the exclusive right and privilege to sell approved Digital Advertising on flat screen monitors installed above each passenger platform at the following Rapid Transit Stations;
  - (i) Osborne Station (Osborne Street Overpass), see Drawing B237-10-71a;
  - (ii) Harkness Station (Stradbrook & Harkness), see Drawing 2;
  - (iii) Fort Rouge Station (Fort Rouge Yards) see Drawing 3;
  - (iv) For flat screen installation locations see Drawings.
- (c) The City reserves ten percent (10%) of all Digital Advertising inventory for the promotion of Winnipeg Transit services and programs, at no cost to the City.
- (d) The equipment shall include, but not be limited to;
  - (i) Twelve (12) Industrial High Definition LCD/LED quality Flat Screens up to 70" diagonal measurement, 16.7M full color, native resolution of at least 1,920 x 1,080 pixels FHD display for use 24/7;
  - (ii) Provision of all necessary hardware, software, electrical and wireless internet connection(s);
  - (iii) Media player(s) capable of supporting text, picture, full motion video, split screen, real-time updates, multiple languages including English and French;
  - (iv) Locking anti-theft system(s) for all components;
  - (v) Highly transparent and toughened acrylic layer or tempered laminate glass on the surface of display panel for protection.
- (e) The Contractor shall provide installation design including schematics, outlines, cabling and electrical requirements, placement, mounting and structural requirements.

- (f) Bidders are advised the equipment will be sheltered from the elements at Osborne Station and suspended from overhead canopies at Harkness Station and Fort Rouge Station. Bidders should be aware the screens/equipment may be exposed to dust, variations in temperature and/or humidity, birds, etc.
- (g) Bidders should consider lighting conditions may vary inside the transit stations.

D2.4 The installed equipment (including screens, enclosures, mounting brackets, connections, and any other equipment) shall complement the aesthetic design of the stations and shall require approval by the Contract Administrator prior to manufacture and installation. The Contractor shall consult with the supplier of the station canopies and with Winnipeg Transit's project consultants in the design of enclosures, mounting brackets, and connections required to install the equipment in the stations. Brackets for the equipment to be custom fit mounting brackets as supplied by;

Enseicom Inc.  
225 rue Norman, Montréal, Québec, Canada, H8R 1A3  
1-800-663-0673  
Att: Constantine Moussis

D2.5 The Contractor

- (a) should provide the Contract Administrator with advance notification of all scheduled downtime;
- (b) should provide Contract Administrator with immediate notification of all unplanned downtime;
- (c) should guarantee response time to service calls;
- (d) should provide 24 hour system monitoring to minimize elapsed time between an unplanned service disruption and the vendors awareness of the disruption;
- (e) shall provide a technical support contact in addition to sales contacts and administrative contacts including email address, phone number, fax number and hours of availability;
- (f) shall provide a minimum of 90 days notice before making any proposed changes to the system. Any proposed changes to the system will be subject to approval by the Contract Administrator or designate.

D2.6 The City shall provide an electrical supply (120 volts) to the monitors.

D2.3 Notwithstanding D2.1, 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, or 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.

### **D3. BACKGROUND INFORMATION**

D3.1 The City can provide the following background information:

- (a) The City owns and operates The City of Winnipeg Transit System which consists of:
  - (i) Fleet size: 555 buses;
  - (ii) Employees: approximately 1,300;
  - (iii) Operating hours: approximately 5:30 am – 2:00 am, 7 days a week;
- (b) In 2010, the CMA population of the City of Winnipeg was 753,600;
- (c) In 2010, Winnipeg Transit ridership was approximately 45.2 million;
- (d) A network of 13 transit routes will operate on the Southwest Rapid Transit Corridor. Approximately 20,000 to 25,000 boardings are expected to be made on these routes each weekday.

- (e) Construction of the Southwest Rapid Transit Corridor – **see Appendix A** - began in May 2009, the project includes:
  - (i) construction of a new 3.6 km Transitway from Queen Elizabeth Way & Stradbrook to Pembina & Jubilee;
  - (ii) three new Rapid Transit stations;
  - (iii) new bus-only links between the Transitway and the regular street system;
  - (iv) new Active Transportation Paths along the corridor that are fully integrated with the Rapid Transit stations;
  - (v) Station fit-out will be completed in early 2012;
  - (vi) The SWRTC will officially go into service on April 8, 2012.
- (f) Current transit advertising contracts include:
  - (i) Transit Vehicle Advertising – Pattison Outdoor Advertising
  - (ii) Transit Shelter Advertising – CBS Outdoor Canada
  - (iii) Transit Courtesy Bench Advertising – Benchmark Advertising Ltd.

#### **D4. LAISON AND ADVERTISING STANDARDS**

- D4.1 In determining the acceptability of any advertisements within the provisions of this Contract, the City will be guided by the general principles embodied in the Canadian Code of Advertising Standards <http://www.adstandards.com/en/standards/theCode.aspx>
- D4.2 The City will not accept advertising which is likely, in light of prevailing community standards, to be considered of questionable taste or be offensive in its style, content or method of presentation. Although guided by the Code of Advertising Standards, the City is the sole and final arbiter in all matters relating to digital advertising in transit facilities. The City may refuse or order the removal of any advertising material at any time in its absolute discretion.
- D4.3 All advertisements must comply with the laws, statutes, regulations and by-laws enforced in the Province of Manitoba.
- D4.4 Political advertising is subject to any laws governing the election including advertising during election times.
- D4.5 The Contractor is charged with the responsibility of interpreting and implementing the advertising guidelines. Advertising clients should deal directly with the Contractor.
- D4.6 Where an advertiser and the Contractor are in dispute with an advertisement's compliance with the aforementioned guidelines (before or after placement) the Contractor shall refer the ad to Advertising Standards of Canada for immediate adjudication of the Code.
- D4.7 If the City receives a complaint concerning digital advertising, the Contract Administrator may send the complaint to the Contractor who will refer to the ad to Advertising Standards of Canada for immediate adjudication. Notwithstanding the foregoing, the City at its discretion will be the final arbiter on all matters related to digital advertising in transit facilities.

#### **D5. CONTRACT ADMINISTRATOR**

- D5.1 The Contract Administrator is:  
Morley Calahan  
Promotions & Contracts Supervisor  
Winnipeg Transit  
  
Telephone No. (204) 986-5741  
e-mail: [mcalahan@winnipeg.ca](mailto:mcalahan@winnipeg.ca)

D5.2 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.

#### **D6. CONTRACTOR'S SUPERVISOR**

D6.1 Further to C6.19, the Contractor shall employ and keep on the Work, at all times during the performance of the Work, a competent supervisor and assistants, if necessary, acceptable to the Contract Administrator. The supervisor shall represent the Contractor on the Site. The supervisor shall not be replaced without the prior consent of the Contract Administrator unless the supervisor proves to be unsatisfactory to the Contractor and ceases to be in his employ.

D6.2 Before commencement of Work, the Contractor shall identify his designated supervisor and any additional personnel representing the Contractor and their respective roles and responsibilities for the Work.

D6.2.1 Further to C5.5 Contract Administrator may give instructions or orders to the Contractor's supervisor and such instructions or orders shall be deemed to have been given to the Contractor.

#### **D7. CONFIDENTIALITY AND OWNERSHIP OF INFORMATION**

D7.1 Information provided to the Contractor by the City or acquired by the Contractor during the course of the Work is confidential. Such information shall not be used or disclosed in any way without the prior written authorization of the Contract Administrator.

D7.2 The Contract, all deliverables produced or developed, and information provided to or acquired by the Contractor are the property of the City. The Contractor 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 Contract Administrator.

D7.3 The Contractor 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 Contract Administrator.

#### **D8. NOTICES**

D8.1 Notwithstanding C22.3, all notices of appeal to the Chief Administrative Officer shall be sent to the attention of the Chief Financial Officer at the following facsimile number:

The City of Winnipeg  
Chief Financial Officer  
Facsimile No.: (204) 949-1174

#### **SUBMISSIONS**

#### **D9. AUTHORITY TO CARRY ON BUSINESS**

D9.1 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.



## **D10. SAFE WORK PLAN**

- D10.1 The Contractor shall provide the Contract Administrator with a Safe Work Plan at least five (5) Business Days prior to the commencement of any Work on the Site but in no event later than the date specified in C4.1 for the return of the executed Contract.
- D10.2 The Safe Work Plan should be prepared and submitted in the format shown in the City's template which is available on the Information Connection page at The City of Winnipeg, Corporate Finance, Materials Management Division website at <http://www.winnipeg.ca/matmgmt/safety/default.stm>

## **D11. INSURANCE**

- D11.1 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) inclusive, with The City of Winnipeg added as an additional insured; such liability policy to also contain a cross-liability clause, non-owned automobile liability and products and completed operations cover, to remain in place at all times during the performance of the Work;
  - (b) if required, automobile liability insurance for owned automobiles used for or in connection with the Work in the amount of at least two million dollars (\$2,000,000.00), to remain in place at all times during the performance of the Work;
- D11.2 Deductibles shall be borne by the Contractor.
- D11.3 The Contractor shall provide the Contract Administrator with a certificate(s) of insurance, in a form satisfactory to the City Solicitor, at least two (2) Business Days prior to the commencement of any Work on the Site.
- D11.4 The Contractor shall not cancel, materially alter, or cause the policy to lapse without providing at least thirty (30) Calendar Days prior written notice to the Contract Administrator.
- D11.5 The City shall have the right to alter the limits and/or coverages as reasonably required from time to time during the continuance of this agreement.

## **D12. PERFORMANCE SECURITY**

- D12.1 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 Minimum Annual Guaranteed Payment; 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 Winnipeg, in the form attached to these Supplemental Conditions (Form H2: Irrevocable Standby Letter of Credit), in the amount of fifty percent (50%) of the Minimum Annual Guaranteed Payment; 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 Minimum Annual Guaranteed Payment.
- D12.1.1 Where the performance security is in the form of a certified cheque or draft, it will be deposited by the City. The City will not pay any interest on certified cheques or drafts furnished as performance security.

D12.2 The Contractor shall provide the City Solicitor with the required performance security within seven (7) Calendar Days of notification of the award and prior to the commencement of any Work on the Site.

### **D13. SUBCONTRACTOR LIST**

D13.1 The Contractor shall provide the Contract Administrator with a complete list of the Subcontractors whom the Contractor proposes to engage (Form J: Subcontractor List) at least two (2) Business Days prior to the commencement of any Work on the Site.

## **CONTROL OF WORK**

### **D14. COMMENCEMENT**

D14.1 The Contractor shall not commence any Work until he is in receipt of a notice of award from the City authorizing the commencement of the Work.

D14.2 The Contractor shall not commence any Work on the Site until:

- (a) the Contract Administrator has confirmed receipt and approval of:
  - (i) evidence of authority to carry on business specified in D9;
  - (ii) evidence of the workers compensation coverage specified in C6.14;
  - (iii) the Safe Work Plan specified in D10;
  - (iv) evidence of the insurance specified in D11;
  - (v) the performance security specified in D12;
  - (vi) the Subcontractor list specified in D13;
- (b) the Contractor has attended a meeting with the Contract Administrator, or the Contract Administrator has waived the requirement for a meeting.

D14.3 The Contractor shall commence the Work on the Site within seven (7) Working Days of receipt of the notice of award or on a date specified by the Contract Administrator.

### **D15. ORDERS**

D15.1 The Contractor shall provide a local Winnipeg telephone number or a toll-free telephone number at which orders for service may be placed.

### **D16. RECORDS**

D16.1 The Contractor shall keep detailed records of the services supplied under the Contract.

D16.2 The Contractor shall record, as a minimum, for each item listed on Form B: Prices:

- (a) user name(s) and addresses;
- (b) order date(s);
- (c) service date(s); and
- (d) description and quantity of services provided.

D16.3 The Contractor shall provide the Contract Administrator with a copy of the records for each quarter year within fifteen (15) Calendar Days of the end of that quarter.

## MEASUREMENT AND PAYMENT

### D17. PAYMENT OF REVENUES

- D17.1 The Contractor agrees to pay to the City for the rights and privileges granted to it for each and every calendar year during the Contract, the amount specified on Form B: Prices.
- D17.2 The Contractor shall pay to the City each month of the contract year the greater of: (A) the number of months expired in the contract year multiplied by one twelfth (1/12) of the minimum net annual guarantee as specified in Schedule B: Revenue, or (B) the percentage of gross annual billings multiplied by sales for the contract period up to and including the current month as specified in Form B: Revenue. Payments for a specific month shall be made within 45 days of that month end. All previous amounts paid during the contract year are to be deducted from the monthly payment.
- D17.3 The consideration of D17.1 set out payable in respect of each calendar year during the currency of the agreement shall be payable without regard to the results of any other calendar year during such period and any billings made after the termination of the agreement in respect of advertising placed during its term shall be included in the last calendar year of the term of such Contract.
- D17.4 Each monthly and annual payment shall be accompanied by a statement of the gross billings made by the Contractor during the period for which such payment is made, verified by the signature of a responsible officer of the Contractor, and the Contractor agrees to keep proper books of account showing such gross billings and the City shall have the right at all reasonable times to examine the books of account of the Contractor through any representative named by it, and shall be given all facilities reasonably necessary to check the correctness of such statements of gross billing.
- D17.5 By March 31st of the second year of the agreement and each year thereafter, up to and including the year following the termination or assignment of this agreement, the Contractor will submit to the City a statement of the total gross billings made by it in the previous year, with an Audit Report commenting on its accuracy prepared by an independent public accountant approved by the City and will pay to the City any amount due at the time the statement is rendered.
- D17.6 It is expressly agreed that the City, by accepting any statement of gross billings submitted by the Contractor (whether audited or otherwise) or any payment based thereon, shall not be deemed to have waived any of its rights hereunder, and the City shall be entitled at any time to have any records or books of account in the possession or control of the Contractor relating to its Income and Expenses specially examined or audited by an accountant either employed by the City or designated by the Commissioner and if the amount of the Gross Billings of the Contractor in any period covered by such examination or audit be found thereby to be greater by three percent (3%) or more than that shown by the statement or statements delivered by the Contractor covering such period, the expense of such special examination or audit shall be borne by the Contractor, but otherwise such expense shall be borne by the City. Forthwith, after receipt of such report by the City and in accordance therewith, the City shall repay the Contractor any overpayment which may have been made by the Contractor and the Contractor shall on demand pay to the City any deficiency, as the case may be. The City's rights under this sub-clause are in addition to any other remedies it may have at law or in accordance with the terms of this Contract.
- D17.7 Under no circumstances shall the City be liable to the Contractor for any claim, loss, damage or injury arising out of the non-operation of any of its transit services. If for any reason the transit services of the City should be suspended for a continuous period of seventy-two (72) hours or longer, the City will, if requested, make a pro rata adjustment with the Contractor in respect to its minimum payments upon receipt of documentation from the Contractor that it has lost revenue by virtue of the suspension of the service, such adjustment to be the lesser of a pro-rated amount based on the length of the stoppage or the amount of the Contractor's loss. In the event that non-service continues for longer than 30 days, consideration will be given to further

adjustments to the applicable annual minimum guarantee to acknowledge the long term business loss that would be experienced due to the period of non-service.

- D17.8 The Contractor may, from time to time, offer bonus advertising space to its clients at no cost or leave advertisements in place without having commitments or contracts with the advertiser. No revenue or value will be placed on such arrangements for the purpose of calculating the gross billing. In addition, the Contractor may, from time to time, offer reduced seasonal prices to advertisers in order to generate additional business.
- D17.9 The term "total gross billings" as used in this agreement means the gross billings made by the Contractor to its advertisers less:
- D17.9.1 Commissions deducted by or paid or payable to advertising agencies with respect to advertising placed with the Contractor through such agencies, but in no case shall any commission be deducted in respect to advertising obtained by the Contractor, or by a person or corporation in which the Contractor is in any way financially interested, direct from advertisers, except the prompt payment discount, not to exceed 2%, wherever applicable.
- D17.9.2 Bad debts, in accordance with and subject to the following provisions, namely. The Contractor shall have the right to write off as bad debts from its gross billings any billings made to advertisers, payment whereof is then three months or more in arrears; a statement of all such billings written off shall be furnished to the City at the time of and together with payment of the instalment in respect of the monthly billings, giving the names and addresses of the advertiser and the respective amounts written off; provided, however, that if collection of any or all of such unpaid billings shall be made by the Contractor at any subsequent date, the Contractor shall forthwith pay to the City an amount in accordance with the terms of this contract covering payment on account of billings.
- D17.9.3 Net production costs for production included in sales Contracts.
- D17.9.4 Any Provincial or Federal sales tax including the Goods and Services Tax collected by the Contractor and remitted directly to any governmental authority.
- D17.9.5 Other standard industry deductions in specific situations subject to prior written approval by the Commissioner or his designate.

## **WARRANTY**

### **D18. WARRANTY**

- D18.1 Warranty is as stated in C12.

**FORM H1: PERFORMANCE BOND**  
(See D12)

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 for

RFP NO. 944-2011

PROVISION OF WIRELESS DIGITAL ADVERTISING NETWORK  
IN RAPID TRANSIT STATIONS

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 as to Principal if no seal)

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

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

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

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

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

**FORM H2: IRREVOCABLE STANDBY LETTER OF CREDIT  
(PERFORMANCE SECURITY)**  
(See D12)

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

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

RE: PERFORMANCE SECURITY – RFP NO. 944-2011

PROVISION OF WIRELESS DIGITAL ADVERTISING NETWORK  
IN RAPID TRANSIT STATIONS

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)





## **PART E - SPECIFICATIONS**

### **GENERAL**

#### **E1. APPLICABLE DRAWINGS**

E1.1 The following are applicable to the Work:

<u>Drawing No.</u>	<u>Drawing Name/Title</u>
B237-10-71a	Southwest Rapid Transit Corridor – Stage 1 Osborne Station & Associated Works – Floor Plan – Locations for Unit Paver Inlays, Tactile Warning Strips & Railing Posts
2	Harkness Station and Fort Rouge Station “Canopy”
3	Harkness Station and Fort Rouge Station “Sheet Pile Wall”

E1.2 Bidders are reminded that requests for approval of substitutes as an approved equal or an approved alternative shall be made in accordance with B6.



## Project Summary

On October 22, 2008, City Council approved implementation of the initial project of Winnipeg's rapid transit system, Stage 1 of the Southwest Rapid Transit Corridor. The project includes:

- Construction of a new Transitway (a high-speed right-of-way for buses, physically separated from the regular street system) from Queen Elizabeth Way & Stradbrook to Pembina & Jubilee. The Transitway includes a new overpass of Osborne Street immediately south of the Osborne/Corydon/Pembina intersection and a new tunnel beneath the CN main line near the east end of Warsaw Avenue.
- New rapid transit stations near Stradbrook & Harkness (Harkness Station), on top of the new overpass of Osborne Street (Osborne Station), and in the Fort Rouge Yards (Fort Rouge Station).
- New bus-only road links between the Transitway and the regular street system at Queen Elizabeth Way & Stradbrook, at Stradbrook near Harkness, at the east end of Warsaw Avenue, and at the Jubilee Overpass near Pembina Highway.
- New Active Transportation Paths along the corridor that are fully integrated with the rapid transit stations.

Construction of this Stage 1 project began in May 2009 and is scheduled for completion by the end of 2011. The location and timing of further rapid transit investments will be determined following consideration by City Council of the City's Transportation Master Plan.

### Osborne Station (looking southwest)



#### Station Features:

- Prominent signage
- Heated waiting areas
- Benches
- Posted route and schedule information
- BUSwatch electronic signs that provide real-time bus departure information
- Bicycle parking
- High levels of lighting
- Easy pedestrian access from adjacent streets
- Safety features

## New Rapid Transit Service

Starting April 8, 2012, a network of 13 new and existing transit routes will use the new Transitway and existing transit priority measures to provide fast, frequent transit service between the downtown and the southwest part of the city (including the University of Manitoba, and residential, commercial, and industrial areas).

Rapid transit routes will operate from the new Balmoral Station (the former Greyhound Terminal adjacent to the University of Winnipeg) via the Graham Transit Mall and Main Street Diamond Lanes, then will access the new Transitway at Queen Elizabeth Way & Stradbrook and travel on the Transitway to Pembina & Jubilee, where they will rejoin the street system via the Jubilee Overpass. Once rejoining the street system, the rapid transit routes will operate via Pembina Highway and branch off at different locations to serve various destinations and neighbourhoods in southwest Winnipeg.

A bus-only access point to the Transitway has been built at the east end of Warsaw Avenue so that buses operating on Grant Avenue can use the Transitway to bypass on-street traffic congestion at the Osborne/Pembina/Corydon intersection and on the approaches to the Osborne Street Bridge and the Donald Street Bridge.

Modern, state-of-the-art buses with air-conditioning will be operated on the rapid transit routes. These vehicles will include new technology recently introduced on the transit fleet (GPS tracking, on-board "next stop" displays/announcements, automated route destination announcements when the bus doors open, and on-board security cameras).

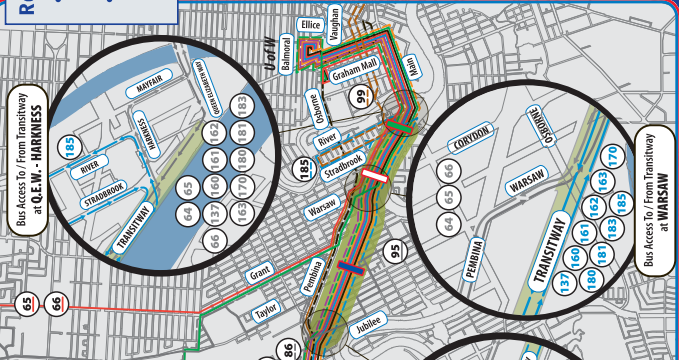
**Project Plan**



- TRANSIT ROUTES USING QUEEN ELIZABETH WAY - JIBILEE**
- 160 (Windsor & Esplanade Parklands)
  - 170 (Windsor & Esplanade Parklands - Sunday)
  - 172 (Windsor & Esplanade Parklands - Sunday)
- UNIVERSITY OF MANITOBA EXPRESS ROUTES:**
- 161 UNIVERSITY SUPER EXPRESS
  - 162 OSBORNE VILLAGE EXPRESS
- WEDGEMOUNT PEAK PERIOD EXPRESS ROUTES:**
- 137 REGINA ROAD SUPER EXPRESS
  - 163 WINDYBUSH EXPRESS
  - 164 INDUSTRIAL EXPRESS
  - 165 WHITE BRIDGE EXPRESS
  - 166 BIRCHWOOD EXPRESS

- TRANSIT ROUTES USING QUEEN ELIZABETH WAY - WARSAW**
- 64 LINENWOODS EXPRESS
  - 65 GRANT EXPRESS
  - 66 GRANT
- LOCAL ON-STREET ROUTES:**
- 99 OSBORNE VILLAGE - DOWNTOWN
  - 72 (BIRCHWOOD WEST - U of M)
  - 84 (WHITE BRIDGE - UNDERWOODS)
  - 91 (ST. NORBERT)
  - 94 (WINDYWOOD - REGINA ST)
  - 95 (DOWLETT)

- TRANSIT ROUTES USING QUEEN ELIZABETH WAY - HARKNESS**
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- Routes to/from Downtown:**
- Southbound buses enter the Transitway at Queen Elizabeth Way & Stradbrook.
  - Northbound buses exit Transitway at Harkness, Mayfair, Queen Elizabeth Way, and Main to Downtown.

**Route Network Plan**

A network of several routes will use all or a portion of the Transitway, entering/exiting at either end or at certain points along the way.



**Active Transportation (AT)**

The Active Transportation (AT) part of this project includes a significant investment for new and improved cycle and walking pathways.







**Aerial photo of new transitway alignment adjacent to Donald Street (looking southwest)**



**Transitway Tunnel under construction (looking south)**

## What about public consultation?

Public consultations for this project have taken place since 2004, when it was confirmed that there was substantial public support for the construction of a Rapid Transit system in Winnipeg. Winnipeg Transit has met with a number of stakeholder groups, including the Winnipeg Active Transportation Advisory Committee, the Winnipeg Access Advisory Committee, the Winnipeg Rapid Transit Coalition, and various building and property owners adjacent to the Rapid Transit Corridor.

A Public Open House was also held on two evenings in May 2009 and on one evening in April 2010. Nearly 400 people attended each event, with many providing written feedback. Respondents were supportive of the Rapid Transit project and offered many suggestions for consideration. A consultation summary can be found at [winnipegtransit.com](http://winnipegtransit.com), click on the "Rapid Transit" link.

## Construction Status

Construction began in May 2009 and will be completed by the end of 2011. Major works include the installation of a land drainage sewer system through the Fort Rouge Yards, the relocation of portions of Donald Street and Stradbroke Avenue to accommodate the north part of the Transitway, the Osborne Overpass, the Transitway Tunnel under the CN Rail Line, and the Transitway through the Fort Rouge Yards. The stations, the active transportation paths, and the Transitway connections to the street system are the final works to be constructed.

For more information about the Southwest Rapid Transit Corridor, please visit the project website at:

<http://www.winnipegtransit.com/en/rapid-transit/>



**View from a rapid transit bus travelling south on new Transitway (Donald Street)**

## Benefits of Rapid Transit

- Provides faster, more reliable transit service
- Reduces traffic congestion on regional streets
- Reduces greenhouse gas emissions from urban transportation
- Provides opportunities for Transit-Oriented Development (TOD)
- Strengthens the Downtown and adjacent neighbourhoods
- Provides economic spin-off benefits for local companies