

PART D

SUPPLEMENTAL CONDITIONS

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GENERAL

D1. GENERAL CONDITIONS

- D1.1 In addition to the *General Conditions for Provision of Services*, these Supplemental Conditions are applicable to the Work of the Contract.
- D1.2 The General Conditions are amended by striking out "The City of Winnipeg Act" wherever it appears in the General Conditions and substituting "The City of Winnipeg Charter".
- D1.3 The General Conditions are amended by striking out "Board of Commissioners" or "Commissioner" wherever it appears in the General Conditions and substituting the "Chief Administrative Officer".
- D1.4 The General Conditions are amended by striking out "Tender Package" wherever it appears in the General Conditions and substituting "Request for Proposal".
- D1.5 The General Conditions are amended by striking out "Tender Submission" wherever it appears in the General Conditions and substituting "Proposal Submission".
- D1.6 The General Conditions are amended by striking out "Bidding Instructions" wherever it appears in the General Conditions and substituting "Bidding Procedures".
- 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 consist of the supply, installation, sales and maintenance of City Transit Shelter Facia Advertising Signs.
- D2.2 The major components of the Work are as follows:
- (a) The supply, installation, sales and maintenance of Facia Advertising Signs (to a maximum of 1,000 signs) on City Transit Shelters (to a maximum of 450 shelters) including:
 - (i) Repairs to City Transit Shelter Structures or related components and landscape elements as a result of installation, maintenance, repair and replacement/removal of Facia Advertising Signs;
 - (ii) All repairs and maintenance shall be to the satisfaction of the City, acting reasonably.
 - (b) The Facia Advertising Signable Area should be of a design(s), size(s) and construction that:
 - (i) Is no larger than 30" high x 72" wide;
 - (ii) Does not detract from existing landscape elements;
 - (iii) Does not impair sightlines or visibility of legal Business signs or advertising, as approved by the City;
 - (iv) Does not create or pose a safety concern or hazard to pedestrians or vehicles;
 - (v) Does not cause damage to City Transit Shelter structures or related components;
 - (vi) May enhance visibility and/or appearance of City Transit Shelters;
 - (c) The City reserves the right to display advertising materials on up to 10% of the advertising signs (Transit Use Signs) for promotion of the Transit System.

D3. DURATION OF CONTRACT

D3.1 The Contract shall be for a period of five (5) years from the date of award.

D4. BACKGROUND

D4.1 The following is provided for the information of the Bidder:

- (a) The City owns and operates a Public Transportation System called Winnipeg Transit;
- (b) In 2001, the CMA population of the City of Winnipeg was approximately 671,000;
- (c) In 2003, Winnipeg Transit carried approximately 37.8 million revenue passengers;
- (d) In 2003, Winnipeg Transit had approximately 53.5 million boardings;
- (e) The City currently has Transit related advertising contracts with:
 - (i) Viacom Outdoor Canada Inc. for Advertising Shelters;
 - (ii) Viacom Outdoor Canada Inc. for Transit Buses; and
 - (iii) Benchmark Advertising Ltd. for Transit Benches.
- (f) There are approximately 812 bus shelters throughout the City of Winnipeg comprised of the following:
 - (i) 600 City Transit Shelters;
 - (ii) 200 Advertising Shelters with 400 advertising faces; and
 - (iii) 12 Advertising Shelters with 24 advertising faces installed by Winnipeg Transit at major bus stops.
- (g) In general, the City of Winnipeg is interested in securing Proposals which provide:
 - (i) a design that is attractive and enduring in the way it achieves a positive visual contribution to the streetscape;
 - (ii) a revenue stream for the City as described in Form B: Revenue.

D5. DEFINITIONS

D5.1 When used in this Request for Proposal:

- (a) "**Advertising Shelter**" means the existing shelters that contain backlit advertising caissons;
- (b) "**City Transit Shelter**" means the existing transit shelters that do not contain backlit advertising caissons;
- (c) "**Facia Advertising Sign**" means a sign no larger than 30" high or 72" wide attached to, marked or inscribed on, or erected on, or placed against a wall of a City Transit Shelter and having the exposed face thereof on a plane approximately parallel to the plane of such wall;
- (d) "**Far Side**" means the side of shelter furthest from oncoming traffic;
- (e) "**Maintain**" or "**Maintenance**" means the work of keeping all Facia Advertising Signs and related components in good working order including but not limited to, painting, cleaning and repairs;
- (f) "**Near Side**" means the side of shelter first approached by oncoming traffic;
- (g) "**non-electronic**" advertising means advertising without electronic, or digital messages or computer generated images of any kind in or on City transit shelter or advertising shelter;
- (h) "**Repair**" means the work of restoring shelter to original condition;
- (i) "**Roof**" means the top enclosure of any building;

- (j) **"Signable Area"** means the actual area of a sign on which copy could be placed including any frame or embellishment which forms an integral part of the display.
- (k) **"Site"** means the lands and other places on, under, in or through which the Work is to be performed;
- (l) **"Transit Patron"** means any customer or potential customer of Winnipeg Transit;
- (m) **"Transit Use Signs"** means at any given time during the term, up to 10% of the Facia Advertising Signs, which Winnipeg Transit may use at no cost for the promotion of Winnipeg Transit Services, products and promotional initiatives. Winnipeg Transit shall be responsible for the production of the advertising and the Contractor shall provide installation, maintenance, removal and storage of the advertising at no cost to Winnipeg Transit.

D6. CONTRACT ADMINISTRATOR

D6.1 The Contract Administrator is:

Morley Calahan
Promotions & Contracts Supervisor
421 Osborne Ave

Telephone No. (204) 986-5741
Facsimile No. (204) 986-6863

D6.2 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.

D7. CONTRACTOR'S SUPERVISOR

D7.1 At the pre-commencement meeting, the Contractor shall identify his designated supervisor and any additional personnel representing the Contractor and their respective roles and responsibilities for the Work.

D8. NOTICES

D8.1 GC.7.06 is hereby amended to delete reference to "registered mail" and to replace same with "ordinary mail".

D8.2 GC.7.06 is further amended hereby to include delivery by facsimile transmission (fax) as an acceptable means of delivering notices, consents, approvals, statements, authorizations, documents or other communications required or permitted to be given under this Contract. Deliveries by fax will be deemed to have been received on the day of delivery, if a business day, or if not a business day, on the business day next following the day of delivery.

D8.3 Further to GC.7.06, all notices, consents, approvals, statements, authorizations, documents or other communications to the City, except as expressly otherwise required in D8.4, D8.5 or elsewhere in the Contract, shall be sent to the attention of the Contract Administrator at the address or facsimile number identified in D6.1.

D8.4 All notices of appeal to the Chief Administrative Officer shall be sent to the attention of the Chief Financial Officer at the following address or facsimile number:

The City of Winnipeg
Chief Administrative Officer Secretariat
Administration Building, 3rd Floor
510 Main Street

Winnipeg MB R3B 1B9
Facsimile No.: (204) 949-1174

- D8.5 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications required to be submitted or returned to the City Solicitor shall be sent to the following address or facsimile number:

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

D9. CONFIDENTIALITY AND OWNERSHIP OF INFORMATION

- D9.1 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.
- D9.2 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.
- D9.3 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.

SUBMISSIONS

D10. AUTHORITY TO CARRY ON BUSINESS

- D10.1 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.

D11. WORKERS COMPENSATION

- D11.1 The Contractor shall be registered with the Workers Compensation Board of Manitoba, shall provide and maintain Workers Compensation coverage throughout the term of the Contract, and shall provide the Contract Administrator with evidence thereof upon request.

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 Twenty Thousand Dollars (\$20,000.00); or

- (b) an irrevocable standby letter of credit issued by a bank or other financial institution registered to conduct business in Manitoba and drawn on a branch located in Manitoba, in the form attached to these Supplemental Conditions (Form H2: Irrevocable Standby Letter of Credit), in the amount of Twenty Thousand Dollars (\$20,000.00); 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 Twenty Thousand Dollars (\$20,000.00).

D12.2 If the bid security provided in his Proposal Submission was not a certified cheque or draft pursuant to B11.1(c), the Contractor shall provide the City Solicitor with the required performance security within seven (7) Calendar Days of notification of the award of the Contract by way of letter of intent and prior to the commencement of any Work on the Site but in no event later than the date specified in GC.3.01 for the return of the executed Contract.

D13. INSURANCE

D13.1 The Contractor shall provide and maintain the following insurance coverage:

- (a) commercial general liability insurance, in the amount of at least two million dollars (\$2,000,000.00) all inclusive, with The City of Winnipeg being added as an additional insured, with a cross-liability clause, to remain in place at all times during the performance of the Work; and
- (b) automobile liability insurance for owned and non-owned automobiles used for or in connection with the Work in the amount of at least two million dollars (\$2,000,000.00) at all times during the performance of the Work and until the date of Total Performance.

D13.2 Deductibles shall be borne by the Contractor.

D13.3 The Contractor shall provide the Contract Administrator with a certified true copy or a certificate of insurance of the policy at least two (2) Business Days prior to the commencement of any Work on the Site but in no event later than the date specified in GC.3.01 for the return of the executed Contract.

D13.4 The Contractor shall not cancel, materially alter, or cause the policy to lapse without providing at least fifteen (15) Calendar Days prior written notice to the Contract Administrator.

SCHEDULE OF WORK

D14. COMMENCEMENT

D14.1 The Contractor shall not commence any Work until he is in receipt of a letter of intent from the Award Authority authorizing the commencement of the Work.

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 that the Contractor is in good standing under The Corporations Act (Manitoba), or properly registered under The Business Names Registration Act (Manitoba), or otherwise properly registered, licensed or permitted by law to carry on business in Manitoba;
 - (ii) evidence of the workers compensation coverage specified in D11;
 - (iii) evidence of the insurance 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.

CONTROL OF WORK

D14.3 Further to GC.5.02, the Contractor shall be the Prime Contractor and shall serve as, and have the duties of the Prime Contractor in accordance with The Workplace Safety and Health Act (Manitoba).

MEASUREMENT AND PAYMENT

D15. PAYMENT SCHEDULE

D15.1 Notwithstanding GC.9.03, payment shall be in accordance with the following:

- (a) 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 as specified in Form B: Revenue.
- (b) 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, 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 Schedule A: 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.
- (c) The consideration of D15.1(a) 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.
- (d) 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.
- (e) By January 1st 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.
- (f) 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 Contract Administrator 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.

- (g) 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.
 - (h) The Contractor may from time to time, offer bonus advertising space to its clients at no cost or leave advertisements in place on the shelters 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.
 - (i) The term total gross billings as used in this agreement means the gross billings made by the Contractor to its advertisers less:
 - (i) 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;
 - (ii) 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;
 - (iii) net production costs for production included sales contracts;
- D15.1.1 any Provincial or Federal sales tax including the Goods and Services Tax collected by the Contractor and remitted directly to any governmental authority; and
- D15.1.2 other standard industry deductions in specific situations subject to prior written approval by the Contract Administrator or his designate

WARRANTY

D16. WARRANTY

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

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

_____ Twenty Thousand _____ dollars (\$20,000.00)

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

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

_____ day of _____ , 20____ , for:

RFP NO. 339-2004

**SUPPLY, INSTALLATION, SALES AND MAINTENANCE OF CITY TRANSIT SHELTER FACIA
ADVERTISING SIGNS**

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

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

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

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

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

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

_____ day of _____ , 20____ .

SIGNED AND SEALED
in the presence of:

(Witness)

(Name of Principal)

Per: _____ (Seal)

Per: _____

(Name of Surety)

By: _____ (Seal)
(Attorney-in-Fact)

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

(Date)

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

RE: PERFORMANCE SECURITY - 339-2004

SUPPLY, INSTALLATION, SALES AND MAINTENANCE OF CITY TRANSIT SHELTER FACIA
ADVERTISING SIGNS

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

_____ Twenty Thousand (\$20,000.00) _____ 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)