



THE CITY OF WINNIPEG

REQUEST FOR PROPOSAL

RFP NO. 379-2010

**CONSULTATION SERVICES FOR THE CITY OF WINNIPEG ARGUE STREET
ACTIVE TRANSPORTATION FACILITY**

Proposals shall be submitted to:

The City of Winnipeg
Corporate Finance Department
Materials Management Division
185 King Street, Main Floor
Winnipeg MB R3B 1J1

in accordance with B6.

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PART B - BIDDING PROCEDURES

B1. CONTRACT TITLE

B1.1 CONSULTATION SERVICES FOR THE CITY OF WINNIPEG ARGUE STREET ACTIVE TRANSPORTATION FACILITY

B2. SUBMISSION DEADLINE

B2.1 The Submission Deadline is 4:00 p.m. Winnipeg time, June 8, 2010.

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 D2.

B3.2 If the Bidder has enquiries, or is unsure of the meaning or intent of any provision in this document, the Bidder should submit enquiries, or request clarification from the Contract Administrator, at least five (5) Business Days prior to the Submission Deadline.

B3.3 Responses to enquiries which, in the sole judgment of the Contract Administrator, require a correction to or a clarification of this document will be provided by the Contract Administrator to all Bidders by issuing an addendum.

B3.4 Responses to enquiries which, in the sole judgment of the Contract Administrator, do not require a correction to or a clarification of this document will be provided by the Contract Administrator only to the Bidder who made the enquiry.

B3.5 If the Bidder finds errors, discrepancies or omissions in this document, the Bidder shall promptly notify the Contract Administrator of the error, discrepancy or omission prior to the Submission Deadline.

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. The use and disclosure of the confidential information shall not apply to information which:

- (a) was known to the Bidder before receipt hereof; or
- (b) becomes publicly known other than through the Bidder; or
- (c) is disclosed pursuant to the requirements of a governmental authority or judicial order. The Bidder shall not make any statement of fact or opinion regarding any aspect of the RFP 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.

- B5.1.1 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>
- B5.1.2 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.
- B5.2 The Bidder shall acknowledge receipt of each addendum in Paragraph 4 of Form A: Proposal. Failure to acknowledge receipt of an addendum may render a Proposal non-responsive.

B6. PROPOSAL SUBMISSION

- B6.1 The Proposal shall consist of the following components:
- (a) Form A: Proposal (Section A);
 - (b) Proposed Approach (Section B);
 - (c) Fees (Section C);
 - (d) Experience (Section D);
 - (e) References (Section E).
- B6.2 Bidders are advised that inclusion of terms and conditions inconsistent with the this document will be evaluated in accordance with B18.1(a).

Format

- B6.3 Proponents should submit one (1) unbound original (marked "original") and two (2) copies plus one (1) copy in an MSOffice compatible electronic format on a standard CD. If there is any discrepancy between the electronic version and the original hard copy, the original hard copy shall take precedence.
- B6.3.1 Each requirement should be addressed in a separate section clearly marked with the corresponding letter.
- B6.3.2 Each section should contain no more than six(6) pages (standard 8.5x11 "), using a printing font with a 12 pitch. Any graphics included should be contained within the specified amount of pages.
- B6.4 The City reserves the right to make additional copies of all Submissions for its internal review process and to provide such copies to its staff and external advisors.
- B6.5 The Proposal should be submitted enclosed and sealed in an envelope clearly marked with the RFP number and the Proponent's name and address.
- B6.6 Proposals submitted by facsimile transmission (fax) or internet electronic mail (e-mail) will not be accepted.
- B6.7 Proposals shall be submitted to:
- The City of Winnipeg
Corporate Finance Department
Materials Management Division
185 King Street, Main Floor
Winnipeg MB, R3B 1J1
- B6.8 Any cost or expense incurred by the Proponent that is associated with the preparation of the Proposal shall be borne solely by the Proponent.

B7. FORM A: PROPOSAL (SECTION A)

- B7.1 Bidders shall complete Form A: Proposal, making all required entries.

B8. PROPOSED APPROACH (SECTION B)

B8.1 Bidders shall propose a consultation strategy that will solicit input from the Argue Street neighbourhood, neighbourhood stakeholders and the active transportation community in order to determine alternatives to the present Argue Street bike boulevard and the street's continued closure.

B9. FEES (SECTION C)

B9.1 Bidders shall submit a lump sum fee, in Canadian funds, for the Contract.

B9.2 The Bidder shall submit a team members' hourly fee schedule, in Canadian funds, for those members assigned to the project.

B9.3 Fees submitted shall not include the Goods and Services Tax (GST), which shall be extra where applicable.

B9.4 Payments to Non-Resident Consultants are subject to Non-Resident Withholding Tax pursuant to the Income Tax Act (Canada).

B10. EXPERIENCE (SECTION D)

B10.1 Bidders shall submit the following information:

- (a) Familiarity and knowledge of the different types of active transportation facilities and consultation experience in working with the public;
- (b) Past work experience in soliciting feedback from citizens and organizations and evidence of having successfully carried out work similar in nature and scope;
- (c) Past work experience specific to active transportation and evidence of having successfully carried out work similar in nature and scope;
- (d) Experience of proposed team members in consultation and active transportation and the estimated percentage of their time to be assigned to the project.

B11. REFERENCES (SECTION E)

B11.1 Bidders shall submit:

- (a) three (3) client references for recent projects similar in size and scope. Each reference should consist of a company name, contact name, email address, phone number and a brief description of the project.

B12. QUALIFICATION

B12.1 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;
- (b) be financially capable of carrying out the terms of the Contract;
- (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; and

B12.2 The Bidder and any proposed Subconsultant (for the portion of the Services 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>

- B12.3 The Bidder and/or any proposed Subconsultant (for the portion of the Services proposed to be subcontracted to them) shall:
- (a) have successfully carried out services for the programming; design, management of construction and contract administration for architectural and/or engineering projects for projects of similar complexity, scope and value; and to those required for this Project; and
 - (b) be fully capable of performing the Services 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);
 - (d) demonstrate that they have the knowledge and resources to administer the requirements of The Workplace Safety and Health Act (Manitoba) during any construction works associated with this Contract; and
 - (e) undertake to meet all licensing and regulatory requirements of the appropriate governing authorities and associations in the Province of Manitoba.

B12.4 The Bidder shall submit, within three (3) Business Days of a request by the Contract Administrator, further proof, satisfactory to the Contract Administrator, of the qualifications of the Bidder and of any proposed Subconsultant.

B12.5 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 Services.

B13. OPENING OF PROPOSALS AND RELEASE OF INFORMATION

B13.1 Proposals will not be opened publicly.

B13.2 After the award of Contract, the name of the successful Bidder will be provided to Bidders who have submitted a Proposal.

B13.3 To the extent permitted, the City shall treat all Proposals as confidential, however the Bidder is advised that any information contained in any Proposal Submission 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 5 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 Services until a Contract for the Services has been duly executed as herein provided, but any offer shall be deemed to have lapsed unless accepted within the time period specified in Paragraph 5 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 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 6 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 Proponent's authorized representatives named in Paragraph 6 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 there from: pass/fail
- (b) qualifications of the Bidder and the Subcontractors, if any, pursuant to B12: pass/fail
- (c) Proposed Approach (Section C); 40%
- (d) Fees (Section D); 10%
- (e) Experience (Section E). 50%

B18.2 Further to B18.1(a), the Award Authority may reject a Proposal as being non-responsive if the Proposal Submission 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), the Proposed Approach shall be evaluated based on the information submitted in accordance with B6.1(b) and B8.
- B18.5 Further to B18.1(d), Fees will be evaluated based on the information submitted in accordance with B6.1(c) and B9.
- B18.6 Further to B18.1(e), Experience will be evaluated based on the information submitted in accordance with B6.1(d) and B10.
- B18.7 Reference checks to confirm information provided may not be restricted to only those submitted by the Bidder, and may include organizations representing Persons, known to have done business with the Bidder.

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.
- B19.2.1 Without limiting the generality of B19.2, the City will have no obligation to award a Contract where:
- (a) the fees exceed the available City funds for the Services;
 - (b) the fees are materially in excess of the prices received for similar services in the past;
 - (c) the prices are materially in excess of the City's cost to perform the Services, or a significant portion thereof, with its own forces;
 - (d) only one Proposal is received; or
 - (e) in the judgment of the Award Authority, the interests of the City would best be served by not awarding a Contract.
- B19.2.2 Where an award of Contract is made by the City, the award shall be made to the responsible and qualified Proponent submitting the most advantageous offer.
- B19.3 Following the award of contract, a Proponent will be provided with information related to the evaluation of his Proposal upon written request to the Project Manager.
- B19.4 If, after the award of Contract, the Project is cancelled, the City reserves the right to terminate the Contract. The Consultant will be paid for all Services rendered up to time of termination.

PART D - SUPPLEMENTAL CONDITIONS

D1. SCOPE OF WORK

- D1.1 The Work to be done under the Contract shall consist of Consultation Services for the City of Winnipeg Argue Street Active Transportation Facility.

Background

- D1.2 Argue Street is located in the Ft. Rouge area of the City of Winnipeg. The street is located parallel to the City's proposed Bus Rapid Transit (BRT) route and vacant undeveloped lands. Argue Street is part of the City of Winnipeg's active transportation route and is known as the Argue Street Bike Boulevard.
- D1.3 The Argue Street Bike Boulevard was developed and designed through the WinSmart program in 2007 and 2008. The design includes pathways, shared roadways and closed sections of the right-of-way from Jubilee to Brandon Avenue. The design was subject to an open house held on April 25, 2007. The closure of Argue Street was strongly supported by the participants. The results of the open house are appended as Appendix A. As a result of the open house Argue Street was physically closed to vehicular traffic.
- D1.4 Since 2007 there have been changes to the area in and around Argue Street. The changes are a proposed new BRT route that will include an active transportation component, a proposed BRT station to be constructed somewhere adjacent to Argue Street that may require access through it, vacant land adjacent to the street that may be developed soon and a new Jubilee/Hay bike route that is proposed to be constructed this year. Recent open houses for the Jubilee/Hay bike route provided participants an opportunity to comment on the continued use of Argue Street as a bike boulevard and its current closure. There were mixed opinions about the continued closure of Argue Street. A summary of the comment sheets is appended as Appendix B.
- D1.5 With the impending changes to the area in the vicinity of Argue Street, it is timely to revisit the closure of Argue Street and its continued use as a bike boulevard. The City of Winnipeg is requesting proposals to provide a report with recommendations on the future of Argue Street as a bike boulevard and its continued closure.

D2. CONTRACT ADMINISTRATOR

- D2.1 The Contract Administrator is:
W. M. Woroby, P. Eng.
Project Management Engineer

Telephone No.: (204) 794-4346
Facsimile No.: (204) 986-5302

Email: bworoby@winnipeg.ca

D3. CONFIDENTIALITY AND OWNERSHIP OF INFORMATION

- D3.1 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.

SUBMISSIONS PRIOR TO START OF SERVICES

D4. AUTHORITY TO CARRY ON BUSINESS

D4.1 The Consultant 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 Consultant does not carry on business in Manitoba, in the jurisdiction where the Consultant does carry on business, throughout the term of the Contract, and shall provide the Project Manager with evidence thereof upon request.

D5. INSURANCE

D5.1 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, with a cross-liability clause, such liability policy to also contain contractual liability, unlicensed motor vehicle liability, non-owned automobile liability and products and completed operations, to remain in place at all times during the performance of the Work;
- (b) 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) at all times during the performance of the Work and until the date of Total Performance.

D5.2 Deductibles shall be borne by the Contractor.

D5.3 The Contractor shall provide the City Solicitor 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.

D5.4 The Contractor shall not cancel, materially alter, or cause each policy to lapse without providing at least thirty (30) Calendar Days prior written notice to the Contract Administrator.

D6. COMMENCEMENT

D6.1 The Contractor shall not commence any Services until he is in receipt of a notice of award from the City authorizing the commencement of the Services.

D6.2 The Contractor shall not commence any Services until:

- (a) the Contract Administrator has confirmed receipt and approval of:
 - (i) evidence of authority to carry on business specified in D4;
 - (ii) evidence of the insurance specified in D5.

D7. TOTAL PERFORMANCE

D7.1 The Contractor shall complete the Work under this Contract by August 20, 2010.

D8. PAYMENT

D8.1 Fees shall be payable without deduction, including no deduction for income taxes, Canada Pension Plan or Employment Insurance premiums or contributions.

D8.2 The Contractor shall submit invoices monthly for the Services rendered and expenses paid within the previous month and the City shall pay same within 30 days of receipt thereof, subject to the approval of invoices by the Contract Administrator.

D8.3 The City may, at its option, pay the Contractor by direct deposit to the Contractor's banking institution.

D8.4 Prices from non-resident Contractors are subject to a Non-resident Withholding Tax pursuant to the Income Tax Act (Canada).

D9. DEFAULT AND TERMINATION

D9.1 The Contractor is in breach of or in default under this Contract if, at any time:

- (a) any representation or warranty made by the Contractor is false or misleading in any material respect; or
- (b) the City is reasonably of the opinion that:
 - (i) the Contractor is not carrying out the Services in a manner acceptable to the City or in accordance with the terms and conditions of this Contract; or
 - (ii) the Contractor has failed to comply with, any of its material obligations or undertakings under this Contract; and
 - (iii) the Contractor, on receiving notice in writing from the City of the breach, default or failure, has failed to remedy the breach, default or failure to the satisfaction of the City within five (5) days of receiving the notice, or in the event the breach, default or failure is such that it cannot be remedied within five (5) days, has failed to provide to the City within five (5) days of receiving the notice a plan, acceptable to the City, for remedying the breach, default or failure within a reasonable period of time; or
- (c) if any receiver or interim receiver, trustee or liquidator of all or substantially all of the Contractor's property is appointed; or if the Contractor makes an assignment for the benefit of its creditors or makes any assignment or has a receiving order made against it under the *Bankruptcy and Insolvency Act (Canada)*; or becomes bankrupt or insolvent or makes application for relief under the provisions of any statute now or hereafter in force concerning bankrupt or insolvent debtors; or takes any action whatever, legislative or otherwise, with a view to winding-up, dissolution or liquidation of the Contractor.

D9.2 If the Contractor is in breach of or in default under this Contract, the City may do or require one or more of the following:

- (a) suspend or withhold any payments due, or any part thereof, until the Contractor has remedied the breach, default or failure to the satisfaction of the City;
- (b) where the breach, default or failure is not remedied or is not capable of being remedied, terminate this Contract and any financial obligation of the City hereunder by giving notice in writing;
- (c) where the breach, default or failure is one described above, terminate this Contract and any financial obligation of the City hereunder by giving notice in writing.

D9.3 Upon notice of termination of this Contract being provided, the Contractor shall deliver to the City all reports, lists and other data and information and material utilized, collected, compiled, drawn or produced in connection with this Contract which are in its possession or under its control.

D9.4 Upon notice of termination of this Contract being provided, and upon receipt of a final statement for Services rendered, the City will pay to the Contractor such amounts as the Contractor may be entitled to receive under this Contract as a payment for Services properly rendered under this Contract up to the date of the notice. The City may set off against such payment any amounts owing to it by the Contractor.

D10. INDEMNITY

D10.1 The Contractor shall indemnify and save harmless the City from and against all claims, losses, costs, damages, suits, proceedings, or actions arising directly or indirectly out of or related to the Contractor's activities in executing the Services including the Contractor's omissions, negligence, improper acts or delays in executing the Services, for an amount equivalent to the Contract value.

- D10.2 The City may settle any such claim, suit or lien and charge the Contractor with the amount paid or to be paid in effecting a settlement or which may be adjudged due by the City.
- D10.3 The Contractor shall pay to the City the value of all legal services and disbursements required to defend it against any claim arising out of the Contract and in computing the value of such services no regard shall be had to the fact that the same may have been performed by a salaried employee of the City.
- D10.4 The Contractor shall pay to the City all costs taxed against the Contractor in any litigation between the Contractor and the City arising out of the Contract.

D11. DECLARATION OF NO CONFLICT

- D11.1 The Contractor hereby declares that this Contract is entered into in good faith on the part of the Contractor, that no member of City Council, administrative or financial officer, director or any other officer of the City has any pecuniary interest, direct or indirect, in this Contract or any other contract or part of a contract, or commission made pursuant to this Contract or to any benefit to arise there from, and agrees that it shall forfeit all claims for payment or otherwise under this Contract if any member of City Council, administrative or financial officer, director or any other officer of the City is at any time interested therein or if any interest therein is given or agreed to be given to it and as well shall refund to the City any monies paid to the Contractor by the City under this Contract.
- D11.2 The Contractor declares that it has not participated in any collusive scheme or combine in connection with the Proposal or this Contract and agrees that it shall forfeit all claims for payment or otherwise under this Contract if it should ever be established that this declaration is false and as well shall refund to the City any monies paid to the Contractor by the City under this Contract.

D12. INFORMATION AND REPORTS

- D12.1 The Contractor shall, at such time and in such form as the City may require, furnish such periodic reports concerning the status of the Services, such statements, certificates, approvals and copies of proposed and executed plans and claims and other information relative to the Services as may be requested by the City. The Contractor shall furnish the City, upon request, with copies of all documents and other materials prepared or developed in relation with or as part of the Services.

D13. MODIFICATION OF CONTRACT

- D13.1 This Contract may be modified by the parties hereto only by a written supplemental agreement executed by both parties.

D14. ASSIGNMENT

- D14.1 The Contractor shall not voluntarily or by operation of law assign or otherwise transfer the obligations incurred on its part pursuant to the terms of this Contract without the prior written consent of the City. Any attempted assignment or transfer by the Contractor of its obligations without such consent shall be wholly void.

D15. CITY NOT OBLIGATED TO THIRD PARTIES

- D15.1 The City shall not be obligated or liable hereunder to any party other than the Contractor.

D16. WHEN RIGHTS AND REMEDIES NOT WAIVED

- D16.1 In no event shall the making by the City of any payment to the Contractor constitute or be construed as a waiver by the City of any breach of covenant, or any default which may then exist, on the part of the Contractor and the making of any such payment by the City while any

such breach or default exists shall in no way impair or prejudice any right or remedy available to the City in respect of such breach or default.

D16.2 The waiver by either party of any breach of any provision of this Contract shall not operate or be construed as a waiver of any subsequent breach.

D17. DEFINITIONS

D17.1 Where used in this Request for Proposal:

- (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) "**Business Day**" means any Calendar Day, other than a Saturday, Sunday, or a statutory or civic holiday;
- (d) "**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;
- (e) "**Contract**" means the combined documents consisting of either:
 - (i) the agreement forwarded to the Contractor and all schedules thereto (consisting of the Request for Proposal 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 Request for Proposal 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.
- (f) "**Contract Administrator**" means the person designated as such in the Supplemental Conditions;
- (g) "**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;
- (h) "**Contractor**" or "**Consultant**" means the person undertaking the performance of the Work under the terms of the Contract;
- (i) "**Council**" means the Council of The City of Winnipeg;
- (j) "**Manager of Materials**" means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- (k) "**may**" indicates an allowable action or feature which will not be evaluated;
- (l) "**must**" or "**shall**" indicates a mandatory requirement which will be evaluated on a pass/fail basis;
- (m) "**Person**" means an individual, firm, partnership, association or corporation, or any combination thereof, and includes heirs, administrators, executors or legal representatives of a person;
- (n) "**Proposal**" means the offer contained in the Proposal Submission;
- (o) "**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;
- (p) "**Request for Proposal**" means the Proposal Submission, the Bidding Procedures, the Supplemental Conditions, the Specifications (where applicable), the Drawings (where applicable) and all addenda;
- (q) "**should**" indicates a desirable action or feature which will be evaluated on a relative scale;

- (r) “**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;
- (s) “**Subcontractor**” means a person contracting with the Contractor for the performance of a part or parts of the Work and includes a Subcontractor’s subcontractor;
- (t) “**Submission Deadline**” means the time and date set out in the Bidding Procedures for final receipt of Bids;
- (u) “**Supplemental Conditions**” means the portion of the Request for Proposal by that name which sets out terms and conditions specific to the Contract.
- (v) “**Total Performance**” means that the entire Work has been performed in accordance with the Contract;
- (w) “**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.