



THE CITY OF WINNIPEG

REQUEST FOR PROPOSAL

RFP NO. 186-2016

**NORTH END WATER POLLUTION CONTROL CENTRE (NEWPCC) DEWATERING
CENTRIFUGE OVERHAUL SERVICES**

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PART B - BIDDING PROCEDURES

B1. CONTRACT TITLE

B1.1 NORTH END WATER POLLUTION CONTROL CENTRE (NEWPCC) DEWATERING CENTRIFUGE OVERHAUL SERVICES

B2. SUBMISSION DEADLINE

- B2.1 The Submission Deadline is 12:00 noon Winnipeg time, April 15, 2016.
- 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. SITE INVESTIGATION

- B3.1 Further to C3.1, the Proponent may make an appointment to view the Site by contacting the Contract Administrator.
- B3.2 The Proponent shall not be entitled to rely on any information or interpretation received at the Site investigation unless that information or interpretation is the Proponent's direct observation, or is provided by the Contract Administrator in writing.

B4. ENQUIRIES

- B4.1 All enquiries shall be directed to the Contract Administrator identified in D3.1.
- B4.2 If the Proponent finds errors, discrepancies or omissions in the Request for Proposal, or is unsure of the meaning or intent of any provision therein, the Proponent shall promptly notify the Contract Administrator of the error, discrepancy or omission at least five (5) Business Days prior to the Submission Deadline.
- B4.3 If the Proponent is unsure of the meaning or intent of any provision therein, the Proponent should request clarification as to the meaning or intent prior to the Submission Deadline.
- B4.4 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 Proponents by issuing an addendum.
- B4.5 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 Proponent who made the enquiry.
- B4.6 All correspondence or contact by Proponents with the City in respect of this RFP must be directly and only with the Contract Administrator. Failure to restrict correspondence and contact to the Contract Administrator may result in the rejection of the Proponents Proposal Submission.
- B4.7 The Proponent 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.

B5. CONFIDENTIALITY

- B5.1 Information provided to a Proponent by the City or acquired by a Proponent 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 Proponent before receipt hereof; or
- (b) becomes publicly known other than through the Proponent; or
- (c) is disclosed pursuant to the requirements of a governmental authority or judicial order.

B5.2 The Proponent shall not make any statement of fact or opinion regarding any aspect of the Bid Opportunity to the media or any member of the public without the prior written authorization of the Contract Administrator.

B6. ADDENDA

B6.1 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.

B6.2 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.

B6.2.1 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>

B6.2.2 The Proponent is responsible for ensuring that he/she 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.

B6.3 The Proponent 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.

B7. SUBSTITUTES

B7.1 The Work is based on the Plant, Materials and methods specified in the Request for Proposal.

B7.2 Substitutions shall not be allowed unless application has been made to and prior approval has been granted by the Contract Administrator in writing.

B7.3 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.

B7.4 The Proponent 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.

- B7.5 The Contract Administrator, after assessing the request for approval of a substitute, may in his/her 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.
- B7.6 The Contract Administrator will provide a response in writing, at least two (2) Business Days prior to the Submission Deadline, to the Proponent who requested approval of the substitute.
- B7.6.1 The Contract Administrator will issue an Addendum, disclosing the approved materials, equipment, methods and products to all potential Proponents. The Proponent requesting and obtaining the approval of a substitute shall be responsible for disseminating information regarding the approval to any person or persons he/she wishes to inform.
- B7.7 If the Contract Administrator approves a substitute as an “approved equal”, any Proponent may use the approved equal in place of the specified item.
- B7.8 If the Contract Administrator approves a substitute as an “approved alternative”, any Proponent bidding that approved alternative may base his/her 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 B25.
- B7.9 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.

B8. PROPOSAL SUBMISSION

- B8.1 The Proposal shall consist of the following components:
- (a) Form A: Proposal;
 - (b) Form B: Prices;
 - (c) Form N: Price Adjustment Proposal; and
 - (d) Form O: Materials of Construction.
- B8.2 The Proposal should also consist of the following components:
- (a) Experience of Proponent and Subcontractors (Section C) in accordance with B12;
 - (b) Experience of Key Personnel Assigned to the Project (Section D), in accordance with B14;
 - (c) Project Understanding and Methodology (Section E) in accordance with B15;
 - (d) Project Schedule (Section F) in accordance with B16; and
 - (e) Key Metrics (Section G) in accordance with B17.
- B8.3 Further to B8.1 all components of the Proposal shall be fully completed or provided in the order indicated, and submitted by the Proponent no later than the Submission Deadline, with all required entries made clearly and completely, to constitute a responsive Proposal.
- B8.4 Further to B8.2, all components of the Proposal should be fully completed or provided in the order indicated, and submitted by the Proponent no later than the Submission Deadline, with all required entries made clearly and completely, to constitute a responsive Proposal.
- B8.5 Proponents should submit one (1) unbound 8.5” x 11” original (marked “original”), six (6) bound copies and one (1) CD/DVD of the complete proposal submission. In case of discrepancy between the paper and electronic copies, the unbound original submission shall take precedence over all other copies.
- B8.6 Proposal format, including type of binding, number of pages, size of pages and, font, etc., will not be regulated, except that the Proposal should contain a table of contents, page numbering

and should be in the Sections identified above. Proponents are encouraged to use their creativity to submit a Proposal which provides the requested information for evaluation and other information which illustrates the strength of their team.

- B8.7 Proponents are advised that inclusion of terms and conditions inconsistent with the Request for Proposal, will be evaluated in accordance with B25.1(a).
- B8.8 The Proposal shall be submitted enclosed and sealed in an envelope/package clearly marked with the RFP number and the Proponent's name and address.
- B8.9 Proposals submitted by facsimile transmission (fax) or internet electronic mail (e-mail) will not be accepted.
- B8.10 Proposals shall be submitted to:
The City of Winnipeg
Corporate Finance Department
Materials Management Division
185 King Street, Main Floor
Winnipeg MB R3B 1J1
- B8.11 Any cost or expense incurred by the Proponent that is associated with the preparation of the Proposal shall be borne solely by the Proponent.

B9. PROPOSAL

- B9.1 The Proponent shall complete Form A: Proposal, making all required entries.
- B9.2 Paragraph 2 of Form A: Proposal shall be completed in accordance with the following requirements:
- (a) if the Proponent is a sole proprietor carrying on business in his/her own name, his/her name shall be inserted;
 - (b) if the Proponent is a partnership, the full name of the partnership shall be inserted;
 - (c) if the Proponent is a corporation, the full name of the corporation shall be inserted;
 - (d) if the Proponent is carrying on business under a name other than his/her own, the business name and the name of every partner or corporation who is the owner of such business name shall be inserted.
- B9.2.1 If a Proposal is submitted jointly by two or more persons, each and all such persons shall identify themselves in accordance with B9.2.
- B9.3 In Paragraph 3 of Form A: Proposal, the Proponent shall identify a contact person who is authorized to represent the Proponent for purposes of the Proposal.
- B9.4 Paragraph 11 of Form A: Proposal shall be signed in accordance with the following requirements:
- (a) if the Proponent is a sole proprietor carrying on business in his/her own name, it shall be signed by the Proponent;
 - (b) if the Proponent is a partnership, it shall be signed by the partner or partners who have authority to sign for the partnership;
 - (c) if the Proponent 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 Proponent is carrying on business under a name other than his/her 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.
- B9.4.1 The name and official capacity of all individuals signing Form A: Proposal should be printed below such signatures.

B9.5 If a Proposal is submitted jointly by two or more persons, the word "Proponent" shall mean each and all such persons, and the undertakings, covenants and obligations of such joint Proponents in the Proposal and the Contract, when awarded, shall be both joint and several.

B10. PRICES

B10.1 The Proponent shall state a price in Canadian funds for each item of the Work identified on Form B: Prices.

B10.1.1 Notwithstanding C11.1.3, 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.

B10.2 The quantities listed on Form B: Prices are to be considered approximate only. The City will use said quantities for the purpose of comparing Proposals.

B10.3 The quantities for which payment will be made to the Contractor are to be determined by the Work actually performed and completed by the Contractor, to be measured as specified in the applicable Specifications.

B10.4 Payments to Non-Resident Contractors are subject to Non-Resident Withholding Tax pursuant to the Income Tax Act (Canada).

B11. PRICE ADJUSTMENT PROPOSAL (FORM N)

B11.1 The Proponent shall complete Form N: Price Adjustment Proposal, making all required entries.

B11.2 Provision of a price adjustment proposal is a mandatory requirement.

B11.3 The Price Adjustment Proposal is applicable to all products and services in this Request for Proposal.

B11.4 The price in effect shall be based upon the date that the purchase order is submitted to the Contractor.

B11.5 Fixed Price Period

B11.5.1 The prices indicated on Form B will be fixed through to December 31, 2016.

B11.5.2 No escalation of prices will be permitted during this period for any cause.

B11.6 Price adjustments will occur annually with the first adjustment taking effect on January 1, 2017.

B11.7 Complete Form N to indicate the method, and details of price determination after the expiration of the fixed prices.

B11.8 Fixed Escalation Rate

B11.8.1 If the Price Adjustment is proposed to be based on a Fixed Escalation Rate, the following shall apply:

- (a) Contract prices for equipment and/or service will remain firm through the Fixed Price Period.
- (b) Price adjustments will take effect annually after the Fixed Price Period expires, with the first adjustment on the first day after the Fixed Price Period.
- (c) Price adjustments will be made in accordance with the percentage change indicated on Form N.
- (d) Provision of a fixed escalation rate is mandatory through until December 31, 2021.
- (e) In the event that an escalation rate is not proposed for a given year:
 - (i) The actual escalation rate to be utilized will be negotiated with the City.

(ii) The Proposal will be evaluated in accordance with B26.4.2(b).

B11.8.2 In the event that a Currency Exchange Factor is proposed to be utilized, the effective price will be adjusted by the Currency Exchange Factor as per B11.10.

B11.9 Indexed Price Adjustment

B11.9.1 If the Price Adjustment is proposed to be based on Indexed Price Adjustment, the following shall apply:

- (a) Contract prices for equipment and/or service will remain firm through the Fixed Price Period.
- (b) Price adjustments will take effect annually after the Fixed Price Period expires, with the first adjustment on January 1, 2017.
- (c) Price adjustments will be made in accordance with the percentage change in the referenced index, as per Form N.
- (d) The price adjustment rate will be determined by comparing the percentage difference between the index in effect on the date of the Bid Submission Deadline and the latest index data available thirty (30) Calendar Days prior to the new prices taking effect. The percentage difference between the two index values will be the price adjustment rate from the original fixed prices.

B11.9.2 In the event that a US based Index is proposed and that a Currency Exchange Factor is proposed to be utilized, the effective price will be adjusted by the Currency Exchange Factor as per B11.10.

B11.10 Currency Exchange Factor

B11.10.1 A Currency Exchange Factor shall apply if:

- (a) The Proponent proposes a Fixed Escalation Rate on Form N, and indicates that a Currency Exchange Factor shall apply.
- (b) The Proponent proposes that price adjustment shall be via Indexed Price Adjustment, that the escalation shall be based on a US index and that a Currency Exchange Factor shall apply.

B11.10.2 The currency exchange rate utilized shall be based on the noon exchange rates posted by the Bank of Canada. All currency exchange rates shall be expressed in terms of the value of the Canadian Dollar in terms of US Dollars or the alternate currency proposed.

B11.10.3 The noon currency exchange rate of the last twenty (20) Business Days prior to and including the Bid Submission Deadline shall be recorded and the average shall be deemed the original exchange rate.

B11.10.4 The initial value of the Currency Exchange Factor shall be 1.0 from Contract Award until December 31, 2016.

B11.10.5 Effective January 1, 2017, the Currency Exchange Factor will be reviewed and updated on an intermittent basis, not more frequent than sixty (60) Calendar Days. A review and potential update of the Currency Exchange Factor will be initiated upon a request for overhaul of one or more of the centrifuges.

B11.10.6 Upon a request for overhaul of one or more of the centrifuges, the Currency Exchange Factor may be updated to reflect the current exchange rate. An update to the Currency Exchange Factor is required where the current Currency Exchange Factor was established a minimum of sixty (60) Calendar days prior to the current date and the resulting calculated new exchange would result in a one percent (1%) or greater change of the Currency Exchange Factor.

B11.10.7 Updates to the Currency Exchange Factor shall be calculated as follows:

- (a) The new Currency Exchange Factor shall be calculated as the original exchange rate divided by the average noon currency exchange rate for the last twenty (20) Business

Days. The Currency Exchange Factor shall be rounded the nearest one thousandth (0.001).

(b) For example:

- (i) If a Currency Exchange Factor (Can\$ / US\$) is proposed and the Can\$ to US\$ noon exchange rate on the date of the Bid Submission Deadline is 0.900, this will be deemed the original exchange rate. The prices in effect will be as per Form B multiplied by the Currency Exchange Factor, which has a value of 1.
- (ii) If the Currency Exchange Factor is updated on October 1, 2017 and the 20-day average Can\$ to US\$ exchange rate is 0.850, the Currency Exchange Factor will be calculated as $0.900 / 0.850 = 1.059$.

B11.10.8 All modifications of the Currency Exchange Factor shall be approved by the Contract Administrator.

(a) Submit the proposed Currency Exchange Factor and supporting calculations to the Contract Administrator. Allow a minimum of five (5) Business days for review.

B11.10.9 The Contract Administrator may reject any Currency Exchange Factor that is not reasonable or reflective of the current exchange rate trends. For example, the Contract Administrator may reject a Currency Exchange Factor based upon a short term event causing an abnormal deviation in the exchange rate.

B11.10.10 The Currency Exchange Factor may either increase or lower the effective price in Canadian dollars.

B11.10.11 The approved updated Currency Exchange Factor shall be:

(a) Applicable for a minimum of sixty (60) Calendar days.

B11.11 The Proponent's Price Adjustment proposal will be reflected in the calculation of the Evaluated Bid Price as per B26.

B11.12 Contract Extension Prices

B11.12.1 As indicated in D2, the City may negotiate a Contract extension with the Contractor. The prices for the Contract extension shall be consistent with the Contractor's Price Adjustment Proposal on Form N.

B12. MATERIALS OF CONSTRUCTION (FORM O)

B12.1 The Proponent shall complete Form O: Materials of Construction, making all required entries.

B12.2 Minimum requirements for materials of construction are outlined in the project specifications identified in E1.1.

B13. EXPERIENCE OF PROPONENT AND SUBCONTRACTORS (SECTION C)

B13.1 Proposals should include:

- (a) details demonstrating the history and experience of the Proponent and Subcontractors in providing decanter centrifuge overhaul services for three projects of similar complexity, scope and value completed in the last 6 years.

B13.2 For each project listed in B13.1(a), the Proponent should submit:

- (a) description of the project;
- (b) list of services provided by the contractor;
- (c) project's original contracted cost and final cost;
- (d) schedule (anticipated Project schedule and actual project delivery schedule);
- (e) project owner;

- (f) Reference information (two current names with email addresses and telephone numbers per project). Reference persons should have worked directly on the reference projects described, such as the Project Manager or the Contract Administrator. Each reference should include the reference organization name, the reference person name, the reference position title/function, email address, and telephone number. References shall be persons who are not members of the Proponents organization or have a financial invested interest in the Proponents organization.

B13.2.1 Where applicable, information should be separated into Proponent and Subcontractor project listings.

B13.3 The Proposal should include general firm profile information, including years in business, average volume of work, number of employees and other pertinent information for the Proponent and all Subcontractors.

B13.4 The proposal should include sample reports and checklists completed as part of one of the reference projects listed in B13.1(a). If sample reports can't be provided due to privacy issues provide report and checklist templates.

B14. EXPERIENCE OF KEY PERSONNEL ASSIGNED TO THE PROJECT (SECTION D)

B14.1 Describe your approach to overall team formation and coordination of team members.

B14.1.1 Include an organizational chart for the Project indicating staff, job titles, project responsibilities and the Proponent's primary point of contact for the Project.

B14.2 Submit the experience and qualifications of the Key Personnel assigned to the Project for projects of similar complexity, scope and value, including the principals-in-charge, the project manager, and lead millwright. Include educational background and degrees, professional recognition, job title, years of experience in current position, years of trade experience, and years of experience with existing employer. Roles of each of the Key Personnel in the Project should be identified in the organizational chart referred to in B14.1.1.

B14.3 For each person identified, list at least two comparable projects in which they have played a primary role. If a project selected for a key person is included in B12, provide only the project name and the role of the key person. For other projects provide the following:

- (a) Description of project;
- (b) Role of the person;
- (c) Project Owner;
- (d) Reference information (two current names with email addresses and telephone numbers per project). Reference persons should have worked directly on the reference projects described, such as the Project Manager or the Contract Administrator. Each reference should include the reference organization name, the reference person name, the reference position title/function, email address, and telephone number. References shall be persons who are not members of the Proponents organization or have a financial invested interest in the Proponents organization.

B15. PROJECT UNDERSTANDING AND METHODOLOGY (SECTION E)

B15.1 Describe your firm's project management approach and team organization during the performance of Services, so that the evaluation committee has a clear understanding of the methods the Proponent will use in the delivery of this Project.

B15.2 Methodology should be presented in accordance with the Scope of Services identified in D2. Describe the collaborative process/method to be used within the Proponent's team and between the Proponent and the City in the various phases of the Project.

B15.3 Proposals should address:

- (a) the team's understanding of the broad functional and technical requirements;
- (b) the proposed Project budget;
- (c) the City's Project methodology with respect to the information provided within this RFP;
and
- (d) any other issue that conveys your team's understanding of the Project requirements.

B15.4 For each person identified in B14.2, list the percent of time to be dedicated to the Project in accordance with the Scope of Services identified in D2.

B16. PROJECT SCHEDULE (SECTION F)

B16.1 Proponents should present a carefully considered Critical Path Method schedule using Microsoft Project or similar project management software, complete with resource assignments (key personnel), durations (weekly timescale) and milestone dates or events. The schedule shall indicate a typical timeline for overhaul of one (1) centrifuge and be representative if services are provided during any period of the year.

B16.2 The Proponent's schedule should include a two (2) week review period of the initial inspection report by the City.

B17. KEY METRICS (SECTION G)

B17.1 Further to B8.2(e), the Proponent should provide the following metrics to aid the City in evaluating the Proponent's resources and capabilities. For each metric, indicate whether it is the Proponent or Subcontractor;

- (a) The Proponent's organization and management structure with a listing of the Proponent's office and repair facility locations;
- (b) Current number of employees in the Proponent's organization available at any given time who can work on these types of centrifuges;
- (c) A listing of the Proponent's available shop equipment to support overhaul and repair of the centrifuges;
- (d) List of personnel eligible to come and work at NEWPCC if required during installation and on-site commissioning of the centrifuge; and
- (e) Hours of support.

B18. DISCLOSURE

B18.1 Various Persons provided information or services with respect to this Work. In the City's opinion, this relationship or association does not create a conflict of interest because of this full disclosure. Where applicable, additional material available as a result of contact with these Persons is listed below.

B18.2 The Persons are:

- (a) Veolia North America

B19. QUALIFICATION

B19.1 The Proponent 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 Proponent does not carry on business in Manitoba, in the jurisdiction where the Proponent 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.
- B19.2 The Proponent 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>
- B19.3 The Proponent 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) or equivalent in the jurisdiction in which they are based;
- B19.4 The Proponent shall provide, in his/her Proposal:
 - (a) Proposed materials of construction for all replacement parts complete with material designations (e.g. ASTM). If the proposed materials of construction differ from the minimum requirements listed in the specifications provide documentation to demonstrate that the proposed materials meet or exceed the minimum requirements.
- B19.5 Further to B19.3(c), the Proponent shall, within ten (10) Business Days of a request by the Contract Administrator, provide proof satisfactory to the Contract Administrator that the Proponent/Subcontractor has a workplace safety and health program meeting the requirements of The Workplace Safety and Health Act (Manitoba), by providing:
 - (a) a copy of their valid Manitoba COR certificate and Letter of Good Standing (or Manitoba equivalency) as issued under the Certificate of Recognition (COR) Program administered by the Construction Safety Association of Manitoba or by the Manitoba Heavy Construction Association's WORKSAFELY™ COR™ Program; or
 - (b) a copy of their valid Manitoba SECOR™ certificate and Letter of Good Standing (or Manitoba equivalency) as issued under the Small Employer Certificate of Recognition Program (SECOR™) administered by the Construction Safety Association of Manitoba or by the Manitoba Heavy Construction Association's WORKSAFELY™ COR™ Program; or
 - (c) a report or letter to that effect from an independent reviewer acceptable to the City. (A list of acceptable reviewers and the review template are available on the Information Connection page at The City of Winnipeg, Corporate Finance, Materials Management Division website at <http://www.winnipeg.ca/matmgt/Safety/default.stm>).
- B19.6 The Proponent 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 Proponent and of any proposed Subcontractor.
- B19.7 The Proponent shall provide, on the request of the Contract Administrator, full access to any of the Proponent's equipment and facilities to confirm, to the Contract Administrator's satisfaction, that the Proponent's equipment and facilities are adequate to perform the Work.

B20. OPENING OF PROPOSALS AND RELEASE OF INFORMATION

- B20.1 Proposals will not be opened publicly.
- B20.2 After award of Contract, the names of the Proponents and the Contract amount of the successful Proponent 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/>

B20.3 To the extent permitted, the City shall treat all Proposal Submissions as confidential, however the Proponent 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.

B20.4 Following the award of Contract, a Proponent will be provided with information related to the evaluation of his/her submission upon written request to the Contract Administrator.

B21. IRREVOCABLE OFFER

B21.1 The Proposal(s) submitted by the Proponent shall be irrevocable for the time period specified in Paragraph 10 of Form A: Proposal.

B21.2 The acceptance by the City of any Proposal shall not release the Proposals of the other responsive Proponents and these Proponents 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.

B22. WITHDRAWAL OF OFFERS

B22.1 A Proponent may withdraw his/her Proposal without penalty by giving written notice to the Manager of Materials at any time prior to the Submission Deadline.

B22.1.1 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.

B22.1.2 The City will assume that any one of the contact persons named in Paragraph 3 of Form A: Proposal or the Proponent's authorized representatives named in Paragraph 11 of Form A: Proposal, and only such person, has authority to give notice of withdrawal.

B22.1.3 If a Proponent 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 11 of Form A: Proposal; and
- (c) if the notice has been given by any one of the persons specified in B22.1.3(b), declare the Proposal withdrawn.

B22.2 A Proponent who withdraws his/her Proposal after the Submission Deadline but before his/her offer has been released or has lapsed as provided for in B21.2 shall be liable for such damages as are imposed upon the Proponent 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.

B23. INTERVIEWS

B23.1 The Contract Administrator may, in his/her sole discretion, interview Proponents during the evaluation process.

B24. NEGOTIATIONS

B24.1 The City reserves the right to negotiate details of the Contract with any Proponent. Proponents are advised to present their best offer, not a starting point for negotiations in their Proposal Submission.

- B24.2 The City may negotiate with the Proponents submitting, in the City's opinion, the most advantageous Proposals. The City may enter into negotiations with one or more Proponents without being obligated to offer the same opportunity to any other Proponents. Negotiations may be concurrent and will involve each Proponent individually. The City shall incur no liability to any Proponent as a result of such negotiations.
- B24.3 If, in the course of negotiations pursuant to B24.2 or otherwise, the Proponent 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 Proponent from the Proposal as originally submitted.

B25. EVALUATION OF PROPOSALS

- B25.1 Award of the Contract shall be based on the following evaluation criteria:
- (a) compliance by the Proponent with the requirements of the Request for Proposal or acceptable deviation therefrom: (pass/fail)
 - (b) qualifications of the Proponent and the Subcontractors, if any, pursuant to B19: (pass/fail)
 - (c) Evaluated Bid Price, calculated as per B26; 40%
 - (d) Experience of Proponent and Subcontractor; (Section C) 20%
 - (e) Experience of Key Personnel Assigned to the Project; (Section D) 10%
 - (f) Project Understanding and Methodology (Section E) 10%
 - (g) Project Schedule. (Section F) 10%
 - (h) Key Metrics (Section G) 10%
- B25.2 Further to B25.1(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.
- B25.3 Further to B25.1(b), the Award Authority shall reject any Proposal submitted by a Proponent who does not demonstrate, in his/her Proposal or in other information required to be submitted, that he/she is responsible and qualified.
- B25.4 Further to B25.1(c), the Subtotal Bid Price shall be the sum of the quantities multiplied by the unit prices for items 1 through 25 shown on Form B: Prices.
- B25.4.1 Further to B25.1(a), in the event that a unit price is not provided on Form B: Prices, the City will determine the unit price by dividing the Amount (extended price) by the approximate quantity, for the purposes of evaluation and payment.
- B25.5 Further to B25.1(d), Experience of Proponent and Subcontractors will be evaluated considering the experience of the organization on projects of similar size and complexity as well as other information requested and submitted in accordance with B13.
- B25.6 Further to B25.1(e), Experience of Key Personnel Assigned to the Project will be evaluated considering the experience and qualifications of the Key Personnel and Subcontractor personnel on Projects of comparable size and complexity requested and submitted in accordance with B14.
- B25.7 Further to B25.1(f), Project Understanding and Methodology will be evaluated considering your firm's understanding of the City's Project, project management approach and team organization requested and submitted in accordance with B15.
- B25.8 Further to B25.1(g), Project Schedule will be evaluated considering the Proponent's ability to comply with the requirements of the Project requested and submitted in accordance with B16.

- B25.9 Further to B25.1(h)B25.1(g), Key Metrics will be evaluated considering the information received from the Proponent in accordance B17.
- B25.10 Notwithstanding B25.1(d) to B25.1(h), where Proponents fail to provide a response to B8.2(a) to B25.1(c), the score of zero may be assigned to the incomplete part of the response.
- B25.11 This Contract will be awarded as a whole; however, work shall be done on an as required basis as identified in D2.3.
- B25.12 If, in the sole opinion of the City, a Proposal does not achieve a pass rating for B25.1(a) and B25.1(b), the Proposal will be determined to be non-responsive and will not be further evaluated.
- B25.13 To be considered responsive, the Proponent should score 50% or greater of the available points for each item included in B25.1.

B26. EVALUATED BID PRICE

- B26.1 The subtotal bid price will be calculated based upon Form B as the sum of the estimated quantities multiplied by the unit prices for items 1 through 25.
- B26.2 The Estimated Cost Per Year will be calculated from the subtotal bid price as follows:
- (a) Year 0 (2016): 0% of the subtotal bid price;
 - (b) Year 1 (2017): 20% of the subtotal bid price, plus escalation;
 - (c) Year 2 (2018): 20% of the subtotal bid price, plus escalation;
 - (d) Year 3 (2019): 20% of the subtotal bid price, plus escalation;
 - (e) Year 4 (2020): 20% of the subtotal bid price, plus escalation, plus currency exchange rate factor indicated in B26.4.1;
 - (f) Year 5 (2021) 20% of the subtotal bid price, plus escalation
- B26.3 Further to B26.1, the Evaluated Bid Price will be calculated as the sum of the Estimated Cost Per Year multiplied by the estimated total escalation for the year.
- B26.4 The estimated total escalation for each year will be based upon the Proponent's Price Adjustment Proposal in Form N.
- B26.4.1 If the Price Adjustment includes a Currency Exchange Factor, an additional escalation rate of 5.0% shall be added to the escalation for January 1, 2020. Note that the escalation is cumulative and thus all subsequent years will be affected.
- B26.4.2 If the Price Adjustment is proposed to be based on a Fixed Escalation Rate, the following shall apply:
- (a) The calculation of the Evaluated Bid Price will utilize the indicated escalation values indicated on Form N.
 - (b) In the event that a percentage price increase is not proposed for a given year on Form N, the annual escalation assumed for the purpose of bid evaluation will be the maximum price increase for the respective year from all other responsive bids, or 7%, whichever is greater.
- B26.4.3 If the Price Adjustment is proposed to be based on Indexed Price Adjustment, the following shall apply:
- (a) An annual escalation rate of 3.0% or the average change of the last five years of the index, whichever is greater, will be assumed for the calculation of the Evaluated Bid Price.
- B26.5 In the event that, in the Contract Administrator's opinion, a specified component of the Form B price appears to be missing, the Contract Administrator may:

- B26.5.1 Deem the bid nonresponsive in accordance with B25.2; or
- B26.5.2 Utilize for the purpose of Bid Evaluation, the average price for the item of the other responsive Bids; or
- B26.5.3 In the event that the product specified is adequately addressed by other products in the Proponent's proposal, a price of zero will be utilized for the corresponding line item.

B27. AWARD OF CONTRACT

- B27.1 The City will give notice of the award of the Contract, or will give notice that no award will be made.
- B27.2 The City will have no obligation to award a Contract to a Proponent, even though one or all of the Proponents are determined to be responsible and qualified, and the Proposals are determined to be responsive.
 - B27.2.1 Without limiting the generality of B27.2, the City will have no obligation to award a Contract where:
 - (a) the prices exceed the available City funds for the Work;
 - (b) the prices are materially in excess of the prices received for similar work in the past;
 - (c) the prices are materially in excess of the City's cost to perform the Work, 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.
- B27.3 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.
- B27.3.1 Following the award of contract, a Proponent will be provided with information related to the evaluation of his/her Proposal upon written request to the Contract Administrator.
- B27.4 Notwithstanding C4 and Paragraph 6 of Form A; Proposal, the City may issue a purchase order to the successful Proponent in lieu of the execution of a Contract.
- B27.5 The Contract Documents, as defined in C1.1(n)(ii), in their entirety shall be deemed to be incorporated in and to form a part of the purchase order notwithstanding that they are not necessarily attached to or accompany said purchase order.

PART C - GENERAL CONDITIONS

C0. GENERAL CONDITIONS

- C0.1 The General Conditions for Supply of Services (Revision 2007 04 12) are applicable to the Work of the Contract.
- C0.1.1 The *General Conditions for Supply of Services* are available on the Information Connection page at The City of Winnipeg, Corporate Finance, Materials Management Division website at http://www.winnipeg.ca/matmgt/gen_cond.stm
- C0.1.2 A reference in the Request for Proposal to a section, clause or subclause with the prefix “**C**” designates a section, clause or subclause in the *General Conditions for Supply of Services*

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) “**Proponent**” 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) “**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;
- (ff) “**Submission Deadline**” means the time and date set out in the Bidding Procedures for final receipt of Bids;
- (gg) “**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;
- (hh) “**Total Performance**” means that the entire Work, except those items arising from the provisions of C12, have been performed in accordance with the Contract;

- (ii) **“User”** means an individual, department or other administrative unit of the City authorized by the Contract Administrator to order Work under this Contract;
- (jj) **“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.
- (kk) **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/she:
 - (a) has investigated the nature of the Work to be done and all conditions that might affect his/her Proposal or his/her 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/she 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/she:
- (a) does so in good faith and that to the best of his/her 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/her 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/her methods, to increase or improve his/her 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/her 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/her 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/her 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/she 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/her 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/her 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/her 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/she enters into with his/her Subcontractors.
- C6.27 The Contractor shall make prompt payment to his/her Subcontractors, his/her 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/she 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/she will issue a notice stating his/her 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/she will issue a notice approving the Change in Work and stating his/her 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/she is able to determine such adjustment based on the available information, he/she shall issue a notice approving the Change in Work and stating his/her 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/she requires further information to determine such adjustment, he/she shall issue a notice stating his/her 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/she 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) a decrease, pursuant to C11.3, due to a change in tax; or
- (d) 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/she 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/her 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/she 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 by the City to 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 to 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) duty;
- (b) freight and cartage;
- (c) 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;
- (d) profit and all compensation which shall be due to the Contractor for the Work and all details necessarily connected with the completion of the Work and all risks and contingencies connected therewith.

Increased or Decreased Costs

C11.2 The Contract Price shall not be increased or decreased by reason of any increase or decrease in the cost of the Work to the Contractor except as provided for herein.

C11.3 The Contract Price shall be adjusted if any change in a tax imposed under the Excise Act, the Excise Tax Act, the Customs Act, the Customs Tariff, The Mining Tax Act (Manitoba), or The Retail Sales Tax Act (Manitoba):

- (a) occurs after the Submission Deadline;
- (b) applies to Material; and
- (c) affects the cost of that Material to the Contractor.

- C11.4 If a change referred to in C11.3 occurs, the Contract Price shall be increased or decreased by an amount equal to the amount that is established, by an examination of the relevant records of the Contractor, to be the increase or decrease in the cost incurred that is directly attributable to that change.
- C11.5 For the purpose of C11.3, where a tax is changed after the Submission Deadline but public notice of the change has been given by either the Federal or Provincial Minister of Finance before that date, the change shall be deemed to have occurred before the Submission Deadline and the Contractor shall not be entitled to an increase in the Contract Price.

Final Payment

- C11.6 Approval by the City of final payment shall be subject to issuance by the Contract Administrator of a certificate of Total Performance.
- C11.7 Neither the issuance of a certificate of Total Performance nor final payment shall relieve the Contractor from his/her 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.
- C11.8 Subject to C11.9, acceptance by the Contractor of final payment shall constitute a waiver and release by him of all claims against the City whether for payment for Work done, damages or otherwise arising out of the Contract.
- C11.9 If the Contractor disputes a determination made by the Contract Administrator with respect to an interim or final payment, the Contractor shall be paid 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.

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 date of Total Performance and shall expire one (1) year thereafter unless extended pursuant to C12.2.1, in which case it shall expire when provided for under these sections.
- C12.2.1 If all outstanding defects or deficiencies have not been corrected to the satisfaction of the Contract Administrator by at least two (2) weeks prior to the date on which the warranty would expire except for this C12.2.1, then the Contract Administrator may require the Contractor to extend the warranty period for a further period of one (1) year for those defects or deficiencies in the Work identified by the Contract Administrator as still outstanding and uncorrected or for any portion of the Work whose use or operation is prevented by such defects or deficiencies.
- C12.3 Notwithstanding C12.2, 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.

Warranty Work

- C12.4 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.

- C12.5 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.
- C12.6 If the Contractor disagrees with the Contract Administrator's determination under C12.4, he/she shall nonetheless comply with C12.5. The Contractor may concurrently appeal the determination of the Contract Administrator as provided for in C20.

Acceptance of the Work

- C12.7 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 C12.5; and
 - (c) the successful conclusion of any tests required under the Contract.
- C12.8 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.
- C12.9 Certification of acceptance of the Work shall not, however, relieve the Contractor from his/her 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/her 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/her Subcontractors, employees or agents in the performance or purported performance of the Work, and more particularly from:

- (a) accidental injury to or death of any person whether retained by or in the employ of the Contractor or not, arising directly or indirectly by reason of the performance of the Work, or by reason of any trespass on or damage to property;
- (b) damage to any property owned in whole or in part by the City, or which the City by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain;
- (c) damage to, or trespass or encroachment upon, property owned by persons other than the City;
- (d) 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/her creditors, or has a receiver or liquidator appointed in respect of his/her 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/her Subcontractors, his/her 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) withhold or retain the whole or part of any payment;
- (b) take the whole of the Work, or any part or parts thereof out of the control of the Contractor;
- (c) demand payment for any amount owed to the City;

all as more particularly set forth in C18.3 to C18.6 below.

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.

Withholding of Payment

C18.3 If an event of default has occurred, the City may withhold or retain the whole or part of any payment to the Contractor.

C18.4 The City may apply the amount withheld or retained to:

- (a) pay any person to whom the Contractor is indebted in respect of Material, labour or services furnished for the Work;
- (b) secure the discharge of a lien or trust claim served upon the City;
- (c) indemnify, compensate or reimburse the City for amounts paid or costs incurred by the City in connection with the event of default.

C18.5 Payment of such amounts shall discharge the City's liability to the Contractor to the same extent as payment directly to him.

C18.6 Upon remedy of the event of default, any amount remaining from the amount withheld will be released to the Contractor.

Taking the Work out of the Contractor's Control

- C18.7 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.
- C18.8 Upon such notice being given to the Contractor, he/she shall immediately discontinue the Work or any part or parts thereof specified in the said notice.
- C18.9 The taking of the Work or any part thereof out of the Contractor's control pursuant to C18.7 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.
- C18.10 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.
- C18.11 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.
- C18.12 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

- C18.13 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.
- C18.14 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/she may, within seven (7) Calendar Days after receiving notice of the Contract Administrator's determination or order, notify the Chief Administrative Officer of his/her 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/she 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/she 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 facsimile number:
The City of Winnipeg
Legal Services Department
Attn: Director of Legal Services
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 for Supply of Services*, these Supplemental Conditions are applicable to the Work of the Contract.

D2. SCOPE OF SERVICES

D2.1 The Work to be done under the Contract may consist of overhaul of five (5) dewatering centrifuges at the NEWPCC for the period from May 1, 2016 until April 30, 2020, with the option of one (1) one (1) year extension.

D2.1.1 The City may extend the term of this Contract upon the first expiry, dated April 30, 2020, by providing written notice to the Contractor within one hundred eighty (180) Calendar Days prior to the expiry date of the Contract.

(a) If exercised by the City, the one (1) year extension of the Contract is mandatory for the Contractor.

(b) The City shall incur no liability to the Contractor if the option is not exercised.

D2.1.2 All subsequent Contract extensions after April 30, 2021 shall be mutually agreed upon between the City and the Contractor, based upon negotiations.

(a) The City may negotiate the extension option with the Contractor within one hundred eighty (180) 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.

(b) Changes resulting from such negotiations shall become effective on April 1 of the respective year. Changes to the Contract shall not be implemented by the Contractor without written approval by the Contract Administrator.

D2.1.3 The prices for Contract extensions shall be consistent with the Price Proposal indicated in Form N and B11.

D2.2 The major components of the Work are as follows:

(a) Transport of centrifuges from NEWPCC to the Contractor's facility including all customs fees and paperwork.

(b) Disassembly, cleaning and inspection of the centrifuges c/w reports outlining the findings.

(c) Repair and refurbishment of the centrifuges, replacing all worn or damaged parts as approved by the City upon review of the inspection report and Proponent's recommendations.

(d) Assembly, inspection and testing of the refurbished centrifuges c/w reports.

(e) Transport of refurbished centrifuges from the Contractor's repair facility to NEWPCC including all customs fees and paperwork.

D2.3 The Work shall be done on an "as required" basis during the term of the Contract.

D2.3.1 The type and quantity of Work to be performed under this Contract shall be as authorized from time to time by the Contract Administrator and/or Users.

D2.3.2 Subject to C7.2, the City shall have no obligation under the Contract to purchase any quantity of any item in excess of its actual operational requirements.

D3. CONTRACT ADMINISTRATOR

D3.1 The Contract Administrator is KGS Group, represented by:

Ashley Dent, P.Eng.
Mechanical Engineer
KGS Group
3rd Floor – 865 Waverley Street
Winnipeg, MB R3T 5P4

Telephone No. (204) 896-1209
Facsimile No. (204) 896-0754
Email adent@ksgsgroup.com

D3.2 Before commencement of Work, Ashley Dent will identify additional personnel representing the Contract Administrator and their respective roles and responsibilities for the Work.

D3.3 Bids Submissions must be submitted to the address in B8.10.

D4. CONTRACTOR'S SUPERVISOR

D4.1 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/her employ.

D4.2 Before commencement of Work, the Contractor shall identify his/her designated supervisor and any additional personnel representing the Contractor and their respective roles and responsibilities for the Work.

D4.2.1 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.

D5. OWNERSHIP OF INFORMATION, CONFIDENTIALITY AND NON DISCLOSURE

D5.1 The Contract, all deliverables produced or developed, and information provided to or acquired by the Contractor are the property of the City and shall not be appropriated for the Contractors own use, or for the use of any third party.

D5.2 The Contractor shall not make any public announcements or press releases regarding the Contract, without the prior written authorization of the Contract Administrator.

D5.3 The following shall be confidential and shall not be disclosed by the Contractor to the media or any member of the public without the prior written authorization of the Contract Administrator;

- (a) information provided to the Contractor by the City or acquired by the Contractor during the course of the Work;
- (b) the Contract, all deliverables produced or developed; and
- (c) any statement of fact or opinion regarding any aspect of the Contract.

D5.4 A Contractor who violates any provision of D5 may be determined to be in breach of Contract.

D6. NOTICES

D6.1 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

D6.2 **Bids Submissions must be submitted to the address in B8.10.**

SUBMISSIONS

D7. AUTHORITY TO CARRY ON BUSINESS

D7.1 The Contractor shall be in good standing under The Corporations Act (Manitoba), or properly registered under The Business Names Registration Act (Manitoba), or otherwise properly registered, licensed or permitted by law to carry on business in Manitoba, or if the Contractor does not carry on business in Manitoba, in the jurisdiction where the Contractor does carry on business, throughout the term of the Contract, and shall provide the Contract Administrator with evidence thereof upon request.

D8. SAFE WORK PLAN

D8.1 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.

D8.2 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/matmgt/safety/default.stm>

D9. INSURANCE

D9.1 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 applicable, Automobile Liability Insurance covering all motor vehicles, owned and operated and used or to be used by the Contractor directly or indirectly in the performance of the Service. The Limit of Liability shall not be less than \$2,000,000 inclusive for loss or damage including personal injuries and death resulting from any one accident or occurrence;

D9.2 Deductibles shall be borne by the Contractor.

D9.3 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.

D9.4 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.

D9.5 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.

D10. SUBCONTRACTOR LIST

D10.1 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

D11. COMMENCEMENT

- D11.1 The Contractor shall not commence any Work until he/she is in receipt of a notice of award from the City authorizing the commencement of the Work.
- D11.2 The Contractor shall not commence any Work on the Site until:
- (a) the Contract Administrator has confirmed receipt and approval of:
 - (i) evidence of authority to carry on business specified in D7;
 - (ii) evidence of the workers compensation coverage specified in C6.14;
 - (iii) the Safe Work Plan specified in D8;
 - (iv) evidence of the insurance specified in D9; and
 - (v) the Subcontractor list specified in D10.
 - (b) the Contractor has attended a meeting with the Contract Administrator, or the Contract Administrator has waived the requirement for a meeting.

D12. ORDERS

- D12.1 The Contractor shall provide a local Winnipeg telephone number or a toll-free telephone number at which orders for service may be placed.

D13. RECORDS

- D13.1 The Contractor shall keep detailed records of the services supplied under the Contract.
- D13.2 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.
- D13.3 The Contractor shall provide the Contract Administrator with a copy of the records for each quarter year within fifteen (15) Calendar Days of a request of the Contract Administrator.

D14. WORKPLACE SAFETY AND HEALTH – QUALIFICATIONS

- D14.1 For Contractors/Subcontractors located in Manitoba the requirements of B19.5 apply.
- D14.2 For Contractors/Subcontractors located outside Manitoba:
- (a) For shop based services completed off-site at the Contractor/Subcontractor repair facility, the requirements of B19.5 shall be superseded by the following:
 - (i) The Contractor/Subcontractor must, throughout the term of the Contract, have a written Workplace Safety and Health Program that meets the requirements of applicable local regulations. At any time during the term of the Contract, the City may, at its sole discretion and acting reasonably, require updated proof of the Workplace Safety and Health Program.
 - (b) For field based services completed at the NEWPCC, the requirements of B19.5(c) apply.

D15. WORKERS COMPENSATION BOARD OF MANITOBA

- D15.1 For Contractors/Subcontractors located in Manitoba the requirements of C6.14 apply.

D15.2 For Contractors/Subcontractors located outside Manitoba the requirements of C6.14 do not apply.

MEASUREMENT AND PAYMENT

D16. INVOICES

D16.1 Further to C11, the Contractor shall submit an invoice for each portion of Work performed to:

The City of Winnipeg
Corporate Finance - Accounts Payable
4th Floor, Administration Building, 510 Main Street
Winnipeg MB R3B 1B9

Facsimile No.: 204 949-0864

Email: CityWpgAP@winnipeg.ca

D16.2 Invoices must clearly indicate, as a minimum:

- (a) the City's purchase order number;
- (b) date of delivery;
- (c) delivery address;
- (d) type and quantity of work performed;
- (e) the amount payable with GST and MRST shown as separate amounts; and
- (f) the Contractor's GST registration number.

D16.3 The City will bear no responsibility for delays in approval of invoices which are improperly submitted.

D16.4 Bids Submissions must be submitted to the address in B8.10.

D17. PAYMENT

D17.1 Further to C11, payment shall be in Canadian funds net thirty (30) Calendar Days after receipt and approval of the Contractor's invoice.

D17.2 Further to C11, the City may at its option pay the Contractor by direct deposit to the Contractor's banking institution.

D18. PURCHASING CARD

D18.1 The Contractor shall allow Users to charge items to their purchasing cards at no extra cost.

D18.2 The Contractor's credit card website/gateway shall have appropriate current Payment Card Industry Data Security standards (PCI DSS) certification, (<https://www.pcisecuritystandards.org/index.shtml>). The credit card gateway shall meet the credit card data security requirements outlined by the Payment Card Industry Security Standards Council (PCI SSC) for service providers and/or software vendors.

WARRANTY

D19. WARRANTY

D19.1 Notwithstanding C12, the warranty period shall be 4000 hours of operation as measured by the City runtime clocks permanently installed on the equipment or 18 months from the date of delivery to the NEWPCC.

D19.2 Further to C12, 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.

PART E - SPECIFICATIONS

GENERAL

E1. APPLICABLE SPECIFICATIONS AND DRAWINGS

E1.1 The following are applicable to the Work:

<u>Document No.</u>	<u>Title</u>
MEC-001	NEWPCC Dewatering Centrifuge Overhaul Services
O&M Manual	Sharples Centrifuges Instructions Manual

E1.2 Proponents are reminded that requests for approval of substitutes as an approved equal or an approved alternative shall be made in accordance with B7.