

PART D

SUPPLEMENTAL CONDITIONS

PART D - SUPPLEMENTAL CONDITIONS

GENERAL

D1. GENERAL CONDITIONS

- D1.1 In addition to the *General Conditions for Construction Contracts*, these Supplemental Conditions are applicable to the Work of the Contract.
- D1.2 The General Conditions are amended by striking out "The City of Winnipeg Act" wherever it appears in the General Conditions and substituting "The City of Winnipeg Charter".
- D1.3 The General Conditions are amended by striking out "Tender Package" wherever it appears in the General Conditions and substituting "Bid Opportunity".
- D1.4 The General Conditions are amended by striking out "Tender Submission" wherever it appears in the General Conditions and substituting "Bid Submission".
- D1.5 The General Conditions are amended by deleting GC:6.16 and GC:6.17. The City of Winnipeg is now within the jurisdiction of the Manitoba Ombudsman pursuant to The Ombudsman Act.

D2. SCOPE OF WORK

- D2.1 The Work to be done under the Contract shall consist of acting as a service Contractor to Sewer Cleaning and Inspection Contractors scheduled to carry out contracts in 2004 and 2005 in the Ash, Doncaster/Roland/Tuxedo, Clifton, Baltimore/Douglas Park, Mager Drive, Linden and Hart Combined Sewer Districts and the Brooklands/Brooklands West/Burrows/Manitoba Wastewater Sewer Districts.
- D2.1.1 As a service Contractor, the following services shall be provided on demand in response to requests from the Contract Administrator:
- (a) Carry out emergency repairs to sewers and manholes identified as being in a state of incipient failure or collapsed,
 - (b) Assist sewer cleaning and inspection contractors with the retrieval of sewer cleaning and inspection equipment.
- D2.2 The major components of the Work are as follows:
- (a) Obtain all necessary underground clearances to carry out the Work;
 - (b) Provide temporary traffic control in accordance with the Manual of Temporary Traffic Control in Work Areas on City Streets, latest edition;
 - (c) Perform sewer and manhole stabilization consisting of man-accessible repairs (sewers 600 – 1050 diameter or height) and man-entry repairs (sewers 1200 diameter or height or larger),
 - (d) Remove sufficient pavement and/or boulevard to carry out the specified external repair activity, excavate and carry out the specified external repair activity in terms of a sewer repair, manhole repair, or equipment retrieval assistance, reconnect all sewers and sewer connections, and backfilling and completion of all surface restoration in the specified time frame;
 - (e) Clean and inspect the sewer, if required.

D3. DEFINITIONS

- D3.1 When used in this Bid Opportunity:

- (a) "Maintenance for Establishment" means scheduled maintenance in accordance with the terms and definitions of this contract sufficient to ensure that the sod has taken and shows evidence of live growth.

D4. CONTRACT ADMINISTRATOR

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

Frank Iwanchuk
Senior Project Coordinator
1479 Buffalo Place, Winnipeg, Manitoba, R3T 1L7

Telephone No. (204) 284-0580

Facsimile No. (204) 475-3646

- D4.2 At the pre-construction meeting, Mr. Iwanchuk will identify additional personnel representing the Contract Administrator and their respective roles and responsibilities for the Work.

D5. CONTRACTOR'S SUPERVISOR

- D5.1 At the pre-construction meeting, the Contractor shall identify his designated supervisor and any additional personnel representing the Contractor and their respective roles and responsibilities for the Work.

D6. NOTICES

- D6.1 Except as provided for in GC:23.2.2, all notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications to the Contractor shall be sent to the address or facsimile number identified by the Contractor in Paragraph 2 of Form A: Bid.

- D6.2 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications to the City, except as expressly otherwise required in D6.3, D6.4 or elsewhere in the Contract, shall be sent to the attention of the Contract Administrator at the address or facsimile number identified in D4.1.

- D6.3 All notices of appeal to the Chief Administrative Officer shall be sent to the attention of the Chief Financial Officer at the following address or facsimile number:

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

510 Main Street
Winnipeg MB R3B 1B9

Facsimile No.: (204) 949-1174

- D6.4 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications required to be submitted or returned to the City Solicitor shall be sent to the following address or facsimile number:

The City of Winnipeg
Corporate Services Department
Legal Services Division

185 King Street, 3rd Floor
Winnipeg MB R3B 1J1

Facsimile No.: (204) 947-9155

D7. FURNISHING OF DOCUMENTS

- D7.1 Upon award of the Contract, the Contractor will be provided with five (5) complete sets of the Bid Opportunity. If the Contractor requires additional sets of the Bid Opportunity, they will be supplied to him at cost.

SUBMISSIONS

D8. PERFORMANCE SECURITY

- D8.1 The Contractor shall provide and maintain performance security until the expiration of the warranty period in the form of:
- (a) a performance bond of a company registered to conduct the business of a surety in Manitoba, in the form attached to these Supplemental Conditions (Form H1: Performance Bond), in the amount of fifty percent (50%) of the Contract Price; or
 - (b) an irrevocable standby letter of credit issued by a bank or other financial institution registered to conduct business in Manitoba and drawn on a branch located in Manitoba, in the form attached to these Supplemental Conditions (Form H2: Irrevocable Standby Letter of Credit), in the amount of fifty percent (50%) of the Contract Price; or
 - (c) a certified cheque or draft payable to "The City of Winnipeg", drawn on a bank or other financial institution registered to conduct business in Manitoba, in the amount of fifty percent (50%) of the Contract Price.
- D8.2 If the bid security provided in his Bid Submission was not a certified cheque or draft pursuant to B10.1(c), the Contractor shall provide the City Solicitor with the required performance security within seven (7) Calendar Days of notification of the award of the Contract by way of letter of intent and prior to the commencement of any Work on the Site but in no event later than the date specified in GC:4.1 for the return of the executed Contract.

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) all inclusive, with The City of Winnipeg and UMA Engineering Ltd. being added as an additional insured, with a cross-liability clause, such liability policy to also contain a contractual liability, an unlicensed motor vehicle liability and a products and completed operations endorsement to remain in place at all times during the performance of the Work and throughout the warranty period;
 - (b) automobile liability insurance for owned and non-owned automobiles used for or in connection with the Work in the amount of at least two million dollars (\$2,000,000.00) at all times during the performance of the Work and until the date of Total Performance;
- D9.2 Deductibles shall be borne by the Contractor.
- D9.3 The Contractor shall provide the City Solicitor with a certified true copy or a certificate of insurance of each policy, in a form satisfactory to the City Solicitor, at least two (2) Business Days prior to the commencement of any Work on the Site but in no event later than the date specified in GC:4.1 for the return of the executed Contract.
- D9.4 The Contractor shall not cancel, materially alter, or cause each policy to lapse without providing at least fifteen (15) Calendar Days prior written notice to the Contract Administrator.

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 but in no event later than the date specified in the General Conditions for the return of the executed Contract.

D11. SECURITY CLEARANCE

D11.1 Criminal Record Search Certificate

D11.1.1 Prior to the commencement of any Work, and if during the term of the Contract additional or replacement individuals are proposed to perform Work, the Contractor shall provide the Contract Administrator with a Criminal Record Search Certificate, obtained not earlier than one (1) year prior to the Submission Deadline, or a certified true copy thereof for each individual proposed to perform Work within City facilities or on private property.

D11.1.2 Any Criminal Record Search Certificate obtained thereby will be deemed valid for the duration of the Contract subject to a repeated records search as hereinafter specified.

D11.1.3 Notwithstanding the foregoing, at any time during the term of the Contract, the City may, at its sole discretion and acting reasonably, require an updated Criminal Record Search. Any individual who fails to provide a Criminal Record Search Certificate as a result of a repeated Criminal Record Search shall not be permitted to continue to perform Work under the Contract.

D11.1.4 No individual for whom a Criminal Record Search Certificate is not provided, or for whom a Criminal Record Search Certificate indicates any convictions or pending charges related to property offences or crimes against another individual, will be permitted to perform any Work within City facilities or on private property.

SCHEDULE OF WORK

D12. COMMENCEMENT

D12.1 The Contractor shall not commence any Work until he is in receipt of a letter of intent from the Award Authority authorizing the commencement of the Work.

D12.2 The Contractor shall not commence any Work on the Site until:

- (a) the Contract Administrator has confirmed receipt and approval of:
 - (i) evidence that the Contractor is in good standing under The Corporations Act (Manitoba), or properly registered under The Business Names Registration Act (Manitoba), or otherwise properly registered, licensed or permitted by law to carry on business in Manitoba;
 - (ii) evidence of the workers compensation coverage specified in GC:6.14;
 - (iii) the performance security specified in D8;
 - (iv) evidence of the insurance specified in D9;
 - (v) the Subcontractor list specified in D10; and
 - (vi) the security clearances specified in D11.
- (b) the Contractor has attended a pre-construction meeting with the Contract Administrator, or the Contract Administrator has waived the requirement for a pre-construction meeting.

D12.3 The Contractor shall be prepared to commence the Work on the Site within seven (7) Working Days of receipt of the letter of intent.

D13. CRITICAL STAGES

D13.1 The Work in this Contract consists of acting as a service contractor to the following contracts:

- (a) Bid Opportunity No. 341-2004
2004 Sewer Cleaning and Inspection – Contract 35
Brooklands/Brooklands West/Burrows/Manitoba Wastewater Sewer Districts
- (b) Tender No. 502-2003
2004 Sewer Cleaning and Inspection – Contract 40
Ash Combined Sewer District
- (c) Tender No. 504-2003
2004 Sewer Cleaning and Inspection – Contract 42
Doncaster/Roland/Tuxedo Combined Sewer Districts
- (d) Tender No. 503-2003
2004 Sewer Cleaning and Inspection – Contract 41
Clifton Combined Sewer District
- (e) Sewer Cleaning and Inspection in the Mager Drive Sewer District.
- (f) Sewer Cleaning and Inspection in the Baltimore/Douglas Park Sewer Districts.
- (g) Sewer Cleaning and Inspection in the Linden Combined Sewer District.
- (h) Sewer Cleaning and Inspection in the Hart Combined Sewer District.
- (i) Miscellaneous locations from previous sewer inspection contracts in the Combined Sewer Districts.

D13.1.1 The Work scheduled for this Contract is critical stage based and will be dictated by the schedule of work and nature and progress of construction activities in the above noted Contracts. Failure to achieve the critical stages of work as noted in D13.3 within the time frames specified may cause the City to incur substantial costs for which the Contractor will be responsible under the terms of D16 Liquidated Damages.

D13.2 The Contractor shall supply the specified services under this Contract upon request by the Contract Administrator. The Contract Administrator's request shall be in the form of a facsimile message, which shall detail the following:

- (a) the type of service required (e.g. external sewer repair, stabilization, or equipment retrieval assistance, etc.) and rank if a backlog of work exists;
- (b) the site where the Contractor must provide services;
- (c) direction as to whether surface restoration that impacts vehicular or pedestrian traffic must be carried out immediately subsequent to the subsurface works or whether those works can be scheduled to be commenced within 7 calendar days of completing subsurface works.

D13.2.1 If the type of service required is a sewer repair the Contract Administrator may provide a follow-up information package with more specific details of the repair required including a video tape or still images of the nature of the Work if available.

D13.3 The Contractor's requirement to respond to these requests shall constitute the critical stages of the Work schedule. The critical stages and the Contractor's requirements to respond are as follows:

- (a) Notification of Utilities
 - (i) Upon formal notification of a request for service the Contractor shall immediately request the necessary underground clearances to commence subsurface work and shall be prepared to meet on Site within 4 hours with representatives of the respective utilities.

- (ii) At the commencement of the Contract the City will be advising the utilities of the nature of the Work and will endeavour to gain their support in terms of providing emergency response in a timely manner. Should the utilities advise the Contractor that the obtaining of underground clearances cannot be secured on the same or following Calendar Day, the Contractor shall immediately notify the Contract Administrator. Failure to notify the Contract Administrator of a utility's inability to meet this timeline shall be cause to hold the Contractor responsible for the utility's delay.
- (b) Commencement of On-Site Repair Work
 - (i) The Contractor shall be fully mobilized and on-site working no later than two Calendar Days after the Contract Administrator's notification or one Calendar Day after obtaining the necessary underground clearances in the case of the utilities requiring more than one Calendar Day to provide these clearances.
 - (ii) In the case of there being more than one repair required at a specific time, the Contract Administrator will prioritize the order that repairs should be carried out in. Each subsequent repair shall be commenced as soon as the subsurface component of Work on the previous repair has been completed.
- (c) Continuous Subsurface Repair Operations
 - (i) Once the Contractor has commenced working on subsurface works (in ground or within the pipe or manhole) he shall be required to work continuously, on a Calendar Day basis until such time that:
 - a. the Cleaning and Inspection Contractor can resume work, and
 - b. final surface restoration activities for any Work required to fully restore vehicular or pedestrian traffic can commence.
 - (ii) In the context of this Contract, the completion of subsurface works shall be deemed to include backfilling, compaction, and any other activity necessary to commence final surface restoration activities for sewer repairs or the completion of the stabilization works.
- (d) Commencement of Final Surface Restoration and Continuous Surface Repair Operation until Completion
 - (i) The Contract Administrator shall identify the required timing for commencement of final surface restoration in the original request for service. The required timing shall be identified as either:
 - a. Commencement immediately following the completion of subsurface works and working continuously on a Calendar Day basis until completion
 - b. Commencement within 7 days of completion of subsurface works and working continuously on a Working Day basis until completion
 - (ii) Completion of surface works within the context of this Contract shall be deemed to mean that the Work is complete as specified and that regular pedestrian and/or vehicular traffic may be fully restored to service.

D14. SUBSTANTIAL PERFORMANCE

D14.1 The Contractor shall achieve Substantial Performance by December 31, 2005.

D14.2 When the Contractor considers the Work to be substantially performed, the Contractor shall arrange, attend and assist in the inspection of the Work with the Contract Administrator for purposes of verifying Substantial Performance. Any defects or deficiencies in the Work noted during that inspection shall be remedied by the Contractor at the earliest possible instance and the Contract Administrator notified so that the Work can be reinspected.

D14.3 The date on which the Work has been certified by the Contract Administrator as being substantially performed to the requirements of the Contract through the issue of a certificate of Substantial Performance is the date on which Substantial Performance has been achieved.

D15. TOTAL PERFORMANCE

D15.1 The Contractor shall achieve Total Performance within ten (10) Working Days of the date that Substantial Performance has been achieved.

D15.2 When the Contractor or the Contract Administrator considers the Work to be totally performed, the Contractor shall arrange, attend and assist in the inspection of the Work with the Contract Administrator for purposes of verifying Total Performance. Any defects or deficiencies in the Work noted during that inspection shall be remedied by the Contractor at the earliest possible instance and the Contract Administrator notified so that the Work can be reinspected.

D15.3 The date on which the Work has been certified by the Contract Administrator as being totally performed to the requirements of the Contract through the issue of a certificate of Total Performance is the date on which Total Performance has been achieved.

D16. LIQUIDATED DAMAGES

D16.1 If the Contractor fails to achieve critical stages, Substantial Performance or Total Performance in accordance with the Contract by the day fixed herein for same, the Contractor shall pay the City the following amounts per Working Day for each and every Working Day following the days fixed herein for same during which such failure continues.

- (a) Notification of Utilities - \$5000 per Calendar Day
- (b) Commencement of On-Site Repair Work - \$5000 per Calendar Day
- (c) Continuous Subsurface Repair Operations - \$5000 per Calendar Day
- (d) Commencement of Final Surface Restoration and Continuous Surface Repair Operation until Completion
 - (i) \$1000 per Calendar Day for repairs identified for immediate commencement
 - (ii) \$500 per Working Day for repairs identified for commencement within 7 Calendar Days
- (e) Substantial Performance - \$1,000 per Calendar Day
- (f) Total Performance - \$500 per Working Day

D16.2 The amounts specified for liquidated damages in D16.1 are based on a genuine pre-estimate of the City's losses in the event that the Contractor does not achieve critical stages, Substantial Performance or Total Performance by the days fixed herein for same.

D16.3 The City may reduce any payment to the Contractor by the amount of any liquidated damages assessed.

D17. SCHEDULED MAINTENANCE

D17.1 The Contractor shall perform the following scheduled maintenance in the manner and within the time periods required by the Specifications:

- (a) Sodding as specified in CW3510.

D17.2 Determination of Substantial Performance and Total Performance shall be exclusive of scheduled maintenance identified herein. All scheduled maintenance shall be completed prior to the expiration of the warranty period. Where the scheduled maintenance cannot be

completed during the warranty period, the warranty period shall be extended for such period of time as it takes the Contractor to complete the scheduled maintenance.

CONTROL OF WORK

D18. JOB MEETINGS

- D18.1 Regular weekly job meetings will be held at the Site. These meetings shall be attended by a minimum of one representative of the Contract Administrator, one representative of the City and one representative of the Contractor. Each representative shall be a responsible person capable of expressing the position of the Contract Administrator, the City and the Contractor respectively on any matter discussed at the meeting including the Work schedule and the need to make any revisions to the Work schedule. The progress of the Work will be reviewed at each of these meetings.
- D18.2 The Contract Administrator reserves the right to cancel any job meeting or call additional job meetings whenever he deems it necessary.

D19. PRIME CONTRACTOR – THE WORKPLACE SAFETY AND HEALTH ACT (MANITOBA)

- D19.1 Further to GC:6.26, the Contractor shall be the Prime Contractor and shall serve as, and have the duties of the Prime Contractor in accordance with The Workplace Safety and Health Act (Manitoba).

D20. CONFINED SPACE ENTRY SAFETY

- D20.1 The Contractor's attention is drawn to the Province of Manitoba Workplace Safety and Health Act ("the Act"), and the Regulations and Guidelines there-under pertaining to Confined Entry Work, and in particular the requirements for conducting hazard/risk assessments and providing personal protective equipment (PPE).
- D20.2 The Contractor shall provide Supplied Air Breathing Apparatus conforming to the requirements of the Act, Regulations and Guidelines for the use of the Contract Administrator where confined entry is required to allow for inspection of the Work.

MISCELLANEOUS

D21. CASH ALLOWANCE

- D21.1 Further to GC:12.3, the Contract Price includes a Cash Allowance as indicated in Form B: Prices of the Bid Submission. The Cash Allowance shall cover the cost of materials plus mark-up, as specified in the Specifications, for sewer stabilization repairs of sewers and manholes by man-entry techniques.
- D21.2 The amount to be measured and processed for payment shall be limited to materials used to repair the fabric of the sewer or manhole or repair voids as specified and approved for inclusion for payment by the Contract Administrator. The Contractor shall be required to provide the Contract Administrator with sufficient documentation to determine the actual cost of materials incorporated into the works.
- D21.3 The amount of the Cash Allowance included in the Contract for payment purposes shall be increased or decreased as required in accordance with the actual value of materials incorporated into the Work plus mark-up, as approved by the Contract Administrator.

D21.4 None of the Contractor's overhead and profit for the overall project shall be assigned to the Cash Allowance except as permitted for material mark-up as specified and, therefore, no claims shall be considered relative to diminution of Work in the event that the actual Cash Allowance utilized is less than the amount specified in Form B: Prices of the Bid Submission.

FORM H1: PERFORMANCE BOND
(See D8)

KNOW ALL MEN BY THESE PRESENTS THAT

_____ ,
(hereinafter called the "Principal"), and

_____ ,
(hereinafter called the "Surety"), are held and firmly bound unto **THE CITY OF WINNIPEG** (hereinafter called the "Obligee"), in the sum of

_____ dollars (\$_____)

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

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

_____ day of _____, 20____, for:

BID OPPORTUNITY NO. 427-2004

2004 EMERGENCY SEWER REPAIRS

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

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

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

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

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

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

_____ day of _____, 20____ .

SIGNED AND SEALED
in the presence of:

(Witness)

(Name of Principal)

Per: _____ (Seal)

Per: _____

(Name of Surety)

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

**FORM H2: IRREVOCABLE STANDBY LETTER OF CREDIT
(PERFORMANCE SECURITY)
(See D8)**

(Date)

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

RE: PERFORMANCE SECURITY – BID OPPORTUNITY NO. 427-2004
2004 EMERGENCY SEWER REPAIRS

Pursuant to the request of and for the account of our customer,

(Name of Contractor)

(Address of Contractor)

WE HEREBY ESTABLISH in your favour our irrevocable Standby Letter of Credit for a sum not exceeding in the aggregate

_____ Canadian dollars.

This Standby Letter of Credit may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you. It is understood that we are obligated under this Standby Letter of Credit for the payment of monies only and we hereby agree that we shall honour your demand for payment without inquiring whether you have a right as between yourself and our customer to make such demand and without recognizing any claim of our customer or objection by the customer to payment by us.

The amount of this Standby Letter of Credit may be reduced from time to time only by amounts drawn upon it by you or by formal notice in writing given to us by you if you desire such reduction or are willing that it be made.

Partial drawings are permitted.

We engage with you that all demands for payment made within the terms and currency of this Standby Letter of Credit will be duly honoured if presented to us at:

(Address)

and we confirm and hereby undertake to ensure that all demands for payment will be duly honoured by us.

All demands for payment shall specifically state that they are drawn under this Standby Letter of Credit.

Subject to the condition hereinafter set forth, this Standby Letter of Credit will expire on

(Date)

It is a condition of this Standby Letter of Credit that it shall be deemed to be automatically extended from year to year without amendment from the present or any future expiry date, unless at least 30 days prior to the present or any future expiry date, we notify you in writing that we elect not to consider this Standby Letter of Credit to be renewable for any additional period.

This Standby Letter of Credit may not be revoked or amended without your prior written approval.

This credit is subject to the Uniform Customs and Practice for Documentary Credit (1993 Revision), International Chamber of Commerce Publication Number 500.

(Name of bank or financial institution)

Per: _____
(Authorized Signing Officer)

Per: _____
(Authorized Signing Officer)

