



**THE CITY OF WINNIPEG**

# **REQUEST FOR PROPOSAL**

**RFP NO. 427-2023**

**PROFESSIONAL CONSULTING SERVICES FOR INDEPENDENT COMMISSIONING  
AGENT FOR SOUTH WINNIPEG REC CAMPUS PHASE 1**

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## **PART B - BIDDING PROCEDURES**

### **B1. CONTRACT TITLE**

- B1.1 PROFESSIONAL CONSULTING SERVICES FOR INDEPENDENT COMMISSIONING AGENT FOR SOUTH WINNIPEG REC CAMPUS PHASE 1

### **B2. SUBMISSION DEADLINE**

- B2.1 The Submission Deadline is 12:00 noon Winnipeg time, June 29, 2023.
- B2.2 The Consulting Contract Administrator or the Manager of Materials may extend the Submission Deadline by issuing an addendum at any time prior to the time and date specified in B2.1.

### **B3. ENQUIRIES**

- B3.1 All enquiries shall be directed to the Consulting Contract Administrator identified in D2.
- B3.2 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 Consulting Contract Administrator of the error, discrepancy or omission at least five (5) Business Days prior to the Submission Deadline.
- B3.3 Responses to enquiries which, in the sole judgment of the Consulting Contract Administrator, require a correction to or a clarification of the Request for Proposal will be provided by the Consulting Contract Administrator to all Proponents by issuing an addendum.
- B3.4 Responses to enquiries which, in the sole judgment of the Consulting Contract Administrator, do not require a correction to or a clarification of the Request for Proposal will be provided by the Consulting Contract Administrator only to the Proponent who made the enquiry.
- B3.5 All correspondence or contact by Proponents with the City in respect of this RFP must be directly and only with the City's Consulting Contract Administrator. Failure to restrict correspondence and contact to the Consulting Contract Administrator may result in the rejection of the Proponents Proposal Submission.
- B3.6 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 Consulting Contract Administrator in writing.
- B3.7 Any enquiries concerning submitting through MERX should be addressed to:  
MERX Customer Support  
Phone: 1-800-964-6379  
Email: merx@merx.com

### **B4. CONFIDENTIALITY**

- B4.1 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 Consulting 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.

B4.2 The Proponent shall not make any statement of fact or opinion regarding any aspect of the Request for Proposals to the media or any member of the public without the prior written authorization of the Consulting Contract Administrator.

## **B5. ADDENDA**

B5.1 The Consulting Contract Administrator may, at any time prior to the Submission Deadline, issue addenda correcting errors, discrepancies or omissions in the Request for Proposal, or clarifying the meaning or intent of any provision therein.

B5.2 The Consulting Contract Administrator will issue each addendum at least two (2) Business Days prior to the Submission Deadline, or provide at least two (2) Business Days by extending the Submission Deadline.

B5.3 Addenda will be available on the MERX website at [www.merx.com](http://www.merx.com).

B5.4 The Proponent is responsible for ensuring that they have received all addenda and is advised to check the MERX website for addenda regularly and shortly before the Submission Deadline, as may be amended by addendum.

B5.5 The Proponent shall acknowledge receipt of each addendum in Paragraph 10 of Form A: Bid/Proposal. Failure to acknowledge receipt of an addendum may render a Proposal non-responsive.

B5.6 Notwithstanding B3, enquiries related to an Addendum may be directed to the Consulting Contract Administrator indicated in D2.

## **B6. PROPOSAL SUBMISSION**

B6.1 The Proposal shall consist of the following components:

- (a) Form A: Bid/Proposal (Section A) in accordance with B7;
- (b) Fees (Section B) in accordance with B8.

B6.2 The Proposal should also consist of the following components:

- (a) Experience of Proponent and Subconsultants (Section C) in accordance with B9;
- (b) Experience of Key Personnel Assigned to the Project (Section D), in accordance with B10;
- (c) Project Understanding and Methodology (Section E) in accordance with B11; and
- (d) Project Schedule (Section F) in accordance with B12.

B6.3 Further to B6.1 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.

B6.4 Further to B6.2, 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.

B6.5 Proposal format, including 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 proposed solution.

B6.6 The Proposal shall be submitted electronically through MERX at [www.merx.com](http://www.merx.com).

B6.6.1 Proposals will **only** be accepted electronically through MERX.

B6.7 Proponents are advised that inclusion of terms and conditions inconsistent with the Request for Proposal, will be evaluated in accordance with B22.1(a).

B6.8 Any cost or expense incurred by the Proponent that is associated with the preparation of the Proposal shall be borne solely by the Proponent.

**B7. PROPOSAL (SECTION A)**

B7.1 The Proponent shall complete Form A: Bid/Proposal, making all required entries.

B7.2 Paragraph 2 of Form A: Bid/Proposal shall be completed in accordance with the following requirements:

- (a) if the Proponent is a sole proprietor carrying on business in their own name, their 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 their own, the business name and the name of every partner or corporation who is the owner of such business name shall be inserted.

B7.2.1 If a Proposal is submitted jointly by two or more persons, each and all such persons shall identify themselves in accordance with B7.2

B7.3 In Paragraph 3 of Form A: Bid/Proposal, the Proponent shall identify a contact person who is authorized to represent the Proponent for purposes of the Proposal.

B7.4 Paragraph 13 of Form A: Bid/Proposal shall be signed in accordance with the following requirements:

- (a) if the Proponent is a sole proprietor carrying on business in their 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 their duly authorized officer or officers;
- (d) if the Proponent is carrying on business under a name other than their 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.

B7.4.1 The name and official capacity of all individuals signing Form A: Bid/Proposal should be entered below such signatures.

B7.5 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.

**B8. FEES (SECTION B)**

B8.1 The Proposal shall include a Fixed Fee for all disciplines and/or phases identified in D4 Scope of Services.

B8.1.1 Within the Fixed Fee, include as a separate line item the fee to:

- (a) provide the optional Monitoring-Based Commissioning service Option 1 – Path 2 per LEED criteria;
- (b) address the second year post construction challenges with shoulder season cooling and heating; and

- (c) provide a thermographic scan of exterior walls at substantial performance (or when the weather permits) to confirm air leakage continuity and sealed unit integrity in accordance with D4.2(p).

B8.2 Adjustments to Fees will only be considered based on increases to the Scope of Services.

B8.2.1 The City will not consider an adjustment to the Fees based on changes in the Project budget or the Final Total Construction Cost.

B8.3 Notwithstanding C1.1(b), Fees shall include costs for out of town travel, related meals and accommodations for the duration of the Project and shall not be considered an Allowable Disbursement.

B8.4 The Fee Proposal shall also include an allowance for Allowable Disbursements as defined in C1.1(b), but shall exclude the costs of any materials testing, soils and hazardous materials investigation during construction.

B8.5 Notwithstanding C11.1, Fees submitted 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.

B8.6 Payments to Non-Resident Consultants are subject to Non-Resident Withholding Tax pursuant to the Income Tax Act (Canada).

## **B9. EXPERIENCE OF PROPONENT AND SUBCONSULTANTS (SECTION C)**

B9.1 Proposals should include:

- (a) details demonstrating the history and experience of the Proponent and Subconsultants in providing commissioning services in the past ten years on three similar projects of similar complexity, scope and value. Per LEED Enhanced Commissioning requirements, the Proponent shall have documented commissioning process experience on a minimum of two of these projects with a similar scope of work, and this experience must extend from the early design phase through at least 10 months of occupancy.
- (b) general firm profile information, including address, years in business, average volume of work, number of employees and pertinent information for the Proponent and all Subconsultants, including the total number of Winnipeg-based staff and their roles.

B9.2 For each project listed in B9.1(a), the Proponent should submit:

- (a) project owner, name of prime design consultant, name of commissioning lead and commissioning consultants responsible for the delivery of commissioning services, a brief description of the project and date of occupancy;
- (b) project's original contracted cost and final cost, include a separate line item for the commissioning costs;
- (c) sustainability goals of the project and LEED Accreditations and/or Zero Carbon Building certification achieved;
- (d) description of scope of work, including systems commissioned, unique challenges and expand on how services enhanced the delivery of the project to the client's benefit; and
- (e) reference information (two current names with telephone numbers and email addresses per project).

B9.2.1 Where applicable, information should be separated into Proponent and Subconsultant project listings.

## **B10. EXPERIENCE OF KEY PERSONNEL ASSIGNED TO THE PROJECT (SECTION D)**

B10.1 Describe your approach to overall team formation and coordination of team members.

B10.1.1 Include an organizational chart for the Project with the Key Personnel identified in B10.2.

- B10.2** Identify the following Key Personnel assigned to the Project:
- (a) Project Manager;
  - (b) Mechanical Commissioning (Cx-C-M);
  - (c) Electrical Commissioning (Cx-C-E);
  - (d) Building Envelope Commissioning (Cx-C-B); and
  - (e) LEED Accredited Professional.
- B10.3** Submit the experience and qualifications of the Key Personnel assigned to the Project for projects of similar complexity, scope and value. Include educational background and degrees, professional recognition, job title, years of experience in current position, years of experience in commissioning 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 B10.1.1.
- B10.3.1** Identify experience working on LEED v4 or LEED v4.1; CaGBC Zero Carbon Building (ZCB) Standards, and activities defined in LEED Fundamental Commissioning prerequisite and Enhanced Commissioning – Option 1 Enhanced System Commissioning Path 1 and Path 2, and Option 2, Envelope Commissioning.
- B10.3.2** For each Key Personnel identified in B10.2, identify if they possess the following credentials:
- (a) Certified Commissioning Professional (CCP); and/or
  - (b) ASHRAE Commissioning Process Management Professional (CPMP).
- B10.4** For each person identified, list at least two comparable projects in which they have played a primary role similar to that proposed for this Project. If a project selected for a key person is included in B9, 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) Reference information (two current names with telephone numbers and email addresses per project).
- B11. PROJECT UNDERSTANDING AND METHODOLOGY (SECTION E)**
- B11.1** 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.
- B11.2** Methodology should be presented in accordance with the Scope of Services identified in D4.
- B11.3** Describe the collaborative process/method to be used by the Key Personnel of the team in the various phases of the Project.
- B11.4** Proposals should address:
- (a) the team's understanding of the broad functional and technical requirements as it relates to the City's sustainability intention for the SWRC to be an energy efficient, net zero carbon ready building;
  - (b) the team's understanding of managing at peak efficiency and not compromising occupant comfort requirements;
  - (c) the team's understanding of facility maintenance staff requirements;
  - (d) the team's understanding of the inspection and testing requirements;
  - (e) the Project methodology with respect to the information provided within this RFP and the City's Project Management Manual at <http://winnipeg.ca/infrastructure/asset-management->

[program/templates-manuals.stm#2](#) and templates at <http://winnipeg.ca/infrastructure/asset-management-program/templates-manuals.stm#4> ;  
and;

(f) any other issue that conveys your team's understanding of the Project requirements.

B11.5 The Proposal should include Form P: Person Hours for all disciplines and or phases identified in D4 Scope of Services.

B11.5.1 The total Fees on Form P: Person Hours should match Fees submitted in response to B8.

B11.6 Proponents may use Form P: Person Hours or a table of their own design provided it includes all information requested in accordance with B11.5.

B11.7 A sample of Form P: Person Hours can be found at <https://winnipeg.ca/matmgt/templates/information.stm>

## **B12. PROJECT SCHEDULE (SECTION F)**

B12.1 The following schedule is based on the June 2, 2023, Council Report: South Winnipeg Recreation Campus (SWRC, Project ID:6362800122 Quarterly Project Status Report No. 5 for the Period Ended March 31,2023 and should be used by the Proponent in the preparation of the submission.

<b>Activity</b>	<b>Targeted Completion Date</b>
SWRC Design Completion	2024 Q1
SWRC Construction Procurement	2024 Q2
SWRC Construction Commencement	2024 Q3
SWRC Construction Completion	2026 Q3
SWRC Facilities Commissioning; Opening	2026 Q4

B12.2 Proponents should present a carefully considered Critical Path Method schedule using Microsoft Project or similar project management software, complete with resource assignments (key designers), durations (weekly timescale) and milestone dates or events. The schedule should address each requirement of the Scope of Services.

B12.3 The Proponent's schedule should include critical dates for review and approval processes by the City and other organizations anticipated during the design and tendering phases of the Project. Reasonable times should be allowed for completion of these processes.

## **B13. ELIGIBILITY**

B13.1 As a result of having assisted with the commissioning scope in relation to this Request for Proposal, the following Persons are not eligible to be a Proponent, participate as team members of a Proponent, or act as advisors to a Proponent or to any of their team members or to otherwise participate in the development and preparation of Proposals for the Project:

- (a) Smith + Andersen – Prime Design Consultant's Electrical and Mechanical Subconsultant;
- (b) Footprint – Prime Design Consultant's Sustainability Subconsultant.

B13.2 A Proponent may be disqualified if any of the above-noted ineligible persons participate in the development and preparation of the Proponent's Proposal for this Independent Commissioning Agent Request for Proposal .

## **B14. DISCLOSURE**

B14.1 Various Person provided information or services with respect to this RFP. 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.

B14.2 The Persons are:

- (a) AECOM Canada Ltd.

B14.3 Additional Material:

- (a) Appendix A - Climate Lens: Climate Change Resilience Assessment and Greenhouse Gas Mitigation Assessment

**B15. CONFLICT OF INTEREST AND GOOD FAITH**

B15.1 Further to C3.2, Proponents, by responding to this RFP, declare that no Conflict of Interest currently exists, or is reasonably expected to exist in the future.

B15.2 Conflict of Interest means any situation or circumstance where a Proponent or Key Personnel proposed for the Services has:

- (a) other commitments;
- (b) relationships;
- (c) financial interests; or
- (d) involvement in ongoing litigation;

that could or would be seen to:

- (i) exercise an improper influence over the objective, unbiased and impartial exercise of the independent judgment of the City with respect to the evaluation of Proposals or award of the Contract; or
- (ii) compromise, impair or be incompatible with the effective performance of a Proponent's obligations under the Contract;
- (e) has contractual or other obligations to the City that could or would be seen to have been compromised or impaired as a result of their participation in the RFP process or the Project; or
- (f) has knowledge of confidential information (other than confidential information disclosed by the City in the normal course of the RFP process) of strategic and/or material relevance to the RFP process or to the Project that is not available to other Proponents and that could or would be seen to give that Proponent an unfair competitive advantage.

B15.3 In connection with their Proposal, each entity identified in B15.2 shall:

- (a) avoid any perceived, potential or actual Conflict of Interest in relation to the procurement process and the Project;
- (b) upon discovering any perceived, potential or actual Conflict of Interest at any time during the RFP process, promptly disclose a detailed description of the Conflict of Interest to the City in a written statement to the Consulting Contract Administrator; and
- (c) provide the City with the proposed means to avoid or mitigate, to the greatest extent practicable, any perceived, potential or actual Conflict of Interest and shall submit any additional information to the City that the City considers necessary to properly assess the perceived, potential or actual Conflict of Interest.

B15.4 Without limiting B15.3, the City may, in their sole discretion, waive any and all perceived, potential or actual Conflicts of Interest. The City's waiver may be based upon such terms and conditions as the City, in their sole discretion, requires to satisfy itself that the Conflict of Interest has been appropriately avoided or mitigated, including requiring the Proponent to put into place such policies, procedures, measures and other safeguards as may be required by and be acceptable to the City, in their sole discretion, to avoid or mitigate the impact of such Conflict of Interest.

B15.5 Without limiting B15.3, and in addition to all contractual or other rights or rights at law or in equity or legislation that may be available to the City, the City may, in their sole discretion:

- (a) disqualify a Proponent that fails to disclose a perceived, potential or actual Conflict of Interest of the Proponent or any of their Key Personnel;
- (b) require the removal or replacement of any Key Personnel proposed for the Services that has a perceived, actual or potential Conflict of Interest that the City, in their sole discretion, determines cannot be avoided or mitigated;
- (c) disqualify a Proponent or Key Personnel proposed for the Services that fails to comply with any requirements prescribed by the City pursuant to B15.4 to avoid or mitigate a Conflict of Interest; and
- (d) disqualify a Proponent if the Proponent, or one of their Key Personnel proposed for the Project, has a perceived, potential or actual Conflict of Interest that, in the City's sole discretion, cannot be avoided or mitigated, or otherwise resolved.

B15.6 The final determination of whether a perceived, potential or actual Conflict of Interest exists shall be made by the City, in their sole discretion.

## **B16. QUALIFICATION**

B16.1 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;
- (c) have all the necessary experience, capital, organization, and equipment to perform the Services in strict accordance with the terms and provisions of the Contract;
- (d) have or establish and staff an office in Winnipeg for the duration of the Project.

B16.2 The Proponent and any proposed Subconsultant (for the portion of the Services proposed to be subcontracted to them) shall:

- (a) be responsible and not be suspended, debarred or in default of any obligations to the City. A list of suspended or debarred individuals and companies is available on the Information Connection page at The City of Winnipeg, Corporate Finance, Materials Management Division website at <https://winnipeg.ca/finance/findata/matmgt/listing/debar.pdf>

B16.3 The Proponent and/or any proposed Subconsultant (for the portion of the Services proposed to be subcontracted to them) shall:

- (a) have successfully carried out mechanical, electrical and building envelope commissioning services for architectural and/or engineering projects of similar complexity, scope and value; and to those required for this Project; and
- (b) be fully capable of performing the Services required to be in strict accordance with the terms and provisions of the Contract;
- (c) have a written workplace safety and health program, if required, pursuant to The Workplace Safety and Health Act (Manitoba);
- (d) have the knowledge and resources to administer the requirements of The Workplace Safety and Health Act (Manitoba) during the construction works associated with this Contract;
- (e) undertake to meet all licensing and regulatory requirements of the appropriate governing authorities and associations in the Province of Manitoba; and
- (f) have completed the Accessible Customer Service online training required by the Accessibility for Manitobans Act (AMA) (see B16.4 and D6).

B16.4 Further to B16.3(f), the Proponent acknowledges they and all Subconsultants have obtained training required by the Accessibility for Manitobans Act (AMA) available at

<http://www.accessibilitymb.ca/training.html> for anyone that may have any interaction with the public on behalf of the City of Winnipeg.

B16.5 The Proponent shall submit, within three (3) Business Days of a request by the Consulting Contract Administrator, further proof satisfactory to the Consulting Contract Administrator of the qualifications of the Proponent and of any proposed Subconsultant.

B16.6 The Proponent shall provide, on the request of the Consulting Contract Administrator, full access to any of the Proponent's equipment and facilities to confirm, to the Consulting Contract Administrator's satisfaction, that the Proponent's equipment and facilities are adequate to perform the Services.

## **B17. OPENING OF PROPOSALS AND RELEASE OF INFORMATION**

B17.1 Proposals will not be opened publicly.

B17.2 After award of Contract, the Contract amount and the name of the successful Proponent and their address will be available on the MERX website at [www.merx.com](http://www.merx.com).

B17.3 The Proponent is advised any information contained in any Proposal Submission may be released if required by The Freedom of Information and Protection of Privacy Act (Manitoba), by other authorities having jurisdiction, or by law or by City policy or procedures (which may include access by members of City Council).

B17.3.1 To the extent permitted, the City shall treat as confidential information, those aspects of a Proposal Submission identified by the Proponent as such in accordance with and by reference to Part 2, Section 17 or Section 18 or Section 26 of The Freedom of Information and Protection of Privacy Act (Manitoba), as amended.

B17.4 Following the award of Contract, a Proponent will be provided with information related to the evaluation of their submission upon written request to the Consulting Contract Administrator.

## **B18. IRREVOCABLE OFFER**

B18.1 The Proposal(s) submitted by the Proponent shall be irrevocable for the time period specified in Paragraph 11 of Form A: Bid/Proposal.

B18.2 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 Services for the time period specified in Paragraph 11 of Form A: Bid/Proposal.

## **B19. WITHDRAWAL OF OFFERS**

B19.1 A Proponent may withdraw their Proposal without penalty prior to the Submission Deadline.

## **B20. INTERVIEWS**

B20.1 The Consulting Contract Administrator may, in their sole discretion, interview Proponents during the evaluation process.

## **B21. NEGOTIATIONS**

B21.1 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.

B21.2 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.

- B21.3 If, in the course of negotiations pursuant to B21.2, 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.

## **B22. EVALUATION OF PROPOSALS**

B22.1 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 Subconsultants, if any, pursuant to B16:                                 | (pass/fail) |
| (c) Fees; (Section B)                                                                                                | 40%         |
| (d) Experience of Proponent and Subconsultant; (Section C)                                                           | 15%         |
| (e) Experience of Key Personnel Assigned to the Project; (Section D)                                                 | 25%         |
| (f) Project Understanding and Methodology (Section E)                                                                | 15%         |
| (g) Project Schedule (Section F)                                                                                     | 5%          |

B22.2 Further to B22.1(a), the Award Authority may reject a Proposal as being non-responsive if the Proposal Submission is incomplete, obscure or conditional, or contains additions, deletions, alterations or other irregularities. The Award Authority may reject all or any part of any Proposal, or waive technical requirements or minor informalities or irregularities if the interests of the City so require.

B22.3 Further to B22.1(b), the Award Authority shall reject any Proposal submitted by a Proponent who does not demonstrate, in their Proposal or in other information required to be submitted, that it is qualified.

B22.4 If, in the sole opinion of the City, a Proposal does not achieve a pass rating for B22.1(a) and B22.1(b), the Proposal will be determined to be non-responsive and will not be further evaluated.

B22.5 Further to B22.1(c), Fees will be evaluated based on Fees submitted in accordance with B8.

B22.6 Further to B22.1(d), Experience of Proponent and Subconsultants will be evaluated considering the experience of the organization on projects of similar size and complexity as well as other information requested, in accordance with B9.

B22.7 Further to B22.1(e), Experience of Key Personnel Assigned to the Project will be evaluated considering the experience and qualifications of the Key Personnel and Subconsultant personnel on Projects of comparable size and complexity, in accordance with B10.

B22.8 Further to B22.1(f), Project Understanding and Methodology will be evaluated considering your firm's understanding of the City's Project, project management approach and team organization, in accordance with B11.

B22.9 Further to B22.1(g), Project Schedule will be evaluated considering the Proponent's ability to comply with the requirements of the Project, in accordance with B12.

B22.10 Notwithstanding B22.1(d) to B22.1(g) where Proponents fail to provide a response to B6.2(a) to B6.2(d), the score of zero may be assigned to the incomplete part of the response.

B22.11 Proposals will be evaluated considering the information in the Proposal Submission and any interviews held in accordance with B20.

B22.12 Where references are requested, the reference checks to confirm information provided may not be restricted to only those submitted by the Proponent, and may include organizations representing Persons, known to have done business with the Proponent.

### **B23. AWARD OF CONTRACT**

B23.1 The City will give notice of the award of the Contract, or will give notice that no award will be made.

B23.2 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 qualified, and the Proposals are determined to be responsive.

B23.2.1 Without limiting the generality of B23.2, the City will have no obligation to award a Contract where:

- (a) the prices exceed the available City funds for the Services;
- (b) the prices are materially in excess of the prices received for similar services in the past;
- (c) the prices are materially in excess of the City's cost to perform the Services, or a significant portion thereof, with their 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.

B23.3 Where an award of Contract is made by the City, the award shall be made to the qualified Proponent submitting the most advantageous offer.

B23.4 The City may, at their discretion, award the Contract in phases.

B23.5 Further to B23.4 the City reserves the right to negotiate and award future phases to the successful Proponent.

B23.6 Further to Paragraph 7 of Form A: Bid/Proposal and C4, the City may issue an award letter to the successful Proponent in lieu of execution of Contract Documents

B23.6.1 The Contract documents as defined in C1.1(u) in their entirety shall be deemed to be incorporated in and to form a part of the award letter notwithstanding that they are not necessarily attached to or accompany said award letter.

B23.7 The form of Contract with the City of Winnipeg will be based on the Contract as defined in C1.1(v).

B23.8 Following the award of Contract, a Proponent will be provided with information related to the evaluation of their Proposal upon written request to the Consulting Contract Administrator.

B23.9 If, after the award of Contract, the Project is cancelled, the City reserves the right to terminate the Contract. The Proponent will be paid for all Services rendered up to time of termination.

## **PART C - GENERAL CONDITIONS**

### **C0. GENERAL CONDITIONS**

- C0.1 The *General Conditions for Consultant Services* (Revision 2022-09-02) are applicable to the Services of the Contract.
- C0.1.1 The *General Conditions for Consultant 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](http://www.winnipeg.ca/matmgt/gen_cond.stm).
- C0.2 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 Consultant Services*.

## PART D - SUPPLEMENTAL CONDITIONS

### GENERAL

#### D1. GENERAL CONDITIONS

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

#### D2. CONSULTING CONTRACT ADMINISTRATOR

D2.1 The Consulting Contract Administrator is:

Tracy Stople

Telephone No. 204 451-0123

Email Address: [tstople@winnipeg.ca](mailto:tstople@winnipeg.ca)

D2.2 At the pre-commencement meeting, the Consulting Contract Administrator will identify additional personnel representing the Consulting Contract Administrator and their respective roles and responsibilities for the Services.

#### D3. BACKGROUND

D3.1 The City has acquired nineteen (19) acres in Waverley West Neighbourhood 'B' (now called Bison Run) for the purpose of developing the South Winnipeg Recreation Campus ("SWRC"). The vision for the site includes the development of a phased multi-use, multi-generational regional recreation facility that includes an aquatic centre with leisure pools and lap tank, multiple gymnasiums, a variety of programming spaces, multi-purpose rooms, indoor walking track, fitness space, a community library, an outdoor spray pad, adjacent park space and athletic fields. There is also the potential of a future twin arena. This full vision will be the largest investment in recreation in Winnipeg's history.

D3.2 Due to funding limitations, the Phase 1 project scope funded through the Investing in Canada Infrastructure Program ("ICIP") focuses on:

- (a) three (3) gymnasiums with mezzanine walking/running track and fitness areas;
- (b) several multi-purpose program meeting spaces of various sizes;
- (c) change rooms, offices, washrooms, servery kitchen, and lobby/common space to support the above;
- (d) potential tenant lease space compatible with the use which could include food service, health-related support spaces (e.g. physiotherapy), and office space for community organizations;
- (e) parking and related site development for Phase 1;
- (f) an outdoor spray pad;
- (g) a portion of the adjacent park amenities and pathways;
- (h) public art component(s); and
- (i) an attached day care facility.

D3.3 The two-storey recreation facility will be approximately 80,000 square feet and the day care will be approximately 20,000 square feet. To suffice funding requirements, the City is required to track the fees for each building separately.

D3.4 Construction costs for Phase 1 of the campus are estimated to be around \$60 million which include the recreation centre and daycare.

- D3.5 Depending on cost estimating and budget analysis during the design process, additional scope items may be considered for inclusion in Phase 1. This could include the leisure pool, library and/or additional site development and park amenities. Future phases of the overall campus will be developed as funding is identified and approved.

### **DESIGN GOALS**

- D3.6 The City's intention for the future South Winnipeg Recreation Campus is to be an energy efficient, net zero carbon ready building.
- D3.7 A net zero carbon building is defined as a highly energy-efficient building that produces onsite, or procures, carbon-free renewable energy or high-quality carbon offsets to counterbalance the annual carbon emissions from operations.
- D3.8 A net zero carbon ready building is one that could operate as a net zero carbon building in the future and prioritizes low-carbon investments based on integrated design principles and lifecycle analysis.
- D3.9 The building will be required to achieve a minimum of 15% energy savings over NECB-2020.
- D3.10 At a minimum, this project is expected to meet all requirements stated in the following sustainable regulations along with being a net zero carbon ready building:
- (a) Manitoba's Green Building Program  
<https://www.gov.mb.ca/finance/greenbuilding/index.html>
  - (b) City of Winnipeg Green Building Policy: New City-Owned Buildings and major additions  
<http://clkapps.winnipeg.ca/DMIS/DocExt/ViewDoc.asp?DocumentTypeld=2&DocId=5989>
  - (c) LEED Silver Certification
  - (d) Efficiency Manitoba's New Buildings Program 2.2  
<https://efficiencymb.ca/business/new-buildings/>
  - (e) requirements listed in the Investing in Canada Infrastructure Program (ICIP) Funding Application;
  - (f) CSA A460:19 Bird Friendly Building Design Standard; and
  - (g) GHG intensity target 15 kg/CO2/m2.
- D3.11 The City has completed a Climate Lens: Climate Change Resilience Assessment and Greenhouse Gas Mitigation Assessment (see Appendix A). Opportunities to increase the facility's climate resilience, particularly the ability to support residents during extended power outages or periods of extreme cold or heat, shall be considered.
- D3.12 Certification under the Canada Green Building Council's Zero Carbon Building (ZCB) Design Standard is not proposed. The implementation of low or zero carbon practices are of interest to the City.

### **D4. SCOPE OF SERVICES**

- D4.1 The Services required under this Contract shall consist of an Independent Commissioning Agent in accordance with the following:
- (a) Schematic Design;
  - (b) Design and Specification Development;
  - (c) Contract Document Preparation;
  - (d) Procurement Process;
  - (e) Construction Services; and
  - (f) Post Construction Services.
- D4.1.1 The Services required under D4.1(a), D4.1(b), D4.1(c), D4.1(d), D4.1(e) and D4.1(f) shall be in accordance with the City's Project Management Manual

<http://winnipeg.ca/infrastructure/asset-management-program/templates-manuals.stm#2> and templates <http://winnipeg.ca/infrastructure/asset-management-program/templates-manuals.stm#4> . Notwithstanding the foregoing, the Consultant is being engaged by the City for their professional expertise; the Consultant shall bring to the Consulting Contract Administrator's attention any aspect of the City's Project Management Manual or templates which the Consultant is of the opinion is not consistent with good industry practice.

- D4.2 The Independent Commissioning Agent shall coordinate activities related to commissioning and confirm that all tests performed by sub-trades, suppliers, and equipment manufacturers are conducted and documented. Commissioning services shall include, but not limited to:
- (a) prepare a design-phase commissioning plan to achieve efficient commissioning of the facility;
  - (b) include in the commissioning plan sufficient detail in the transfer of the building from the project team to the City's operating staff, and shall include but not limited to;
    - (i) details of the procedures and processes to be followed;
    - (ii) organizational plan prescribing roles and responsibilities;
    - (iii) communication and distribution plan;
    - (iv) schedule including meeting and training schedule; and
    - (v) functional performance verification forms.
  - (c) perform a focused design review at the end of Design Development;
  - (d) review the Prime Design Consultant's design documentation (including details and product information) prior to tender to identify issues of concern from a commissioning perspective;
    - (i) review the tender ready construction documents in the Contract Document Phase to ensure that commissioning is adequately specified, meets the design intent relative to functionality, energy performance, water performance, maintainability, sustainability, system cost, indoor environmental quality and local environmental impacts;
  - (e) provide commissioning and testing services on the building envelope, mechanical, and electrical systems, equipment, and components;
  - (f) provide commissioning services that meet LEED Silver criteria for Enhanced Commissioning, including Enhanced Systems Commissioning and Building Enclosure Commissioning;
  - (g) assist the Prime Design Consultant in the preparation of the specification section in the bid opportunity relating to commissioning delivery of the facility and the roles and responsibilities of each party;
  - (h) prepare functional performance verification forms or test sheets for each piece of equipment and system specified in building envelope, mechanical, and electrical divisions;
  - (i) prepare a timetable and a list of seasonal tasks to be performed during the first two years of operation;
  - (j) prior to starting functional performance verification, review the following;
    - (i) installation;
    - (ii) documentation;
    - (iii) design criteria, design intent, special features;
    - (iv) commissioning schedule;
    - (v) commissioning procedures;
    - (vi) cleanliness of the systems; and
    - (vii) electrical characteristics of connected equipment.
  - (k) verify that training as indicated in the contract specification has been provided;
  - (l) review operation and maintenance (O&M) manuals for completeness of commissioning items;

- (m) perform functional performance verification of systems including the Building Automation System (BAS) and report faults and defects affecting commissioning to the Prime Design Consultant;
- (n) verify energy conservation features are operating as designed and meeting energy use intensity target;
- (o) attend commissioning related design meetings with the Prime Design Consultant team, starting at Schematic Design, and construction meetings with the contractor and take the lead in performing the commissioning scope of work; and
- (p) provide a thermographic scan of exterior walls at substantial performance (or when the weather permits) to confirm air leakage continuity and sealed unit integrity.

D4.3 Due to the complexity of the systems and post construction challenges with shoulder season cooling and heating, the Independent Commissioning Agent shall monitor the performance of all building systems (envelope, mechanical, electrical) through eight (8) complete seasons (summer, fall, winter, spring), report to the City on compliance or non-compliance with the performance expectations, and provide necessary documentation and direction to the City's staff and/or contractor with respect to correction of variances from performance expectations.

## D5. DEFINITIONS

D5.1 When used in this Request for Proposal:

- (a) **“Independent Commissioning Agent” or “Consultant”** means the Proponent who will be awarded a contract as a result of this RFP to lead the professional commissioning consultant services for Phase 1 of the South Winnipeg Recreation Campus;
- (b) **“Prime Design Consultant”** means Diamond Schmitt Architects who was the successful proponent of RFP No. 746-2021, Prime Design Consultant Services for South Winnipeg Recreation Campus (SWRC) – Phase 1; and
- (c) **“Supply Chain Disruption”** means an inability by the Contractor to obtain goods or services from third parties necessary to perform the Work of the Contract within the schedule specified therein, despite the Contractor making all reasonable commercial efforts to procure same. Contractors are advised that increased costs do not, in and of themselves, amount to a Supply Chain Disruption;

## D6. ACCESSIBLE CUSTOMER SERVICE REQUIREMENTS

D6.1 The Accessibility for Manitobans Act (AMA) imposes obligations on The City of Winnipeg to provide accessible customer service to all persons in accordance with the Customer Service Standard Regulation (“CSSR”) to ensure inclusive access and participation for all people who live, work or visit Winnipeg regardless of their abilities.

D6.1.1 The Consultant agrees to comply with the accessible customer service obligations under the CSSR and further agrees that when providing the Goods or Services or otherwise acting on the City of Winnipeg's behalf, shall comply with all obligations under the AMA applicable to public sector bodies.

D6.1.2 The accessible customer service obligations include, but are not limited to:

- (a) providing barrier-free access to goods and services;
- (b) providing reasonable accommodations;
- (c) reasonably accommodating assistive devices, support persons, and support animals;
- (d) providing accessibility features e.g. ramps, wide aisles, accessible washrooms, power doors and elevators;
- (e) inform the public when accessibility features are not available;
- (f) providing a mechanism or process for receiving and responding to public feedback on the accessibility of all goods and services; and
- (g) providing adequate training of staff and documentation of same.

## **D7. UNFAIR LABOUR PRACTICES**

- D7.1 Further to C3.2, the Consultant declares that in bidding for the Work and in entering into this Contract, the Consultant and any proposed Subconsultant(s) conduct their respective business in accordance with established international codes embodied in United Nations Universal Declaration of Human Rights (UDHR) <https://www.un.org/en/about-us/universal-declaration-of-human-rights> International Labour Organization (ILO) [https://www.ilo.org/global/lang--en/index.htm](https://www.ilo.org/global/lang-en/index.htm) conventions as ratified by Canada.
- D7.2 The City of Winnipeg is committed and requires its Consultants and their Subconsultants, to be committed to upholding and promoting international human and labour rights, including fundamental principles and rights at work covered by ILO eight (8) fundamental conventions and the United Nations Universal Declaration of Human Rights which includes child and forced labour.
- D7.3 Upon request from the Consulting Contract Administrator, the Consultant shall provide disclosure of the sources (by company and country) of the raw materials used in the Work and a description of the manufacturing environment or processes (labour unions, minimum wages, safety, etc.).
- D7.4 Failure to provide the evidence required under D7.3, may be determined to be an event of default in accordance with C14
- D7.5 In the event that the City, in its sole discretion, determines the Consultant to have violated the requirements of this section, it will be considered a fundamental breach of the Contract and the Consultant shall pay to the City a sum specified by the Consulting Contract Administrator in writing ("Unfair Labour Practice Penalty"). Such a violation shall also be considered an Event of Default, and shall entitle the City to pursue all other remedies it is entitled to in connection with same pursuant to the Contract.
- D7.5.1 The Unfair Labour Practice Penalty shall be such a sum as determined appropriate by the City, having due regard to the gravity of the Consultant's violation of the above requirements, any cost of obtaining replacement goods/ services or rectification of the breach, and the impact upon the City's reputation in the eyes of the public as a result of same.
- D7.5.2 The Consultant shall pay the Unfair Labour Practice Penalty to the City within thirty (30) Calendar Days of receiving a demand for same in accordance with D7.5. The City may also hold back the amount of the Unfair Labour Practice Penalty from payment for any amount it owes the Consultant.
- (a) The obligations and rights conveyed by this clause survive the expiry or termination of this Contract, and may be exercised by the City following the performance of the Work, should the City determine, that a violation by the Consultant of the above clauses has occurred following same. In no instance shall the Unfair Labour Practice Penalty exceed the total of twice the Contract value.

## **SUBMISSIONS**

### **D8. AUTHORITY TO CARRY ON BUSINESS**

- D8.1 The Consultant shall be in good standing under The Corporations Act (Manitoba), or properly registered under The Business Names Registration Act (Manitoba), or otherwise properly registered, licensed or permitted by law to carry on business in Manitoba, or if the Consultant does not carry on business in Manitoba, in the jurisdiction where the Consultant does carry on business, throughout the term of the Contract, and shall provide the Consulting Contract Administrator with evidence thereof upon request.

## **D9. SAFE WORK PLAN**

- D9.1 The Consultant shall provide the Consulting 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 C4.4(a) for the return of the executed Contract.
- D9.2 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>

## **D10. INSURANCE**

- D10.1 The Consultant shall procure and maintain, at their own expense and cost, insurance policies with limits no less than those shown below.
- D10.2 As a minimum, the Consultant shall, without limiting their obligations or liabilities under any other contract with the City, procure and maintain, at their own expense and cost, the following insurance policies:
- (a) Comprehensive or Commercial General Liability Insurance including:
    - (i) an inclusive limit of not less than \$2,000,000 for each occurrence or accident with a minimum \$2,000,000 Products and Completed Operations aggregate and \$5,000,000 general aggregate;
    - (ii) all sums which the Consultant shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to the Services or any operations carried on in connection with this Contract;
    - (iii) coverage for Products/Completed Operations, Blanket Contractual, Consultant's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, Employees as Additional Insureds, and Non-Owned Automobile Liability;
    - (iv) a Cross Liability clause and/or Severability of Interest clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder in respect to any claim, demand, suit or judgment made against any other Insured.
  - (b) if applicable, Automobile Liability Insurance covering all motor vehicles, owned and operated and used or to be used by the Consultant directly or indirectly in the performance of the Service. The limit of liability shall not be less than \$5,000,000 inclusive for loss or damage including personal injuries and death resulting from any one accident or occurrence.
  - (c) Professional Liability Insurance including:
    - (i) an amount not less than \$ 2,000,000 . per claim and \$ 5,000,000 in the aggregate.
- D10.2.1 The Consultant's Professional Liability insurance shall remain in force for the duration of the Project and for twenty-four (24) months after Total Performance.
- D10.3 The policies required in D10.2(a) shall provide that the City is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.
- D10.4 The Consultant shall provide the Consulting 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 Services, but in no event later than the date specified in C4.4(a) for the return of the executed Contract. Such certificates shall state the exact description of the Services and provide for written notice in accordance with D10.7.
- D10.5 The Consultant may take out such additional insurance as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City.

- D10.6 All insurance, which the Consultant is required to obtain with respect to this Contract, shall be with insurance companies registered in and licensed to underwrite such insurance in the Province of Manitoba.
- D10.7 The Consultant shall not cancel, materially alter, or cause any policy to lapse without providing at least thirty (30) Calendar Days prior written notice to the City.

## **SCHEDULE OF SERVICES**

### **D11. COMMENCEMENT**

- D11.1 The Consultant shall not commence any Services until it is in receipt of a notice of award from the City authorizing the commencement of the Services.
- D11.2 The Consultant shall not commence any Services until:
- (a) the Consulting Contract Administrator has confirmed receipt and approval of:
    - (i) evidence of authority to carry on business specified in D8;
    - (ii) the Safe Work Plan specified in D9; and
    - (iii) evidence of the insurance specified in D10.
  - (b) the Consultant has attended a meeting with the Consulting Contract Administrator, or the Consulting Contract Administrator has waived the requirement for a meeting;
  - (c) the direct deposit application specified in D14.1
- D11.3 The City intends to award this Contract by August 22, 2023.

### **D12. SUPPLY CHAIN DISRUPTION SCHEDULE DELAYS**

- D12.1 The City acknowledges that the schedule for this Contract may be impacted by Supply Chain Disruption. Commencement and progress of the Services shall be performed by the Consultant with due consideration to delivery requirements and schedule identified in the Contract, in close consultation with the Consulting Contract Administrator.
- D12.2 If the Consultant is delayed in the performance of the Services by reason of the Supply Chain Disruption, the Services schedule may be adjusted by a period of time equal to the time lost due to such delay and costs related to such delay will be determined as identified herein.
- D12.3 A minimum of seven (7) Calendar Days prior to the commencement of Services, the Consultant shall declare whether a Supply Chain Disruption will affect the start date. The Consultant shall provide sufficient evidence that the delay is directly related to a Supply Chain Disruption, including but not limited to evidence related to availability of staff, ordering of Material or Goods, production and/or manufacturing schedules or availability of staff as appropriate.
- D12.4 For any delay related to Supply Chain Disruption and identified after Services have commenced, the Consultant shall within seven (7) Calendar Days of becoming aware of the anticipated delay declare the additional delay and shall provide sufficient evidence as indicated in D12.3. Failure to provide this notice will result in no additional time delays being considered by the City.
- D12.5 The Services schedule, including the durations identified in the Contract, will be adjusted to reflect delays accepted by the Consulting Contract Administrator.
- D12.6 Any time or cost implications as a result of Supply Chain Disruption and in accordance with the above, as confirmed by the Consulting Contract Administrator, shall be documented in accordance with C8.

## MEASUREMENT AND PAYMENT

### D13. INVOICES

D13.1 Further to C11, the Consultant 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

Send Invoices to [CityWpgAP-INVOICES@winnipeg.ca](mailto:CityWpgAP-INVOICES@winnipeg.ca)

Send Invoice Inquiries to [CityWpgAP-INQUIRIES@winnipeg.ca](mailto:CityWpgAP-INQUIRIES@winnipeg.ca)

D13.2 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 Consultant's GST registration number.

D13.3 The City will bear no responsibility for delays in approval of invoices which are improperly submitted.

### D14. PAYMENT

D14.1 Further to C11.14, the City shall make payments to the Consultant by direct deposit to the Consultant's banking institution, and by no other means. Payments will not be made until the Consultant has made satisfactory direct deposit arrangements with the City. Direct deposit application forms are at [https://winnipeg.ca/finance/files/Direct\\_Deposit\\_Form.pdf](https://winnipeg.ca/finance/files/Direct_Deposit_Form.pdf).

## DISPUTE RESOLUTION

### D15. DISPUTE RESOLUTION

D15.1 If the Consultant disagrees with any opinion, determination, or decision of the Consulting Contract Administrator, the Consultant shall act in accordance with the Consulting Contract Administrator's opinion, determination, or decision unless and until same is modified by the process followed by the parties pursuant to D15.

D15.2 The entire text of C17.4 is deleted, and amended to read: "Intentionally Deleted"

D15.3 The entire text of C17.5 is deleted, and amended to read:

- (a) If Legal Services has determined that the Disputed Matter may proceed in the Appeal Process, the Consultant must, within ten (10) Business Days of the date of the Legal Services Response Letter, submit their written Appeal Form, in the manner and format set out on the City's Materials Management Website, to the Chief Administrative Officer, and to the Consulting Contract Administrator. The Consultant may not raise any other disputes other than the Disputed Matter in their Appeal Form.

D15.4 Further to C17, prior to the Consulting Contract Administrator's issuance of a Final Determination, the following informal dispute resolution process shall be followed where the Consultant disagrees with any opinion, determination, or decision of the Consulting Contract Administrator ("Dispute"):

- (a) In the event of a Dispute, attempts shall be made by the Consulting Contract Administrator and the Consultant's equivalent representative to resolve Disputes within the normal

course of project dealings between the Consulting Contract Administrator and the Consultant's equivalent representative.

- (b) Disputes which in the reasonable opinion of the Consulting Contract Administrator or the Consultant's equivalent representative cannot be resolved within the normal course of project dealings as described above shall be referred to a without prejudice escalating negotiation process consisting of, at a minimum, the position levels as shown below and the equivalent Consultant representative levels:
  - (i) The Consulting Contract Administrator;
  - (ii) Supervisory level between the Consulting Contract Administrator and applicable Department Head;
  - (iii) Department Head.

D15.4.1 Names and positions of Consultant representatives equivalent to the above City position levels shall be determined by the Consultant and communicated to the City at the pre-commencement or kick off meeting.

D15.4.2 As these negotiations are not an adjudicative hearing, neither party may have legal counsel present during the negotiations.

D15.4.3 Both the City and the Consultant agree to make all reasonable efforts to conduct the above escalating negotiation process within twenty (20) Business Days, unless both parties agree, in writing, to extend that period of time.

D15.4.4 If the Dispute is not resolved to the City and Consultant's mutual satisfaction after discussions have occurred at the final escalated level as described above, or the time period set out in D15.4.3, as extended if applicable, has elapsed, the Consulting Contract Administrator will issue a Final Determination as defined in C1.1(dd), at which point the parties will be governed by the Dispute Resolution process set out in C17.

### THIRD PARTY AGREEMENTS

#### D16. FUNDING AND/OR CONTRIBUTION AGREEMENT OBLIGATIONS

D16.1 Funding for the Services of the Contract is being provided to the City of Winnipeg by the Government of Manitoba and/or the Government of Canada and accordingly, as required by the applicable funding agreements, the following terms and conditions shall apply.

D16.2 For the purposes of D16:

- (a) "**Government of Canada**" includes the authorized officials, auditors, and representatives of the Government of Canada; and
- (b) "**Government of Manitoba**" includes the authorized officials, auditors, and representatives of the Government of Manitoba.

D16.3 Indemnification By Consultant

D16.3.1 In addition to the indemnity obligations outlined in C13 of the General Conditions for Consultant Services, the Consultant agrees to indemnify and save harmless the Government of Canada and the Government of Manitoba and each of their respective Ministers, officers, servants, employees, and agents from and against all claims and demands, losses, costs, damages, actions, suit or other proceedings brought or pursued in any manner in respect of any matter caused by the Consultant or arising from this Contract or the Services, or from the goods or services provided or required to be provided by the Consultant, except those resulting from the negligence of any of the Government of Canada's or the Government of Manitoba's Ministers, officers, servants, employees, or agents, as the case may be.

D16.3.2 The Consultant agrees that in no event will Canada or Manitoba, their respective officers, servants, employees or agents be held liable for any damages in contract, tort (including negligence) or otherwise, for:

- (a) any injury to any person, including, but not limited to, death, economic loss or infringement of rights;
- (b) any damage to or loss or destruction of property of any person; or
- (c) any obligation of any person, including, but not limited to, any obligation arising from a loan, capital lease or other long term obligation;

in relation to this Contract or the Work.

#### D16.4 Records Retention and Audits

D16.4.1 The Consultant shall maintain and preserve accurate and complete records in respect of this Contract and the Services, including all accounting records, financial documents, copies of contracts with other parties and other records relating to this Contract and the Services during the term of the Contract and for at least six (6) years after Total Performance. Those records bearing original signatures or professional seals or stamps must be preserved in paper form; other records may be retained in electronic form.

D16.4.2 In addition to the record keeping and inspection obligations outlined in C7.16 of the General Conditions for Consultant Services, the Consultant shall keep available for inspection and audit at all reasonable times while this Contract is in effect and until at least six (6) years after Total Performance, all records, documents, and contracts referred to in D16.4.1 for inspection, copying and audit by the City of Winnipeg, the Government of Manitoba and/or the Government of Canada and their respective representatives and auditors, and to produce them on demand; to provide reasonable facilities for such inspections, copying and audits, to provide copies of and extracts from such records, documents, or contracts upon request by the City of Winnipeg, the Government of Manitoba, and/or the Government of Canada and their respective representatives and auditors, and to promptly provide such other information and explanations as may be reasonably requested by the City of Winnipeg, the Government of Manitoba, and/or the Government of Canada from time-to-time.

#### D16.5 Other Obligations

D16.5.1 The Consultant consents to the City providing a copy of the Contract Documents to the Government of Manitoba and/or the Government of Canada upon request from either entity.

D16.5.2 If the Lobbyists Registration Act (Manitoba) applies to the Consultant, the Consultant represents and warrants that it has filed a return and is registered and in full compliance with the obligations of that Act, and covenants that it will continue to comply for the duration of this Contract.

D16.5.3 The Consultant shall comply with all applicable legislation and standards, whether federal, provincial, or municipal, including (without limitation) labour, environmental, and human rights laws, in the course of providing the Services.

D16.5.4 The Consultant shall properly account for the Services provided under this Contract and payment received in this respect, prepared in accordance with generally accepted accounting principles in effect in Canada, including those principles and standards approved or recommended from time-to-time by the Chartered Professional Accountants of Canada or the Public Sector Accounting Board, as applicable, applied on a consistent basis.

D16.5.5 The Consultant represents and warrants that no current or former public servant or public office holder, to whom the Value and Ethics Code for the Public Sector, the Policy on Conflict of Interest and Post Employment, or the Conflict of Interest Act applies, shall derive direct benefit from this Contract, including any employment, payments, or gifts, unless the provision or receipt of such benefits is in compliance with such codes and the legislation.

D16.5.6 The Consultant represents and warrants that no member of the House of Commons or of the Senate of Canada or of the Legislative Assembly of Manitoba is a shareholder, director or officer of the Consultant or of a Subconsultant, and that no such member is entitled to

any benefits arising from this Contract or from a contract with the Consultant or a Subconsultant concerning the Work.

## **APPENDIX A – CLIMATE LENS: CLIMATE CHANGE RESILIENCE ASSESSMENT AND GREENHOUSE GAS MITIGATION ASSESSMENT**