



#### **4.0 Schedule of Performance**

- 4.1 Time is of the essence in the performance of the Services under this Agreement. The Contractor shall complete the Services described in Schedule "A" within the Term of this Agreement and during the period of March 1<sup>st</sup> and April 30<sup>th</sup> of each year.
- 4.2 Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by the Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Contractor.

#### **5.0 Compensation**

- 5.1 The Contractor agrees to supply all labour, materials and equipment necessary to carry out the complete inspection services to the fire alarms for the Buildings in accordance with the specifications attached hereto as Schedule "A" and forming part of this agreement at and for the total annual consideration of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) including taxes.
- 5.2 The City agrees to pay to the Contractor the amounts shown as Inspection Prices on the attached Schedule "A" on the completion of each inspection service and upon receipt from the Contractor of an invoice as required by the City.
- 5.3 The parties agree that the costs of labour and material for additional services provided by the Contractor to the City in respect to the fire alarm units in the Buildings shall be provided at the following rates:

Regular Hours - \$\_\_\_\_\_ per hour

Parts and Materials - Contractor's cost plus \_\_\_\_\_% (Manitoba Retail Sales Tax not included)

#### **6.0 Invoices**

- 6.1 In order to request payment, the Contractor shall submit invoices upon completion of each inspection to the City describing the Services performed and the applicable charges (including identification of personnel who performed the Services, hours worked, and hourly rates), based upon the Contractor's billing rates (set forth in Schedule "A" as Inspection Prices). If applicable, the invoice shall also describe the percentage of completion of each task.
- 6.2 The information in the Contractor's payment requests shall be subject to verification by the City.

#### **7.0 Qualifications/Standard of Care**

- 7.1 All of the Services shall be performed by the Contractor or under the Contractor's supervision.
- 7.2 The Contractor represents that it possess the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them.
- 7.3 The Contractor represents that it and its employees have and shall maintain during the Term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.
- 7.4 All of the Services to be furnished by the Contractor under this Agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout the Province of Manitoba under the same or similar circumstances.

#### **8.0 Inspection of Services**

- (a) All Services performed shall be subject to inspection and shall meet the approval of the Chargehand of Building Maintenance. If the Services are not approved, the Chargehand of Building Maintenance shall have the right to reject them or to require correction.
- (b) Acceptance or rejection of the Services shall be made as promptly as practicable, but failure to accept or reject the Services shall not relieve the Contractor from responsibility for the Services, provided it is not in accordance with the Agreement.
- (c) The City will not be deemed to have accepted the Services by virtue of a partial or full payment.
- (d) The City shall be the final judge of all the Services and its decisions of all questions in dispute shall be final.

## **9.0 Compliance with Laws**

- 9.1 The Contractor shall keep itself informed of and in compliance with all federal, provincial and municipal laws, by-laws, regulations, and orders that may affect in any manner the performance of the Services or those engaged to perform Services under this Agreement.
- 9.2 The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

## **10.0 Errors/Omissions**

- 10.1 The Contractor shall correct at no cost to the City, any and all errors, omissions, in the Services done for the City, provided the City gives notice to the Contractor.
- 10.2 The obligation shall survive the termination of the Agreement.

## **11.0 Independent Contractor**

- 11.1 It is understood and agreed that in performing the Services under this Agreement the Contractor, and any person employed by or contracted with the Contractor to furnish labour and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of the City.

## **12.0 Assignment**

- 12.1 The parties agree that the expertise and experience of the Contractor are material considerations for this Agreement. The Contractor shall not assign or transfer any interest in this Agreement nor the performance of any of the Contractor's obligations hereunder without the prior written consent of the City.
- 12.2 Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the City will be void.

## **13.0 Sub-Contracting**

- 13.1 The Contractor shall not sub-contract any portion of the Services to be performed under this Agreement without the prior written authorization of the City.
- 13.2 The Contractor shall be responsible for directing the Services of any sub-contractors and for any compensations due to sub-contractors. The City assumes no responsibility whatsoever concerning compensation.
- 13.3 The Contractor shall be fully responsible to the City for all acts and omissions of a sub-contractor.
- 13.4 The Contractor shall change or add sub-contractors only with the prior approval of the City.

## **14.0 Performance Audits**

- 14.1 The City reserves the right to conduct periodic performance audits at any time within the Term of the Agreement. The following criteria may be included, but not limited to:
- (a) Timely completion of the Services.
  - (b) Quality of the Services.
  - (c) Health and safety violations.

## **15.0 Occupational Health and Safety Requirements**

- 15.1 The Contractor shall strictly comply with the current Industrial Health and Safety Regulations of Safe Work Manitoba and the safety policies/procedures of the City, and other applicable federal, provincial and local regulations and policies concerning the health and safety of workers and general public shall also be followed.

## **16.0 Indemnification**

- 16.1 To the fullest extent permitted by law, the Contractor shall protect, indemnify, defend, save and hold harmless the City its Council members, officers, employees, and agents (each an "Indemnified Party") from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorney's fees, experts fees, court costs and disbursements ("Claims") resulting from, arising out of or in any manner related to performance or non-performance by the Contractor, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by and Indemnified Party.

16.2 Notwithstanding the above, nothing in this Clause 16 shall be construed to require the Contractor to indemnify an Indemnified Party from Claims arising from the active gross negligence, or willful misconduct of an Indemnified Party.

16.3 The acceptance of the Contractor's services and duties by the City shall not operate as a waiver of the right of indemnification. The provisions of this Clause 16 shall survive the expiration or early termination of this Agreement.

## 17.0 Insurance

17.1 As of the Commencement Date and prior to the Contractor or any of its employees or anyone for whose acts it may be liable entering onto the Buildings, the Contractor shall purchase and maintain insurance policies, and shall provide limits of liability of not less than the following:

- (a) Worker's Compensation, disability benefits and other similar employee benefits acts that are applicable to the Service performed and in conformance with the statutory requirements of the Province of Manitoba.

- i. The Contractor's Worker's Compensation Number (\_\_\_\_\_) must be kept in good standing.

17.2 **Commercial General Liability ("CGL")** insurance for claims or damages for bodily injury or death of any person other than the Contractor's employees; damage or destruction of tangible property other than to the Service performed; Independent Contractor's Liability; and Contractual Liability coverage:

- (a) Bodily injury, property damage, and personal injury: two million dollars (\$2,000,000.00) each occurrence.

17.3 **Commercial Automobile Liability ("Auto")** insurance for all owned, hired, leased and non-owned automobiles for claims or damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle:

- (a) Bodily injury & Property Damage: two million dollars (\$2,000,000.00) each person and two million dollars (\$2,000,000.00) each occurrence.

The Contractor's automobile liability insurance policy must include coverage for contractual liability.

17.4 **Professional Liability ("Professional")** insurance against any wrongful acts, errors, or omissions on the part of the Contractor for an amount not less than one million dollars (\$1,000,000.00) resulting from any action under the Agreement or in connection with the Services.

17.5 The Contractor shall keep the policies required by Clause 17.1, 17.2, 17.3 and 17.4 in effect until after final completion of the Services. Coverage afforded under the policies shall not be canceled, be materially altered or be allowed to expire without being renewed until at least thirty (30) days written notice has been given to the City.

17.6 Except to the extent precluded by applicable law, the Contractor agrees that the policies required by Clause 17.1, 17.2, 17.3 and 17.4 (with the exception of Worker's Compensation) shall name the City as an additional insured.

17.7 The terms of coverage required by Clause 17.1, 17.2, 17.3 and 17.4 shall be evidenced by certificate of insurance reflecting the required insurance coverages, which shall be made available to the City and subject to audit and verification by the City upon demand during normal business hours.

## 18.0 Damages and Defects

18.1 The Contractor shall use due care so that no persons are injured, or no property damaged or lost in providing the Services.

18.2 The Contractor shall be solely responsible for all loss, damages, costs and expenses in respect of any injury to persons, damage of property, or infringement of the rights of others incurred in the performance of the Services or caused in any other manner whatsoever by the Contractor or its employees.

18.3 The Contractor shall rectify any loss or damage for which, in the opinion of the City, the Contractor is responsible, at no charge to the City and to the satisfaction of the City.

18.4 Alternatively, the City may repair the loss or damage and the Contractor shall pay to the City the costs of repairing the loss or damage upon the demand from the City.

## 19.0 Termination of Agreement

19.1 The City reserves the right, at its sole discretion, to terminate this Agreement, in whole or in part, if the Contractor receives three (3) written notices for any one or more of the following reasons:

- (a) Failure to deliver the promised goods and/or services at the required time and location; or
- (b) Failure to provide qualified personnel to provide or perform the goods and/or services; or
- (c) Failure to provide satisfactory Services; or
- (d) Failure to meet the City's standard of expected and agreed level of services and performance; or
- (e) Performing unsafe acts while on City property that could pose a threat to the safety of City Staff or Public; or
- (f) Safety infractions; or
- (g) Places unknown personnel, sub-contractors or assignment of the Services to others; or
- (h) Fails to provide the necessary insurance or if the required insurance lapses; expired insurance (CGL, Auto or Professional); or
- (i) Expired business license; or
- (j) Any other reason considered appropriate, at the sole discretion of the City.

Upon termination of the Agreement, the City will be under no further obligation to the Contractor, except to pay any outstanding amounts that the Successful Proponent may be entitled to receive up to the date of termination. Such termination will not result in any penalty to the City.

## **20.0 Cancellation**

- 20.1 This Agreement may be cancelled by either party for any reason without cause or penalty upon thirty (30) calendar day's written notice.

## **21.0 Notices**

- 21.1 For the purpose of this agreement, any notice to the City by the Contractor shall be addressed to the Chargehand of Building Maintenance, 900 Richmond Avenue East, Brandon, Manitoba R7A 7M1 and any notice to the Contractor shall be addressed to \_\_\_\_\_.

## **22.0 Miscellaneous**

- 22.1 This Agreement constitutes the entire agreement between the Contractor and the City relating to the subject matter hereof, and there are no previous contemporary representations or warranties of the City or the Contractor not set forth herein.
- 22.2 Except as specifically provided herein, no modification or waiver of this Agreement or any term hereof shall be binding on either party unless made in writing and executed by an authorized representative of the City and the Contractor.
- 22.3 No waiver of any right under this Agreement shall affect the right of the party waiving the same to thereafter exercise such right or any other right similar thereto.
- 22.4 No modification, waiver, termination, discharge or cancellation of this Agreement or any term hereof shall impair the right of either party hereto with respect to any liability whether or not liquidated of the other party therefore accrued.
- 22.5 All rights and remedies of the City specified in this Agreement are in addition to the City's other rights and remedies under the law, whether in contract or in tort.
- 22.6 The Contractor shall remain an independent and shall have no power, nor shall the Contractor represent that the Contractor has any power to bind the City or to assume or to create any obligation expressed or implied on behalf of the City.
- 22.7 This Agreement shall be interpreted, performed and enforced in accordance with the laws of Manitoba.

5. This agreement shall enure to the benefit of and be binding upon the parties hereto, their heirs, executors, and administrators.

**IN WITNESS WHEREOF** this Agreement has been executed on behalf of both parties by their duly authorized representatives the day and year first above written.

**CONTRACTOR**

\_\_\_\_\_  
"Authorized Signatory  
I am authorized to bind the corporation."

**CONTRACTOR**

\_\_\_\_\_  
"Authorized Signatory  
I am authorized to bind the corporation."

**THE CITY OF BRANDON**

\_\_\_\_\_  
Mark Yeomans  
Director of Public Works  
*"I am authorized to bind the City"*

SAMPLE



**SCHEDULE "A"**

**SPECIFICATIONS AND INSTRUCTIONS FOR ANNUAL FIRE ALARM TESTING AND INSPECTIONS AGREEMENT**

**Scope of the work to be completed:**

- Test & inspect as per fire code, ALL components of each fire alarm system. This includes main control unit, remote annunciators, batteries, ancillary devices, manual alarm initiating devices, audible & visual signalling devices and automatic alarm initiating devices.
- The City of Brandon will provide escorts and trades as required
- Work is to be performed during regular working hours
- Work is to be completed between March 1<sup>st</sup> & April 30<sup>th</sup> of each year
- Sensitivity testing for detectors to be completed using the true test sensitivity unit
- Provide inspection reports (including deficiencies) for each separate facility within one (1) month of completion

**INSPECTION PRICES**

Facility	Base Price	GST (5%)	MB RST (8%)	Total Bid Price
A.R. McDiarmid Civic Complex				
Airport Buildings				
Art Gallery & Library				
Civic Administration Building				
Civic Services Complex				
Engineer Lab				
Police Services				
Recycle Facility				
Sportsplex				
Wheat City Golf & Curling				

Year Two \_\_\_\_\_% increase

Year Three \_\_\_\_\_% increase

Year Four \_\_\_\_\_% increase

Year Five \_\_\_\_\_% increase

**Labour Costs to Correct Deficiencies Outside of the Inspection:**

Rates per hour (including taxes) \$ \_\_\_\_\_

**Provide Material Cost Mark Up:**

Parts at cost plus \_\_\_\_\_%