

DELIVERY SERVICES AGREEMENT

THIS DELIVERY SERVICES AGREEMENT (the “Agreement”) made this day of , 2021

BETWEEN:

(hereinafter called the “**Courier**”),
OF THE FIRST PART,

- and -

THE CITY OF BRANDON,
(hereinafter called the “**City**”),
OF THE SECOND PART.

(Collectively, the “**Parties**”)

WHEREAS the City requires the services of the Courier for the pick up and transport of merchandise from various locations within the City of Brandon and delivery to the City General Stores (900 Richmond Avenue East) on an as needed basis or any other time as determined by the City; and

WHEREAS the City requires the services of the Courier for the pick up and transport of merchandise from the City General Stores and delivery to various City facilities within the City of Brandon; and

WHEREAS the Courier has agreed to provide said service to the City under the terms and conditions contained in this Agreement;

NOW THEREFORE in consideration of the premises and mutual covenants herein contained, the Parties agree as follows:

1.0 The Contract Documents consists of all the documents listed as follows:

- (a) This Agreement
- (b) Specifications to RFQ Item #L-13
- (c) RFQ Item #L-13
- (d) Contractors Response

2.0 Service Requirements

- 2.1 The Courier covenants and agrees to transport the City's merchandise in its vehicles in accordance with the requirements set out in sub-clauses 2.2 and 2.3 below, hereinafter referred to as the "**Service**".
- 2.2 The Courier shall be responsible for the pick up of merchandise on an "as required basis" from various vendors within the City of Brandon and the direct delivery of said merchandise to City General Stores, 900 Richmond Avenue East.
- 2.3 The Courier shall be responsible for the pick up of merchandise on an "as required basis" from City General Stores, 900 Richmond Avenue East, and the direct delivery of said merchandise to various City facilities.
- 2.4 The Courier covenants and agrees to furnish all labour, materials, tools and equipment and more specifically all motor vehicles and qualified motor vehicle operators necessary for the performance of the Service, and further covenants and agrees to carry out such Service in a diligent, careful and workmanlike manner.
- 2.5 The Courier shall comply with all legislation applicable and necessary to the performance by the Courier of its obligations under this Agreement.
- 2.6 The Courier acknowledges and agrees that meeting the scheduled departure times, pick-up times and drop-off times provided for in sub-clauses 2.2 and 2.3 above represents an essential element of the Service the Courier is obligated to perform under this Agreement.
- 2.7 The Courier shall designate a representative who shall serve as a contact person to the City for the purposes of this Agreement and shall ensure the availability of such a representative at all times during the performance of the Service.
- 2.8 Without prejudice to any other rights or remedies available to the City herein, or by law, it is understood and agreed that should the Courier at any time fail to provide the Service as required by this Agreement, the City may make alternative arrangements, and the Courier hereby agrees and covenants to pay any costs incurred by the City forthwith. The City may deduct such costs from the amount owing or accruing due to the Courier from the City.

3.0 Term

- 3.1 This Agreement shall be for a two (2) year term commencing the ____ day of ____, 2021 and expiring the ____ day of ____, 2023, where upon it can be renewed for a one (1) year term thereafter, on similar conditions at the written request of the City and written acceptance of the Courier.

4.0 Payment Procedures

- 4.1 Subject to all other terms and conditions in this Agreement, the City shall pay the Courier in accordance with sub-clause 4.6 as consideration for the performance of the Service.
- 4.2 Any additional service must be authorized in advance and invoiced on a monthly basis at the applicable rates indicated in sub-clause 4.6.
- 4.3 Payment shall be made only for the Service performed.
- 4.4 Each invoice for payment shall be certified as correct by an officer of the City and accompanied by such supporting documentation as the City may require.
- 4.5 Any error in payment shall be adjusted forthwith and the City shall have the right to deduct any monies owed to it by the Courier from any monies then due or becoming due to the Courier.
- 4.6 Payment to the Courier shall be calculated on the following basis:
 - i. The City shall pay the Courier a flat rate of _____ per trip for each merchandise pick up and/or delivery.
- 4.7 The Courier shall be signed up for direct deposit with the City's Accounts Payable.

5.0 Insurance

- 5.1 The Courier shall provide and maintain, at its own expense, the following minimum insurance coverage in accordance with the terms and conditions set out herein.
- 5.2 **Commercial General Liability Insurance**, with a minimum limit of two million dollars (\$2,000,000.00) per occurrence for personal injury, bodily injury (including death) and property damage. The City shall be added to the policy as an additional insured and the policy shall contain cross liability and severability of interest clauses.
- 5.3 **Commercial Automobile Liability Insurance**, with a minimum limit of two million dollars (\$2,000,000.00) per occurrence for bodily injury (including death) and property damage.
- 5.4 The Courier shall provide the City with certificates of insurance as evidence that the required coverages are in effect and the City shall be given sixty (60) days prior written notice of cancellation or material change to any such coverage.

- 5.5 Compliance with the foregoing insurance provisions shall not relieve the Courier of complying with any other obligation to the City, including the obligations set out in the indemnification clause, nor shall the foregoing provision limit the insurance coverages required by municipal, provincial or federal law. It shall be the sole responsibility of the Courier to determine what additional insurance coverages, if any, are necessary and advisable for its own protection or to fulfill its obligations under this Agreement. Any such additional insurance shall be provided and maintained by the Courier at its own expense.

6.0 Compensation and Other Coverage

- 6.1 The Courier acknowledges that it is its sole responsibility to obtain and maintain such workers compensation or other coverage as may be required in the Province of Manitoba in which the Courier will be performing its obligations under this Agreement.
- 6.2 The Courier's Workers Compensation Number _____ must be current and in good standing.

7.0 Covenants of the Courier

- 7.1 The Courier shall not in any way alter the scope of the Service without prior written consent of the City.
- 7.2 The Courier shall not use the City's trademarks and logos without the express written consent of the City, or unless required in this Agreement.
- 7.3 All personnel employed, or to be employed, by the Courier shall be bondable and shall be subject to a security check by the City. The Courier shall provide a list of all names for the security check. All expenses shall be borne exclusively by the Courier. The City reserves the right to approve/refuse any prospective employee of the Courier as a result of the security check.

8.0 Termination and Default

- 8.1 For the purpose of this Agreement, the following shall constitute events of default (herein "Events of Default"):
- i. If a petition is filed or resolution passed on its business, or the Courier agrees to make a bulk sale of its assets or if the Courier ceases or threatens to cease to carry on its business;
 - ii. If there is a breach of any representation or warranty made by the Courier in connection with this Agreement or if any such representation or warranty proves untrue; or

- iii. If the Courier neglects or fails to perform or observe any of its obligations under this Agreement and fails to cure the breach to the satisfaction of the City following written notice to the Courier.
- 8.2 The City may, upon the occurrence of any of the Events of Default, and in addition to any rights or remedies available to it under this Agreement, or by law, terminate this Agreement, in whole or in part, immediately without notice.
- 8.3 The City may in its sole discretion terminate this Agreement in whole or in part without cause and with liability by giving thirty (30) days' written notice to the Courier.
- 8.4 The Courier may terminate this Agreement by giving sixty (60) days' notice in writing to the City.
- 8.5 The Courier shall have no claim against the City for damages or for loss of anticipated profits as a result of the termination of this Agreement herein provided.
- 8.6 Termination of this Agreement shall be without prejudice to the rights of the Parties that have accrued prior to termination.
- 8.7 The provisions of sub-clauses 8.5, 8.6, and 9.1 shall survive the termination or expiry of this Agreement.
- 9.0 Indemnification**
- 9.1 The Courier shall at all times indemnify, save and hold harmless the City, its directors, officers, employees and any others for whom, it may become responsible in law, from and against all losses, claims (including claims made by the Courier's personnel under Worker's Compensation legislation), claims by any person alleging an employer/employee relationship, demands, awards, judgments, actions and proceedings by whomsoever made, brought or prosecuted in respect or loss of, damage to or destruction of property (including loss or damages sustained by the Courier) or personal injury including death and from and against any and all loss of, damage to or destruction of property, expenses and costs (including legal fees and disbursements) suffered or incurred by the City, its directors, officers, employees and any other for whom it may become responsible in law, arising out of or in any way connected with the Courier's provision of Service under this Agreement and whether or not caused by the Courier's negligence. Loss or damage sustained by the Courier shall also include loss as a result of loss of use.

10.0 Warranties re: Capacity, Standard of Work and Quality of Items Delivered

10.1 The Courier warrants:

- i. That it has the status, capacity and authority to enter into this Agreement and that it is unaware of any facts that would prevent it from fulfilling its obligations under this Agreement;
- ii. That it is free of any contractual or statutory rights or obligations in favour of any third party that would prevent or impair it from entering into or fulfilling its obligations under this Agreement;
- iii. That, by entering into this Agreement and fulfilling its obligations under this Agreement, it will not knowingly be in breach of any existing contract or any statute, law, rule or regulation of any federal, provincial, or local government or administrative agency;
- iv. That it has the experience, expertise and resources necessary in order to fulfill its obligations under this Agreement;
- v. That all work to be carried out by the Courier under this Agreement shall be carried out in a competent manner and meet or exceed the standards for such work as are generally acceptable in the industry; and
- vi. That the Courier represents and warrants that it has the capacity, power and lawful authority to enter into this Agreement and to fulfill any and all covenants set forth in this Agreement.

11.0 Notice

11.1 For the purpose of this Agreement, any notice to the City by the Courier shall be addressed to:

City General Stores
Civic Services Complex
900 Richmond Avenue East
Brandon, Manitoba R7A 7M1

And any notice to the Courier shall be addressed to:

**** PLEASE INSERT COURIER'S MAILING INFO HERE****

12.0 Miscellaneous

12.1 **Entire Agreement:** This document contains the entire agreement between the Parties. There are no undertakings, representations, or promises, expressed or implied, other than those contained in this Agreement.

12.2 **Applicable Law:** This Agreement shall be interpreted, performed and enforced in accordance with the laws of Manitoba.

12.3 **Assignment:** This Agreement cannot be assigned by the Courier to any other party, without prior written consent of the City and any such reported sale, assignment, transfer, subcontract or disposal without such prior written consent is void.

The City may assign in whole or in part the benefits of this Agreement without the consent of the Courier.

12.4 **Enurement:** This Agreement shall enure to the benefit of and be binding upon the Parties hereto, their heirs, executors, successors, and administrators.

12.5 **Sub-Contracting:** Where the Service, or any part thereof, is sub-contracted by the Courier to another person (herein "**Sub-Contractor**"), the Courier shall remain fully responsible for ensuring that the Service as per Clause 2.0 is performed strictly in accordance with the requirements of this Agreement.

i. The Courier shall not sub-contract any of its obligations under this Agreement without the prior written approval of the City. The duly authorized representative for granting any such approval shall be designated by the City.

ii. The Courier shall be fully responsible for and to the Sub-Contractor. The City shall have no obligation whatsoever to the Sub-Contractor. The Courier shall, upon request by the City, promptly provide the City with a copy of any and all correspondence and other documentation exchanged between Courier and the Sub-Contractor and such other information, as may be requested by the City respecting the progress and results of any aspect of the Service that the Courier has sub-contracted to the Sub-Contractor and respecting any disclosure of confidential information to the Sub-Contractor.

12.6 **Waiver:** Failure of any party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions by the same shall be and remain at all time in full force and effect.

- 12.7 **Amendments:** Unless otherwise provided herein, this Agreement shall not in any manner be supplemented, amended or modified except by written instrument executed on behalf of both Parties.
- 12.8 **Time of the Essence:** Time shall, in all respects, be of the essence in each of the terms, covenants, obligations and conditions in this Agreement.
- 12.9 **Independent Contractor:** The Parties recognize that the Courier operates as an independent business and declare that nothing in this Agreement shall be construed as creating a relationship of employment, joint venture, partnership or agency between the City and the Courier, and no act or omission of either party shall bind or obligate the other except as expressly set forth in this Agreement.

The Courier shall provide all personnel and services required to carry out its obligations under this Agreement as an independent contractor. All personnel provided by the Courier shall be and remain employees of the Courier.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement the day and year first above written.

**THE CITY
PER:**

"I am authorized to bind the City"

Name:
Position:
Date:

**COURIER
PER:**

"I am authorized to bind the Courier"

Name:
Position:
Date: