THIS AGREEMENT made as of the _____ day of _____, 2011.

BETWEEN:

**THE CITY OF WINNIPEG**
(referred to as the "City"),

OF THE FIRST PART,

- and -

**THE GOVERNMENT OF MANITOBA,**
as represented by the Minister of Infrastructure and Transportation
(referred to as "MIT"),

OF THE SECOND PART.

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**WHEREAS:**

A. The City is, pursuant to *The Highway Traffic Act* (Manitoba) (the "Act"), the "traffic authority" for those highways, or portions thereof, that are located within the limits of the city of Winnipeg, other than "provincial highways" (as that term is defined in the Act) and highways on privately-owned land;

B. The City is authorized, pursuant to subsection 87(1) of the Act, to issue permits ("Permits") authorizing vehicles to be driven or property to be moved by vehicle over, upon or along those highways, or portions thereof, located within the City limits for which the City is the traffic authority that would not otherwise be permitted by the Act or the Regulations;

C. The City, as traffic authority, is permitted, under subsection 87(2) of the Act, to impose any conditions on Permits it issues which the City considers appropriate and, pursuant to subsection 87(6) of the Act, may also place restrictions on the Permits which it issues;

D. Pursuant to subsection 87(2.1) of the Act, a traffic authority may cancel Permits if the Permit holder or any other person who operates, owns or drives a vehicle or moves property under the Permit fails to comply with a condition of the Permit or contravenes the Act, *The Drivers and Vehicles Act* (Manitoba) or *The Manitoba Public Insurance Corporation Act* (Manitoba) or the regulations under any of those

Acts, or if the Permit holder fails to pay a fee required to be paid in respect of the Permit;

E. The parties recognize the desirability of working towards the harmonization of services, policies and fees for the delivery of permitting services to the motor carrier industry;

F. The City wishes to retain the services of MIT to process Permit applications and to issue Permits with and without restrictions, collect Permit fees and cancel Permits on behalf of the City, and MIT has agreed to perform such services for and on behalf of the City, on the terms and conditions hereinafter set forth, by means of an automated permit issuance and routing system; and

G. This Agreement supports the parties' objective of harmonizing permitting services to the motor carrier industry.

**NOW, THEREFORE,** in consideration of the premises and the mutual covenants and agreements contained herein, the parties confirm and agree as follows:

## ARTICLE 1.00 - DEFINITIONS

1.01 For the purposes of this Agreement, the following terms and expressions shall apply:

(a) "Act" means *The Highway Traffic Act*, S.M. 1985-86, c. 3 – Cap. H60, as may be amended from time to time;

(b) "Effective Date" shall be the effective date of this Agreement as set out in subsection 3.01;

(c) "MIT Additional Costs" means such additional costs as may be incurred by MIT which are not included in the definition of MIT Permit Services Provision Charges and which may become payable by the City to MIT pursuant to the provisions of subsections 4.09 and 11.02;

(d) "MIT Permit Services Provision Charges" means the charge per Permit payable by the City to MIT on account of MIT's administrative and other costs attributable to the provision of the Services by MIT pursuant to this Agreement as set out in Article 6.00, which includes, without limiting the generality hereof, the estimated amount of the City's proportionate share of the costs relating to computer hardware and software, stationery, postage, telephone, rent and other such costs of providing the Services and also including costs relating to salary, superannuation and other benefits attributable to the workload incurred in providing said Services but excluding the following:

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A. the cost of implementing a policy or Permit Fee change where such change would require the use of an outside consultant or consultants to make modifications to the permit issuance and routing system as provided for in subsection 4.09; and

B. the costs of modifying the permit issuance and routing system upon termination of this Agreement by the City, as set out in subsection 11.02;

(e) "Permit" means a permit issued pursuant to subsection 87(1) of the Act;

(f) "Permit Fees" means the charges payable in respect of the processing of Permit applications and the issuance and cancellation of Permits by MIT on behalf of the City in accordance with the Act and Regulations or, if applicable, the City's by-laws or as may be otherwise authorized by law, as set out in the Policy Manual and which may be referred to as "fees" in the Manual;

(g) "Permit Refunds" means Permit Fees refunded by MIT to Permit applicants and Permit holders pursuant to subsection 5.05;

(h) "Permit Revenues" means Permit Fees collected by MIT on behalf of the City pursuant to this Agreement;

(i) "Policy Manual" means the *Permit Policy Manual*, dated October 1, 2010, which incorporates the City's policies, procedures, traffic by-laws and Permit Fees respecting the issuance and cancellation of Permits authorizing vehicles to be driven or property to be moved by vehicle over, upon or along those highways, or portions thereof, located within the City limits for which the City is the traffic authority, as may be amended from time to time in accordance with the terms of this Agreement;

(j) "Regulations" means the regulations to *The Highway Traffic Act*, S.M. 1985-86, c. 3 – Cap. H60, as may be amended from time to time; and

(k) "Services" means any or all of the services to be performed by MIT pursuant to this Agreement.

## ARTICLE 2.00 - PURPOSE AND OBJECTIVES

2.01 This Agreement formalizes the services arrangement between the City and MIT regarding the processing of Permit applications, the issuance and cancellation of Permits and the collection of Permit Fees by MIT on behalf of the City with respect to those highways, or portions thereof, located within the City limits for which the City is the traffic authority.

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## ARTICLE 3.00 - TERM OF AGREEMENT

3.01 This Agreement comes into effect on **[effective date]** and shall continue for a period of one (1) year to **[expiry date]**, unless extended beyond that date under Article 10.00 or terminated before that under Article 11.00.

## ARTICLE 4.00 - CITY'S RESPONSIBILITIES/OBLIGATIONS/AUTHORIZATION/ REPRESENTATIONS

4.01 The City hereby represents and warrants that it has lawful authority to enter into this Agreement and to retain MIT to process Permit applications and to issue and cancel Permits on the City's behalf.

4.02 The City further represents and warrants that it has lawful authority to charge the Permit Fees specified in the Policy Manual to be charged by MIT on behalf of the City and that such Permit Fees have been properly enacted or imposed by the City.

4.03 The City undertakes and agrees that it shall immediately notify MIT in writing in the event that the City having had authority, pursuant to the Act and the Regulations, to charge Permit Fees loses that authority.

4.04 The City further undertakes and agrees that, if at any time the City, having lawful authority to charge Permit Fees, amends those Permit Fees by by-law(s) or as may be otherwise authorized by law, it shall immediately take the necessary steps to amend the Policy Manual, as provided for in this Agreement, to reflect those changes.

4.05 The City hereby retains MIT to process Permit applications and to issue and cancel Permits on behalf of the City, as well as collect Permit Fees on the City's behalf, as of the Effective Date.

4.06 The City hereby authorizes and directs MIT to issue Permits on behalf of the City in accordance with the Policy Manual.

4.07 The parties agree that the City may amend the Policy Manual from time to time by providing a proposed revised policy statement to MIT in accordance with the notice provisions contained in Article 14.00 of this Agreement, provided that:

(a) the changes reflected in the proposed revised policy statement relate to Permits, which may involve the processing of Permit applications or the issuance and cancellation of Permits, and the proposed changes are in compliance with all applicable legislation, including regulations thereto;

(b) unless MIT otherwise agrees in writing, the changes reflected in the

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proposed revised policy statement do not revise, amend or alter, directly or indirectly, the permit policies of the Province of Manitoba;

(c) the City has authority over the matters affected by such proposed changes and the lawful authority to make those changes; and

(d) MIT is provided with a period of notice which is sufficient, in MIT's reasonable opinion, to implement the changes required to be made to the permit issuance and routing system to accommodate the City's proposed changes to the Policy Manual.

4.08 Upon receipt from the City of any proposed changes to the Policy Manual, MIT shall advise the City whether it is of the opinion that one or more outside consultants would be required to modify the permit issuance and routing system in order to implement the proposed changes. If so, MIT shall obtain and forward to the City a written estimate from any such outside consultants setting out the proposed costs of implementing the proposed changes. The City shall confirm to MIT, in writing, whether or not it is agreeable to paying the costs to be charged by any external consultants in implementing the proposed changes. Subject to compliance with subsection 4.07:

(a) the City's proposed changes to the Policy Manual which do not require the assistance of external consultants in order to implement them; and

(b) any proposed changes for which the City has confirmed its agreement to bear the responsibility for the costs of the external consultants,

shall take effect as of the date that MIT is able to implement the necessary changes required to be made to the permit issuance and routing system to accommodate such proposed changes, and thereafter the proposed revised policy statement submitted by the City to MIT shall be incorporated into the Policy Manual. If MIT advises the City, in writing, that it is of the reasonable opinion that there is not compliance with any or all of the conditions set out in clauses (a), (b), (c) and (d) of subsection 4.07, the provisions of the Policy Manual shall remain the same and the City's proposed changes shall not become effective.

4.09 Where the City's proposed changes to the Policy Manual involve the implementation of a policy or Permit Fee change of such a nature that, in the opinion of MIT, requires an outside consultant or consultants to modify the permit issuance and routing system, the City shall, subject to subsections 4.08 and 4.10 and any other agreement between the parties to the contrary relating to costs, be responsible for payment of the MIT Additional Costs associated with the modification(s) which are payable to any such external consultants.

4.10 Notwithstanding subsection 4.09:

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(a) where:

(i) the City's proposed changes to the Policy Manual involve only a Permit Fee change;

(ii) the proposed Permit Fees are intended by the City to take effect as of the same time that MIT implements its own change in Permit fees with respect to Permits issued by Manitoba for the Province itself; and

(iii) the proposed Permit Fees to be charged on behalf of the City are exactly the same as those intended to be charged by Manitoba with respect to Permits issued by Manitoba for the Province itself,

the City shall, in MIT's sole discretion, either be required to pay no MIT Additional Costs associated with that particular modification to the permit issuance and routing system or only those fees of outside consultant(s) payable on account of the additional time required to modify the permit issuance and routing system to implement the City's proposed change in Permit Fees; and

(b) where the City's proposed changes to the Policy Manual involve the implementation of a policy or Permit Fee change of such a nature that, in the opinion of MIT, requires an outside consultant or consultants to modify the permit issuance and routing system and it is, in MIT's opinion, possible to engage outside consultant(s) to make such modification(s) at the same time as modification(s) are made to the permit issuance and routing system to implement changes for the Province itself, or at the same time as MIT engages an outside consultant(s) to perform maintenance work with respect to the permit issuance and routing system, the MIT Additional Costs associated with the modification(s) may, in MIT's sole discretion, be reduced.

4.11 The City hereby authorizes and directs MIT to cancel Permits issued by the City, or by MIT on behalf of the City pursuant to this Agreement, if:

(a) MIT has knowledge, or reasonably believes, that the Permit holder or another person who has operated, owned or driven a vehicle or moved property under the Permit has failed to comply with a condition of the Permit or has contravened the Act, *The Drivers and Vehicles Act* (Manitoba) or *The Manitoba Public Insurance Act* (Manitoba) or the regulations under any of those Acts;

(b) the Permit holder has failed to pay a fee required to be paid in respect of the Permit;

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(c) MIT reasonably believes that it has authority, pursuant to this Agreement, the Act, the Regulations or otherwise, to cancel the Permit for any other reason; or

(d) the City instructs MIT to cancel the Permit based upon one of the grounds for cancellation of a Permit as set out in the Act or Regulations.

4.12 Upon execution of this Agreement by the parties, the City shall make available one of its employees as a resource person to assist MIT in the Permit automation and consolidation process by providing:

(a) a three to five-day training course for employees of MIT, followed by an additional two-week period of onsite support, at the offices of MIT where Permits will be processed, based on an assessed need by MIT; and

(b) telephone support as may be requested by MIT from time to time during the term of this Agreement.

Such resource person shall be paid by the City without reimbursement by MIT.

4.13 The City shall provide to MIT, within a reasonable period of time, certified true copies of such documents in the possession of the City and relating to a Permit issued by the City, or a Permit cancelled by MIT on behalf of the City, as MIT may require from time to time in connection with any legal proceedings or as MIT may reasonably require for any other purpose arising out of or relating to the Services or this Agreement.

## ARTICLE 5.00 - MIT RESPONSIBILITIES/OBLIGATIONS/AUTHORITY

5.01 MIT shall charge Permit Fees in connection with the processing of applications and the issuance and cancellation of Permits on behalf of the City, in accordance with the Act and the Regulations or, if applicable, the City's by-laws or as may be otherwise authorized by law, as set out in the Policy Manual.

5.02 Upon receipt by MIT of:

(a) an application for a Permit to permit a vehicle to be driven or property to be moved by vehicle over, upon or along a highway located within the city of Winnipeg for which the City is the traffic authority and for which a Permit may be issued pursuant to the provisions of the Act and Regulations; and

(b) payment of the appropriate Permit Fees in accordance with the Act and Regulations or, if applicable, the City's by-laws or as may be otherwise authorized by law, as set out in the Policy Manual;

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MIT is authorized by the City to issue a Permit to the applicant on behalf of the City in accordance with the Policy Manual.

5.03 Subject to the terms of this Agreement, where authorized by the City to do so, MIT agrees that it will issue Permits on behalf of the City. Such Permits shall be issued only in accordance with and subject to any applicable restrictions and conditions as set out in the Policy Manual.

5.04 If a Permit issued by or on behalf of more than one traffic authority is intended to be cancelled, the existing Permit shall be cancelled and a replacement Permit issued for the remaining jurisdiction or jurisdictions in respect of which the Permit is to continue.

5.05 If any Permit applicant or Permit holder becomes entitled to a refund of any Permit Fees paid, MIT may refund such Permit Fees to the Permit applicant or Permit holder, as the case may be, subject to any administrative costs which may be deductible from such refund in accordance with the Policy Manual. MIT shall be entitled to include such refunds made by MIT on behalf of the City ("Permit Refunds") in the accountings to be provided by MIT pursuant to this Agreement, and the Permit Refunds shall be deductible by MIT from the Permit Revenues otherwise payable to the City pursuant to this Agreement.

5.06 Subject to the terms of this Agreement, if:

(a) the Policy Manual does not deal with any particular matter relating to the processing of a Permit application, the issuance of a Permit or the cancellation of a Permit on behalf of the City;

(b) in MIT's opinion, the Policy Manual contains any ambiguities or conflicts in the wording thereof;

(c) MIT is uncertain as to the meaning or intention of anything set out in the Policy Manual; or

(d) MIT has any other questions relating to application of the Policy Manual,

MIT shall consult with the City's Traffic Management Engineer, or such other person as may be designated by the City from time to time, who shall, within a reasonable period of time, provide written direction to MIT in relation to such matter.

5.07 The parties acknowledge and agree that a common or consolidated form of Permit, in the form attached hereto as Schedule "A", has been approved by The City of Winnipeg, the City of Brandon and the Province of Manitoba for use with respect to Permits to be issued by or on behalf of those three entities.

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5.08 Notwithstanding subsection 5.03, MIT shall have the right to refuse to issue a Permit for which an application has been made if:

(a) payment has not been received by MIT of the appropriate Permit Fees in accordance with the Act and Regulations or, if applicable, as prescribed by the City's by-laws or as may be otherwise authorized by law, as set out in the Policy Manual; or

(b) MIT is of the opinion that there are other reasonable grounds for not issuing a Permit including, without limitation:

(i) if the applicant or any other person who does or who intends to operate, own or drive a vehicle or move property under the requested Permit has contravened the Act, *The Drivers and Vehicles Act* (Manitoba) or *The Manitoba Public Insurance Corporation Act* (Manitoba) or the regulations under any of those Acts; or

(ii) if there is no authority under subsection 87(1) of the Act to issue a Permit as requested.

5.09 MIT shall have the right to cancel Permits issued by or on behalf of the City if:

(a) MIT has knowledge, or reasonably believes, that the Permit holder or another person who has operated, owned or driven a vehicle or moved property under the Permit has failed to comply with a condition of the Permit or has contravened the Act, *The Drivers and Vehicles Act* (Manitoba) or *The Manitoba Public Insurance Act* (Manitoba) or the regulations under any of those Acts;

(b) the Permit holder has failed to pay a fee required to be paid in respect of the Permit; or

(c) MIT reasonably believes that it has authority, pursuant to this Agreement and the Act or the Regulations, to cancel the Permit for any other reason.

5.10 MIT agrees that it shall cancel a Permit as it relates to a Permit issued by or on behalf of the City if the City, being the appropriate traffic authority, instructs MIT to do so based upon one of the grounds for cancellation of a Permit as set out in the Act or Regulations.

5.11 The parties agree that, notwithstanding any other provision of this Agreement, MIT may amend the Policy Manual from time to time by providing replacement pages to the City in accordance with the notice provisions contained in Article 14.00 of this Agreement where the changes reflected in the replacement pages relate to one or both of the following:

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(a) the permit policies or fees of the Province of Manitoba exclusively; or

(b) a change in legislation that affects the processing of Permit applications, the issuance of Permits or the cancellation of Permits by MIT on behalf of the City.

If the changes reflected in the replacement pages do not affect Permits processed by MIT on behalf of the City, MIT shall simply restate the permit policies (and, if applicable, fees) of the City, without amendment.

5.12 MIT shall maintain complete and accurate records in connection with the Services provided under this Agreement. These records shall be maintained by MIT for a period of seven (7) years, or for such other period of time as may be required by *The Archives and Recordkeeping Act* (Manitoba).

5.13 MIT shall provide to the City, within a reasonable period of time, certified true copies of such documents in the possession of MIT and relating to a Permit application received by MIT on behalf of the City, or a Permit issued or cancelled by MIT on behalf of the City, as the City may request from time to time.

5.14 MIT shall provide the City with on-line access to information pertaining to the processing of Permit applications, as well as Permits issued and cancelled, by MIT on behalf of the City provided that it is technically possible to remove all personal information that is inapplicable to the City and that relates to Permit applications and Permits processed by MIT for itself and on behalf of any other municipal authority.

## ARTICLE 6.00 - MIT PERMIT SERVICES PROVISION CHARGES

6.01 The City shall be responsible for payment to MIT of the sum of Twenty ($20.00) Dollars per Permit issued by MIT on the City's behalf, representing the MIT Permit Services Provision Charges payable by the City during the term of this Agreement. The parties agree that this amount is subject to change at the end of the current term of this Agreement.

## ARTICLE 7.00 - ACCOUNTING AND PAYMENT

7.01 Any MIT Additional Costs incurred by MIT may be:

(a) included by MIT in its quarterly accountings, as referred to in subsection 7.02; or

(b) invoiced to the City immediately upon such MIT Additional Costs having been incurred by MIT.

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7.02 MIT shall provide the City with a quarterly accounting, not later than the 15th day in each of the months of April, July, October and January in each year, of all Permit Revenues and MIT Permit Services Provision Charges for the immediately preceding quarter, as well as any MIT Additional Costs (as defined in subsection 1.01(c)) and Permit Refunds (as defined in subsection 1.01(g)) which have not yet been accounted for or invoiced by MIT. MIT shall remit to the City the amount by which the Permit Revenues exceed the aggregate of the following:

(a) the MIT Permit Services Provision Charges;

(b) the MIT Additional Costs for the previous quarter;

(c) Permit Refunds made by MIT during the previous quarter; and

(d) any other amounts outstanding by the City to MIT pursuant to this Agreement, including quarterly shortfalls or MIT Additional Costs previously invoiced to the City but not yet paid by the City or recovered by MIT and any interest remaining payable to MIT.

In the event that the quarterly MIT Permit Services Provision Charges, MIT Additional Costs and Permit Refunds included in that quarterly accounting exceed the quarterly Permit Revenues, MIT will invoice the City for the shortfall.

7.03 Any and all amounts invoiced by MIT pursuant to this Agreement shall become due and payable by the City to MIT within thirty (30) days of the City's receipt of the invoice.

7.04 Interest, at the rate set by the Minister of Finance in accordance with subsection 25(1) of *The Financial Administration Act* (Manitoba), established January 1st and July 1st of each year, shall be payable on all monies which are invoiced to the City and which are not paid when due. Such interest shall accrue (calculated and compounded monthly) from the date due without any demand being made by MIT and shall continue to accrue, including before and after judgment and following the termination or expiry of this Agreement.

## ARTICLE 8.00 - MIT POLICIES AND REGULATIONS

8.01 Employees of the City who attend at the premises of MIT for the purpose of performing duties pursuant to this Agreement shall, while on the property where MIT performs the Services on behalf of the City, be subject to the policies and regulations of MIT. MIT shall, upon the execution of this Agreement, provide the City with a written copy of all applicable policies and regulations presently in effect and shall promptly notify the City, in writing, of any amendments thereto as may be made from time to time.

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## ARTICLE 9.00 - COMPLIANCE WITH AUTHORITY

9.01 Each of the parties agrees that it shall comply with the requirements of all applicable laws, regulations, rules and orders of every governmental authority or agency which has jurisdiction over the processing of Permit applications and the issuance and cancellation of Permits.

## ARTICLE 10.00 – EXTENSION OF AGREEMENT

10.01 If no notice is issued to terminate this Agreement at least ninety (90) days prior to the expiry and the Agreement has not otherwise been terminated pursuant to subsection 11.01, this Agreement shall be deemed to have been extended for a further period of one (1) year from the date of expiry on the same terms and conditions as herein contained. During this one (1) year extension period, the parties will jointly participate in a review and evaluation of this Agreement and consider possible amendments to this Agreement, including the indemnifications provided for in Article 12.00.

10.02 This Agreement may be further extended by written agreement of the parties.

## ARTICLE 11.00 - TERMINATION

11.01 This Agreement can be terminated, prior to the expiration thereof:

(a) by mutual agreement of the parties; or

(b) by either party providing at least ninety (90) days' prior written notice of termination to the other in accordance with the notice provisions hereof.

11.02 If this Agreement is terminated by the City, the City shall be responsible for and shall reimburse MIT for any and all associated MIT Additional Costs, including (but not limited to) costs incurred to modify the permit issuance and routing system, including (but not limited to) removing elements in the system that pertain to the City, and to amend all necessary Permit forms to reflect that Permits will no longer be processed by MIT on behalf of the City.

11.03 Upon expiry or termination of this Agreement, MIT shall, within sixty (60) days following the expiration or termination of this Agreement:

(a) provide to the City a final accounting of all Permit Revenues and MIT Permit Services Provision Charges since the date of the last quarterly accounting, as well as any Permit Refunds and MIT Additional Costs not previously accounted for or invoiced by MIT; and

(b) remit to the City the amount by which the final Permit Revenues exceed the

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final MIT Permit Services Provision Charges, Permit Refunds and MIT Additional Costs included in the final accounting, and any other amounts which may remain owing by the City to MIT pursuant to this Agreement, including any quarterly shortfalls or MIT Additional Costs previously invoiced but not yet paid by the City or recovered by MIT and any interest remaining payable to MIT.

In the event that the final MIT Permit Services Provision Charges, Permit Refunds and MIT Additional Costs included in the final accounting exceed the final Permit Revenues, MIT will invoice the City for the shortfall.

Any amount which may remain owing by MIT to the City and unpaid on the date due shall bear interest at the same rate as set out in subsection 7.04 of this Agreement.

11.04 Upon expiry or termination of this Agreement, whichever is sooner, MIT shall provide to the City access to records in the possession of MIT relating to applications for Permits and Permits issued or cancelled on behalf of the City provided that it is possible to remove all personal information that is inapplicable to the City and that relates to Permit applications and Permits processed by MIT for itself and on behalf of any other municipal authority.

**ARTICLE 12.00 - LIABILITY AND INDEMNIFICATION**

12.01 Except to the extent that any such damage or loss is caused directly by the negligent acts or omissions or breach of this Agreement by MIT or its employees, representatives or agents:

(a) MIT shall not be liable or responsible in any way for any or all of the following:

(i) any consequential or financial loss of any nature whatsoever that may be suffered or sustained by the City; or

(ii) any loss, damage, or loss of income or revenue, resulting from any failure, howsoever caused, in the supply of the Services; and

(b) the City will indemnify and save harmless The Government of Manitoba, its ministers, officers, employees and agents, from and against any and all claims, actions, costs, damages and liabilities in connection with any personal injury, loss of life or damage to property, and any other claims by any person, firm or entity including, without limitation, Permit applicants, Permit holders and persons who operate, own or drive vehicles or move property under Permits issued or cancelled by MIT on behalf of the City, any or all of which may arise out of or pursuant to this Agreement.

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## ARTICLE 13.00 - ARBITRATION

13.01 Any disagreement which may arise between MIT and the City in relation to this Agreement shall, when a mutually satisfactory settlement cannot be reached within thirty (30) days, or such other period of time as the parties may agree, be submitted to arbitration. The arbitration authority may either be a single person mutually satisfactory to both parties, or a board of three, one member to be proposed by each party and a third selected by the two as chosen. The decision of the arbitrator or arbitration board shall be accepted as final and binding. The cost of arbitration will be split equally between MIT and the City. In all other respects, the provisions of *The Arbitration Act* (Manitoba) shall govern.

## ARTICLE 14.00 – NOTICES

14.01 Any written notice or communication required or permitted by this Agreement shall be sent by delivery, by facsimile, or by mail prepaid and registered at an office of Canada Post, and shall be directed to or addressed as follows:

(a) if to MIT, addressed as follows:

Manitoba Infrastructure and Transportation
Unit C, 1695 Sargent Avenue
Winnipeg, MB R3H 0C4
Attention: Executive Director, Motor Carrier Division
Facsimile Number: (204) 945-5539

With a copy to:

Manitoba Infrastructure and Transportation
1550 Dublin Avenue
Winnipeg, MB R3E 0L4
Attention: Executive Director, Motor Carrier Division
Facsimile Number: (204) 948-2078

(b) if to the City, addressed as follows:

The City of Winnipeg
101-1155 Pacific Avenue
Winnipeg, MB R3E 3P1
Attention: Traffic Management Engineer
Facsimile Number: (204) 986-7020

or to such other address or facsimile number as either party may from time to time advise the other by notice in writing.

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14.02 Any notice or communication sent in accordance with such methods shall be deemed to have been received by the addressee on the day served if delivered personally, on the third business day after the date of mailing if sent by prepaid registered mail, or on the next business day following the date of the transmittal slip if sent by facsimile transmission. If there exists a labour dispute or other event at the time of mailing, or within three (3) business days after any notice is mailed, which would affect the normal delivery of the notice by mail, then notice will only be effective if delivered personally or sent via facsimile transmission.

## ARTICLE 15.00 - PRIVACY AND CONFIDENTIALITY ISSUES

15.01 The parties agree that they shall each comply with the provisions of *The Freedom of Information and Protection of Privacy Act* (Manitoba), and that any requests for access to information relating to Permit applications or Permits issued or cancelled by or on behalf of the City shall be handled by the appropriate party or parties in accordance with that Act.

## ARTICLE 16.00 – PUBLIC ANNOUNCEMENTS, ETC.

16.01 The parties agree to jointly coordinate any and all public announcements, official ceremonies, special events and other public communications respecting the execution and implementation of this Agreement. During the term of this Agreement, Manitoba may make public announcements or other public communications respecting the Services provided by Manitoba.

## ARTICLE 17.00 - INTERPRETATION

17.01 The preamble hereto forms an integral part of this Agreement.

17.02 The headings do not form part of this Agreement but have been inserted for convenience of reference only.

17.03 In the event of any conflict or inconsistency between the various provisions of this Agreement and the Policy Manual, the provisions of this Agreement shall prevail.

## ARTICLE 18.00 - GENERAL PROVISIONS

18.01 This Agreement and the attached Schedule(s) constitute the entire agreement between the parties. There are no undertakings, representations or promises, express or implied, other than those contained in this Agreement.

18.02 Neither party may assign this Agreement without the prior written consent of the other party, which consent may be withheld for any reason.

18.03 Nothing in this Agreement shall constitute or be construed to be or to create a

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partnership or joint venture nor does this Agreement create the relationship of employer and employee between the City and MIT, or any officer, employee or subcontractor of the other party.

18.04 No amendment or change to, or modification of, this Agreement shall be valid unless it is in writing and signed by both parties.

18.05 The determination that any provision of this Agreement is invalid or unenforceable shall not invalidate this Agreement, it being understood and agreed that all of the provisions herein are being inserted conditionally on their being considered legally valid and that this Agreement shall be construed and performed in all respects as if any invalid or unenforceable provisions are omitted provided the primary purpose of this Agreement is not thereby impeded.

18.06 Those provisions of this Agreement which contain representations, warranties, obligations and indemnifications that by their very nature are intended to survive the termination or expiration of this Agreement shall survive.

18.07 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

18.08 No failure or delay on the part of a party hereto in exercising any right, power or privilege hereunder shall operate as or be determined to be a waiver thereof unless confirmed in writing by an authorized person on behalf of such party. The rights and remedies herein shall be cumulative and not exhaustive to the rights and remedies provided by law for either party to this Agreement.

18.09 This Agreement shall be governed by, and interpreted and enforced in accordance with the laws of the Province of Manitoba. Each party irrevocably submits to the jurisdiction of the Province of Manitoba for and with respect to any matter arising hereunder.

18.10 There shall be no application of a principle or rule of law to interpret this Agreement, in the case of perceived uncertainty, against the party who prepared this Agreement; both parties agree and acknowledge they have each played a considerable role in negotiating and coming to the terms of this Agreement.

18.11 This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall be but one and the same instrument.

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18.12 Each of the parties confirms and acknowledges that it has availed itself of, or had full and ample opportunity to obtain, independent legal advice relating to this Agreement.

**IN WITNESS WHEREOF** the City and MIT have signed this Agreement each on the dates noted below.

Approved as to content:

_____
Director of Public Works

Certified as to form:

_____
Director of Legal Services and City Solicitor

**THE CITY OF WINNIPEG**

Per: _____
Mayor

Date: _____

Per: _____
City Clerk

Date: _____

I/We have authority to bind The City of Winnipeg.

**THE GOVERNMENT OF MANITOBA, as represented by the Minister of Infrastructure and Transportation, or the Minister's designate**

_____
Witness

_____

Date: _____

DRAFT

## SCHEDULE "A"

## FORM OF PERMIT

This is Schedule "A" to the Agreement between The City of Winnipeg and The Government of Manitoba, as represented by the Minister of Infrastructure and Transportation, made as of the _____ day of _____, 2011.

See attached.

DRAFT