



# The Heavy News Weekly



## Canadian Cities Caught Between Crumbling Infrastructure & Growing Calls for Transit

*Originally published by The Globe and Mail and featured in CCA's Gold Seal Certification newsletter*



Canadian Construction Association

As a decision looms on part of Toronto's aging Gardiner Expressway, cities across the country are facing their own difficult choices about building for the future, and what to do with infrastructure nearing the end of its lifespan.

A huge infrastructure bill is bearing down on Canada's cities, where most people live and most of the country's GDP is generated. And as cities grapple with the decay of highways and bridges built in the exuberant post-war era, a time when the car was king, there is increasing pressure to direct money to transit instead.

While the issue comes to a head in Toronto – city council is to kick off Wednesday what is likely to be a divisive session over the future of the eastern Gardiner – similar debates about priorities are simmering across Canada. Commuting times are being weighed against city-building and cost against benefit.

And raising the stakes of these big-budget decisions, an increasing number of experts are saying that in the near future transportation will look very different than it does today.

For example, Ontario Transportation Minister Steven Del Duca noted recently that self-driving cars – already being tested on public roads in the United States– could bring major changes. *(Continued on page 2-3)*

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Montreal is debating tearing down the Bonaventure Expressway and replace the highway highway with a boulevard interlaced with green spaces and parks. (Graham Hughes/The Canadian Press)

“It’s got to become, quickly, a fairly fundamental aspect of how we plan [transportation],” he said. “You’re going to see, potentially, the opportunity to figure out how to get from here to there and see a dramatic drop in the number of cars and vehicles generally on our roads.”

In Metro Vancouver, residents recently had the chance to weigh in on their transit and transportation future, voting on an expansion plan funded by raising the provincial sales tax 0.5 per cent across the region. But even as the area tries to plan for the next generation of movement, Vancouver is still mulling what to do with the vestigial remains of past transportation decisions.

There are two viaducts – relics of the freeway system that the city rejected in the 1970s – that could be torn down and replaced with a new street design, enhanced park space and affordable housing. There is growing public and political support for removing the viaducts, which would help make room for a new inner-city neighbourhood and turn Georgia Street, a main east-west artery in the city, into something of a grand boulevard.

Before year’s end, Vancouver council is expected to receive two reports from staff: one on what a new street system would look like after the two mini-bridges were torn down, and another on the neighbourhood design that would grow up around the new road model.

As in other cities, any opposition will likely centre on concerns over what it could mean for drivers. Although critics have so far been muted, that could change once the public gets a look at the planned road changes. Any sense that the new design might make the city’s already troublesome gridlock worse could incite enough hostility to kill the concept.

In Calgary – an expansive city of 825.3 square kilometres to Toronto’s roughly 630 – planners have to connect people across a big area. The chosen solution is to pour money into both rail transit and road infrastructure.

Currently, the big project is the southwest leg of the Calgary ring road, connecting Highway 2 in the south to the TransCanada Highway. Planning began in the 1970s and this portion is the last bit still to be done. However, the \$1.8-billion project has seen a four-year delay and might not be ready for another decade.

At the same time, the city is looking at expanding its light rail transit (LRT) system with two new lines, collectively dubbed the Green Line, that would be a significant addition to the current LRT system. The \$5-billion project is beloved by city council but remains under-funded. Council is looking into fast-tracking it if enough provincial money becomes available.

In the Montreal region, all three levels of government have been on a highway spending binge since the 2006 overpass collapse that killed five people. Among the billions recently spent to expand and extend freeways, add new bridges and replace crumbling ones, construction is under way on a \$5-billion St. Lawrence River span to replace the decrepit Champlain Bridge and a \$3.7-billion spaghetti interchange known as the Turcot which is a main entry point from the western and South Shore suburbs into the city.

The highway money dwarfs recent public transit investment. Besides the inauguration of an \$670-million underutilized commuter line last year, Montrealers last saw expansion in the Metro eight years ago, when three stops were added to the northern suburb of Laval at a cost of \$740-million. Another extension toward the east has been promised repeatedly over the past two decades but seems no closer to completion.

In another long-gestating project – one that reflects Toronto’s Gardiner debate – Montrealers have wondered for years what to do about the Bonaventure Expressway. This is a kilometre of elevated highway that symbolically cuts off

southwestern neighbourhoods from Old Montreal; there is a \$142-million plan to replace the highway with a boulevard interlaced with green spaces and parks. Critics say this will still leave inner-city neighbourhoods cut off by an immense load of traffic on the nine-lane road.

In Toronto, the issue of the Gardiner Expressway has similarly hung over council for years. The highway was built at a time when its route went through industrial or empty spaces. In the decades since, the local development potential has boomed as the city reconnected with its waterfront. And although much of the Gardiner will remain as an elevated expressway regardless of what council does, the fate of the 1.7-kilometre stretch between Jarvis and the Don Valley Parkway could be decided this week.

It is the biggest decision to come before this council and could shape the eastern downtown for decades.

Two main options on the table are keeping the eastern Gardiner as an elevated expressway but moving some of the ramps, at the long-term cost of \$921-million, or replacing it with a boulevard for \$461-million. The first option is faster for the minority of commuters who would be affected by a tear-down, while the latter opens up more city land for development.

Mayor John Tory came out strongly weeks ago in favour of keeping the Gardiner as an elevated highway and warned of “traffic chaos” if it is removed. In a speech this week, he painted a dire picture of the effects of a tear-down, and his official Twitter account later that evening warned darkly about “freight trucks in front of your house.”

Opponents point out that the city’s environmental assessment projected delays of a few minutes for people commuting downtown, and that only 3 per cent of those coming into the core do so on that highway. All future growth is expected to be carried by transit, which is now bulging at the seams.

With both sides entrenched and a roughly equal number of councillors having come out in support of either option, the debate is expected to run long. And it remains possible that neither option will secure a majority on council, leading to a move to defer and seek more information.

A group of prominent Torontonians – including two former mayors, business leaders and public officials – added their voices to the debate Tuesday. In an open letter, they argue that the undecided councillors “hold the future of the city” in their hands.

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# Pay When Paid Clauses: Approach With Caution

*Originally published by Thompson, Dorfman, Sweatman LLP, written by Meghan Ross*

## What is a “Pay When Paid” Clause?

A “pay when paid” clause is one of the more contentious contractual provisions that can be found in a construction contract. As its name suggests, a “pay when paid” clause provides that a subcontractor is not entitled to be paid for its work until the contractor receives payment from the owner of the project. This clause seeks to shift the risk of an owner’s non-payment from contractors to subcontractor. In the absence of such a clause, if an owner fails to pay the contractor for work completed by the subcontractor, the contractor must still pay the subcontractor for the work completed.

Contractors are obviously in favour of the enforcement of “pay when paid” clauses. Without it, a contractor may have to pay for work that was performed by a subcontractor for the benefit of an owner who fails to pay. On the other hand, subcontractors are just as enthusiastic about limiting the applicability of “pay when paid” clauses, as the work has been performed and they feel that they are entitled to payment from the contractor that they agreed to perform the work for.

## No Unified Approach

Courts across Canada have had the opportunity to consider “pay when paid” clauses in light of the above conflict in position, with largely inconsistent results. In Ontario and Alberta, the courts have upheld the parties’ right to contract by strictly interpreting construction contracts, and often enforce “pay when paid” clauses. On the other hand, the Nova Scotia Court of Appeal in *Arnoldin Construction & Forms Ltd. v. Alta Surety Co.* (1995), 137 N.S.R. (2d) 281 (“Arnoldin”) attempted to limit the effect of “pay when paid” clauses by ruling that subcontractors have a legal right to be paid within a reasonable time for their work, regardless of the fact that the contractor may not have been paid by the owner. Manitoba, Prince Edward Island, Saskatchewan and British Columbia have followed the lead of Nova Scotia in this regard.

Interestingly, in Ontario, a private members bill has been introduced (the Prompt Payment Act) which would impose mandatory payment terms on construction parties, both in terms of timing and consequences of non-payment. The Prompt Payment Act remains before the Standing Committee on Regulations and Private Acts and it remains to be seen as to whether it will become law. Yet, the Prompt Payment Act will be worth paying attention to, as it proposes significant changes to standard industry practices.

## Consideration of “Pay When Paid” in Manitoba

In Manitoba specifically, the Court of Queen’s Bench has recently commented on “pay when paid” clauses in *A&B Mechanical Ltd. v. Canotech Consultants Ltd. et al*, 2013 MBQB 287 (affirmed by the Manitoba Court of Appeal in *A&B Mechanical Ltd. v. Canotech Consultants Ltd. et al*, 2014 MBCA 80 on other grounds) (“A&B Mechanical”). In *A&B Mechanical*, A&B Mechanical Ltd. (“A&B”), was a subcontractor who had not been fully paid by the general contractor, Canotech Consultants Ltd. (“Canotech”), for work it had fully performed.

A&B sought summary judgment in the amount of its completed work on the project. Canotech acknowledged the non-payment to A&B for the work performed, for which it admitted funds were properly owing, but relied upon the subcontract and took the position that no further funds were payable by Canotech to A&B until Canotech was paid by the owner of the project, 5994731 Manitoba Ltd. (the “Owner”). The subcontract contained the following provision:

The Contractor agrees to pay the Sub-Contractor for the performance of the Sub-contract as follows:

Payments will be made monthly on progress estimates as approved by the Architect and/or Engineer and the Contractor’s Superintendent covering 92.5% of the value of the work completed by the Sub-Contractor to the end of the previous month, such payments to be made five days after the Contractor receives payment for such work from the Owner.

Payment of the balance of 7.5% owing under the Sub-Contract will be made within five days after final payment has been received by the Contractor.

In granting summary judgment, the court held that A&B had fulfilled the only condition precedent to its being paid

under subcontract, namely, the provision of statutory declarations for each progress billing submitted. The disputed “pay when paid” clause was not so clear as to justify interpretation that it was the parties’ intention that A&B was waiving its right to be paid.

The court further held that the disputed clause was more logically interpreted as a timing mechanism for payment of A&B, not a condition precedent to payment. In that regard, the timeline clause in the prime contract between Canotech and the Owner provided the relevant reference point. The prime contract provided that Canotech was entitled to receive payment from the Owner within 15 days after making application for payment, and no other conditions were attached. If Canotech’s position was accepted, the result would be that A&B might never be paid the amount owing if defendant was never paid by the Owner. The court found it difficult to believe that any subcontractor would agree to do work if payment was contingent on general contractor being paid by the Owner.

The court acknowledged that the Manitoba Court of Appeal has not yet considered “pay when paid” clauses (which is still the case today), but notably the Manitoba Court of Appeal in *Winfield Construction Ltd. v. B.A. Robinson Co.* (1996), 110 Man. R. (2d) 41 has stated that it appreciates the reasoning of the Nova Scotia Court of Appeal in *Arnoldin*.

### **Lessons to Take Away**

While there is no unified Canadian approach to the interpretation of “pay when paid” clauses, the takeaway for contractors and subcontractors in Manitoba is that courts will approach “pay when paid” clauses cautiously and may favour findings which hold this type of clause unenforceable unless the clause is so plain as to demonstrate the parties’ clear intention to affect payments related to the construction contract.

Contractors who wish to include a true “pay when paid” clause must include clear language and bring it to the attention of the subcontractor. Subcontractors must be aware of the risk of non-payment that they are taking on in such cases, and if confronted with a “pay when paid” clause that they are not willing to accept, should confirm same with the contractor in writing.

## **Welcome new MHCA Members!**

The Manitoba Heavy Construction Association is proud to welcome its new Members **Voltage Power Ltd.**, **XPressions**, **Canart Backhoe** and **Western Canada Equipment Sales Ltd.**

Voltage Power Ltd. is a contractor affiliate, based in Winnipeg, MB, that provides all services associated with Power Distribution facilities including: consultation, emergency response, engineering support, site preparation, clearing and access, complete construction services, maintenance, conductor and structure rehabilitation, modifications and upgrades, live work, installation, inspections, testing and commissioning, scheduling, material, quality and safety.

Xpressions is a supplier, also based in Winnipeg, MB, that offers custom-printed work wear, corporate apparel and promotional products. We carry all premium brand names such as Carhartt, Dickies and Tough Duck.

Canart Backhoe is a contractor, based in Elkhorn, MB, that offers sewer, water, oilfield, construction and remediation services.

And Western Canada Equipment Sales Ltd. is a supplier, based in Oak Bluff, MB, that offers short and long-term rentals of construction equipment (Rock Trucks, Excavators, Dozers, Packers).



**Western Canada  
Equipment Sales Ltd.**



# 2015 MHCA ANNUAL GOLF CLASSIC

Wednesday, August 12, 2015 |  
Elmhurst & Pine Ridge Golf Courses

**REGISTRATION FEE: \$250 / person <sup>+GST</sup>**

**10:30 a.m.** - Registration Desk opens

**Noon** - Shot Gun start

**FOUR PERSON TEXAS SCRAMBLE INCLUDES:**

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An Assortment of Contests

Delicious Steak Dinner

Bus Shuttle between courses before/after dinner

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Classic is officially  
**SOLD OUT!** Any  
further registration  
will be put on the  
waiting list.

Please provide your  
team members'  
names as soon as  
possible.



## UPCOMING EVENTS

**Wednesday, June 3, 2015**

**Spring Mixer**

Assiniboia Downs  
Winnipeg, MB

**Wednesday, August 12, 2015**

**Annual Golf Classic**

Pine Ridge & Elmhurst Golf Courses  
Winnipeg, MB

**Friday, November 20, 2015 (new date!)**

**Awards Breakfast & AGM**

RBC Convention Centre  
Winnipeg, MB

**Saturday, November 21, 2015 (new date!)**

**Chairman's Gala**

RBC Convention Centre  
Winnipeg, MB

**February 7 - 10, 2016**

**WCR&HRC Annual Convention**

The Fairmont Kea Lani, Maui Resort  
Wailea, Maui





# 2015 MHCA ANNUAL GOLF CLASSIC SPONSORSHIP OPPORTUNITIES

Wednesday, August 12, 2015 | Elmhurst & Pine Ridge Golf Courses



Let us advertise your company, products and/or services at one of the largest and most popular golf tournaments for the heavy construction industry in Manitoba! **Don't miss out!**

## FIRST COME... FIRST SERVED

### HOLE SPONSORSHIP

\$425 <sup>+GST</sup>

### DUAL HOLE SPONSORSHIP

\$699 <sup>+GST</sup>

### LONGEST DRIVE - **SOLD OUT!**

\$425 <sup>+GST</sup> (includes prize & sign)

### CLOSEST TO THE LINE

\$425 <sup>+GST</sup> (includes prize & sign)

### BALL IN THE WATER

\$425 <sup>+GST</sup> (includes prize & sign)

- Sink your ball in the water and enter a draw to win!

### CLOSEST TO THE PIN

\$425 <sup>+GST</sup> (includes prize & sign)

### CHIPPING CONTEST - **SOLD OUT!**

\$425 <sup>+GST</sup> (includes prize & sign)

### FREE PUTTING CONTEST - **SOLD OUT!**

\$425 <sup>+GST</sup> / per course (includes prize & sign)

### BUS TRANSPORTATION

\$350 <sup>+GST</sup> / two buses

- Donation towards bus shuttle between courses

### "TOURNAMENT BALL" CONTEST - **SOLD OUT!**

\$950 <sup>+GST</sup> plus prize donation in excess of \$250 per course

- Will hold one team entry per sponsorship until June 19.  
*Team registration fees extra.*
- Each team will use your corporate golf ball.

### BEVERAGE CART / DRINK SPONSORSHIP - **SOLD OUT!**

\$1,200 <sup>+GST</sup> / per course

- Will hold one team entry per sponsorship until June 19.  
*Team registration fees extra.*
- Windshield signage on each golf cart.

### GOLF CART SPONSORSHIP - **SOLD OUT!**

\$1,200 <sup>+GST</sup> / per course

- Will hold one team entry per sponsorship until June 19.  
*Team registration fees extra.*
- Windshield signage on each golf cart.

### DINNER SPONSORSHIP - **SOLD OUT!**

\$3,000 <sup>+GST</sup>

- Will hold one team entry per sponsorship until June 19.  
*Team registration fees extra.*
- Signage present during dinner at the host course

### TEAM ENTRIES:

- Team registration forms and fees still need to be completed and sent to the MHCA prior to June 19, 2015
- If you forfeit your team entry, please notify the MHCA

### SPONSOR RECOGNITION INCLUDES:

- Networking at one of the largest golf tournaments in Manitoba
- Exposure to over 380 private sector decision makers in the heavy construction industry
- Recognition throughout the facility, on the golf carts, and in the dinner programs
- Recognition in the MHCA's Heavy News Weekly, which is circulated to over 1,000 companies plus stakeholders, associations, MP's, MLA's, City Councillors, and agencies, at all three levels of government, across Manitoba

### NOTE:

- Sponsors wishing to have representatives on the hole are subject to approval by the Events Committee and must notify the organizer of representation prior to **July 23, 2015**.
- Sponsor reps are responsible for payment of their own meal(s) - **\$50/person.**

Company: \_\_\_\_\_ Sponsorship Package: \_\_\_\_\_  
(one or both courses)

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Will be submitting a team (for applicable contests only): \_\_\_\_\_

Special Instructions: \_\_\_\_\_

Please send completed form to Christine Miller at [christine@mhca.mb.ca](mailto:christine@mhca.mb.ca) or by fax at 204-943-2279



# WORKSAFELY MHCA SAFETY TIPS

## Heat Stress

Heat stress can be prevented by:

- Take breaks in cooler, shaded areas and rest regularly.
- Drink water every 15 minutes, even if you are not thirsty.
- Avoid coffee, tea, or soda as these deplete the body of fluid.
- Wear a hat and light-colored, loose-fitting, breathable clothing such as cotton.
- Use gloves with leather palms and cotton or denim backs, which allow for an increased airflow and still protect hands. Choose gloves with a liner to absorb sweat and prevent perspiration buildup. Some gloves feature strips of nylon mesh or are perforated at the back of the hand for more airflow.
- Learn the signs of heat illness and what to do in an emergency.
- Keep an eye on fellow workers.

**WATER, REST, SHADE.** Taking these precautions can mean the difference between life and death.

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**TO REGISTER,  
PLEASE CONTACT:**  
Sarah Higgins  
sarah@mhca.mb.ca

# Training Schedule

## June

Committee/Representative Training (1/2 day AM)  
Excavating & Trenching (1/2 day PM)

June 1 MHCA Office  
June 1 MHCA Office

COR™ Leadership in Safety Excellence  
COR™ Principles of Health & Safety Management  
COR™ Auditor

June 8 - 9 MHCA Office  
June 10 MHCA Office  
June 11 - 12 MHCA Office

## July

Train the Trainer  
WHMIS (1/2 day AM)  
TDG (1/2 day PM)  
Committee/Representative Training (1/2 day AM)  
Flagperson (1/2 day PM)

July 6 - 7 MHCA Office  
July 8 MHCA Office  
July 8 MHCA Office  
July 9 MHCA Office  
July 9 MHCA Office

COR™ Leadership in Safety Excellence  
COR™ Principles of Health & Safety Management  
COR™ Auditor

July 13 - 14 MHCA Office  
July 15 MHCA Office  
July 16 - 17 MHCA Office

Traffic Control Coordinator

July 22 - 23 MHCA Office





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## Pent-up Demand... Where?

By Peter G. Hall, Vice President and Chief Economist



Doomsayers have had no lack of pet issues over the past few years. Their favourite zone of the world has been Europe. The ill-fated Zone has provided a continually replenished smorgasbord of structural chasms, failed fixes and debilitating events, enough

to feed pessimists' apocalyptic fancies and convince their readers that the end must indeed be nigh. Against such an onslaught, it's a miracle that the Eurozone has made it this far. But does its recent path suggest that all the future holds is a continuing Sisyphean struggle, or will the Zone break free?

Let's review some of its key challenges. Nobel laureates claimed that the single-currency area would not survive its first recession. It's a credit to leaders that after the Great Recession, the structure is still intact...for now, at least. On the other hand, there were the key officials who boldly pronounced in 2008 that Europe had decoupled from the US malaise, only to fall headlong into it. The malaise revealed key vulnerabilities in the European financial system. Then the stimulus required to prevent a meltdown produced a fiscal crisis that ushered in crippling austerity long before there was sufficient growth to support it. To make matters worse, there were the repeated panic points of financial impasse between borrower and lender states that are still very much with us. Add to this an economic area with sorry demographic fundamentals and chronic under-investment, and it looks even today like a pretty hopeless case.

In this context, mere survival could be seen as a noble goal. But can Western Europe actually look forward to better times? In spite of recent slow growth, austerity is actually doing its work. By some measures, Greece actually posted a balanced budget during 2014. It's not structurally balanced yet – the number remains volatile – but progress to date is years ahead of expectations. Scan the remaining fiscal sinners, and their progress is also obvious. The banking system has also gone through a re-vamp, and is well on its way to greater stability. Again, that's quite an achievement in a low-growth context.

If there are already key successes, it stands that higher growth will accelerate the structural improvement. But is higher growth in the forecast? Note that many pundits are actually revising up their European outlooks. Current data does seem more upbeat. But do the doomsayers have it right? Is this just setting us up for another round of the serial let-downs Europe has had to endure?

One key ingredient suggests not. Years of low activity have actually created a groundswell of potential demand in Europe, much as it has in America. Housing markets have been buried in the depths since the onset of crisis, and have traced out a path almost identical to America's – except it has yet to recover. Building permits are far below household requirements, and have been stuck there for seven long years. That's plenty of time to work off the pre-crisis surplus, and create a pretty substantial deficit. Maybe that explains soaring property prices in key markets. Although a small sector of the economy, this is a prescient one: It's very closely attached to region-wide consumer spending, which as a share of GDP is still close to cyclical lows.

Linked to this is business investment activity. It has also been much lower than normal, and has yet to post anything close to a recovery. But years of under-investment are actually beginning to reveal impending capacity issues. Capacity utilization rates are on the rise, and increasing orders – boosted by the revival in the US economy – will put additional pressure on the system. When it does, look for long-sleepy investors to wake up and part with their cash-stash.

If it all seems too good to be true, take solace in the fact that at the near end of a growth cycle, it always does. Cynics can be forgiven – this has been an unusually protracted downturn. But pessimists butt up against general European sentiment. Confidence indicators suggest that in general, Europe's businesses and consumers anticipate better times.

The bottom line? Long tossed on to the top of the developed-economy ash-heap, it seems that the Eurozone is poised to rise from the ashes. Given its economic heft, this is good news for the global economy.

## **The Manitoba Water Services Board**

Sealed tenders, marked as follows will be received by the undersigned at The Manitoba Water Services Board, Imperial Square, 2010 Currie Blvd., Box 22080, Brandon, Manitoba, R7A 6Y9, no later than 11:00 a.m., prevailing Brandon time on:

**Friday June 26, 2015**

for the following works:

The supply and installation of approximately 61,100 metres of pressure pipeline, 196 service connections, and related appurtenances all located in the Rural Municipality of Kelsey and The Pas Indian Reserve No. 21B. **MARKED**

**M.W.S.B. No. 1207  
R.M. of Kelsey Ralls Island Water Pipeline 2015**

Tenders will be publicly opened and read at the location, time and date specified above.

Each tender must be accompanied by a fully executed BID BOND on the form provided and in favor of the Minister of Finance for the amount shown on the Tender. Under NO CIRCUMSTANCES will a certified cheque be accepted in lieu of a Bid Bond.

Tender documents may be obtained by provincially registered companies on or after **June 8, 2015** at 2010 Currie Blvd., Brandon, MB. Contact us at (204) 726-6076 to request the documents in PDF digital or hard copy format.

The lowest or any tender may not necessarily be accepted.



## **The Manitoba Water Services Board**

Sealed tenders, marked as follows will be received by the undersigned at The Manitoba Water Services Board, Imperial Square, 2010 Currie Blvd., Box 22080, Brandon, Manitoba, R7A 6Y9, no later than 11:00 a.m., prevailing Brandon time on:

**June 26<sup>th</sup>, 2015**

for the following works:

**The construction of approximately 900 metres of new 300mm water supply main and associated works for road and rail crossings, hydrants, valves and end connections located in the City of Portage la Prairie along 14th St. N.E. and 6th Ave. N.E.**

**MARKED**

**M.W.S.B. No. 1217  
INDUSTRIAL PARK WATER SUPPLY MAIN - PHASE 1**

Tenders will be publicly opened and read at the location, time and date specified above.

Each tender must be accompanied by a fully executed BID BOND on the form provided and in favor of the Minister of Finance for the amount shown on the Tender. Under NO CIRCUMSTANCES will a certified cheque be accepted in lieu of a Bid Bond.

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