

PART D

SUPPLEMENTAL CONDITIONS

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GENERAL

D1. GENERAL CONDITIONS

- D1.1 In addition to the General Conditions for Construction Contracts, these Supplemental Conditions are applicable to the Work of the Contract.
- D1.2 The General Conditions are amended by striking out "The City of Winnipeg Act" wherever it appears in the General Conditions and substituting "The City of Winnipeg Charter".
- D1.3 The General Conditions are amended by striking out "Tender Package" wherever it appears in the General Conditions and substituting "Bid Opportunity".
- D1.4 The General Conditions are amended by striking out "Tender Submission" wherever it appears in the General Conditions and substituting "Bid Submission".
- D1.5 The General Conditions are amended by deleting GC:6.16 and G.C:6.17.
The City of Winnipeg is now within the jurisdiction of the Manitoba Ombudsman pursuant to The Ombudsman Act.

D2. DEFINITIONS

- D2.1 When used in this Bid Opportunity:
- (a) Construction Documents means the specifications, drawings and other documents that are prepared based on the Bid Opportunity Documents by the Design-Build Consultant on behalf of the Contractor and are accepted by the City.
 - (b) Design-Build Consultant is the person or entity identified in the Design-Build Proposal and means the Architect, the Engineer, or entity licensed to practice in the Province of Manitoba and engaged by the Contractor to provide the Design Services.
 - (c) Design Services means the professional services for the design and construction administration performed by the Design-Build Consultant or other consultants under the Contract.

D3. SCOPE OF WORK

- D3.1 The Work to be done under the Contract shall consist of the Design, Supply, and Construction of a Sand and Salt Storage Facility at 1539 Waverley Street.
- D3.2 The major components of the Work are as follows:
- (a) Preparation of Construction Documents including drawings and specifications for the architectural, structural, mechanical and electrical works, sealed by an Architect and Professional Engineers licensed to practice in the Province of Manitoba.
 - (b) Obtaining the necessary permits and licences required for construction of the project including the necessary building and occupancy permits.
 - (c) Construction of the following:
 - (i) Foundation
 - (ii) Barrier Wall
 - (iii) Fabric Building
 - (iv) Mechanical and Electrical components
 - (v) Exterior Storage Tanks

(d) Preparation of Record Drawings and Operation and Maintenance Manuals.

D4. CONTRACT ADMINISTRATOR

D4.1 The Contract Administrator is:
Andrew Nagy, P. Eng.
Senior Project Engineer
1479 Buffalo Place, Winnipeg, Manitoba, R3T 1L7
Telephone No. (204) 284-0580
Facsimile No. (204) 475-3646

D4.2 At the pre-construction meeting, the Contract Administrator will identify additional personnel representing the Contract Administrator and their respective roles and responsibilities for the Work.

D5. CONTRACTOR'S SUPERVISOR

D5.1 At the pre-construction meeting, the Contractor shall identify his designated supervisor and any additional personnel representing the Contractor and their respective roles and responsibilities for the Work.

D5.2 At least two (2) business days prior to the commencement of any Work on the site, the Contractor shall provide the Contract Administrator with a phone number where the supervisor identified in D5.1 or an alternate can be contacted 24 hours a day to respond to an emergency.

D6. NOTICES

D6.1 Except as provided for in GC:23.2.2, all notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications to the Contractor shall be sent to the address or facsimile number identified by the Contractor in Paragraph 2 of Form A: Bid.

D6.2 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications to the City, except as expressly otherwise required in D6.3, D6.4 or elsewhere in the Contract, shall be sent to the attention of the Contract Administrator at the address or facsimile number identified in D4.1.

D6.3 All notices of appeal to the Chief Administrative Officer shall be sent to the attention of the Chief Financial Officer at the following address or facsimile number:

The City of Winnipeg
Chief Administrative Officer Secretariat
Administration Building, 3rd Floor
510 Main Street
Winnipeg MB R3B 1B9
Facsimile No.: (204) 949-1174

D6.4 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications required to be submitted or returned to the City Solicitor shall be sent to the following address or facsimile number:

The City of Winnipeg
Corporate Services Department
Legal Services Division
185 King Street, 3rd Floor
Winnipeg MB R3B 1J1
Facsimile No.: (204) 947-9155

D7. FURNISHING OF DOCUMENTS

- D7.1 Upon award of the Contract, the Contractor will be provided with five (5) complete sets of the Bid Opportunity. If the Contractor requires additional sets of the Bid Opportunity, they will be supplied to him at cost.

SUBMISSIONS

D8. SAFE WORK PLAN

- D8.1 The Contractor shall provide the Contract Administrator with a Safe Work Plan at least five (5) Business Days prior to the commencement of any Work on the Site but in no event later than the date specified in GC:4.1 for the return of the executed Contract.
- D8.2 The Safe Work Plan shall be prepared and submitted in the format shown in the City's template which is available on the Information Connection page at The City of Winnipeg, Corporate Finance, Materials Management Division internet site at <http://www.winnipeg.ca/matmgt>.

D9. INSURANCE

- D9.1 The Contractor shall provide and maintain the following insurance coverage:
- (a) commercial general liability insurance, in the amount of at least two million dollars (\$2,000,000.00) all inclusive, with The City of Winnipeg being named as an additional insured, with a cross-liability clause, such liability policy to also contain a contractual liability, an unlicensed motor vehicle liability and a completed operations endorsement to remain in place at all times during the performance of the Work and throughout the warranty period;
 - (b) automobile liability insurance for owned and non-owned automobiles used for or in connection with the Work in the amount of at least two million dollars (\$2,000,000.00) at all times during the performance of the Work and until the date of Total Performance;
 - (c) all risks course of construction insurance in the amount of one hundred percent (100%) of the Total Contract Price, written in the name of the Contractor and the City of Winnipeg, at all times during the performance of the Work and until the date of Total Performance.
- D9.2 Deductibles shall be borne by the Contractor.
- D9.3 The Contractor shall provide the City Solicitor with a certified true copy or a certificate of insurance of each policy, in a form satisfactory to the City Solicitor, at least two (2) Business Days prior to the commencement of any Work on the Site but in no event later than the date specified in the GC:4.1 for the return of the executed Contract.
- D9.4 The Contractor shall not cancel, materially alter, or cause each policy to lapse without providing at least fifteen (15) Calendar Days prior written notice to the Contract Administrator.

D10. PERFORMANCE SECURITY

- D10.1 The Contractor shall provide and maintain performance security until the expiration of the warranty period in the form of:
- (a) a performance bond of a company registered to conduct the business of a surety in Manitoba, in the form attached to these Supplemental Conditions (Form H1: Performance Bond), in the amount of fifty percent (50%) of the Contract Price; or
 - (b) an irrevocable standby letter of credit issued by a bank or other financial institution registered to conduct business in Manitoba and drawn on a branch located in Manitoba, in the form attached to these Supplemental Conditions (Form H2: Irrevocable Standby Letter of Credit), in the amount of fifty percent (50%) of the Contract Price; or
 - (c) a certified cheque or draft payable to "The City of Winnipeg", drawn on a bank or other financial institution registered to conduct business in Manitoba, in the amount of fifty percent (50%) of the Contract Price.
- D10.2 If the bid security provided in his Bid Submission was not a certified cheque or draft pursuant to B11.1(c), the Contractor shall provide the City Solicitor with the required performance security within seven (7) Calendar Days of notification of the award of the Contract by way of letter of intent and prior to the commencement of any Work on the Site and in no event later than the date specified in the GC:4.1 for the return of the executed Contract.

D11. SUBCONTRACTOR LIST

- D11.1 The Contractor shall provide the Contract Administrator with a complete list of the Subcontractors whom the Contractor proposes to engage (Form J: Subcontractor List) at or prior to a pre-construction meeting, or at least two (2) Business Days prior to the commencement of any Work on the Site but in no event later than the date specified in the GC:4.1 for the return of the executed Contract.

D12. DETAILED WORK SCHEDULE

- D12.1 The Contractor shall provide the Contract Administrator with a detailed work schedule (Form L: Detailed Work Schedule) at least two (2) Business Days prior to the commencement of any Work on the Site but in no event later than the date specified in the General Conditions for the return of the executed Contract.

SCHEDULE OF WORK

D13. COMMENCEMENT

- D13.1 The Contractor shall not commence any Work until he is in receipt of a letter of intent from the Award Authority authorizing the commencement of the Work.
- D13.2 The Contractor shall not commence any Work on the Site until:
- (a) the Contract Administrator has confirmed receipt and approval of:
 - (i) evidence that the Contractor is in good standing under The Corporations Act (Manitoba), or properly registered under The Business Names Registration Act (Manitoba), or otherwise properly registered, licensed or permitted by law to carry on business in Manitoba;
 - (ii) evidence of the workers compensation coverage specified in GC:6.14;
 - (iii) the Safe Work Plan specified in D8;
 - (iv) the performance security specified in D10;

- (v) evidence of the insurance specified in D9;
 - (vi) the subcontractor list specified in D11;
 - (vii) the detailed work schedule specified in D12;
 - (viii) the twenty-four (24) hour emergency response phone number specified in D5.2 and
 - (ix) the Workplace Safety and Health Program specified in B10.1 (g).
- (b) the Contractor has attended a pre-construction meeting with the Contract Administrator, or the Contract Administrator has waived the requirement for a pre-construction meeting.

D13.3 The Contractor shall commence the Work within seven (7) Working Days of receipt of the Letter of Intent.

D14. WORK BY OTHERS

D14.1 Further to Clauses GC:6.25 and GC:8, other contractors include utilities, railways and other agencies.

D14.2 Work by others on or near the Site will include but not necessarily be limited to:

- (a) Public Works – Final clean-up and landscaping for Local Improvement Project on Chevrier Boulevard.
- (b) Public Works – Final clean-up and landscaping for the Sand and Salt Storage Facility at 1539 Waverley Street, Yard Works Contract as detailed in the reference Construction Drawings.

D14.3 The Contract Administrator will attempt to arrange and co-ordinate work to be performed by others so that such work does not interfere with the Work and Schedule of the Contractor. Where work by others interferes, as determined by the Contract Administrator, with the Contractor's planned work, the Contractor shall modify his plans and do other work. Unless the Contract Administrator determines that there was no opportunity for the Contractor to do a similar amount of work no consideration will be made to extending the Contract time.

D15. SUBSTANTIAL PERFORMANCE

D15.1 The Contractor shall achieve Substantial Performance by September 24, 2005.

D15.2 When the Contractor considers the Work to be substantially performed, the Contractor shall arrange, attend and assist in the inspection of the Work with the Contract Administrator for purposes of verifying Substantial Performance. Any defects or deficiencies in the Work noted during that inspection shall be remedied by the Contractor at the earliest possible instance and the Contract Administrator notified so that the Work can be re-inspected.

D15.3 The date on which the Work has been certified by the Contract Administrator as being substantially performed to the requirements of the Contract through the issue of a certificate of Substantial Performance is the date on which Substantial Performance has been achieved.

D16. TOTAL PERFORMANCE

D16.1 The Contractor shall achieve Total Performance by October 8, 2005.

D16.2 When the Contractor or the Contract Administrator considers the Work to be totally performed, the Contractor shall arrange, attend and assist in the inspection of the Work with the Contract Administrator for purposes of verifying Total performance. Any defects or deficiencies in the Work noted during that inspection shall be remedied by the Contractor at the earliest possible instance and the Contract Administrator notified so that the Work can be reinspected.

D16.3 The date on which the Work has been certified by the Contract Administrator as being totally performed to the requirements of the Contract through the issue of a certificate of Total Performance is the date on which Total Performance has been achieved.

D17. LIQUIDATED DAMAGES

D17.1 If the Contractor fails to achieve Substantial Performance in accordance with the Contract by the day fixed herein for Substantial Performance, the Contractor shall pay the City eight hundred dollars (\$800) per Calendar Day for each and every Calendar Day following the day fixed herein for Substantial Performance during which such failure continues.

D17.2 The amount specified for liquidated damages in D17.1 is based on a genuine pre-estimate of the City's losses in the event that the Contractor does not achieve Substantial Performance by the day fixed herein for same.

D17.3 The City may reduce any payment to the Contractor by the amount of any liquidated damages assessed.

CONTROL OF WORK

D18. LAYOUT

D18.1 The Contractor shall locate and lay out all work, establishing all lines, levels, centres, etc., and shall assume the responsibility for any errors resulting from failures to exercise adequate caution.

D18.2 A location plan showing the approximate location of the proposed Sand and Salt Storage Facility at the 1539 Waverley is attached as part of the Reference Drawings, Drawing No. 1 – Pavement Plan, File 9-2005_Drawing_06-R1.pdf.

D19. TEMPORARY UTILITIES

D19.1 Electricity – The Contractor shall provide and pay for temporary electrical connections required for construction purposes. Temporary power will be supplied by the Contract Administrator from adjacent facilities at no charge.

D20. PERMITS

D20.1 The Contractor shall obtain and pay for all required permits to allow the Work specified herein.

D20.2 Permits shall be obtained prior to construction and a copy of each permit shall be forwarded to the Contract Administrator.

D21. JOB MEETINGS

D21.1 Job meetings/conference calls will be held as required. These meetings shall be attended by a minimum of one representative of the Contract Administrator, one representative of the City and one representative of the Contractor. Each representative shall be a responsible person capable of expressing the position of the Contract Administrator, the City and the Contractor respectively on any matter discussed at the meeting including the work Schedule and the need to make any revisions to the Work Schedule. The progress of the Work will be reviewed at each of these meetings.

D21.2 The Contract Administrator reserves the right to cancel any job meeting or call additional job meetings whenever he deems it necessary.

D22. PRIME CONTRACTOR – THE WORKPLACE SAFETY AND HEALTH ACT (MANITOBA)

D22.1 Further to GC:6.26, the Contractor shall be the Prime Contractor and shall serve as, and have the duties of the Prime Contractor in accordance with The Workplace Safety and Health Act (Manitoba).

MEASUREMENT AND PAYMENT

D23. PAYMENT SCHEDULE

D23.1 Further to GC:12.1, payment shall be in accordance with the following payment schedule:

- (a) Completion of the Detailed Design and Construction Documents and acceptance by the Contract Administrator and obtaining the necessary permits and licences required for the construction of the project up to 10%.
- (b) Completion of the concrete foundation and barrier/retaining wall up to 15%.
- (c) Completion of the sand and salt storage structure up to 50%.
- (d) Total Performance up to 25%.

WARRANTY

D24. WARRANTY

D24.1 Notwithstanding GC:13.2, the warranty period shall begin on the date of Total Performance and shall expire three (3) years thereafter unless extended pursuant to GC:13.2.1 or GC:13.2.2, in which case it shall expire when provided for thereunder.

D24.1 Notwithstanding GC:13.2, the Contract Administrator may permit the warranty period for a portion or portions of the Work to begin prior to the date of Total Performance if:

- (a) a portion of the Work cannot be completed because of unseasonable weather or other conditions reasonably beyond the control of the Contractor but that portion does not prevent the balance of the Work from being put to its intended use.
- (b) Substantial performance has been achieved.

D24.1.1 In such case the date specified by the Contract Administrator for the warranty period to begin shall be substituted for the date specified in GC:13.2 for the warranty period to begin.

FORM H1: PERFORMANCE BOND
(See D10)

KNOW ALL MEN BY THESE PRESENTS THAT

_____ ,
(hereinafter called the "Principal"), and

_____ ,
(hereinafter called the "Surety"), are held and firmly bound unto **THE CITY OF WINNIPEG** (hereinafter called the "Obligee"), in the sum of

_____ dollars (\$_____.)

of lawful money of Canada to be paid to the Obligee, or its successors or assigns, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has entered into a written contract with the Obligee dated the

_____ day of _____, 20____, for:

BID OPPORTUNITY NO. 9-2005

Design, Supply and Construction of a Sand and Salt Storage Facility at 1539 Waverley Street

which is by reference made part hereof and is hereinafter referred to as the "Contract".

NOW THEREFORE the condition of the above obligation is such that if the Principal shall:

- (a) carry out and perform the Contract and every part thereof in the manner and within the times set forth in the Contract and in accordance with the terms and conditions specified in the Contract;
- (b) perform the Work in a good, proper, workmanlike manner;
- (c) make all the payments whether to the Obligee or to others as therein provided;
- (d) in every other respect comply with the conditions and perform the covenants contained in the Contract; and
- (e) indemnify and save harmless the Obligee against and from all loss, costs, damages, claims, and demands of every description as set forth in the Contract, and from all penalties, assessments, claims, actions for loss, damages or compensation whether arising under "The Workers Compensation Act", or any other Act or otherwise arising out of or in any way connected with the performance or non-performance of the Contract or any part thereof during the term of the Contract and the warranty period provided for therein;

THEN THIS OBLIGATION SHALL BE VOID, but otherwise shall remain in full force and effect. The Surety shall not, however, be liable for a greater sum than the sum specified above.

AND IT IS HEREBY DECLARED AND AGREED that the Surety shall be liable as Principal, and that nothing of any kind or matter whatsoever that will not discharge the Principal shall operate as a discharge or release of liability of the Surety, any law or usage relating to the liability of Sureties to the contrary notwithstanding.

IN WITNESS WHEREOF the Principal and Surety have signed and sealed this bond the

_____ day of _____, 20____ .

SIGNED AND SEALED
in the presence of:

(Witness)

(Name of Principal)

Per: _____ (Seal)

Per: _____

(Name of Surety)

By: _____ (Seal)
(Attorney-in-Fact)

All demands for payment shall specifically state that they are drawn under this Standby Letter of Credit.

Subject to the condition hereinafter set forth, this Standby Letter of Credit will expire on

(Date)

It is a condition of this Standby Letter of Credit that it shall be deemed to be automatically extended from year to year without amendment from the present or any future expiry date, unless at least 30 days prior to the present or any future expiry date, we notify you in writing that we elect not to consider this Standby Letter of Credit to be renewable for any additional period.

This Standby Letter of Credit may not be revoked or amended without your prior written approval.

This credit is subject to the Uniform Customs and Practice for Documentary Credit (1993 Revision), International Chamber of Commerce Publication Number 500.

(Name of bank or financial institution)

Per: _____
(Authorized Signing Officer)

Per: _____
(Authorized Signing Officer)

