

PART D

SUPPLEMENTAL CONDITIONS

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GENERAL

D1. GENERAL CONDITIONS

- D1.1 In addition to the *General Conditions for Provision of Services*, 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 “Board of Commissioners” or “Commissioner” wherever it appears in the General Conditions and substituting the “Chief Administrative Officer”.
- D1.4 The General Conditions are amended by striking out “Tender Package” wherever it appears in the General Conditions and substituting “Request for Proposal”.
- D1.5 The General Conditions are amended by striking out “Tender Submission” wherever it appears in the General Conditions and substituting “Proposal Submission”.
- D1.6 The General Conditions are amended by striking out “Bidding Instructions” wherever it appears in the General Conditions and substituting “Bidding Procedures”.
- D1.7 In addition to the *General Conditions*, these Supplemental Conditions are applicable to the Work of the Contract.

D2. SCOPE OF WORK

- D2.1 The Work to be done under the Contract shall consist of the design, interior development and operation of a food service facility within the Plaza on the Esplanade Riel – Pedestrian Walking Bridge.
- D2.2 The major components of the Work are as follows:
- (a) Design and Installation of a Food Service Facility; and
 - (b) Operation of the Food Service Facility.

D3. DURATION OF CONTRACT

- D3.1 The Contract shall be for the period of ten (10) years, commencing from Date of Award.
- D3.2 By mutual agreement of the Contractor and the City, this Contract may be renewed for up to two (2) additional five (5) year periods from the expiration of the original contract term.
- D3.3 Notwithstanding the foregoing, and further to C18. CITY’S RIGHTS AND REMEDIES, the City may terminate the Contract without cause upon one year’s written notice after the first five (5) years of this Contract. The Contractor would be entitled to the re-imbursement of only the unamortized value of the interior improvements. The value of the interior improvements shall be attached to the final Contract.

D4. DEFINITIONS

- D4.1 When used in this Request for Proposal:

- (a) "**Business Day**" means any Calendar Day, other than a Saturday, Sunday, or a Statutory or Civic Holiday;
- (b) "**Food Service Facility**" means the Plaza on the Esplanade Riel Bridge;
- (c) "**Pedestrian Bridge**" means the Esplanade Riel Bridge;
- (d) "**Submission Deadline**" and "**Time and Date Set for the Final Receipt of Bids**" mean the time and date set out in the Bidding Procedures for final receipt of Proposals.

D5. CONTRACT ADMINISTRATOR

D5.1 The Contract Administrator is represented by:

Catherine Green
Main Floor, 185 King Street
Winnipeg MB R3B 1J1

Telephone No. (204) 986-4097

Facsimile No. (204) 949-1178

cgreen@winnipeg.ca

D5.2 At the pre-commencement meeting, the Contract Administrator will identify additional personnel representing the Contract Administrator and their respective roles and responsibilities for the Work.

D6. CONTRACTOR'S SUPERVISOR

D6.1 At the pre-commencement meeting, the Contractor shall identify his designated supervisor and any additional personnel representing the Contractor and their respective roles and responsibilities for the Work.

D7. NOTICES

D7.1 GC.7.06 is hereby amended to delete reference to "registered mail" and to replace same with "ordinary mail".

D7.2 GC.7.06 is further amended hereby to include delivery by facsimile transmission (fax) as an acceptable means of delivering notices, consents, approvals, statements, authorizations, documents or other communications required or permitted to be given under this Contract. Deliveries by fax will be deemed to have been received on the day of delivery, if a business day, or if not a business day, on the business day next following the day of delivery.

D7.3 Further to GC.7.06, all notices, consents, approvals, statements, authorizations, documents or other communications to the City, except as expressly otherwise required in D7.4, D7.5 or elsewhere in the Contract, shall be sent to the attention of the Contract Administrator at the address or facsimile number identified in D5.1.

D7.4 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

- D7.5 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

D8. CONFIDENTIALITY AND OWNERSHIP OF INFORMATION

- D8.1 Information provided to the Contractor by the City or acquired by the Contractor during the course of the Work is confidential. Such information shall not be used or disclosed in any way without the prior written authorization of the Contract Administrator.
- D8.2 The Contract, all deliverables produced or developed, and information provided to or acquired by the Contractor are the property of the City. The Contractor shall not disclose or appropriate to its own use, or to the use of any third party, all or any part thereof without the prior written consent of the Contract Administrator.
- D8.3 The Contractor shall not make any statement of fact or opinion regarding any aspect of the Contract to the media or any member of the public without the prior written authorization of the Contract Administrator.

D9. RIGHT OF ENTRY

- D9.1 The City and its agents shall have the right to enter the Plaza at all times to examine the Food Service Facility, to enforce or carry out any provisions of this Contract, and to make such alterations to the Plaza or any part thereof or to any adjacent property and the City considers necessary or desirable, including, without limitation, the right to use, install, construct, maintain, replace or repair any utility lines, pipes, roof drainage pipes, cables, conduits, wiring, ducts or other installations, equipment, facilities, services and systems of any kind in or through the ceiling space, column space or any other parts of the Plaza for, or in connection with the supply of any services to the Plaza or to any other part of the Plaza and, for such purpose, the City may, without limitation, take all materials into and upon the Plaza which is required therefore, have access to the underfloor, ducts, access panels and mechanical shafts, have the right to check, calibrate, adjust and balance controls and other parts of the HVAC system and other parts of the heating and ventilation and air conditioning systems and climate control systems, and attach scaffolds or other temporary fixtures to, in or upon the Plaza without any of this constituting a re-entry or a breach of any covenant for quiet enjoyment contained in this Contract or implied by law.
- D9.2 The City and its agents have the right to enter the Plaza at all times to show the Plaza to prospective purchasers, lessees, insurers or mortgagees, and during the twelve (12) months prior to the expiration of the term, the City may place at the Plaza the usual "For Rent" or "For Sale" notices, which the Contractor shall permit to remain thereon without molestation or complaint.
- D9.3 If the Contractor is not personally present to open and permit an entry into the Plaza at any time when for any reason an entry therein is necessary or permissible, the City or its agents may, without service of notice or resort to legal process, forcibly enter the Plaza without rendering the City or such agents liable therefore, and without in any manner affecting the obligations and covenants of this Contract.

D10. DAMAGE OR DESTRUCTION

- D10.1 If the Plaza is damaged or destroyed by any cause whatsoever and if in the opinion of the City the Plaza cannot be rebuilt, within one hundred and eighty (180) days of the damage or destruction, the City may, at its option, terminate this Contract by giving the Contractor within thirty (30) days of such damage or destruction notice of termination and thereupon any payments for which the Contractor is liable under this Contract shall be apportioned and paid to the date of such damage or destruction and the Contractor shall immediately deliver up possession of the Plaza to the City; provided that notwithstanding the termination of this Contract as in this Paragraph set forth, the Contractor shall remain liable for any outstanding obligations of the Contractor under this Contract at the time of such termination.
- D10.2 It is understood and agreed that nothing contained in this Clause shall obligate the City to rebuild the Plaza or any part thereof according to the original plans and specifications.
- D10.3 Notwithstanding anything to the contrary set forth in this Clause, it is understood and agreed that if the Plaza or any part thereof is damaged or destroyed by any cause that the City has not insured against, or if the City is of the opinion that the cost of repairing or reconstructing such damage or destruction will exceed the amount of insurance proceeds which will be payable in connection with such damage or destruction, the City may within ninety (90) days after such damage or destruction upon giving notice to the Contractor, declare this Contract terminated forthwith, and in such event rental shall be apportioned and shall be payable up to the time of such damage or destruction.

D11. CITY'S DISCLAIMER

- D11.1 Unless caused by the negligence of the City, its servants, agents or employees, the City shall not be liable nor responsible in any way for any personal or consequential injury of any nature whatsoever that may be suffered or sustained by the Contractor or any employee, agent, or customer of the Contractor or any person who may be upon the Esplanade Riel Bridge or Plaza or any loss of or damage or injury to any property belonging to the Contractor or to its employees or to any other person while such property is on the Esplanade Riel Bridge or the Plaza, and in particular (but without limiting the generality of the foregoing), the City shall not be liable for any damage or damages of any nature whatsoever to any such property caused by the failure by reason of breakdown or other cause to supply adequate drainage, snow or ice removal, or by reason of the interruption of any public utility or service or in the event of steam, water, rain or snow which may leak into, issue or flow from any part of the Esplanade Riel Bridge or Plaza, or from the water, steam, gas, sprinkler or drainage pipes or plumbing works of the same or from any other place or quarter or for any damage caused by anything done or committed by any sub-Contractor, but the City shall use all reasonable diligence to remedy such condition, failure or interruption of service when not directly or indirectly attributable to the Contractor, after notice of same, when it is within its power and obligation so to do. Nor shall the Contractor be entitled to any compensation in respect of any such condition, failure or interruption of services as aforesaid.

SUBMISSIONS

D12. WORKERS COMPENSATION

- D12.1 The Contractor shall be registered with the Workers Compensation Board of Manitoba, shall provide and maintain Workers Compensation coverage throughout the term of the Contract, and shall provide the Contract Administrator with evidence thereof upon request.

D13. INSURANCE

- D13.1 The Contractor shall provide and maintain a commercial general liability insurance policy for bodily injury (including death), personal injury and property damage in an amount of at least two million (\$2,000,000.00) dollars inclusive for any one occurrence and shall include:
- (i) The City added as an additional insured;
 - (ii) A cross-liability clause;
 - (iii) Contractual liability;
 - (iv) Contractor's Legal liability;
- D13.2 An All Risks property insurance policy for the full replacement cost insuring stock and equipment; Contractor's Improvements; Business Interruption; and said policy shall also contain a waiver of subrogation against the City.
- D13.3 The Contractor, and not the City, shall be responsible for any deductible that apply in the policies if insurance provided for in the Proposal.
- D13.4 The Contractor shall provide the Contract Administrator with a certificate of insurance at least two (2) Business Days prior to the commencement of any Work on the Site but in no event later than seven (7) Calendar Days from notification of the award of Contract.
- D13.5 The Contractor shall not cancel, or materially alter, or cause any policies to lapse without providing at least thirty (30) Calendar Days prior written notice to the City and the City to be advised immediately should said policies of insurance lapse or otherwise be discontinued.
- D13.6 The City shall have the right to alter the limits and/or coverages as reasonably required from time to time by the Contractor during the continuance of this agreement.

CONTROL OF WORK

D14. COMMENCEMENT

- D14.1 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.
- D14.2 The Contractor shall commence the Work on the Site within seven (7) Working Days of receipt of the letter of intent.
- D14.3 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 D12;
 - (iii) evidence of the insurance specified in D13.
 - (b) the Contractor has attended a meeting with the Contract Administrator, or the Contract Administrator has waived the requirement for a meeting.

D15. ENQUIRIES DURING THE CONTRACT

- D15.1 The Contractor shall provide a local Winnipeg telephone number or a toll-free telephone number at which enquiries for service may be placed.

D16. RECORDS

- D16.1 The Contractor shall keep detailed records of the services supplied under the Contract as follows:
- (a) Records kept at the Contractor's principal office of true and accurate books of account prepared in accordance with generally accepted accounting principals, satisfactory to the Contract Administrator, showing all income generated by the supply of food and beverage services at the Plaza and further shall permit the Contract Administrator free access any and all times to inspect, examine, copy or audit the said books of the account.
- D16.2 The Contractor shall record a detailed list of all interior improvements including a description and quantity of improvements provided and to retain invoices of same for the duration of the Contract.
- D16.2.1 The Contract Administrator may request a copy of the invoices.
- D16.3 The Contractor shall provide the Contract Administrator with a copy of the Audited Financial records for all revenues and expenditures on October 1st of each year during the Contract.

MEASUREMENT AND PAYMENT OF REVENUES

D17. PAYMENT ADDRESS

Planning Property and Development
Real Estate Division
Property Management Branch – (File number 8228)
2nd Floor, 65 Garry Street
Winnipeg, MB R3C 4K4

D18. PAYMENT OF REVENUES

- D18.1 Notwithstanding C11. MEASUREMENT AND PAYMENT, the Contractor agrees to pay the City for the rights and privileges granted for each and every calendar year during the Contract, as specified in D3.
- D18.2 Gross revenue shall mean the total revenues not including PST and GST generated by this Contract.
- D18.3 The Contractor shall not be required to pay revenue to the City for the first two months of the Contract. The basic rent shall be payable on the first of each month for the duration of the Contract.
- D18.4 The Contractor shall pay to the City a monthly percentage rent of gross revenue as specified in Form B: Proposed Rent & Interior Improvements.
- D18.5 The Contractor shall provide the Contract Administrator the percentage of gross sales as proposed on Form B: Proposed Rent & Interior Improvements in quarterly payments, with said payment being due and payable within fifteen (15) Calendar Days of the end of that quarter.
- D18.6 The Contractor shall pay to the City upon receipt of a request for payment of an amount equivalent to realty taxes each year through the duration of the Contract.
- D18.7 The Contractor shall pay promptly all license fees, and business tax which may be charged in respect of any renovation or use and occupation of the food service facility by the Contractor and any goods and services tax in respect thereof, where such fees and taxes are charged by a municipal, provincial, or federal authority or otherwise, as well as the cost of all utilities and

services (hydro, gas, water, cable, inter-net cable, phone) to the Plaza and for the cost of any metering which may be required by the Contractor and be responsible for all other costs incidental to the Contractors use and operations within the Plaza.