

PART D

SUPPLEMENTAL CONDITIONS

PART D - SUPPLEMENTAL CONDITIONS

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 GC:6.17. The City of Winnipeg is now within the jurisdiction of the Manitoba Ombudsman pursuant to The Ombudsman Act.

D2. SCOPE OF WORK

- D2.1 The Work to be done under the Contract shall consist of landscape planting improvements and the supply and installation of various site furniture. The tree plantings also include a two (2) year maintenance period.

D3. CONTRACT ADMINISTRATOR

- D3.1 The Contract Administrator is Ken Rech Landscape Architects Inc, represented by:

Ken Rech
Landscape Architect
1480 Wellington Crescent, Winnipeg, Manitoba, R3N 0B3
Telephone No. (204) 489-6616
Facsimile No. (204) 489-6852
E-Mail kenrech@mts.net

- D3.2 At the pre-construction meeting, Ken Rech will identify additional personnel representing the Contract Administrator and their respective roles and responsibilities for the Work.

D4. CONTRACTOR'S SUPERVISOR

- D4.1 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. NOTICES

- D5.1 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.

- D5.2 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications to the City, except as expressly otherwise required in D5.3, D5.4 or elsewhere in the Contract, shall be sent to the attention of the Contract Administrator at the address or facsimile number identified in D3.1.
- D5.3 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
- D5.4 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

SUBMISSIONS

D6. PERFORMANCE SECURITY

- D6.1 If the Contract Price exceeds twenty-five thousand dollars (\$25,000.00), 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.
- D6.2 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 Purchase Order and prior to the commencement of any Work on the Site.

D7. INSURANCE

- D7.1 The Contractor shall provide and maintain the following insurance coverage:
- (a) commercial general liability insurance, in the amount of at least five million dollars (\$5,000,000.00) all inclusive, with The City of Winnipeg, The Winnipeg School Division, and Ken Rech Landscape Architects Inc. being added 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 products and 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;

D7.2 Deductibles shall be borne by the Contractor.

D7.3 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 seven (7) Calendar Days from notification of the award of Contract.

D7.4 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.

D8. SUBCONTRACTOR LIST

D8.1 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 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.

SCHEDULE OF WORK

D9. COMMENCEMENT

D9.1 The Contractor shall not commence any Work until he is in receipt of a Purchase Order from the Award Authority authorizing the commencement of the Work.

D9.2 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 performance security specified in D6;
 - (iv) evidence of the insurance specified in D7;
 - (v) the Subcontractor list specified in D8; and
- (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.

D9.3 The Contractor shall commence the Work on the Site within seven (7) Working Days of receipt of the Purchase Order.

D10. SUBSTANTIAL PERFORMANCE

D10.1 The Contractor shall achieve Substantial Performance within 20 (twenty) consecutive Working Days of the commencement of the Work as specified in D9.

D10.2 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.

D10.3 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.

D11. TOTAL PERFORMANCE

D11.1 The Contractor shall achieve Total Performance within 25 (twenty-five) consecutive Working Days of the commencement of the Work as specified in D9.

D11.2 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 re-inspected.

D11.3 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.

D12. LIQUIDATED DAMAGES

D12.1 If the Contractor fails to achieve Total Performance in accordance with the Contract by the day fixed herein for Total Performance, the Contractor shall pay the City four hundred dollars (\$400.00) per Working Day for each and every Working Day following the day fixed herein for Total Performance during which such failure continues.

D12.2 The amount specified for liquidated damages in D12.1 is based on a genuine pre-estimate of the City's losses in the event that the Contractor does not achieve Total Performance by the day fixed herein for same.

D12.3 The City may reduce any payment to the Contractor by the amount of any liquidated damages assessed.

D13. SCHEDULED MAINTENANCE

D13.1 The Contractor shall perform the following scheduled maintenance in the manner and within the time periods required by the Specifications:

(a) Two year tree maintenance as specified in E7 and E8.;

D13.2 Determination of Substantial Performance and Total Performance shall be exclusive of scheduled maintenance identified herein. All scheduled maintenance shall be completed prior to the expiration of the warranty period. Where the scheduled maintenance cannot be completed during the warranty period, the warranty period shall be extended for such period of time as it takes the Contractor to complete the scheduled maintenance.

CONTROL OF WORK

D14. PRIME CONTRACTOR – THE WORKPLACE SAFETY AND HEALTH ACT (MANITOBA)

- D14.1 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).
- D14.2 The Contractor must meet with the Principals of each School prior to commencing construction, and develop a safety plan. The Principal has the sole authority to accept or modify the Contractor's safety plan and may
- (a) restrict times when Contractor can Work, to avoid peak areas of possible conflicts with students;
 - (b) determine the location of protective fencing;
 - (c) determine the site access; etc.

D15. SITE ACCESS

- D15.1 Access to the Site as required by the Contractor shall be provided and maintained by the Contractor at his own expense and approved by the Contract Administrator.
- D15.2 All necessary precautions shall be exercised by the Contractor so as not to remove, disturb, or damage any existing trees, shrubs, sod, pavements, streets, roads, boulevards, poles, hydrants, water pipes, gas pipes, electrical wires, cables, conduits, sewers or other existing facilities and equipment at the Site of the Work. For all damage incurred thereto in the performance of the Work, the Contractor shall upon instructions from and to the satisfaction of the City thereof, either replace and repair such damage, whichever may be deemed necessary in the opinion of, and acceptable to, the City thereof and the cost of which shall be borne entirely by the Contractor. The Contractor shall also indemnify and save harmless the City from all claims made directly or indirectly against it in respect to any such damage.
- D15.3 The Contractor's operations shall be limited to the minimum area necessary for undertaking the Work and he shall be responsible for all damage resulting from his Work on private property. The Contractor shall take such measures as are necessary to ensure safe and convenient pedestrian ingress and egress is maintained to private properties while he is working near them. Any damage caused by the negligence of the Contractor or his Sub-Contractors to the adjacent works or properties, shall be promptly repaired by him at his own expense, to the satisfaction of the Contract Administrator.
- D15.4 Care shall be taken to protect existing trees and their root systems from damage, compaction, and contamination resulting from construction to the satisfaction of the Contract Administrator. No heavy equipment shall be driven or parked on the area within the drip line of any trees.

D16. DAMAGE TO EXISTING STRUCTURES AND PROPERTY

- D16.1 Further to GC:6, all necessary precautions shall be exercised by the Contractor so as not to remove, disturb, or damage any existing trees, shrubs, sod, pavements, streets, roads, boulevards, poles, hydrants, water pipes, gas pipes, electrical wires, cables, conduits, sewers or other existing facilities and equipment at the Site of the Work. For all damage incurred thereto in the performance of the Work, the Contractor shall upon instructions from and to the satisfaction of the Contract Administrator, either replace and repair such damage, whichever may be deemed necessary in the opinion of, and acceptable to, the Contract Administrator. The cost of which shall be borne entirely by the Contractor.

- D16.2 The Contractor shall also indemnify and save harmless the City from all claims made directly or indirectly against it in respect to any such damage.
- D16.3 The Contractor's operations shall be limited to the minimum area necessary for undertaking the Work and he shall be responsible for all damage resulting from his Work on private property. The Contractor shall take such measures as are necessary to ensure safe and convenient pedestrian ingress and egress is maintained to private properties while he is working near them.
- D16.4 Any damage caused by the negligence of the Contractor or his sub-contractors to the adjacent works or properties, shall be promptly repaired by him at his own expense, to the satisfaction of the Contract Administrator.

D17. LAYOUT OF WORK

- D17.1 The Contractor is to set control lines and bench marks by means of stakes, buoys or marks and shall make the completed works conform to the lines and marks thus indicated. The Contractor shall be responsible for the careful preservation of all stakes and marks so set whether relating to his own or to other Work. Care must be taken that the Contract Administrator be notified immediately of the disturbance of any such stakes or marks; the cost of correcting any errors arising out of neglect of the Contractor or his agent or his employees, to so notify the Contractor Administrator shall be borne entirely by the Contractor, as well as the cost of replacing any disturbed stakes or marks.
- D17.2 All layout Work shall be inspected and approved by the Contract Administrator prior to construction.
- D17.3 Before commencing Work the contractor shall satisfy himself as to the meaning and correctness of all stakes and marks and no claims shall be entertained by the City of Winnipeg on account of any alleged inaccuracies. If any error is suspected in the plans, specifications or the directions of the Contract Administrator, Work shall be discontinued until the errors are rectified, but no claims shall be made on account of any delay occasioned thereby.

D18. SITE RESTORATION

- D18.1 Total Performance of the Work shall not be attained until the Contractor has cleaned up the Site and has removed all plant, tools, equipment, waste, debris and surplus foundation earth to the satisfaction of the Contract Administrator. Unless otherwise specified, the Contractor shall restore all areas of the site beyond the established limit of Work, which have been disturbed by the Contractor's operations to as good as or better than the original condition to the satisfaction of the Contract Administrator. The Contractor shall pay all costs associated with this Work.

D19. PROTECTION OF TREES

- D19.1 The Contractor shall take the following precautionary steps to avoid damage from his construction activities to existing Boulevard trees within the limits of the construction area
- (a) The Contractor shall not stockpile materials and soil or park vehicles and equipment on boulevards within 2 metres of trees
 - (b) Contract Administrator shall identify the mature tree trunks that shall be strapped with 25 x 150 x 2400 (1" x 6" x 8') wood planks. Smaller trees shall be similar protected using appropriately sized wood planks.
 - (c) Excavations shall be carried out in such a manner so as to minimize damage to existing tree branches. Where roots must be cut to facilitate an excavation they shall be neatly pruned at the face of the excavation and coated with an appropriate wound dressing to prevent infection.

- (d) Work on Site shall be carried out in such a manner so as to minimize damage to existing tree branches. Where damage to tree branches does occur, the Contractor shall neatly prune the damaged branches and coat them with an appropriate wound dressing to prevent infection.

D19.2 All damage to existing trees caused by the Contractor's construction activities shall be repaired to the requirements and satisfaction of the City of Winnipeg, Parks and Recreation Department, Forestry Branch.

D19.3 No separate measurement or payment will be made for protection of trees. It shall be considered incidental to the contract Work

MEASUREMENT AND PAYMENT

D20. PAYMENT SCHEDULE

D20.1 Further to GC:12.1, payment shall be in accordance with the following payment schedule:

- (a) The cost for the Two Year Plant Maintenance Period will be twenty-five (25) % of the total cost of all the trees, as shown in Form B: Prices, items 1a, 2a, 3b, and 6a inclusive. The remaining seventy five (75) % value will be paid on a per unit basis, for each plant properly installed, and which plant complies with the specification requirements.
- (b) The two year plant maintenance period is considered to consist of six (6) months of maintenance per year, for a total of twelve (12) months of maintenance. The basis of payment cost, will be based on a pro rated basis, based on each full month of maintenance, and the respective proportion of the total twelve (12) months. Progress payments will be made once a year at the end of each growing season.
- (c) Where the plant material has been replaced and is covered under the extended warranty period, a proportional amount of holdback will be further maintained, until the plant has survived for a full two years and is accepted.

WARRANTY

D21. WARRANTY

D21.1 Notwithstanding GC:13.2, the warranty period shall begin on the date of Total Performance and shall expire two (2) 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.

D21.2 Notwithstanding GC:13.2 or D21.1, 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; or

D21.2.1 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.

D21.3 All plant material is to be warranted for a full two years, from the date of installation or Total Performance, whichever is later. Plant material will be accepted at the end of the two year maintenance period if it is healthy and as per E7. Any plant material requiring replacement, shall carry an additional two year warranty and two year maintenance period, until all plants have survived and show healthy growth, and have been maintained for a full two years.

FORM H1: PERFORMANCE BOND
(See D6)

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. 204-2004

LANDSCAPE AND SITE ENHANCEMENTS, TO SIX SCHOOL SITES

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)

**FORM H2: IRREVOCABLE STANDBY LETTER OF CREDIT
(PERFORMANCE SECURITY)**
(See D6)

(Date)

The City of Winnipeg
Corporate Services Department
Legal Services Division
185 King Street, 3rd Floor
Winnipeg MB R3B 1J1

RE: PERFORMANCE SECURITY - 204-2004

LANDSCAPE AND SITE ENHANCEMENTS, TO SIX SCHOOL SITES

Pursuant to the request of and for the account of our customer,

(Name of Contractor)

(Address of Contractor)

WE HEREBY ESTABLISH in your favour our irrevocable Standby Letter of Credit for a sum not exceeding in the aggregate

_____ Canadian dollars.

This Standby Letter of Credit may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you. It is understood that we are obligated under this Standby Letter of Credit for the payment of monies only and we hereby agree that we shall honour your demand for payment without inquiring whether you have a right as between yourself and our customer to make such demand and without recognizing any claim of our customer or objection by the customer to payment by us.

The amount of this Standby Letter of Credit may be reduced from time to time only by amounts drawn upon it by you or by formal notice in writing given to us by you if you desire such reduction or are willing that it be made.

Partial drawings are permitted.

We engage with you that all demands for payment made within the terms and currency of this Standby Letter of Credit will be duly honoured if presented to us at:

(Address)

and we confirm and hereby undertake to ensure that all demands for payment will be duly honoured by us.

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)

