

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 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 the supply and installation of tiles at Pan Am Lap Pool.

D3. CONTRACT ADMINISTRATOR

- D3.1 The Contract Administrator is:
Stuart McConnell
City of Winnipeg
Building Services
Main Floor, 100 Main Street
Winnipeg, MB R3C 1A4
Telephone No. (204) 986-2888
Facsimile No. (204) 986-7311
- D3.2 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.

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 two million dollars (\$2,000,000.00) all inclusive, with The City of Winnipeg 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 the date specified in GC:4.1 for the return of the executed 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. SECURITY CLEARANCE

D8.1 Each individual proposed to perform Work under the Contract within City facilities or on private property shall be required to obtain a Criminal Record Search Certificate from the police service having jurisdiction at his/her place of residence.

D8.2 Prior to the commencement of any Work, and during the term of the Contract if additional or replacement individuals are proposed to perform Work, the Contractor shall supply the Contract Administrator with a Criminal Record Search Certificate obtained not earlier than one (1) year prior to the Submission Deadline, or a certified true copy thereof, for each individual proposed to perform Work within City facilities or on private property.

D8.3 Any individual for whom a Criminal Record Search Certificate is not provided, or for whom a Criminal Record Search Certificate indicates any convictions or pending charges related to property offences or crimes against another person, will not be permitted to perform any Work within City facilities or on private property.

D8.4 Any Criminal Record Search Certificate obtained thereby will be deemed valid for the duration of the Contract subject to a repeated records search as hereinafter specified.

D8.5 Notwithstanding the foregoing, at any time during the term of the Contract, the City may, at its sole discretion and acting reasonably, require an updated criminal records search. Any individual who fails to provide a satisfactory Criminal Record Search Certificate as a result of a repeated criminal records search will not be permitted to continue to perform Work under the Contract within City facilities or on private property.

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; and
 - (v) the security clearances specified in D8.
- (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 not commence the Work on the Site before Monday, August 30, 2004.

D10. SUBSTANTIAL PERFORMANCE

D10.1 The Contractor shall achieve Substantial Performance within twenty (20) 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 reinspected.

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 by September 27, 2004.

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 reinspected.

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 one hundred dollars (\$100.00) 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.

CONTROL OF WORK

D13. JOB MEETINGS

- D13.1 Regular weekly job meetings will be held at the Site. 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.
- D13.2 The Contract Administrator reserves the right to cancel any job meeting or call additional job meetings whenever he deems it necessary.

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).

WARRANTY

D15. WARRANTY

- D15.1 Notwithstanding GC:13.2, the warranty period shall begin on the date of Total Performance and shall expire one (1) year thereafter, except where longer warranty periods are specified in the respective Specification sections, unless extended pursuant to GC:13.2.1 or GC:13.2.2, in which case it shall expire when provided for thereunder.
- D15.1.1 For the purpose of Performance Security, the warranty period shall be one (1) year.

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. 298-2004

SUPPLY & INSTALL TILES IN PAN AM LAP POOL

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 - 298-2004

SUPPLY & INSTALL TILES IN PAN AM LAP POOL

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)