

PART D

SUPPLEMENTAL CONDITIONS

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GENERAL

D1. GENERAL CONDITIONS

D1.1 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 Goods and/or Services Facility within the Plaza on the Esplanade Riel Pedestrian Bridge.

D2.2 The major components of the Work are as follows:

- (a) the design and completion of interior improvements to the plaza space; and
- (b) establishment of a Goods and/or Services Facility which is a specialty retail, food services, tourist or other innovative operation.

D3. DURATION OF CONTRACT

D3.1 The Bidder shall state the proposed term for the Contract. The duration of the Contract shall be subject to negotiations and the approval of the City in its sole discretion acting reasonably. Notwithstanding the foregoing, and further to C16 of the General Conditions, 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-imbursment of only the unamortized value of the interior improvements. The value of the interior improvements and their amortization schedule shall be attached to the final Contract.

D4. DEFINITIONS

D4.1 When used in this Request for Proposal:

- (a) "**Pedestrian Bridge**" means the Esplanade Riel Bridge;
- (b) "**Idea**" means the proposed concept for use of the Plaza Space;
- (c) "**Plaza Space**" means the 4000 square foot enclosed space situated on the Esplanade Riel Pedestrian Bridge;
- (d) "**Goods and/or Services Facility**" means the proposed operation of a business in the Plaza on the Esplanade Riel Pedestrian Bridge.

D5. CONTRACT ADMINISTRATOR

D5.1 The Contract Administrator is represented by:

Catherine Green

Materials Management Branch
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 C.19.7 is hereby amended to delete reference to "registered mail" and to replace same with "ordinary mail".

D7.2 C.19.7 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 C.19.7, 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 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 under floor, 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 Pedestrian 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 Pedestrian 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 Pedestrian Bridge or Plaza, or from the water, steam, 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.

D12. BUILDERS' LIEN

D12.1 The Contractor shall use its best efforts to ensure that no Builders' Lien claims are made against the City.

D12.2 In the event that any liens under The Builders' Liens Act are made as a result of the work carried out by the Contractor or its employees, duly authorized agents, consultants, Contractor of their subcontractors, the Contractor shall promptly and at its sole cost effort and expense, obtain and register discharges of any such Builders' Liens.

D12.3 Further, as security to protect the City, and the Contractor from Builders' Liens, before commencing development or finishing work, the Contractor must provide the Contract Administrator with an irrevocable standby letter of credit in the amount of 10% of the estimated value of the interior improvements issued by a bank or other financial institution registered to conduct business in Manitoba and drawn on a branch located in Manitoba, in a form satisfactory to the Contract Administrator and the City's Solicitor. The letter of credit, or so much thereof that remains undrawn, will be returned to the Contractor when the development and finishing work is complete and the time for claiming liens has expired.

D12.3.1 At the end of the Contract, the Contractor shall remove all chattels unless, by mutual agreement between the Contractor and the Contract Administrator, there is direction to do otherwise.

D12.4 The City will be responsible for the following:

- (a) replacement of all coverings affixed to the exterior of the roof of the Plaza;
- (b) any other maintenance, replacement or repair necessary to extend or restore the lifespan of the roof or bearing structure of the Plaza;
- (c) all utility connections to the Plaza;

- (d) the City will use reasonable efforts to avoid disruption to the operation of the goods and/or service facility, however the Contractor shall not be entitled to any compensation for any delays, interruptions, inconvenience, nuisance, and/or costs incurred as a result of any work carried out hereunder by the City;
- (e) provide water and sewer hook-up to the Plaza space (water and sewer consumption is payable by the Contractor);
- (f) provide snow removal on the Esplanade Riel Pedestrian Bridge in accordance with the City snow clearing cycle;
- (g) clean the Esplanade Riel Pedestrian Bridge in accordance with the City bridge cleaning cycle;
- (h) maintain Esplanade Riel Pedestrian Bridge lighting and exterior lighting on Plaza; and
- (i) will provide a fire hydrant at the west landing for fire protection.

SUBMISSIONS

D13. AUTHORITY TO CARRY ON BUSINESS

D13.1 The Contractor shall be 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, or if the Contractor does not carry on business in Manitoba, in the jurisdiction where the Contractor does carry on business, throughout the term of the Contract, and shall provide the Contract Administrator with evidence thereof upon request.

D14. WORKERS COMPENSATION

D14.1 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.

D15. INSURANCE

D15.1 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; and
- (iv) Contractor's Legal liability;

D15.2 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.

D15.3 The Contractor, and not the City, shall be responsible for any deductible that apply in the policies if insurance is provided for in the Proposal.

D15.4 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.

- D15.5 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.
- D15.6 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

D16. COMMENCEMENT

- D16.1 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.
- D16.2 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 D14;
 - (iii) evidence of the insurance specified in D15.
 - (b) the Contractor has attended a meeting with the Contract Administrator, or the Contract Administrator has waived the requirement for a meeting.

D17. ENQUIRIES DURING THE CONTRACT

- D17.1 The Contractor shall provide a local Winnipeg telephone number or a toll-free telephone number at which enquiries may be placed.

D18. RECORDS

- D18.1 The Contractor shall keep detailed records of the Work 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 goods and/or 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.
- D18.2 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.
- D18.2.1 The Contract Administrator may request a copy of the invoices.
- D18.3 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

D19. PAYMENT ADDRESS

Planning Property and Development

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

D20. PAYMENT

- D20.1 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.
- D20.2 The Contractor shall not be required to pay rent 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.
- D20.3 The Contractor shall pay to the City as additional rent:
- (a) an amount equal to the realty taxes on the premises and any improvements thereon including local improvement levies as though the entire premises were included in the City's realty assessment roll; and
 - (b) in addition to the foregoing all license fees and business taxes, including Goods and Services Tax, which may be charged in respect of rent payable under the contract or in respect of the premises, whether such fees and taxes are charged by any municipal, provincial or federal authority or otherwise.
- D20.4 The Contractor shall pay promptly all license fees, realty tax and business tax which may be charged in respect of any renovation or use and occupation of the goods and/or services 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, water, cable, internet cable, phone) to the Plaza Space 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 Space. Annual realty and business taxes are estimated at \$33,000.00 and \$8,266.00 respectively.