Meeting attachments

Finance, Policy, Operations and Legislations Committee

Wednesday 13 July 2022 - 6pm

fremantle.wa.gov.au

Table of Contents

FPOL2207-1 SOLE SOURCE OF SUPPLY – CIVICA SPYDUS LIBRARY MANAGEMENT SYSTEM

Civica Pty Limited.
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Ground Floor, 277 William Street
Melbourne VIC 3000
Australia

T: +61 423 152 250
E: anthony.robjohns@civica.com.au
W: civica.com.au

Thursday, 16 June 2022

Dear Sir/Madam,

RE: Spydus Library Management Softare

As requested and to confirm Civica Australia is the IP developer, owner and sole seller of Spydus Library Managemeny software.

Thank you and please let us know if we can assist further in anyway.

Yours sincerely,

Anthony Robjohns
Sales Manager – Civica Libraries and Education

FPOL2207-5 REQUEST FOR APPROVAL OF PROPOSED SALE OF 8 POINT STREET (PREVIOUSLY 2 POINT ST) FREMANTLE

City of Fremantle

Tender Document - Point Street Property

Tender Number: FCC 391/12

From 3rd October 2012 to 7th November 2012

Tender Closing Date: 1400 hours, 7th day of November 2012

Please ensure that you write the tender number on the outside of the envelope.

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City of Fremantle

Tender Documents
Point Street Property
FCC 391/12

Table of Contents

City of Fremantle

Tender Documents
Point Street Property
FCC 391/12

Tender Specification

CITY OF FREMANTLE
TENDER NO. FCC 391/12
City of Fremantle Point Street Property

1. Sale by Tender

The City of Fremantle offers the Property for sale by tender on the terms and conditions contained in this document.

2. Definitions and Interpretation

2.1 Definitions

In this document, unless the context otherwise requires, the following words and expressions have the following meanings:

"**Balance Land**" means the land so identified in clause 17.2(a).

"**Bank Guarantee**" means the unconditional undertaking by an Australian bank which is an authorised deposit taking institution in favour of the Seller on terms acceptable to the Seller acting reasonably to pay on demand $200,000.

"**Business Day**" means a day, which is not a Saturday, Sunday, public holiday or bank holiday in Western Australia.

"**Business Plan**" means a business plan, as is required by the LGA in relation to a "major trading undertaking" or the entering into of either a "major land transaction" or a "land transaction" that is preparatory to entering into a "major land transaction" (as each of the terms are defined in the LGA), in relation to the sale of the Property.

"**Buyer**" means the Successful Tenderer.

"**Change of Control**" means the change in the identity of a person who is able to Control an entity (including a corporation defined in the *Corporations Act 2001* (Cth)).

"**City**" means the City of Fremantle.

"**Claim**" means any claim, demand, cause of action, liability, loss, damage or expense.

"**Commence Construction**" means the commencement of new works associated with the Development.

"**Complete Construction**" means that the Development is complete and capable of being used for its stated purpose except for minor omissions and defects which do not prevent the Development from being used for its stated purpose.

"**Contract**" means the contract to buy and sell the Property which comes into existence pursuant to clauses 10.1 and 10.2.

"**Contract Date**" means the Tender Acceptance Date.

"**Control**" of an entity includes the definition of Control in section 50AA of the *Corporations Act 2001* (Cth) and in the case of a corporation includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of the Board of Directors of that corporation, the voting rights of the majority of the voting shares of the corporation or the management of the affairs of the corporation.

"**Council**" means the Council of the City of Fremantle.

"**Decides**" means the decision by the Council.

"**Deposit**" means the First Deposit and the Second Deposit which together comprise 10% of the Purchase Price.

"**Design Advisory Committee**" means the committee of the Council that advises the Council on any matters relating to the design quality of development.

"**Development**" means:

(a) initially, the development of the Property as described in the Planning Application; and

(b) following receipt of the Planning Approval, the development of the Property in accordance with the Planning Approval.

"**First Deposit**" means:

(a) the Tender Fee, if the Tender Fee is greater than $100,000; or

(b) $100,000 if the Tender Fee is less than or equal to $100,000.

"**Gazettal**" means the notification in the Government Gazette of the amendment of the Planning Scheme in accordance with Proposed Amendment 49.

"**General Conditions**" means the 2011 Joint Form of General Conditions for the Sale of Land (a copy of which is attached in Annexure B).

"**Guarantor**" means the person described in this document as "Guarantor".

"**Leases**" means (if any) all leases, licences and other rights to occupy the Property existing at the Contract Date and any Lease entered into after the Contract Date.

"**LGA**" means the *Local Government Act 1995* (WA).

"**Local Government Laws**" means the LGA, the *Local Government (Miscellaneous Provisions) Act 1960* (WA), the Planning Scheme and any other statute.

"**Lodgment Date**" means 180 days after:

(a) the date of Gazettal, if Gazettal occurs after the Contract Date; or

(b) the Contract Date, if Gazettal occurs before the Contract Date.

"**Object**" means delay Settlement, make or assert a Claim, withhold or require a retention of all or part of the Purchase Price or terminate or rescind this document or the Contract.

"**Planning Application**" means a complete application under the Planning Scheme for a planning approval in respect of a development of the Property.

"**Planning Approval**" means an approval (including any conditions of that approval) under the Planning Scheme in respect of the Development.

"**Planning Scheme**" means the City's Local Planning Scheme No. 4 or such other "Planning Scheme" (as that term is defined in the *Planning & Development Act 2005* (WA)) as is in force in respect of the Property from time to time.

"**Presentation Date**" means 60 days after:

(a) the date of Gazettal, if Gazettal occurs after the Contract Date; or

(b) the Contract Date, if Gazettal occurs before the Contract Date.

"**Property**" means the property so described in clause 4.

"**Proposed Amendment 49**" means the amendment to the Planning Scheme known as "Amendment 49."

"**Purchase Price**" means the amount so described in the Tender as the "Purchase Price".

"**Second Deposit**" means a sum equal to the Deposit minus the First Deposit.

"**Seller**" means the City of Fremantle.

"**Settlement Date**" means the date that is 30 days after the Buyer is granted the Planning Approval.

"**Successful Tenderer**" means the person whose Tender is accepted by the Seller.

"**Tender**" means:

(a) initially, the form of tender set out at page 21; and

(b) upon submission by a Tenderer, means the form of tender set out at page 21 as submitted including all annexures and other material forming part of the Tender.

"**Tender Acceptance Date**" means as described in clause 9.1.

"**Tender Closing Date**" means 1400 hours WST on 7th November 2012.

"**Tender Fee**" means 1% of the Purchase Price.

"**Tender Rules**" means the City's Tender Rules (a copy of which is attached in Annexure A).

"**Tenderer**" means a person who submits a Tender.

2.2 Interpretation

In this document, unless inconsistent with the context:

(a) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;

(b) the singular includes the plural and vice versa;

(c) a reference to a gender includes any gender;

(d) a heading is for convenience only and does not affect interpretation;

(e) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this document;

(f) the word *includes* is not a word of limitation and does not restrict the interpretation of a word or phrase in this document;

(g) a reference to a document, includes a variation or replacement of it;

(h) a reference to person includes a reference to:

   (i) an individual, a body corporate, a trust, a partnership, a joint venture an, unincorporated body or other entity, whether or not it is a separate legal entity; and

   (ii) that person's successors and permitted assigns and a person, who novates this document;

(i) an agreement, representation or warranty in favour of or on the part of two or more people, benefits or binds them jointly and severally;

(j) each obligation imposed on a party under this document is a separate obligation.

(k) a provision is not to be construed against a party solely on the ground that the party is responsible for the preparation of this document or that provision;

(l) if the date on which a thing must be done is not a Business Day, then that thing must be done on the next Business Day;

(m) the Tender Rules are incorporated into and form part of this document; and

(n) in the event of an inconsistency between the parts of this document, the order of priority is as follows:

   (i) firstly, clauses 2.3 and 2.4;

   (ii) secondly, the remainder of this document (other than the parts mentioned below);

   (iii) thirdly, the Tender Rules; and

   (iv) fourthly, the General Conditions.

2.3 **Inconsistency with Statutory Provisions**

In the event of any inconsistency between:

(a) an obligation, right or power of either the Tenderer or the City under this document and the Contract; and

(b) an obligation, right or power of the City under the Local Government Laws, then the obligation, right or power of the City under the Local Government Laws prevails.

2.4 **No Fettering**

Nothing in or arising out of this document or the Contract in any way:

(a) diminishes the City's rights and powers; or

(b) fetters any discretion that the City has,

under the Local Government Laws.

3. Introduction

(a) Council adopted the Business Plan titled, 'Proposal to enter into a major land transaction through the disposal of: 2 Point St, 64-72 Adelaide St Fremantle', at its Ordinary Meeting on 22 August 2012, in accordance with section 3.59 of the *LGA*.

(b) The objective of the sale and development of the Property is to:

(i) act as a catalyst to stimulate development and further regeneration of the east end area of the City centre;

(ii) incorporate a high standard of sustainable design into development of the Property as good practice as well as a demonstration to other developers and the community;

(iii) achieve a quality modern development that protects and reinforces the area's significant cultural heritage;

(iv) ensure that the quality, safety and amenity of the surrounding public spaces are enhanced by the development;

(v) increase the number and diversity of people in the area as a combination of workers, residents and visitors; and

(vi) ensure that a minimum Green Star rating of 5 Stars (Australian excellence) using the Green Building Council Australia's current rating tools as appropriate to a mixed use development is achieved for the development of the Property.

(c) Development of the Property shall be in accordance with the provisions of the Planning Scheme, as amended by Proposed Amendment 49.

(d) Proposed Amendment 49 to the Local Planning Scheme was adopted by the Council at its Ordinary Meeting on 24 March 2012.

(e) Proposed Amendment 49 proposes to modify the land use and development standards of twelve key sites in the eastern end of the City centre zone to enable more intensive development, including the development standards relevant to the Property.

(f) Proposed Amendment 49 is currently being assessed by the Department of Planning for a recommendation to the Minister for Planning and Arts.

3.2 By way of further explanation of the selection criteria, the following information is provided as to the information each Tenderer must provided to the Seller:

Selection criteria	Weighting of each criterion	Information required
Purchase Price	80%	A tendered Purchase Price
Experience and capability	20%	– Outline experience in developing comparable projects. The City is seeking expeditious completion of a development of the Property. Development shall substantially commence within 3 years of the Contract Date and be practically completed within 5 years of the Contract Date.

4. Title Particulars

The "Property" is Lot 34 on Deposited Plan 61988 being the whole of the land comprised in Certificate of Title Volume 2775 Folio 144, with property street addresses of:

- 2 Point Street, Fremantle, Western Australia;
- 64 Adelaide Street, Fremantle, Western Australia; and
- 66-72 Adelaide Street, Fremantle, Western Australia.

5. Condition of Sale

The Property is offered for sale by tender as one lot.

6. Submission of Tenders

6.1 Each Tenderer must complete and execute the Tender and must post or deliver to the City's offices two (2) copies of it with this document attached in a sealed envelope marked:

> **"Tender FCC 391/12. Tender for the purchase and development of Point Street Property"**.

so that the Tender is received before the Tender Closing Date.

6.2 The Tender constitutes an irrevocable offer by the Tenderer to purchase the Property on the terms and conditions of the submitted Tender.

6.3 Each Tender must be accompanied by:

(a) a bank cheque drawn by an Australian trading bank in favour of the City for the Tender Fee; and

(b) a written response to the selection criteria in clause 3.2.

6.4 The Tenderer warrants and represents to the City that at all times:

(a) the Tender is true and correct and not misleading in any way; and

(b) the Tenderer has the financial capacity to buy the Property and develop the Property.

7. The City's rights and the Tenderer's Acknowledgements

7.1 Any Tender received or delivered after the Tender Closing Date may be received for consideration or rejected by the City in the absolute discretion of the City.

7.2 Tenders received through the post will be deemed late unless the envelope bears evidence that the time and date of posting was sufficient to allow delivery in the ordinary course of post before the Tender Closing Date.

7.3 The City reserves the right to negotiate with any Tenderer or any other person in respect of the sale of the Property.

7.4 Subject to clause 7.5, no Tenderer may withdraw a Tender.

7.5 If any Tenderer wishes to withdraw its Tender, it may do so by Notice in writing to the City but only after 65 days after the Tender Closing Date.

7.6 The City reserves the right to accept or reject any Tender.

7.7 The City may withdraw the Property from tender at any time and on withdrawal all Tenders will be treated as unsuccessful.

7.8 Without in any way limiting clause 7.7 above, this tender and the sale of the Property by the City is subject to and conditional upon the Planning Scheme being amended in accordance with Proposed Amendment 49 within a time period acceptable to the City.

7.9 The City reserves the right in its absolute discretion to:

(a) refuse to consider or accept any Tender even if the Tenderer has offered the highest Purchase Price;

(b) negotiate with any one or more Tenderer, and allow any Tenderer to amend its Tender as agreed;

(c) call for new Tenders;

(d) accept or reject any Tender which does not comply with this document;

(e) waive or vary any obligation of a Tenderer under this document or the Contract;

(f) sell the Property at any time to any person (even if they are not a Tenderer);

(g) re-evaluate any Tender if the Seller accepts an offer, but the resultant conveyance is not settled for any reason;

(h) seek clarification or additional information from any Tenderer; and

(i) at any time before the Tender Closing Date, extend the Tender Closing Date by a maximum of 21 days by giving written notice to every party who to its knowledge has received a copy of this document.

7.10 The City reserves the right to issue one or more addenda to this document by giving written notice to every party who to its knowledge has received a copy of this document and such addenda will be treated as part of this document.

7.11 If any Tender has additions, alterations or erasures or an illegible price in it or does not otherwise comply with this document, the City may reject that Tender.

7.12 No variation of the terms of this document will be accepted by the City.

7.13 The City will be under no obligation to disclose to any Tenderer which Tender was accepted nor to give reason for acceptance or rejection of any Tender.

7.14 The City's acceptance or rejection of any Tender is final and binding and no Tenderer has any right of appeal or review as to the City's decision.

7.15 The Buyer must not Object because of any of the matters referred to in this clause 7.

8. Refund of Tender Fees

The City will refund to unsuccessful Tenderers their Tender Fee together with interest (if any) earned, less bank fees and charges, no later than 7 days after the Tender Acceptance Date by pre-paid letter addressed to the Tenderer at the address given in the Tender.

9. Acceptance of Tender

9.1 The Tender will be deemed to have been accepted on the day ("Tender Acceptance Date") when the City's written notice of that acceptance in the form set out at page 24 of this document:

(a) is given to the Tenderer;

(b) if sent by fax to the number shown in the Tender on notification of despatch being shown on a machine from which it is sent;

(c) if sent by pre-paid post at the time when in the ordinary course of post it would have reached the addressee, or

(d) is left at the address shown in the Tender.

10. The Contract

10.1 The Tender together with the City's written acceptance of it shall constitute the Contract between the City as seller and the Successful Tenderer as buyer.

10.2 The Contract will come into force on the Tender Acceptance Date.

10.3 The Buyer must, by bank cheque, pay to the City:

(a) the First Deposit, by not later than 7 days after the Contract Date; and

(b) the Second Deposit, by not later than 60 days after the Contract Date.

10.4 The Tender Fee is deemed, on the date when the First Deposit is due, to be, depending upon the amount, all or part of the First Deposit.

10.5 The City will invest the Deposit in an interest bearing account.

10.6 At Settlement, the Buyer is entitled to the interest on the Deposit, less any fees or charges payable and any amount required to be deducted under the *Income Tax Act*.

11. Title

11.1 Unless removed from the Certificate of Title of the Property before Settlement, the Property is sold subject to the following which are also for the purposes of the General Conditions the "Specified Encumbrances":

(a) the Leases;

(b) all reservations and conditions (if any) contained in the Crown Grant to the Property or referred to in the Certificate of Title to the Property or which are reasonably apparent on visual inspection;

(c) all easements, encroachments and rights of way (if any) and any laws including Acts of parliament, by-laws, orders and regulations thereunder (if any) affecting the Property;

(d) all easements and rights and claims by adverse possession affecting the Property or any part of it whether or not mentioned in the Certificates of Title or known to the Seller;

(e) the limitations, interests, encumbrances and notifications contained in the Certificate of Title to the Property;

(f) Caveat E066652 by Dick Smith (Wholesale) Pty Ltd;

(g) Lease K885907 to GE Personal Financial Pty Ltd;

(h) easement burden created under s.167 *P&D Act* for electricity supply purposes to Electricity Networks Corporation – see Deposited Plan 61988; and

(i) the restrictive covenants referred to in clause 11.2.

11.2 Certain development requirements including that the Development must achieve a minimum Green Star rating of 5 Stars (Australian excellence) using the Green Building Council Australia's current rating tools as appropriate to a mixed use development, will be recorded against the Certificate of Title to the Property before Settlement by way of a restrictive covenant under s.129BA or s.136D of the *Transfer of Land Act* for a period of 25 years starting from the date of registration of the restrictive covenant at Landgate or recorded in a development deed to be entered into between the Buyer and the Seller. These development requirements will be stipulated by the Design Advisory Committee or contemplated by the Planning Approval.

11.3 The Buyer shall not require any evidence of the identity of the Property other than that afforded by a comparison of the description in this document and the Certificate of Title.

11.4 The Buyer is not entitled to Object because of any of the matters referred to in this clause 11.

12. Settlement Date and payment of Purchase Price

12.1 On the Settlement Date the Buyer must pay the whole of the balance of the Purchase Price to the Seller.

12.2 On and from Settlement the Buyer must comply with all of the terms of the Leases to be complied with by the "owner", "lessor" or "licensor".

12.3 The Buyer indemnifies the Seller against all loss arising directly or indirectly from any breach by the Buyer of clause 12.2.

13. Property sold as is, where is

13.1 The Buyer accepts the Seller's title to the Property as described in this document.

13.2 The Buyer acknowledges and agrees:

(a) that the Property is purchased in an "as is where is" condition subject to all faults and defects whether or not they are apparent;

(b) that the Buyer does not rely on and has not been induced to submit a Tender by any representations, warranties or information provided or statements about the Property, the Planning Scheme, Proposed Amendment 49 and the timing for the Gazettal made by or on behalf of the Seller, the Seller's agents or their respective employees or agents; and

(c) it is purchasing the Property subject to all:

(i) Leases;

(ii) Specified Encumbrances;

(iii) restrictions on use and development of the Property including those that are imposed or prescribed by law or any Authority; and

(d) until Settlement the Seller can deal with the Leases in such manner as the Seller sees fit, in the Seller's sole discretion.

13.3 The Buyer represents and warrants that:

(a) the Buyer has obtained its own independent professional advice on the Planning Scheme, Proposed Amendment 49, the timing for the Gazettal, the nature of the Property and its permitted uses, the Leases, the Specified Encumbrances and the Buyer's rights and obligations under this document;

(b) the Buyer has relied entirely on its own independent investigations and enquiries about the Planning Scheme, Proposed Amendment 49, the timing for the Gazettal, the Leases, the Specified Encumbrances and the Property in entering into this document; and

(c) the Buyer has carried out extensive and comprehensive investigations in relation to:

(i) the Leases;

(ii) the Specified Encumbrances;

(iii) the presence of any contamination affecting the Property;

(iv) the nature and existence of any liability arising from any environmental law in connection with the Property;

(v) the purpose for which the Property and its improvements may be used;

(vi) the boundaries of the Property and the services to the Property;

(vii) it has taken all independent advice that a prudent buyer would take;

(viii) it is satisfied as to the rights and privileges attaching to or relating to the Property in all respects; and

(ix) the Planning Scheme, Proposed Amendment 49 and the timing of the Gazettal.

13.4 Without limiting any other part of this document, the City has been informed that a proportion of the Property currently occupied by the Port Cinema Building was used, prior to the construction of the Port Cinema Building, as a petrol station. Tenderers are informed that a contaminated site assessment may be required (to the satisfaction of the Department of Environment and Conservation) as part of any proposal to develop the Property or change the land use.

13.5 The Buyer acknowledges that:

(a) the Seller gives no warranty whatsoever in relation to the matters referred to in this clause 13; and

(b) the Buyer will not be entitled to Object because of any of the matters referred to in this clause 13.

14. Plans for Development and Planning Approval

14.1 The Buyer must:

(a) provide the Buyer's proposed plans for the development of the Property to the Design Advisory Committee at least seven days before the first meeting of the Buyer and the Design Advisory Committee; and

(b) in good faith meet with the Design Advisory Committee at least once before the Presentation Date and after that date whenever reasonably requested.

14.2 The Buyer must give due consideration to the design related feedback of the Design Advisory Committee in finalising its plans for the development and the Planning Application.

14.3 The Buyer must properly prepare and lodge the Planning Application with the City by not later than the Lodgement Date and pay all application fees.

14.4 If the Buyer fails to either:

(a) give the proposed plans for the development of the Property to the Design Advisory Committee at least seven days before its first meeting;

(b) in good faith meet with and present the Buyer's proposed plans for the development of the Property to the Design Advisory Committee by the Presentation Date; or

(c) properly prepare and lodge the Planning Application with the City by the Lodgment Date,

then the City may terminate the Contract by giving Notice to the Buyer of termination of the Contract.

14.5 If the City terminates the Contract in accordance with clause 14.4, the following will apply:

(a) the Deposit and the Tender Fee shall forfeit to and become the absolute property of the City;

(b) the Contract shall be at an end; and

(c) no party will have any Claim against the other arising from the termination, in respect of any matter which arose before the termination.

14.6 If either:

(a) Proposed Amendment 49 in the form actually Gazetted is not acceptable to the City or the Buyer;

(b) Proposed Amendment 49 has not been Gazetted within 24 months of the Contract Date;

(c) the Design Advisory Committee consider that the Planning Application should not be supported within 80 days after the Planning Application is lodged with the City and the City give Notice of this to the Buyer;

(d) the Planning Approval is not acceptable to the Buyer or the Design Advisory Committee (acting reasonably); or

(e) the Planning Approval has not been obtained by the Buyer within 90 days after the Planning Application is actually lodged with the City,

then either party will be entitled to terminate the Contract by giving Notice to the other of termination of the Contract, provided that:

(f) where clause 14.6(a) applies, such Notice of termination can only be given within 21 days of the Gazettal; and

(g) where clause 14.6(d) applies, such Notice of termination can only be given within 21 days of the Planning Approval being obtained.

14.7 If a party terminates the Contract in accordance with clause 14.6, the following will apply:

(a) the Deposit must be repaid to the Buyer;

(b) the City will be entitled to the interest on the Deposit if clause 14.6(d) or 14.6(e) applies, otherwise the Buyer will be entitled to the accrued interest on the Deposit;

(c) the Contract shall be at an end; and

(d) no party will have any Claim against the other arising from the termination, except in respect of any matter which arose before the termination.

15. Time for Commencement and Completion of Development

15.1 Notwithstanding any timeframe set out in the Planning Approval, the Buyer agrees with the Seller to:

(a) Commence Construction of the Development within 3 years after receiving the Planning Approval;

(b) continue to carry out construction of the Development once it has been commenced; and

(c) Complete Construction of the Development within 5 years after receiving the Planning Approval.

15.2 The Buyer must provide the Seller with quarterly written progress reports in a form and content reasonably required by the Seller outlining the Buyer's progress towards completing the Development

15.3 Within a reasonable time of a request to do so, the Buyer must provide the Seller with such evidence, certification and documentation as is required by the Seller to demonstrate the Buyer's progress towards completing the Development.

15.4 Once Planning Approval has been obtained, the Buyer must not seek to vary the Planning Approval or Development without the prior written consent of the Seller.

16. Indemnity

16.1 The Buyer indemnifies the Seller against any Claim arising directly or indirectly from:

(a) any breach by the Buyer of the Contract; or

(b) any act or omission (including any negligence, unlawful conduct or wilful misconduct) by the Buyer relating to the Contract.

16.2 Each indemnity in the Contract is a continuing obligation, separate and independent from the other obligations of the Buyer and survives the termination of the Contract.

16.3 It is not necessary for the Seller to incur expense or make a payment before enforcing an indemnity conferred by the Contract.

17. Seller's Option to Repurchase

17.1 Before Commencement of Construction

(a) Without prejudice to the Seller's rights pursuant to General Condition 24, the Seller has, until the commencement of construction, the option to repurchase the Property at the price and in the manner set out below if the Buyer fails to Commence Construction of the Development within the period set out in clause 15.

(b) The Seller may exercise the option of repurchase at any time following the Buyer's breach or threatened breach of clause 15 by giving Notice of the exercise of the option to repurchase to the Buyer.

(c) The repurchase price to be paid by the Seller will be the lower of the amounts calculated by:

(i) deducting the sum of the amount set out in clause 17.1(d) from the Purchase Price; or

(ii) deducting the sum of the amount set out in clause 17.1(d) from the current market value of the Property.

(d) The amount includes:

(i) the Seller's solicitors and settlement agents' cost and disbursements incurred upon the repurchase of the Property by the Seller;

(ii) all amounts incurred by the Seller arising from the breach by the Buyer of its obligations under the Contract;

(iii) all legal and any other costs charges and expenses for which the Seller is liable in consequence of or in connection with the exercise or attempted exercise of the right to repurchase the Property; and

(iv) the agent's selling commission on the sale of the Property by the Seller to the Buyer.

(e) Any dispute as to the current market value of the Property will be determined, at the request of either party, by the nominee of the President for the time being of the Australian Property Institute (Western Australian Division), who must be a Licensed Valuer with at least 5 years relevant experience in valuing land similar to the Property who will act as an expert and his decision will be final and binding.

(f) Upon the exercise of the option to repurchase:

(i) the Seller will prepare and submit to the Buyer who, as transferor, must execute forthwith a registrable transfer of the Property to the Seller as transferee;

(ii) the repurchase price must be paid by the Seller (with no deposit) and possession given by the Buyer in exchange for delivery to the Seller of the duly registrable transfer and the duplicate Certificate of Title within one month after the date of service of the Notice exercising the option;

(iii) rates and taxes will be adjusted as at the date that the Seller retakes possession of the Property;

(iv) the Buyer must pay the costs of preparation and registration of the transfer and all duties and registration fees on it; and

(v) the Buyer irrevocably appoints the Seller and every officer and employee of the Seller (jointly and severally) to be the agent and attorney of the Buyer in the Buyer's name and on the Buyer's behalf to execute a transfer of the Property from the Buyer to the Seller and to do all other things necessary to transfer the Property to the Seller, if the option of repurchase is exercised by the Seller pursuant to this condition. The Buyer ratifies and confirms and agrees to ratify and confirm all that the attorney does or causes to be done under this condition.

17.2 **After Commencement of Construction but Before Completion of Construction**

(a) Without prejudice to the Seller's rights pursuant to General Condition 24 the Seller has all the rights set out in subclause 17.1(a)-(f) (with the necessary modifications) to repurchase so much of the Property, if any, on which the Buyer has failed to Complete Construction of the Development ("Balance Land") within the period set out in clause 15 if the Development has proceeded on the basis of a staged development.

(b) The Seller may serve Notice on the Buyer to subdivide the Property so that a separate Certificate of Title is capable of issuing in respect of the Balance Land.

(c) Upon receipt of the Notice referred to in subclause (b), the Buyer must take all steps and seek all approvals from all relevant Authorities to obtain subdivisional approval of the Property to create the Balance Land.

(d) The Seller's entitlement under this clause to obtain separate Title to the Balance Land is expressly subject to the consent of Western Australian Planning Commission and the Buyer must within 14 days after the date of the Notice referred to in subclause (b) make application for the approval of the Western Australian Planning Commission to the subdivision of the Balance Land from the Property.

(e) If the Buyer fails to make application for any approval of any Authority in accordance with subclause (d), the Seller may in the name of the Buyer and at the cost of the Buyer seek all such approvals from all Authorities whose consent is necessary or requisite for that subdivision.

(f) In all other respects the provisions of clause 17.1 shall apply to the transfer of the Balance Land as if set out in this clause 17.2 (with the necessary modifications).

17.3 The 2011 General Conditions will be deemed to be incorporated in the contract of repurchase, whether pursuant to subclause 17.1 or 17.2 and will apply to any repurchase of the Property or the Balance Land pursuant to this clause 17 so far as they are not varied by or inconsistent with the express terms of this Contract.

17.4 The Buyer charges the Property in favour of the Seller with the due performance of the Buyer's obligations under clause 17 and the Buyer acknowledges that the Seller is entitled to lodge a caveat (whether expressed to be absolute or otherwise) over the title to the Property to give notice of its rights under this Contract provided that in doing so the Seller agrees to withdraw upon the Buyer completing the Development in accordance with the obligations of clause 15.

18. 2011 General Conditions

18.1 The General Conditions are incorporated into this document and apply to the Contract so far as they are not varied by or inconsistent with the express terms of this document and the Contract.

18.2 General Condition 9 is excluded and does not apply to this Contract.

19. GST

19.1 GST – General Provisions

(a) Any reference in this clause to terms defined or used in the A New Tax System (Goods and Services Tax) Act 1999 ("Act") is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

(b) Any amount referred to in the Contract which is relevant in determining a payment to be made by one of the parties to the other is **exclusive of any GST** unless indicated otherwise.

(c) General Conditions 18.1, 18.2 and 18.3 of the General Conditions shall not apply to the Contract.

19.2 GST – Supply of Property – Margin Scheme

(a) The Seller and the Buyer agree to apply the margin scheme to the sale of the Property.

(b) The Buyer must, at the cost of the Seller, obtain a valuation of the Property as at 1 July 2000 that complies with any requirements determined in writing by the Commissioner for making valuations for the purposes of Division 75 of the Act ("Valuation").

(c) The Buyer must pay to the Seller the amount equal to the GST liability on the margin for the Property at the same time as the Buyer is required to pay the Purchase Price to the Seller under the Contract.

(d) The Seller authorises the Buyer and any valuer employed by the Buyer to have access to the Property from the Contract Date for the purpose of valuing the Property.

(e) The Seller must remit the GST to the Commissioner as required by the Act.

(f) The Seller is not obliged to issue a tax invoice to the Buyer in relation to the supply of the Property to the Buyer under the margin scheme.

(g) The Seller and Buyer shall do all things reasonably necessary to ensure that the GST payable on the sale of the Property is determined under the margin scheme.

(h) If for any reason the Commissioner determines that the margin scheme does not apply or increases the amount of the margin in respect of the supply of the Property, then:

  (i) the Seller must give the Buyer a copy of the assessment or correspondence from the Commissioner together with a tax invoice if the supply is a taxable supply; and

  (ii) the Seller must pay amount of any additional GST payable in respect of the supply;

(iii) the Buyer is liable to any penalties or interest imposed on the amount of any additional GST payable by the Seller as a result of the application of this clause.

19.3 **GST – Other Supplies**

(a) GST is payable in respect of each taxable supply made under the Contract, including the sale of the Property to the extent that the Seller is unable to apply the margin scheme as provided for in clause 19.2 above.

(b) In respect of any taxable supply made under the Contract, the recipient must pay to the supplier the amount equal to the GST liability on that taxable supply at the same time as the recipient is required to pay the consideration for that taxable supply to the supplier under the Contract. The GST liability for any taxable supply is the amount equal to 10% of the consideration attributable to the taxable supply made by the supplier to the recipient.

(c) If one of the parties is entitled to be reimbursed for an expense or outgoing incurred in connection with the Contract, the amount of the reimbursement will be net of any input tax credits which may be claimed by the party being reimbursed in relation to that expense or outgoing;

(d) The supplier must issue a tax invoice and any relevant adjustment note to the recipient for that taxable supply;

(e) Any review or adjustment of any consideration payable for a taxable supply must take into account that this clause requires an adjustment of that consideration and must take account of any adjustment to that consideration which has already been or is required to be determined, under the provisions of this clause.

19.4 **Survival of Clause**

Rights and obligations under this clause survive after Settlement.

20. Survival of Conditions

Notwithstanding completion of the purchase any General Conditions or other term of this sale to which effect is not given by the Transfer and which is capable of taking effect after completion will remain in full force and effect but after completion the Buyer will not be entitled to rescind or annul the sale by reason of any breach or non-observance of any such condition or term.

21. Foreign Investment Review Board

If the Tenderer is a "person to whom this section applies" as referred to in sub-section 26(a)(1) of the *Foreign Acquisitions and Takeovers Act 1975*, the Tenderer shall with the Tender provide written notice from the Foreign Investment Review Board that it approves the Tenderer's purchase of the Property.

22. Guarantee

If the Tenderer is not a natural person, then unless it is a public company listed on the Australian Stock Exchange, each director of the Tenderer must execute this Tender as a guarantor and agrees to be bound by the following terms of guarantee:

(a) The Guarantor unconditionally guarantees to the Seller the due and punctual performance by the Buyer of all the Buyer's obligations to the Seller under this document and indemnifies the Seller against all loss and damage which the Seller may suffer as a result of the Buyer's default in any of its obligations under this document.

(b) This guarantee and indemnity is irrevocable until the whole of the Purchase Price and all other moneys due and payable under the Contract have been paid by the Buyer to the Seller and the Buyer has observed and performed all its obligations under the Contract.

(c) This guarantee and indemnity constitutes a principal obligation between the Guarantor and the Seller and the Guarantor waives all rights inconsistent with the provisions of this guarantee and indemnity, including rights as to contribution, marshalling, consolidation and subrogation which the Guarantor might otherwise be entitled to claim and enforce.

(d) The Seller is not required to give any notice to the Guarantor of any default by the Buyer.

(e) The Guarantor's liability shall not be affected by any claim or right to set-off, counter-claim or cross-action which the Buyer may have or claim to have against the Seller on any account whatsoever, nor shall the Guarantor be entitled to any set-off against the Seller.

(f) The Guarantor warrants to and agrees with the Seller that the Guarantor has full power to execute and do all things required by this document.

23. Bank Guarantee

(a) To secure the performance by the Buyer of the Buyer's obligations in the Contract, the Buyer must give the Bank Guarantee to the Seller on the Settlement Date.

(b) If the Buyer is in default under the Contract, then the Seller may, pursuant to the Bank Guarantee, demand that the bank pay to the Seller such amount of the sum guaranteed under the Bank Guarantee that is in the reasonable opinion of the Seller due to the Seller as a result of the default on the part of the Buyer.

(c) The liability of the Buyer to the Seller under the Contract will not be and is not limited to the amount of the sum guaranteed under the Bank Guarantee.

(d) Any demand made under paragraph (b) will not in any way be deemed to constitute a waiver by the Seller of any default and will not prejudice any other right of the Seller arising from that default.

(e) Should any amount of the Bank Guarantee be appropriated or demanded from time to time by the Seller as provided in this clause then the Buyer must on demand by the Seller and within 14 days from the demand deliver to the Seller a further Bank Guarantee for the amount so appropriated or demanded (in a form acceptable to the Seller) in order to reinstate the amount of the Bank Guarantee to an amount at least equal in value to the sum guaranteed under the Bank Guarantee and if the further Bank Guarantee is not provided, the failure to do so will be a default.

(f) After the Buyer has complied with all of its obligations under the Contract to the Seller's satisfaction, the Seller will return any remaining Bank Guarantee to the Buyer.

24. Dealings

24.1 (a) The Buyer must not before completion of the Development sell, assign or otherwise part with or deal with its right, title or interest in the Property or the Development without the prior consent of the City, which consent the City may in its absolute discretion grant or withhold.

(b) The City may as a condition precedent to granting its consent under clause 24.1(a) require the Buyer to procure the execution by the assignee or transferee of a deed to be prepared by the City's solicitors at the cost of the Buyer binding the proposed assignee or transferee to observe and perform all the terms and conditions of the Contract as if the proposed assignee or transferee were named as the Buyer.

24.2 A Change of Control of the Buyer (being a body corporate whose shares or units are not listed on the Official List of the ASX Limited) or of any person, also being a body corporate, who Controls the Buyer is taken to be a dealing for the purposes of clause 24.1 and the parties to that dealing must comply with clause 24.1 as applicable or as the Seller otherwise directs.

25. Insolvency

Without in any manner negating, limiting or restricting any rights or remedies which would have been available to the Seller at law or in equity if this clause had not been included in the Contract, it is agreed that if the Buyer (being a corporation under the *Corporations Act 2001*), prior to Settlement:

(a) has its members resolve that it go into liquidation;

(b) has an application for its winding up made and such application is not withdrawn, struck out or otherwise determined in favour of the Buyer within 28 days of the application being made or by the Settlement Date, whichever is the earlier;

(c) has a provisional liquidator or liquidator appointed;

(d) enters into any scheme or arrangement with its creditors under the *Corporations Act 2001*;

(e) has a receiver, receiver/manager or other controller appointed to, or any such person takes control of, it and/or all or any part of its assets or undertakings;

(f) has an inspector appointed under the provisions of the *Corporations Act 2001*; or

(g) has its board of directors resolve to appoint an administrator to the Buyer and the Buyer and/or the corporation appoints or otherwise suffers the appointment of an administrator,

then the Buyer will not have complied with the Contract in an essential respect and will be in default under the Contract and the Seller may exercise any of its powers and/or remedies arising out of such default under the Contract or otherwise at law including, without limit, the right to terminate the Contract under clause 24 of the General Conditions.

City of Fremantle

Tender Documents
Point Street Property
FCC 391/12

TENDER No. FCC 391/12

TO: City of Fremantle
Ground Floor
Town Hall Centre
8 William Street
FREMANTLE WA 6160

I/We ...[redacted]...

....

(Natural person - Full name, Address and Fax Number)

SKS Land Pty Ltd, 161 029 303, 3B Temple St, Victoria Park, 6100, WA, 08 9470 4829

(Corporation - Full name, ACN, Registered Office, Fax No.

("Tenderer")

[redacted]

....

(First Guarantor – Name, Address)

....

(Second Guarantor – Name, Address)

....

(Third Guarantor – Name, Address)

("Guarantors (or directors of Corporate Tenderer")

HEREBY OFFER to purchase *as joint tenant/tenants in common in the following shares .... in the Property on the conditions set out in this document for the Purchase Price of $ 10,000,000 (ten million only)
(insert price)

AND I/WE attach with this Tender:

(a) a bank cheque for the Tender Fee;

(b) in the case of a foreign Buyer, evidence of FIRB approval; and

(c) a written response to the selection criteria in clause 3.2.

City of Fremantle

AND I/WE agree:

(a) in submitting this Tender to be bound by and to observe and perform the terms and conditions of this document; and

(b) that if this Tender is accepted to be bound by and to observe and perform the terms and conditions of the Contract.

Dated the day of 2012

Executed by the [Tenderer]
161 029 303
ACN
pursuant to Section 127
of the Corporations Act

[redacted]
Director

[redacted]
Director/Secretary

[redacted]
Full Name (please print)

[redacted]
Full Name (please print)

SIGNED by the said
[Guarantor]
in the presence o
Name [redacted]
Address [redacted]
Occupation [redacted]

Guarantor sign here

[redacted]

SIGNED by the said
[Guarantor]
in the presence of:
Name
Address
Occupation

Guarantor sign here

SIGNED by the said
[Guarantor]
in the presence of:
Name
Address
Occupation

Guarantor sign here

City of Fremantle

Tender Documents
Point Street Property
FCC 391/12

NB: Complete the tender form in this document. Do not remove the tender form from this document.

☐ **CHECKLIST**

Tenderers are reminded to submit –

1. Two (2) copies of this entire document, including the tender form comprising pages 21 and 22.
2. A bank cheque for 1% of the Purchase Price payable "City of Fremantle".
3. A written response to the selection criteria in clause 3.2.
4. In the case of a foreign Buyer, evidence of FIRB approval.
5. Tender to be in a sealed envelope marked ***"Tender No. FCC 391/12. Tender for the Purchase/Development Point Street Property*** " to reach the City of Fremantle before the Tender Closing Date.

City of Fremantle

Tender Documents
Point Street Property
FCC 391/12

NOTICE OF ACCEPTANCE OF TENDER

TO: SKS LAND PTY LTD

(Name of Tenderer as shown in Tender)

City of Fremantle notifies you that your Tender dated 7/11/12 for the purchase of the Property for the Purchase Price of $10 MILLION is the successful tender.

In accordance with clause 10.1 of the Tender, this Notice and the Tender shall constitute the Contract between the City as seller and you as buyer.

Dated the day of 2012

THE COMMON SEAL of)
CITY OF FREMANTLE)
was hereunto affixed by)
authority of a resolution of the Council)
in the presence of:)

MAYOR	CHIEF EXECUTIVE OFFICER
Dr Brad Pettitt Mayor	GRAEME MACKENZIE Chief Executive Officer
NAME (Please Print)	NAME (Please Print)

THE SEAL OF THE CITY OF FREMANTLE