

THE CORPORATION OF THE CITY OF ST. CATHARINES

GENERAL CONDITIONS

GC1 DEFINITIONS

The following definitions shall apply to all Contract Documents and references to the masculine or singular throughout the Contract Documents shall be considered to include the feminine and the plural respectively, and vice versa as the context requires.

"Approved Substitute" shall mean a substitute product or service approved in writing by the City's Representative for an item designated in the Specifications or the Scope of Work.

"Bid" shall mean the written offer of a Bidder to perform the Work.

"Bidder" shall mean the party submitting a Bid for the Work.

The "City" shall mean The Corporation of the City of St. Catharines.

"City's Representative" shall mean the duly authorized representative, designated from time to time by the City, to exercise such power, authority, or discretion as is required under the Contract.

"Company" shall mean the Bidder to whom the City has awarded the Work, its successors and/or assignees and is a party to the Contract.

"Contract" shall mean the undertaking by the City and the Company to perform their respective duties, responsibilities and obligations as set out in the Contract Documents.

"Contract Change" shall mean a written instruction for a mutually agreed final amount of costs and project scope, issued by the City, to the Company for additions, deletions or other revisions to the Work as specified in the Contract Documents.

"Contract Completion" shall mean when the entire Work, except those items arising from the provisions of GC8 - WARRANTY, has been performed to the requirements of the Contract Documents and is so certified by the City's Representative.

"Contract Documents" shall mean change order(s), purchase order, supplementary conditions, general conditions, specifications, contract drawings, information available to bidders and the Company's Bid, and any amendments thereto.

"Contract Drawings" or "Drawings" shall mean the drawings included in the Contract Documents, any supplementary or revised drawings furnished by the City's Representative and incorporated into the Contract and the shop drawings and other drawings submitted by the Company and reviewed by the City's Representative.

"Contract Price" shall mean the price stipulated in the Notification of Award and/or Purchase Order which may be adjusted in accordance with the terms of the Contract.

"Contract Schedule" shall mean the most recent schedule indicating the timing of major activities of the Work submitted by the Company and approved in writing by the City's Representative.

"F.O.B." shall mean the point at which title to the Work passes from the Company to the City.

"Milestone" shall mean any specified event, date, or time by which a defined scope of Work shall be completed, including Contract Completion.

"Notification of Award" shall mean the written notification by the City accepting the Bid from a Bidder for the Work.

"Permits, Licences and Approvals" shall mean all permissions, consents, approvals, certificates, permits, licences, agreements, and authorizations to be obtained by the Company in accordance with this Contract and as required by Applicable Laws, including any associated fees.

"Goods" shall mean materials, machinery, equipment and/or fixtures forming the Work.

"Purchase Order" shall mean the document issued by the City, confirming and documenting the purchase of the Work of the Contract at a stated price or price formula upon the terms and conditions as stated in the Contract Documents, or acting as the Contract in the absence of other Contract Documents.

"RFT" shall mean the request for tenders documents to which the Bidder submitted a Bid.

"Scope of Work" shall mean a written description of the Work, setting out the Work that the Company shall perform to meet the City's requirements.

"Site" shall mean the City's destination to which the Work is delivered.

"Specifications" shall mean written descriptions or instructions pertaining to the performance of the Work under the Contract, including, but not limited, to the qualitative and quantitative requirements for Products, standards, services, processes, and workmanship.

"Subcontractor" shall mean the individual, firm, partnership, or corporation having a direct contract with the Company to perform a part or parts of the Work including the supply of Products worked to a special design according to the Contract Documents.

"Work" or "Works" shall mean the design, manufacture, fabrication, supply and/or related services, or supply of Goods as required by the Contract Documents.

“Worker” shall mean any individual that the Company, or a Subcontractor, employs, contracts with, or assigns to perform Work.

GC2 APPLICABLE LAWS

In the performance of the Work, the Company shall observe and comply with the statutes and regulations of the Government of Canada and the Province of Ontario and with the by-laws of the Corporation of the City of St. Catharines, as well as any order, direction, directive, or ordinance of an authority with appropriate jurisdiction

Wherever a statute, regulation, by-law, standard, code or document or any part thereof is quoted in the Contract Documents, it shall be deemed to refer to the latest amendment or revision in effect on the date of the closing of the RFT and shall be a part of the Contract as if it had been written in full herein.

The Contract shall be governed by and interpreted in accordance with the laws of the Province of Ontario and any action or proceeding brought by the Company to interpret or enforce the Contract shall be commenced in the Courts of Ontario in the city of St. Catharines.

GC3 ORDER OF PRECEDENCE

In the event of any inconsistency or conflict, the Contract Documents shall be interpreted in accordance with the following order of precedence:

- 1.1 Contract Amendments;
- 1.2 Purchase Order;
- 1.3 Notification of Award;
- 1.4 Supplementary Conditions;
- 1.5 General Conditions;
- 1.6 Specifications;
- 1.7 Contract Drawings, if applicable;
- 1.8 Information Available To Bidders, if applicable; and
- 1.9 Company's Bid.

These General Conditions together with the Contract Documents shall be the only terms and conditions which govern the Contract. All other terms and conditions, including those supplied by the Company on any quote, estimate, invoice, or any record or document of any kind whatsoever, are expressly rejected by the City, unless the City provides its express and written consent.

GC4 LANGUAGE OF THE CONTRACT

Communications between the Company and the City shall be in the English language and said communication shall include, but not be limited to, all documents, notes on drawings and submissions required under the Contract.

GC5 INTENT OF THE CONTRACT

The intent of the Contract is for the Company to provide everything necessary for the proper performance and completion in every detail of the Work described or implied by the Contract Documents including all Contract Amendments.

The Company shall not assign, transfer, convey, sell, or otherwise dispose of the whole or any part of the Contract without the written consent of the City.

Nothing contained in the Contract Documents shall imply or create any contractual relationship between any Subcontractor and the City.

The Company shall exercise its rights and perform its obligations at its own cost and risk without recourse to the City, except as otherwise provided in this Contract, in which case the Company's sole recourse with respect to the subject matter of this Contract shall be the City.

GC6 TAXES AND DUTIES

The Contract Price is inclusive of all applicable Canadian taxes and customs duties, either in force or announced prior to the RFT Closing Date, even if the effective date is after the RFT closing date, including but not limited to the Harmonized Sales Tax (HST).

If a change in the tax or duty payable is announced after the RFT closing date, any change in tax or duty payable will be to the account of the City. No additional costs for administration or overhead and profit will be allowed on such changes and the Company shall supply at no cost to the City, sufficient documentation to permit a determination of the resulting change.

Where an exemption or recovery of government sales tax, custom duties or excise taxes is applicable to the Contract, the Company shall provide the City where required, with all necessary cost information including original invoices and assistance, at no cost, to facilitate such exemption or recovery of taxes and duties to the credit of the City.

GC7 PERMITS

The Company shall apply for and obtain in its own name, Permits, Licences and Approvals and shall pay fees and give notices necessary and incidental to the due and lawful performance of the Work, in accordance with the Specifications.

GC8 WARRANTY

The Company shall promptly correct at its own expense any defect or deficiency in the workmanship or material which appears within a period of one year from the date of delivery of the Work to the City or such longer period as may be specified for certain Products or Work as set out in the Specifications or other Contract Documents. Neither testing, inspection, payment, or acceptance of the Work by the City's Representative shall relieve the Company of this responsibility.

Upon receiving notice of a defect or deficiency, the Company shall immediately correct, within forty-eight hours or some other reasonable time agreed to with the City's Representative and at the Company's own expense, all Work found defective, deficient, or unable to meet the design,

performance and operation criteria set out in the Contract. The Company shall also correct, at its own expense any damage to other work resulting from any corrections required under this general condition. If the Company after such notification shall delay or default in making good the Work, then the City's Representative may arrange to correct the defect and the Company shall be liable for all costs, changes and expenses in connection therewith. New Warranty periods shall commence upon the completion of the remedied Work.

If, as determined by the City's Representative, the Company is not expedient in correcting defective Work or Work not performed in accordance with the Contract Documents, then the City may deduct from the monies otherwise due to the Company, the difference in value as determined by the City's Representative between the Work as performed and that which is called for by the Contract Documents.

GC9 PROPRIETARY RIGHTS

If any design, device, process or material covered by a letters patent or trademark, copyright, industrial design, trade secrets or other forms of intellectual property, is provided by the Company under the Contract, the Company shall indemnify, defend and save the City harmless from any action or claim arising out of the infringement or alleged infringement of any valid or allegedly valid patent, trademark, copyright, industrial design, trade secret or other forms of intellectual property and shall indemnify the City for any cost, expense and damages which it may suffer or be obliged to pay by reason of such action or claim.

The Company shall pay all royalties and patent fees required for the performance of the Contract.

Any drawings, documents, technical data, methods, processes, tooling, and inventions; whether conceived, or developed and produced during the Contract specifically for the purposes of completing the Contract, shall be the property of the City, who shall have sole exclusive rights for subsequent use of same, except as may otherwise be granted by the City.

The City has the right, within the scope of the Contract and for the sole purpose of operating, maintaining and subsequently modifying the Work, to use, duplicate, or disclose internally within the City, the technical data and the information conveyed therein, in whole or in part, and to have or permit others to do so, as set out below:

Manuals or instructional materials prepared for installation, operating, maintenance or training purposes;

Technical data pertaining to items, components or processes which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements;

Other technical data which has been or is normally furnished without restriction by the Company or Subcontractors;

Should the Company and/or its Subcontractors require an agreement prior to providing confidential technical data to the City, then the City will enter into a non-disclosure agreement acceptable to said parties to ensure delivery of confidential technical data pursuant to the Contract Documents; and other specifically described technical data, which the parties agree will be furnished without restriction.

No such copyrighted matter shall be included in technical data furnished hereunder unless the written permission of the copyright owner has been obtained by the Company for use by the City in the manner herein described.

The Company shall report to the City promptly and in written detail each notice or claim of copyright infringement received by the Company with respect to any technical data delivered hereunder.

GC10 AUTHORITY OF THE CITY'S REPRESENTATIVE

The City's Representative shall represent the City upon issuance of the Notification of Award or Purchase Order until completion of the Contract and shall have authority to act on behalf of the City to the extent provided in the Contract Documents. The City's instructions to the Company shall be forwarded through the City's Representative.

The City's Representative shall decide questions which arise relating to the performance of the Work, the rate of progress, the quality and acceptability of Products furnished, the interpretation of the Contract Documents and the mutual rights as between the Company and other contractors working on the Site.

The City's Representative has the authority to reject Work which, in the City's Representative's opinion, does not conform to the Contract Documents and to require special inspection or testing of the Work, whether such Work is fabricated, installed, or completed. Neither the City's Representative's authority to act nor decisions made to exercise or not to exercise such authority in accordance with the Contract shall give rise to any duty or responsibility of the City's Representative to the Company or its Subcontractors.

The City's Representative will prepare and issue, if appropriate, Contract Amendments in accordance with GC20 - CHANGES IN THE WORK and GC21 - VALUATION OF CHANGES IN THE WORK.

The City's Representative may, for cause, direct any part of the Work to be commenced and/or completed in priority to any other part of the Work.

GC11 INSPECTION AND TESTING OF THE WORK

The City's Representative shall, at all times, be provided access to the Work. Work to be done under the Contract shall be done to the satisfaction of the City's Representative who has the discretionary authority to reject Work which, in the City's Representative's opinion, does not conform to the requirements of the Contract Documents. Defects and deficiencies shall be corrected by the Milestone date(s) or as mutually agreed upon between the City's Representative and the Company.

If the Work is designated for special tests, inspections, or approvals in the Contract Documents or by the City's Representative's instructions or by the applicable statutes, regulations and by-laws, the Company shall give the City's Representative timely notice regarding such inspections. Inspections by the City's Representative will be made promptly. The Company shall arrange for inspections by other applicable authorities and shall give the City's Representative timely notice of such inspections.

If the Company fails to provide timely notice to the City's Representative of any special tests, inspections or approvals required by the Contract Documents, it shall be required to repeat such tests or inspections at its expense if directed by the City's Representative.

Any part or parts of the Work may be specially examined for compliance with the Contract Documents if so ordered by the City's Representative. If, upon examination, such Work is found not to be in accordance with the Contract Documents, the Company shall correct such Work and pay the cost of examination and correction. If such Work is found to be in accordance with the Contract Documents, the City will pay the cost of examination and reinstatement.

GC12 SUSPENSION OF THE WORK

The City shall have the right at any time for cause or convenience to suspend further performance of all or any portion of the Work at any stage of undertaking by notice in writing to the Company. On the date of such notice the Company shall discontinue all Work as instructed whether being performed by itself or its sub-suppliers and shall serve and protect all Work in progress and completed Work.

The Company shall be reimbursed for that portion of the Work satisfactorily performed or complete to the date of the notice. The City shall not be liable for any other costs arising from such notice including but not limited to loss of anticipated profits or loss of opportunity.

GC13 DEFAULT BY THE COMPANY

If, in the opinion of the City's Representative, the Company by its own acts, omissions or neglect or that of any of its Subcontractors, or Product suppliers, fails to comply with the provisions of the Contract, delays the Work, or provides broken or defective Goods, or causes expense to the City or to any other parties under contract to the City, then the City's Representative may notify the Company in writing that the Company is in default of its contractual obligations and instruct it to correct the default within five (5) calendar days immediately following receipt of such notice.

If the default cannot be corrected within the five (5) calendar days specified, the Company shall be in compliance with the City's Representative's instructions if it commences the correction of the default within such specified time and provides the City with a schedule acceptable to the City's Representative for such correction and completes the correction in accordance with such schedule.

If the Company fails to correct the default within the time specified or subsequently agreed upon, the City, without prejudice to any right or remedy it may have under GC15 - TERMINATION FOR DEFAULT, or any other provision of the Contract, may correct such default.

If the City or any other party under contract to it, suffers any expense caused by the acts, omissions or neglect as indicated above, then the City shall have the right to deduct the value of such expenses, notwithstanding the correction of the default within the time specified or subsequently agreed upon.

In the event that all costs have been paid to the Company prior to completion of services, and City suffers expense caused by acts, omissions or neglect as indicated above, the Company shall refund costs back to the City to cover the cost of the suffered expenses within seven (7) days of

receiving a notice which shall include the cause of the suffered expenses, the amount of the suffered expenses, and any supporting documentation, such as receipts or invoices.

GC14 DELAY BY THE CITY

If the Company is delayed in the performance of the Work by any act, omission, or neglect of the City, then an extension of time shall be granted as the City's Representative decides, after consulting with the Company. If the City's Representative and the Company cannot mutually agree to an extension of time, the City's Representative at his/her sole discretion shall determine the length of the delay and grant an extension of time accordingly. The Company shall be entitled to compensation for any associated additional costs that the City's Representative may determine as being the result of such delay.

No extension of time or payment of compensation shall be granted unless the Company, submits to the City's Representative in writing its notice of delay within seven (7) calendar days after the delay. The notice of delay shall state the nature of the delay, its cause, the portions of the Work affected thereby, and the dates when such portions of the Work became so affected. The notice shall provide the anticipated direct impact of the delay

GC15 TERMINATION FOR DEFAULT

The Company shall be in default of the Contract and the City may terminate the Contract if the Company, in the opinion of the City:

1. Suspends the whole or any part of the Work without cause before completion;
2. Fails or refuses to proceed with the Work with due diligence or fails or refuses to maintain the Contract Schedule;
3. Ceases or threatens to cease to carry on its business, or if there occurs, at any time, an act or event of bankruptcy or insolvency of the Company (as defined or provided for in any applicable statute), or if any proceedings, voluntary or involuntary, by or against the Company under any statute or statutory provisions relating to bankruptcy, insolvency, liquidation, arrangement, re-organization or dissolution are commenced, or if the Company makes any proposal under the Bankruptcy Act or if the Company or the property or assets of the Company become subject to the Winding Up Act, or if any application is made with respect to the Company under the Companies' Creditors Arrangement Act or under similar legislation, or if any order shall be made or a resolution passed for the winding up, liquidation or dissolution of the Company or if any receiver, receiver and manager, trustee, liquidator or similar official is appointed for the property or assets of the Company;
4. Continually or repeatedly refuses or fails to supply sufficient skilled workers, or Products, plant or equipment of the proper quality or quantity;
5. Provides faulty or broken Goods, as determined by the City's Representative upon delivery;

6. Fails to make payments promptly to suppliers or Subcontractors for materials, Products, and labour;
7. Disregards or fails to comply with statutes, regulations, by-laws, or the instructions of the City's Representative;
8. Continually or repeatedly refuses or fails without cause to perform this Contract in strict accordance with the Contract Documents.

Should the Company be in default of this Contract as outlined herein, the City's Representative may serve written notice upon the Company specifying the default and instructing the Company to remedy such default.

If the default continues for three (3) calendar days after the date of serving the said notice of default, the City may serve upon the Company and its surety, if applicable, written notice of its intention to terminate the Contract.

If the default continues for three (3) calendar days after the date of serving the said notice of intention to terminate the Contract, the City, upon issuance of written notice from the City's Representative that sufficient cause exists to justify such action and without prejudice to any other rights or remedies it has, may terminate the Contract, and serve notice of termination upon the Company and its surety, if applicable.

If the City is required to complete the Work, the Company shall not be entitled to receive any further payment. If the unpaid balance of the Contract Price exceeds the reasonable cost of completing the Work and any damages incurred by reason of the Company's default, including liquidated damages and the cost for warranty items, the Company shall pay such excess to the City.

Notwithstanding anything to the contrary in this Contract, where the Company has been given three notices, the City may immediately terminate this Contract by serving a notice of termination upon the Company (and its surety, if applicable) regardless of whether the Company has previously rectified any default(s).

If such reasonable cost of completing the Work including damages exceeds the Contract Price, then the Company and its surety, if applicable, shall be liable to the City for any additional cost in completing the Work.

A Company that has been terminated for default, may at the City's sole discretion, be restricted from submitting bids on subsequent City procurements, for a period deemed appropriate by the City. The City shall also be under no obligation to accept any bid from a company with whom an officer or director of that company or with whom an individual associated with that company, including but not limited to an officer or director that has, in the past, been associated, in any way, with a company that has previously had a contract with the City that was terminated for default, for a period of time deemed appropriate by the City, as applicable.

GC 15.1 LIQUIDATED DAMAGES

The Company acknowledges that damages pursuant to a breach of the Contract by their nature are difficult to ascertain. Accordingly, in the event that the Contract is terminated as a result of the Company's breach, the Company shall be liable to pay liquidated damages to the City in an amount which equals the Contract Price for the Work provided herein. Liquidated damages are not intended to be a penalty and are solely intended to compensate for damages.

GC16 CONFLICT OF INTEREST

For the purposes of the Contract, a "Conflict of Interest" includes but is not limited to any situation or circumstance where:

1. In relation to the Request for Tender (RFT) process, the Company has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to: (i) having or having access to information in the preparation of its Bid that is confidential to the City, and not available to other bidders; (ii) communicating with any person with a view to influencing preferred treatment in the RFT process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive RFT process and render that process non-competitive and unfair; or
2. In relation to the performance of its contractual obligations in the Contract, the Company's other commitments, relationships or financial interests could or could be seen to: (i) exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (ii) compromise, impair or be incompatible with the effective performance of its contractual obligations.

The Company shall:

1. Avoid any Conflict of Interest in its contractual obligations;
2. Disclose to the City's Representative without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and
3. Comply with any requirements prescribed by the City's Representative to resolve any Conflict of Interest.

The Company should declare that the Company and if applicable, each joint venture participant, has no pecuniary interest in the business of any third party or any connection or relationship with any such third party or employers or directors of such third party that would cause a Conflict of Interest or appear to cause a Conflict of Interest in carrying out the Work. Should any such interest, connection or relationship materialize during the life of the Contract, the Company shall declare it immediately to the City's Representative.

Company personnel must disclose to the City's Representative any relevant arrangements, contracts, alliances, connections, or relationships so that their eligibility for a contract is based on all available information.

The issue of whether a 'Conflict of Interest' exists involving the Company shall be determined at the City's sole discretion.

GC17 COMPANY'S RESPONSIBILITIES

The Company shall have complete control of the Work and shall effectively direct and supervise the Work to ensure conformance with the Contract Documents. The Company shall be solely responsible for production means, methods, techniques, sequences, and procedures and for coordinating the various parts of the Work and its delivery under this Contract.

The Company shall be responsible for the quality and workmanship of the goods provided under the contract, and ensuring delivery of such goods, if applicable, in working order.

The Company shall employ the services of a Professional Engineer of Ontario (PEng), if required, to fulfil the requirements of the statutes and regulations pertaining to the Contract.

The Company shall adhere to the Contract Milestones, which includes delivery dates of the Work to the City, and the Company will provide written notification to the City's Representative forthwith of any potential or actual failure to adhere to a Milestone delivery date.

The Company shall be as fully responsible to the City for the acts and omissions of its Subcontractors, suppliers, agents, consultants, and persons directly or indirectly employed by the Company as it is for its own acts or omissions.

GC18 FORCE MAJEURE

If the Company is delayed in the performance of the Work by acts of God, or public enemies, acts of governments, or foreign states, or fires, floods, epidemics, quarantine restrictions, strikes, lockouts or organizations of workers, or embargoes by transportation companies or public authorities, or by riots, insurrections, wars, pestilence, lightning, earthquakes, cyclones, or by other causes which the City's Representative determines to be wholly beyond the control of the parties, then an extension to any affected Milestones, which the City's Representative determines is reasonably necessary, may be granted. The Company shall not be entitled to any additional compensation on account thereof. Precipitation, cold and hot weather, unseasonable or otherwise, will not be considered force majeure.

No extension of time shall be granted unless the Company, within 14 calendar days after the delay is discovered, submits to the City's Representative in writing its notice of claim for extension of time stating the nature of delay, its causes, the portions of the Work affected thereby and the date when they become so affected.

If the City's Representative is satisfied that the delay of the Work occurred, and that it resulted from one or more of the causes described herein, the City's Representative shall issue a Contract Amendment, subject to receipt of the Company's documentation.

GC19 CHANGES IN THE WORK

The City may make changes in the Work without invalidating the Contract, by altering, adding to, or deducting from the Work.

No change in the scope of Work or quantity of Goods supplied shall be undertaken without an authorized Contract Amendment and no change in the Contract Price or in Milestones, shall be valid unless so ordered and approved by the City.

When a Contract Amendment is proposed, the Company shall present to the City's Representative for approval, its change in the Contract Price and in the Milestones, as applicable. The Company shall submit a detailed breakdown of the price of the proposed change giving quantities of labour, material and equipment and the unit prices for same along with substantiating documentation within 10 business days after the City's Representative has initiated the change request. The Company shall supply any additional information in support of the price submitted and/or change in Milestones that the City's Representative may request.

GC20 SETTLEMENT OF DISPUTES

If a claim or any other dispute arising between the City and the Company cannot be resolved to the satisfaction of both parties, then the parties may between themselves agree to submit the matter for binding arbitration in accordance with the provisions of the Arbitration Act of the Province of Ontario and amendments thereto.

The Company shall complete the Work, in accordance with the written instruction of the City's Representative, notwithstanding any dispute, arbitration, or any legal action initiated by either or both of the parties.

Arbitration proceedings shall not take place until the completion or alleged completion of the Work except in a case where the parties agree that a matter in dispute is of such nature as to require immediate consideration while evidence is available.

No action or suit may be brought by the Company until after the final invoice has been processed by the City's Representative and that action or suit shall only be in the amount of any difference between the Company's account as submitted and the final invoice.

GC21 TERMINATION FOR CONVENIENCE

Notwithstanding any other provisions relating to the City's rights to terminate this Contract, the City may, by written notice to the Company, terminate this Contract for its own convenience at any time if the City deems such action necessary or in the best interests of the City. The City's right to terminate the Contract for its convenience shall be absolute and unconditional and exercisable by the City in its sole discretion. Such notice of termination for convenience shall specify the date upon which such termination becomes effective. Upon receipt of such notice, the Company shall cease all operations, except as may be directed by the City's Representative to complete any unfinished portion of the Work.

The Company, upon receiving such notice of termination from the City, shall immediately carry out any instructions given and shall proceed with such work as instructed by the City's Representative in the notice of termination. Subject to any directions in the notice of termination, the Company shall immediately discontinue ordering Products related to the cancelled Work and shall make every reasonable effort to cancel existing orders and sub-contracts related to the Work, on the best terms available.

In the event the Contract is terminated for the convenience of the City, pursuant to this section, the Company shall only be entitled to payment of the following amounts:

The portion of the Contract Price relating to Work performed and/or Goods supplied to the date of the notice of termination in accordance with the Contract Documents. Cancellation costs (which costs shall not include loss of anticipated profit claims) reasonably incurred by the Company as the result of such termination provided the Company has substantiated such costs to the City's reasonable satisfaction after the City has reviewed the details thereof. The Company's obligations as to quality, correction and warranty of any Work performed or Goods delivered under this Contract shall continue in force, after such termination.

Once the total effect on the Contract of the said termination has been established, the change to the Contract shall be formalized by the issuance of a Contract Amendment, in accordance with GC19 - CHANGES IN THE WORK.

Except as described in this General Condition, the Company shall not be entitled to any additional reimbursement on account of any such termination including, without limitation, incidental, special, consequential, or other damages, notwithstanding any other provision of the Contract Documents.

GC22 RECORDS AND AUDIT

The City may inspect and audit the books, payrolls, accounts, and records of the Company at any time as deemed necessary by the City prior to Contract Completion and thereafter for a period of two years, to verify the Company's valuations of Contract Amendments, cancelled Work and claims, and the Company shall supply certified copies of the books, payrolls, accounts and any other records to the City or access to same as required by the City.

In the case of the Company's neglect or failure to observe fully and faithfully the provision of documentation to validate such Contract Amendments, cancelled Work and claims, the Company shall forfeit all right to payment there for, which it otherwise might have had and shall not make any claim in respect thereof; and if made, the City may reject the same as invalid, and the Company shall not have any right of recovery in respect thereof at law or otherwise, unless written consent of the City's Representative to the making of such a claim is obtained.

Should an audit disclose any overbilling on the part of the Company, the Company shall be responsible to repay to the City all monies owed by the Company resulting from the overbilling or the City at its discretion may deduct the overbilling from monies owed to the Company. Further the City shall have the right at its sole discretion to restrict the Company, from submitting a bid on future City Bid Requests, for a period deemed appropriate by the City.

GC23 SEVERABILITY

Any condition, section, subsection or other subdivision of this Contract or any other provision of this Contract which is, or becomes, illegal, invalid, or unenforceable, shall be severed from this Contract and be ineffective to the extent of such illegality, invalidity or unenforceability and shall not affect or impair the remaining provisions hereof.

GC24 PROHIBITION AGAINST GRATUITIES

No Company and no employee, agent, or representative of the Company may offer or give any gratuity in the form of entertainment, participation in social events, gifts or otherwise to any member of the City of St. Catharines Council or any officer or employee of the City in connection

with or arising from this Contract, whether for the purpose of securing a future contract or seeking favourable treatment in respect to this Contract.

If the City determines that this clause has been breached by or with respect to the Company, the City may preclude the Company from bidding on future City work and may terminate this Contract without incurring any liability.

GC25 SET-OFF

The City shall have the right, at its sole discretion and at any time, to hold back an amount of its choosing from the amounts owing by the City to the Company pursuant to the Company's indemnification of the City and the City's right to collect applicable liquidated damages.

GC26 INDEMNIFICATION

The Company shall accept and assume responsibility for all risk in respect of loss, damage, injury, destruction or accident arising from any violation of law, negligent act, or wilful misconduct of the Company from whatsoever cause arising, related to this Contract or performing the Work and shall not under any circumstances whatsoever allege or claim that the City is vicariously liable for the Company's obligations under the Contract, including its performance of the Works, and that this section shall act as an estoppel against any proceeding, including a defence made against the City by the Company, in the event of a dispute related to liability. Without restricting the generality of the foregoing, the Company further acknowledges that it is not a volunteer of the City and is not protected by any Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sched. A protection or any other insurance protection or coverage of the City.

The Company shall hereby assume the defense of, fully indemnify, and hold harmless the City, its Representative, consultants, agents and employees in respect of the amount of any claim, demand, loss, cost, expense (including reasonable legal expenses), action, suit, proceeding, liability, fine, penalty, interest, payment or damage by whomsoever (including, but without limitation, the City) which is made, sustained, brought or prosecuted in any manner based upon, occasioned by, or attributable to any breach of the Contract by the Company, including its performance of the Works, or to any willful misconduct, fault, or negligent act or omission of the Company or any person, agent, consultant, firm or corporation for whose acts the Company is liable at law (collectively referred to as "Claims").

Further, the Company shall pay any amount of Claims incurred by the City on account of any injuries, including death, or damages, or destruction of property, including the City's property, received or sustained by any persons or property and if it fails to do so, the City may pay such Claims and deduct the amount thereof from any monies due, or to become due, to the Company, or otherwise recover such amounts or any balance thereof from the Company.

Subject to any Supplementary Condition with respect to the payment of liquidated damages, if applicable, neither party shall be liable to the other party for any consequential damages, including, but not limited to, claims for loss of profit or reputation.

Notwithstanding anything to the contrary contained in the Contract, the Company's liability to the City will not exceed the greater of One Million (\$1,000,000.00) dollars in Canadian funds or the amount payable by the City under the Contract ("Limitation on Indemnity") for the Work as set forth herein provided, however, this Limitation on Indemnity will not apply to:

- i) any obligation of the Company to indemnify the City based on claims of third parties on account of personal injury or property damage;
- ii) to the amount of applicable liquidated damages available to the City hereunder;
- iii) any liability related to the Company's gross negligence or willful misconduct; and
- iv) any injury to City's Representatives, consultants, agents, employees, or City's property to the extent caused by the gross negligence or willful misconduct of the Company or its agents.

GC27 INVOICING

Invoices shall be submitted in the currency as stated on the City's Purchase Order and shall detail the following in a form acceptable to the City:

1. General Requirements:

- the City Purchase Order number and applicable line-item number, or Contract number as applicable;
- the Work period covered by the invoice ;
- the calendar date and corresponding location for each separate item of Work performed/delivered;
- the quantity of units of Work performed during the Work period covered by the invoice; the itemized unit price rates, applicable discounts, for each item of Work performed (as listed in the Price Schedule contained in the Contract Documents, or as agreed via any Contract Amendment);
- applicable Harmonized Sales Tax (HST) shall be shown separately on the invoice;
- the Company's HST registration number, if applicable; and
- the name of the City Representative requesting each item of Work.

2. Documentation for invoice:

- the Company shall ensure it can provide evidence which can substantiate invoices including, but not limited to, City's request for such Work, actual time sheets, waybills, expense receipts, completions/units delivered to City, etc. as applicable; and
- the Company shall, upon request by the City's Representative, deliver said evidence, in a format considered acceptable to the City's Representative in his/her sole discretion, promptly and at no cost to the City.

Invoices shall be forwarded in a timely manner to the following address
accounts.payable@stcatharines.ca

OR

The Corporation of the City of St. Catharines
Attention: Accounts Payable
50 Church Street
PO Box 3012
St. Catharines, Ontario
L2R 7C2

GC28 TERMS OF PAYMENT

Payments for Work performed shall be made within 30 calendar days following delivery of the Work and receipt by the City of an acceptable invoice submitted in accordance with GC27 - INVOICING. (If the 30th day falls on a weekend or public holiday, payment will be made the next business day thereafter.)

Payment shall be issued in the form of Electronic Funds Transfer (EFT) wherever possible, and, where necessary by cheque.

Payment under the terms of the Contract shall not constitute acceptance of the Work nor relieve the Company from any of the responsibilities or obligations under the Contract.

GC29 VALUATION OF CHANGES IN THE WORK

For changes which are to be performed on a time-and-material basis for professional services for additional Work, the Company shall develop all-inclusive hourly "Billing Rates" for each position classification that may be utilized on any design change Work. These "Billing Rates," if acceptable to, and approved by, the City's Representative, would be applied against the approved hours for the Contract Change Work related to design Work. No other mark-ups are applicable to the approved all-inclusive "Billing Rates." The approved "Billing Rates" shall be applicable throughout the term of the Contract, for Contract Change Work.

Changes, which are to be performed on a lump-sum basis, shall be subject to negotiations between the City's Representative and the Company.

Changes for extra Work which are to be performed on a unit-price basis, shall be in accordance with accepted "Unit Prices For Extra Work" contained in the Contract Documents or if there are no accepted "Unit Prices For Extra Work," using unit prices subsequently negotiated between the City's Representative and the Company.

GC30 WORKPLACE SAFETY

The Company shall at all times comply and ensure compliance by its employees, volunteers, agents, and any subcontractors ("the Company Workers") with all applicable federal, provincial or municipal legislation relating to occupational health and safety, all applicable regulations thereunder and any and all applicable industry standards and guidelines pertaining to the provision of the Deliverables ("Workplace Safety Laws").

The Company shall be responsible for taking every precaution in the circumstances for the protection of the Company Workers associated, utilized, or required for the provision of the Deliverables whether employed by the Company or a third party.

Further, the Company shall be responsible for establishing a safe and secure worksite for the protection of any member of the public.

The Company shall inspect the workplace prior to the commencement of the provision of the Deliverables and satisfy itself that the conditions of the workplace are in compliance with Workplace Safety Laws. If at any time, the Company observes any non-compliance in the conditions of the workplace, it shall immediately notify the City within one (1) Business Day, otherwise it shall be deemed to have voluntarily accepted such non-compliance. A notice provided under this section shall include:

- a) the date and time of the observation;
- b) general description of the non-compliance; and
- c) an indication of the hazard presented.

In the event that the Company is performing construction or improvements on City lands, the Company understands and acknowledges that the City defers, and the Company accepts, full and complete control of the worksite with respect to the occupational health and safety of the Company Workers and the safety of the public.

The Company represents and warrants that it has received all applicable training and certification commensurate with industry standards and which are required to comply with Workplace Safety Laws. The Company shall have and continue to maintain such certification, training, and qualification as necessary to complete the Deliverables. The City may call upon, and the Company shall deliver within two (2) Business Days, any documentation or records required to evidence such training or qualification, to the satisfaction of the City.

Unless stated otherwise, where the work hereunder involves construction, the Company shall be the constructor for the purposes of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 ("OHSA").

Due to the Company's expertise and proximity in relation to occupational health and safety related to the provision of the Deliverables, the Company acknowledges and understands that the City shall not be responsible for such occupational health and safety, and that the City must rely on the Company's representations and warranties hereunder to ensure the health and safety of the Company Workers.

With respect to the Company Workers, the Company shall assume the role of an "Employer" as defined under OHSA and shall comply with all obligations attached thereto.

The City may rely on this representation to discharge any duties the City may have with respect to the occupational health and safety of the Company Workers.

Upon the request of a regulatory or enforcement agency with competent jurisdiction, the City may provide this Agreement as evidence that it has discharged any duty owed to the Company Workers with respect to occupational health and safety. If required, the Company shall come to the defense of the City, whether in writing or oral testimony given by an authorized corporate officer of the Company, and confirm that no action was required of the City as the Company represented and warranted that it shall be wholly responsible to comply with all occupational health and safety laws requirements owed to the Company Workers.