



## STANDARD TERMS AND CONDITIONS

### 1. Rejection of Bids

Bids with one or more of the following may be declared informal and/or disqualified and/or rejected:

- a) Bids that do not comply strictly with all terms and conditions of the Bid Solicitation document
- b) Bids that are incomplete, conditional, qualified, illegible or obscure, or that contain additions not called for
- c) Bids that are based upon an unreasonable period of time for completion of the Work
- d) Bids received from Bidders involved in civil litigation or pending litigation with the City, or banned or on probation with the City.

### 2. Addendum

Any and all addendum or addenda issued prior to the Closing Time shall form part of this document. The onus is on the Bidder to verify that they have received and reviewed all addenda prior to Closing Time. The cost of complying with the addendum or addenda requirement (if any) shall be included in the Bid price. It is the responsibility of the Bidder to seek clarification of any matter that they consider unclear before submitting a Bid. The City is not responsible for any misunderstanding of the Bid Solicitation document on the part of the Bidder.

It is understood and acknowledged that while the Bid Solicitation document includes specific requirements, a complete review and recommendation is required. Minor items or details not herein specified, but obviously required for the Work shall be provided as if specified in conformance with modern practices. Any omissions or errors or misrepresentation of these requirements and specifications within the Bid Solicitation document shall not relieve the Vendor of the responsibility of providing the services or products as aforesaid.

### 3. Procurement By-Law

All Bids received by the City are governed by its Procurement By-law, which set rules in determining the validity of all Bids. Bids will be called, received, evaluated, accepted and processed in accordance with the City's Procurement By-law. By submitting a Bid, each Bidder agrees to be bound by the terms and conditions of the City's Procurement By-law and any amendments to it, as fully as if it were reproduced and attached to the Bid Solicitation document. The City's Procurement By-law is available on the City's website at:

<http://www.burlington.ca/uploads/91/635575154674235381.pdf>

### 4. Basis of Award (Price factor)

Bidders shall be deemed to have included all costs related to the Work in the Total Bid Price as provided in their Bid, except for items clearly identified as provisional in the Bid Solicitation document. In no case shall the invoicing for the entire Work performed exceed the Total Bid Price, unless additional Work is ordered by the City in writing. The unit prices as well as provisional pricing shall be used to invoice the additional or provisional work, as required by the City. **For the purpose of award, the Total Bid Price will be considered as representing the intention of the**



## STANDARD TERMS AND CONDITIONS

**Bidders and will be used as the basis for comparison of Bids for the price factor.**

### **5. Incurred Cost**

The City will not be liable, nor reimburse any Bidder for costs incurred in the preparation of the Bid, or any other services that may be requested as part of the procurement process.

### **6. No Lobbying and Single Point of Contact**

Any attempt on the part of the Bidder or any of its employees, servants, agents, contractors or representatives to contact any of the following persons, directly or indirectly, with respect to this procurement may lead to disqualification:

- a) any elected or appointed officer;
- b) any staff of the City except the Designated Representative as identified in the Bid Solicitation document; or
- c) any other person connected in any way with the procurement.

### **7. No Collusion**

Bid shall be made without any comparison of figures or arrangement with any other individual, corporation or person submitting a Bid for the same Work and shall be fair in all respects and shall be without collusion or fraud.

### **8. Conflict of Interest**

By submitting a Bid, the Bidder confirms that they have no conflict of interest with respect to other work and/or other clients except otherwise specified on the Form of Offer submitted by the Bidder. The Bidder shall ensure that all subcontractors and sub-consultants also have no conflict with respect to other work and/or other clients.

### **9. Examination of Site**

Bidders will accept the site conditions, and the requirements of the work, as is. No modifications to the Bid will be accepted after the Closing Time.

- a) No claim for extras will be allowed for work or difficulties encountered due to conditions of the site which were visible, knowable, or reasonably inferable, prior to the time of submission of Bid. Bidders shall accept sole responsibility for any error or neglect on their part in this regard.
- b) Before submitting a Bid, each Bidder shall:
  - i. carefully examine this entire Bid Solicitation document to determine the extent of the Work, and various provisions including the maps, drawings and specifications;
  - ii. report all discrepancies between the various documents and site conditions;
  - iii. provide subcontractors, sub-consultants and suppliers to whom the Bidder intends to sublet a portion or portions of the Work with complete information as to the requirements of the Work. This is to include maps, drawings, specifications and all requirements of the Bid Solicitation document including any addenda.
- c) In the event of discrepancies between the maps, drawings and the specifications with regard to quantity or quantities of materials or items, and in the absence of addenda in clarification of said discrepancies, the Bidder is to include for the larger quantity or quantities.

## STANDARD TERMS AND CONDITIONS

- d) No additional payments will be made for any costs incurred through failure of the Bidder to abide by provisions stipulated in all of the articles and sub-articles of this item.
- e) It is the Bidder's sole responsibility to verify all site measurements and quantities.

### 10. Pricing and Taxes

- a) Prices shall be in Canadian funds, quoted separately for each item if stipulated.
- b) Prices shall be firm for the duration of the Contract, unless specified otherwise in the Bid Solicitation document.
- c) The Bid price must include all incidental costs and the Bidder shall be deemed to be satisfied as to all the full requirements of the Bid Solicitation document.
- d) The Bid shall include all applicable customs duty, excise tax, freight, insurance, and all other charges of every kind attributable to the Work.
- e) Harmonized Sales Tax (HST) - All Bid prices submitted shall exclude the HST or show the HST amount separately.
- f) Should any additional tax, duty, or any variation in any tax or duty or legislative changes such as minimum wage revision be imposed by either or both of the Governments of Canada or Ontario and become directly applicable to Work specified in the Bid Solicitation document subsequent to submission by the Bidder and before the completion of the Work covered thereby, an appropriate increase or decrease in the Contract price shall be made to compensate for such changes as of the effective date thereof.

The Bidder shall be responsible to contact the federal or provincial sales tax branches directly to verify any questions on applicable taxes and, if applicable, shall be shown on the Bid. Any extra charges not specified will not be paid.

### 11. Electronically submitted Bids to be Considered an Offer

The submission of a Bid through the Bidding System (<https://burlington.bidsandtenders.ca>) shall be deemed to constitute an "Offer" which may be accepted, at the option of the City by:

- a) written acknowledgment of acceptance, or
- b) the issuance of City's Purchase Order
- c) the issuance of an agreement or an award confirmation notice

and upon such acceptance the terms, conditions and specifications herein set forth shall be confirmed and binding upon the City and the Bidder. Upon acceptance of the Bid, both parties hereto agree to do everything necessary to ensure that the terms of the Contract with the Vendor take effect.

The failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect their right thereafter to enforce such provision or to seek damages for the breach thereof. It is agreed between the parties that neither party shall be held responsible for damages caused by delay or failure to perform their undertakings hereunder when such delay or failure is due to force majeure.

The City reserves the right to remove from future eligibility, the name of any Bidder for failure to accept a Contract or for unsatisfactory performance of a Contract.

## STANDARD TERMS AND CONDITIONS

### 12. Variation of Bid Prices

No variation in the Total Bid Price, unit prices and/or provisional pricing will be permitted after Closing Time, except in the instance of variation solely due to an increase or decrease in the rate of eligible taxes, beyond the control of the Bidder, occurring after the time of submission of their Bid. An increase or a decrease in the rate of eligible taxes, under these circumstances, shall alter the price of the Bid, but only to the extent of the tax increase or decrease.

### 13. Patent, Copyright and Other Proprietary Rights

The Bidder (by responding) agrees that the Bid on acceptance by the Designated Representative, become the property of the City. The copyright for respective purchased concepts and/or materials will become the property of the City unless otherwise mutually agreed upon by the Bidder and the City.

All Bids, other documents as well as correspondence are subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA).

### 14. Reserved Rights of the City

The City reserves the right, in its sole and unfettered discretion, to:

- a) make changes, including substantial changes, to the Bid Solicitation document provided that those changes are issued by way of addenda in the manner set out in the Bid Solicitation document;
- b) make public the names of any or all Bidders;
- c) check references other than those provided by any Bidder;
- d) to reject any, or any part of, any or all Bids, or cancel the bidding process at any stage and/or issue a new bid call for the same or similar deliverables;
- e) disqualify any Bidder:
  - (i) whose Bid contains misrepresentations or any other, inaccurate or misleading information, or any qualifications within their Bid,
  - (ii) who has engaged in conduct prohibited by the Bid Solicitation document,
  - (iii) with inadequate credentials or due to unsatisfactory past performance,
- f) reject Bid(s) from Bidder who has engaged in lobbying or has contravened any of the terms of the Bid Solicitation document;
- g) reject a Bid on the basis of:
  - (i) information provided by references or credit check or other due diligence efforts,
  - (ii) the information provided by a Bidder pursuant to the City exercising its clarification rights under the procurement process, or
  - (iii) other relevant information that arises during the procurement process;
- h) if a single Bid is received, choose to reject the Bid of the sole Bidder and cancel the bidding process or enter into direct negotiations with the sole Bidder;
- i) accept a Bid other than the lowest or highest scoring and/or to not accept any Bid for any reason whatsoever;
- j) negotiate in circumstances as permitted by the Procurement By-law, and include additional terms and conditions during the process of negotiations;
- k) no longer consider a Bidder if a satisfactory outcome is not reached as part of negotiation, as determined by the City in its sole discretion and move to the next highest ranked Bid in such event;



## **STANDARD TERMS AND CONDITIONS**

- l) select a Bidder other than the Bidder whose Bid reflects the lowest cost to the City and/or award the Contract to any Bidder;
- m) not award the Contract if the costs of completing the Work exceed budget funding or if necessary internal approvals are not obtained.

These reserved rights are in addition to any other expressed rights or any other rights which may be implied in the circumstances. The City shall not be liable for any expenses, costs or losses suffered by any Bidder or any third party resulting from the City exercising any of its expressed or implied rights under this bidding process.

### **15. Indemnification**

The Bidder will indemnify and save harmless and defend the City, its elected officials, officers, employees, contractors, agents and their successors and assigns, from and against all actions claims and demands whatsoever which may be brought against or made upon the City and against all losses, liability, judgments, claims, costs, demands or expenses which the City may sustain, suffer, or be put to resulting from or arising out of the Bidder's failure to exercise reasonable care, skill or diligence in the performance or rendering of any Work or service required hereunder to be performed or rendered by the Bidder, its agents, servants, employees or subcontractors, or any of them as well as for the infringement of or use of any intellectual property rights including any copyright or patent arising out of the reproduction or use in any manner of any plans, designs, drawings, specifications, information, negatives, data, material, sketches, notes, documents, memoranda, or computer software furnished by the Bidder in the performance of this Contract.

### **16. Non-Assignment**

It is mutually agreed and understood that the Bidder shall not assign, transfer, convey, sublet or otherwise dispose of their agreement or their right, title or interest therein, or their power to execute the Contract, to any other person, firm, Bidder or corporation without the previous written consent of the City. An assignment agreement may be required.

### **17. Waiver**

No term or provision of the Bid Solicitation document shall be deemed waived and no breach consented to, unless such waiver or consent is in writing and signed by an authorized representative of the party claimed to have waived or consented to the breach. No consent by a party to, or waiver of, a breach under the procurement process shall constitute consent to, waiver of, or excuse for any other, different or subsequent breach.

The City does not accept responsibility for any information or any errors or omissions which may be contained in the Bid Solicitation document or the data, materials or documents disclosed or as provided to the Bidders pursuant to the procurement. The City makes no representation or warranty, either expressed or implied, in fact or in law with respect to the accuracy or completeness of the Bid Solicitation document or such data, materials or documents and the City shall not be responsible for any actions, costs, losses or liability whatsoever arising from any Bidder's reliance or use of the Bid Solicitation document or any other technical or





## STANDARD TERMS AND CONDITIONS

historical data, materials or documents provided by the City. The Bidder is responsible for obtaining its own independent financial, legal, accounting and technical advice with respect to any information included in the Bid Solicitation document or in any data, materials, or documents provided or required by the City.

### 18. Withdrawal / Resubmission

A Bidder may withdraw or edit and resubmit his Bid anytime prior to the Closing Time. The most recent submission or withdrawal received in the Bidding System on or before the Closing Time shall prevail and shall overwrite all previous submission(s) and withdrawal(s).

### 19. Approvals and Award Recommendation

All Bids contained herein are subject to the approval of the City as required under the Procurement By-Law. The award may also be subject to the approval of the City Council and the availability of funding. Bids shall be irrevocable and open for acceptance by the City for a period of One Hundred Twenty (120) calendar days after the Closing Time. Neither the issuance of the Bid Solicitation document nor the acceptance of a reply or Bid shall constitute any obligation or imply any commitment on the part of the City. The highest scored or lowest priced compliant or any Bid shall not necessarily be accepted. Award of the Work shall be as recommended by the City's evaluation committee in conjunction with the Designated Representative, and as approved by the City Council if necessary. In the evaluation of Bids, it is understood by the Bidder that the City reserves the right to accept or reject any or all Bids, in whole or in part, for any reason whatsoever, and to accept any Bid if, upon evaluation and analysis, it is considered to be in the best interest of the City.

**Bidders are advised to not make any business decisions, assignment or any sub-contract for the execution of the Work, before receiving a written award confirmation from the Designated Representative.**

### 20. Documents for Contract execution

Within ten (10) working days of receiving a request or intent to award from the Designated Representative, the Bidder receiving the above notification ("Recommended Bidder") shall provide following:

- a) Insurance certificate with coverage specified in the Bid Solicitation document,
- b) WSIB clearance certificate valid on date of award or an exemption letter,
- c) An executed agreement, if applicable duly signed and sealed by the authorised signatory,
- d) Contract security, if applicable as specified in the Bid Solicitation document,
- e) Any other submittal if specified in the Supplemental Terms and Conditions.

### 21. Insurance

The Vendor, during the term of the Contract, at its expense, shall take out and keep in full force and effect the following insurance policies:

- a) Commercial General Liability insurance insuring all services, operations, products, and work as described in the contract. The policy will be extended to include bodily injury, property damage, personal injury and advertising injury, contractual liability, products- completed operations, contingent employer's, and

## STANDARD TERMS AND CONDITIONS

owners and contractors protective liability to a limit of not less than two million dollars (\$2,000,000) per occurrence.

The policy shall include a cross liability and severability of interest clause and be endorsed to name "The Corporation of the City of Burlington" as an **additional insured**;

- b) Non-owned automobile insurance to a limit of not less than one million dollars (\$1,000,000) and;
- c) If applicable, automobile insurance (OAP1) for both owned and leased vehicles with inclusive limits of not less than one million dollars (\$1,000,000).

All policies of insurance shall:

- (i) be written with an insurer licensed to do business in the Province of Ontario;
- (ii) contain an undertaking by the insurers to notify the City in writing not less than thirty (30) days prior to any termination or cancellation of coverage unless otherwise required by law;
- (iii) be non-contributing with and will apply only as primary and not excess to any other insurance or self-insurance available to the City and;
- (iv) any deductible amounts will be borne by the Vendor.

Certificates of Insurance evidencing renewal or replacement of policies shall be delivered to the City within fifteen (15) working days prior to the expiration or replacement of the current policies, without demand by the City.

### 22. Insurance Claims

Claims or alleged claims received by the Vendor shall be dealt with immediately by the Vendor.

- (a) The Vendor shall retain an independent adjuster who will determine the Vendor's liability for all third party claims, and advise the claimant in writing of the determination of liability within sixty (60) days of service of the claim on the Vendor. Copies of such determination of liability shall be forwarded to the City.
- (b) If the Vendor or the Vendor's independent adjuster fails to respond within the time noted in (a) or responds in a manner inconsistent with the evidence at hand, the City reserves the right to have another independent adjuster review the claim and determine liability therefore. All cost incurred by the City to investigate, defend and satisfy any third-party claim where it was determined that the Vendor was liable will be Vendor's responsibility and will be deducted from monies owing to the Vendor by the City.
- (c) If a claim is settled to the satisfaction of the claimant, the Vendor shall provide the City with a copy of the claimant's release. The claimant's release shall cover the interests of the Vendor and the City, its employees, agents and anyone for whom it is in law responsible.

### 23. Permits and Licences

Unless stated otherwise, the Vendor shall apply for all required permits and licences, supply all necessary notices required for the Work and pay all required fees. These costs shall be included in the Total Bid Price.

## STANDARD TERMS AND CONDITIONS

### 24. Responsibilities of the Vendor

Acceptance of a purchase order issued by the City and/or a signed agreement shall constitute a contract (the "Contract") between the City and the Vendor, which shall bind the Vendor on his part to furnish and deliver the goods, equipment and services at the prices given and in accordance with the conditions of the Bid Solicitation document.

The Vendor shall:

- a) perform the Contract in accordance with the specifications, terms and conditions under which it is awarded;
- b) not, except with the consent of the City in writing, release information relating to any subsequent order for advertising, promotional or technical purposes or otherwise give it publicity in any fashion, nor shall the name of the City be used for, or in connection with, any advertising or promotional purpose of the Vendor;
- c) treat information gained while working with the City confidentially and not use it for any other project and return it to the City if requested.
- d) submit to the City of Burlington, Finance – Accounts Payable, an invoice for payment at the completion of the Work, unless otherwise stated. All applicable taxes including HST are to be itemized separately on invoices. Include the purchase order number on each invoice;
- e) provide necessary information if they wish to receive payment by EFT (Electronic Funds Transfer).

### 25. Work Continuity

The Vendor shall take adequate care to protect the Work, the City's property, adjacent properties and shall be fully responsible for any damage or injury due to his act or neglect or is attributable to the acts or omissions of the Vendor, its subcontractors, suppliers, agents, employees, officers, directors, and all other persons and other entities for whose acts the Vendor may be liable or for whom it is responsible in law and their respective officers, directors, agents and employees.

The Vendor shall ensure minimal to no disturbance to the user(s) of the surrounding facilities. Replacement and repairs due to any damage caused to any existing structure, City equipment, public assets or private property during the Work shall be the responsibility of the Vendor.

### 26. No Branding

The Vendor shall not place any sign at the site, public meetings, any public or private property or along curbside prior, during or after the Work without prior written permission of the Project Manager.

### 27. Compliance with Laws

The Vendor will be required to comply with all applicable federal, provincial laws as well as municipal by-laws in performing its obligations under the Contract including, without limitation, the *Occupational Health and Safety Act*, as amended, and the *Workplace Safety and Insurance Act*, 1997, as amended, and *Accessibility for Ontarians With Disabilities Act*, 2005, S.O. 2005, c.11, Accessibility Standards for Customer Services O. Reg. 429/07 requirements, under the *Accessibility for Ontarians With Disabilities Act*, 2005, as amended, or any successor legislation



## **STANDARD TERMS AND CONDITIONS**

applicable, and to provide to the City, upon request, periodic reports and evidences confirming such compliance.

By supplying the goods or equipment and/or providing services, the Vendor warrants that the goods or equipment supplied and services provided to the City conforms in all respects to the standards and codes set forth by federal and provincial agencies. Failure to comply with this condition will be considered a breach of this Contract.

The obligations of the parties and resolutions of any disputes shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada, both as to interpretation and performance, and shall be treated, in all respects, as an Ontario contract. The parties shall attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

### **28. Payment Terms**

The payment terms shall be net thirty (30) days after receipt of invoice unless agreed by the City in writing. An early payment discount, if offered, may be considered on mutual agreement basis. Payment may be delayed if the invoice is incorrect or the goods, equipment and/or services are not acceptable to the City. The City will not pay any interest, penalty or late fee for delayed payments.

### **29. Ownership of Work**

All material prepared by the Vendor required to perform this Contract including computer disks, reports and documents, are instruments of service for use in carrying out the contract are the property of the City. The Vendor irrevocably assigns all of the above to the City and its copyright therein and in the artistic character and design of the work for the purpose of carrying out this agreement has been terminated by the City. However, notwithstanding the foregoing, the Vendor may retain, for its use and reference, the original documentation, disks, electronic media and instruments of service prepared by them. It is further specifically understood and agreed that, where applicable, all computer disks, electronic media, reports, documents and instruments of service, or other material prepared by the Vendor may be published, printed or otherwise reproduced in whole or in part by the City.

### **30. Records, Inspection, Audits**

The City will have the right, upon reasonable notice, to full access to the accounts and records of the Vendor in respect of the goods, services and equipment provided by it under the Contract, for the purposes of inspection and/or audit. The Vendor shall make and retain such records during the term of the Contract and for a minimum of seven (7) years following its termination, cancellation or expiry.

### **31. Non- Exclusivity**

Unless stated otherwise, this Contract does not guarantee exclusivity. The City reserves the right to obtain goods, services or equipment from other suppliers should it determine, in its sole discretion, that it is appropriate to do so. This may include, without limitation, goods, services and equipment which were not contemplated at the time of issuance of the Bid Solicitation document, or that the Vendor is unable to reasonably provide.

## STANDARD TERMS AND CONDITIONS

### 32. Performance

Following substantial performance, City's representative ("Contract Administrator" or "Project Manager") responsible to liaison with the Vendor may prepare a report on the performance of the Vendor. The report will rate performance in various categories including: organization, quality of work, public relations, supervisory staff, safety practices, clean up and time for completion. A copy of the completed report will be provided to the Vendor.

The Vendor shall be responsible for the performance of his subcontractors and sub-consultants and will be evaluated for the entire Work.

Performance ratings may be referenced by the City in analysing future Bids by the Vendor. Copies of the report may be provided to other agencies involved in the Work or their agents such as participating municipalities, architects, consultants, advisors or other third parties.

A Vendor receiving an unacceptable score on their performance review may not be eligible to work on any other City requirements either in the capacity of a Vendor or as their subcontractor or sub-consultant. The Vendor Performance Evaluation form is available online on City's website: [www.burlington.ca](http://www.burlington.ca)

- a) If a banned or on-probation organization is listed as a subcontractor, the City may require the Bidder to provide an alternative subcontractor that is acceptable to the City. The Bidder is responsible to check and confirm from their subcontractors if they are on-probation or banned by the City.
- b) The subject Bidder may request a debriefing meeting to discuss the evaluation within ten (10) calendar days following delivery of the evaluation. The request outlining any comments or concerns with the performance review should be sent in writing to City's Project Manager.
- c) The debriefing will highlight areas of concern as noted by the City's Project Manager. The criteria included in the evaluation form will not be open for discussion. If the Vendor remains unsatisfied with the outcome of the debriefing meeting, they can request in writing to the Manager of Design and Construction or Manager of Procurement Services, as applicable, for a further review within ten (10) calendar days following the debriefing.
- d) The Review Committee appointed by the Manager of Design and Construction or Manager of Procurement Services will hear from both City's Project Manager and the subject Bidder and review the overall scenario independently. The decision of the review committee shall be final.
- e) In reaching a decision, the City staff shall be entitled to rely upon the evaluation criteria determined in advance of the project.

### 33. Default

In the event that the Vendor fails to properly, promptly, and fully carry out the work required by these documents, the City reserves the right to notify the Vendor to discontinue all work under this Contract, to advertise for new Bids or carry out the work in any way as the City may, at its sole discretion, deem best.



## **STANDARD TERMS AND CONDITIONS**

The Vendor further agrees to save and hold harmless the City and/or its officers, agents, or servants from all loss, damage, liability, cost, charge or expense whatsoever which it, they or any of them may suffer, incur or be put to by reason of such default or failure.

### **34. Termination**

In the event that the Vendor fails to comply with any provision of this agreement or otherwise fails to perform its obligations hereunder in a competent manner satisfactory to the City, the City may give the Vendor notice in writing of such failure. In the event that the Vendor has not remedied its failure within ten (10) working days of the said notice, the City shall be entitled to exercise any one or more of the following remedies:

- a) The City may terminate the contract without further notice, and exercise its rights to the Contract security provided by the Vendor;
- b) The City may withhold any payment due to the Vendor hereunder until the Vendor has remedied its failure;
- c) The City may engage the services of another vendor to remedy the Vendor's failure, and obtain reimbursement therefore from the Vendor. The said reimbursement may be obtained either through deduction from any amounts owing to the Vendor hereunder, or through any other legal means available to the City; or
- d) The City may assert any other remedy available to it in law or equity.

Unless the City expressly agrees to the contrary, any failure of the City to exercise any of the foregoing remedies, or the granting of any extension or indulgences, shall not be prejudicial to any right of the City to subsequently obtain such remedies.

### **35. Termination for Convenience**

The City may terminate the Contract, in whole or in part, whenever the City determines that such termination is in the best interest of the City without showing cause, upon providing written notice to the Vendor. The City shall pay all reasonable costs incurred by the Vendor up to the date of termination considering the work performed and/or services were provided in accordance with the Contract and to the complete satisfaction of the City. Payment shall be in accordance with prices as per Contract. However, in no event shall the Vendor be paid an amount, which exceeds the Total Bid Price. The Vendor will not be reimbursed for any profits which may have been anticipated but which have not been earned up to the date of termination.

### **36. Force Majeure**

Delays in a failure of performance by either party under the Contract shall not constitute default hereunder or give rise to any claim for damages if and to the extent caused by occurrences beyond the control of the party affected, including but not limited to decrees of Government, acts of God, fires, floods, explosions, riots, war, rebellion, sabotage and atomic or nuclear incidents, lawful acts of public authorities, or delays caused by common carriers, which cannot reasonably be foreseen or provided against. However lack of finances, strikes, or other concerted acts by workers, delay or failure arising out to the nature of the work to be done, or from the normal actions of the elements or from any normal difficulties which may be encountered in the performance of the Work, having regard to the nature thereof,



## STANDARD TERMS AND CONDITIONS

shall in no event be deemed to be a cause beyond a party's control. If in the reasonable opinion of either party to this Contract that performance of the Contract is made possible by force majeure, then either party shall notify the other in writing and the City shall either terminate the Contract forthwith without any future payments being made or authorize the Vendor to continue performance of the Contract with such adjustments as required by the existence of the force majeure and agreed upon by both parties.

### **37. Suspension of Bidders**

At the sole discretion of the Manager of Procurement Services, any Bidder may be suspended from consideration of their Bids for up to three (3) years for default of delivery, unsatisfactory performance, safety concerns, lobbying or contravention of the Bid Solicitation document.

### **38. Bankruptcy**

In the event that, during the term of the Contract, the Vendor makes an assignment for the benefit of creditors, or becomes bankrupt or insolvent, or makes a proposal to its creditors, the Contract with the Vendor shall immediately be terminated, and the City shall be entitled to enter into an agreement with another party without the consent of the Vendor.

### **39. Applicable Terms and Conditions**

None of the standard or other terms, conditions or policies of the Vendor, whether published or otherwise shall be of any effect unless accepted by the City in writing. This includes, without limitations, terms in publications, web-site, sales invoice, delivery document as well as those commonly applied by the Vendor. City's acceptance of goods, equipment or service, acknowledgement thereon or paying invoices shall not imply acceptance of such terms, conditions or provisions.