

Bidding System Terms of Use Agreement

Revision Date (January 13, 2016)

Welcome to the City's bid opportunities website (the "*Bidding System*"). The Bidding System provides information about and access to bid opportunities issued by The Corporation of the City of Brantford ("*City*"). By using this Bidding System, you agree to comply with and be bound by this Terms of Use Agreement ("*Agreement*"). If you do not agree to all of these Terms of Use, you will not be permitted to use the Bidding System. As a result, you will not be eligible to bid on Brantford bid opportunities unless special dispensation is granted by the City.

The terms "*you*", "*your*" and "*Bidder*" refers to the user or viewer of the Bidding System; and in the case of a representative of a corporation, the terms also mean that corporation. The term "*Service Provider*" means the City's contracted Bidding System Provider.

A. ACCEPTANCE OF AGREEMENT

You agree to the terms and conditions, without modification, outlined in this Agreement with respect to this Bidding System.

This Agreement may be amended by the City from time to time without specific notice to you, by updating this posting. This Agreement constitutes the entire and only agreement on the use of this Bidding System between the City and the Bidder, and supersedes all prior or contemporaneous agreements, representations, warranties and understandings with respect to the Bidding System and the content provided by or through the Bidding System, and the subject matter of this Agreement.

B. BIDDING SYSTEM VENDOR ACCOUNT

You must create a vendor account to gain access to the Bidding System. By creating and using a vendor account on behalf of an entity, both the Bidder represents and warrants to the City that you have authority to do so and to make the representations, warranties, releases of liability and indemnities contained in this Agreement.

The creating of a vendor account requires you to list the individual contact(s) who may access the account. You will be required to provide identifiable personal information about each contact. You agree to provide the City with real names and accurate, complete information.

Each individual will be given a personal login and password to the same shared vendor account. You are not permitted to (a) allow any other person to use your login to the vendor account, (b) use any other person's login to the vendor account, or (c) access the vendor account through a single shared email address (e.g. info@abc.com) made available to multiple company contacts. You are responsible for preventing such unauthorized use.

You are solely responsible for ensuring that the information in the vendor account (including but not limited to your current delivery or invoicing address, fax number and email address) is current and accurate. The City is not responsible or liable whatsoever for misdirected notices of solicitations or for misdirected addenda/addendum which may result from your failure to update your contact information

and/or invited additional company contacts that have failed to create their own login to the Bidding System and you hereby release the City from any liability therefrom whatsoever.

C. PASSWORD

You must login to the Bidding System using your email address and the password you created. You are entirely responsible for maintaining the confidentiality of your password. You agree not to use the email address or password of another individual at any time. You agree to notify the City immediately if you suspect any unauthorized use of your vendor account or access to your password. You are solely responsible for any and all use of your vendor account, including by any other contacts at your company.

Your login is for your personal use only and not for any other person or entity, except the corporate or other legal entity who you are authorized to represent.

It is understood and agreed that the City and Service Provider, its affiliates and agents are under no obligation to confirm the actual identity or authority of any individual Bidder and have no liability for damages or harm the Bidder may incur from misuse of its vendor account, and you hereby release the City and Service Provider from any liability therefrom whatsoever.

D. REGISTERED PLAN TAKERS

In order to be able to (i) download bid documents, (ii) be notified by the Bidding System via email of any addendums pertaining to the bid opportunity, (iii) submit bids electronically through the Bidding System, (iv) withdraw/edit bids electronically, and/or (v) electronically acknowledge the addendum/addenda, you must register as a 'Plan Taker' for each applicable bid opportunity.

E. ACCESS NOT TRANSFERABLE

Your right to use the Bidding System is not transferable or assignable. Any login or right given to you to obtain information or documents is not transferable or assignable.

F. USE OF THE BIDDING SYSTEM

The information provided through the Bidding System regarding any particular bid opportunity is provided solely and strictly on the terms and conditions described in each specific bid opportunity. Any other information is provided on an "as is" basis without any warranties of any kind. The City assumes no responsibility to you or any third party for the consequences of any errors or omissions.

When using the Bidding System, information, including but not limited to any documents and drawings made available for download on the Bidding System and information you submit through the Bidding System, will be transmitted over a medium that may be beyond the City's control and jurisdiction. As such, the City assumes no liability for or relating to the delay, failure, interruption or corruption of any data or other information transmitted in connection with this Bidding System and any delay, failure, interruption or corruption of any data or other information transmitted by you; and you hereby release the City from any liability therefrom whatsoever.

G. INTELLECTUAL PROPERTY

The materials located on the Bidding System are protected by copyright, trademark and other forms of proprietary rights and are owned or controlled by the City or any other party credited as the provider of that information. The content, organization, graphics, design, compilation, magnetic translation, digital conversion and other matters related to the Bidding System are protected under applicable copyright, trademark and other proprietary (including but not limited to intellectual property) laws. By registering as a 'Plan Taker' for a specific bid opportunity posted on the Bidding System, you are authorized to view or download the contents of that specific bid opportunity and its related documents but not any other contents from the Bidding System.

H. FUNCTIONALITY OF A VENDORS (COMPUTER) SYSTEM

You must maintain the functionality of your own (computer) system. The City and the Service Provider do **not** (a) assume any responsibility for the functionality of your computer system; or (b) agree to provide you or any other person or entity with an alternate mode or method of submitting its bid, **except** if permitted by written addendum by the City.

I. FEES

It is understood and agreed that you may be required to pay a fee for the ability, either in the alternative or cumulatively, to obtain a bid document and to be able to submit bids electronically through the Bidding System.

J. CONFIDENTIALITY AND SECURITY

Bids submitted through the Bidding System are held in confidence (utilizing an electronic lock box) until after the bid closing date and time. However, it is understood and agreed that the City and Service Provider cannot ensure the privacy and authenticity of any information that it sends or receives through the internet, and it is further understood and agreed that the City and Service Provider will not be responsible for any damages incurred respecting confidential information sent over the internet to the City; and the Bidder hereby releases the City and Service Provider from any liability therefrom whatsoever.

K. PRIVACY AND CONSENT TO USE OF NAME

The *Municipal Freedom of Information and Protection of Personal Privacy Act*, R.S.O. 1990, c.M.56, as amended or replaced from time to time, governs the collection, use and/or disclosure of any personal information provided through the Bidding System.

The City is authorized to collect your personal information pursuant to sections 2, 8, 9, and 10 of the *Municipal Act, 2001*. You consent to the collection, use and disclosure of your personal information for the following purposes:

- i. To send and receive information for the operation of the Bidding System or as relates to bidding opportunities;
- ii. To contact you;
- iii. To resolve disputes;
- iv. To identify or troubleshoot problems;

- v. To detect and protect the Bidding System, and its agents and affiliates, against error, fraud and other illegal activity;
- vi. To enforce this Agreement;
- vii. For comparison and review to identify errors, omissions and accuracy; and
- viii. As otherwise described to the Bidder at the time of collection, use or disclosure.

The City is further authorized to make your COMPANY NAME, ADDRESS, EMAIL ADDRESS, UNOFFICIAL AND OFFICIAL BID AMOUNT(S) available to other registered bidders and members of the public at any time and in any format for the purpose of meeting the requirements of the Bidding System, including the publication of document request lists, names and addresses of 'Plan Takers' and Bidders, unofficial and official bid amount(s), and the name(s) of the selected bidder.

Personal Information may also be disclosed to:

- i. Service Providers or agents engaged by the City respecting the provision of services for the Bidding System;
- ii. Other bidders in order to facilitate the use of the Bidding System and the bidding process;
- iii. City staff or third party engaged by the City to evaluate a bid for compliance;
- iv. A person who, in the reasonable judgment of the City, is providing or seeking the information as the Bidder's agent;
- v. The City's insurers;
- vi. The public through the display of bid results; and
- vii. Any third party or parties, where the Bidder consents to such disclosure or where disclosure is required or permitted by law.

The following information is automatically collected and stored whenever the Bidder accesses the Bidding System:

- i. The internet protocol address and domain name is used;
- ii. The type of browser and operating system;
- iii. The date and time of the visit; and
- iv. The web pages or services accessed.

Questions regarding the collection, use and disclosure of personal information may be directed to Robin Nechelput, City's Purchasing Manager, at 519.759.4150 x5395 or rnechelput@brantford.ca.

L. SYSTEM INTEGRITY

You may not use any device, system, software or other mechanism or means to interfere or attempt to interfere with the proper working of the Bidding System. You may not take any action, which imposes or results in an unreasonable or disproportionately large load on the system and infrastructure supporting the Bidding System.

M. WEB SITE LINKING

Links to other web sites or references to other organizations, products, services or publications do not constitute endorsement or approval by the City and the City makes no representations or warranties whatsoever about any other web site which you may access through this one. The City does not warrant the accuracy, completeness, timeliness, non-infringement, merchantability or fitness for a particular

purpose of any information available through these links and disclaims any opinions expressed on such sites.

N. ERRORS, CORRECTIONS AND CHANGES

The City does not represent or warrant that the Bidding System will be error-free, free of viruses or other harmful component, or that defects will be corrected. The City may make changes to the features, functionality or content of the Bidding System at any time. The City reserves the right, in its sole discretion, to edit or delete any documents, information or other content appearing on the Bidding System.

O. EXCLUSION OF LIABILITY

The City is not liable to you or any third party for any damages of any kind arising out of or relating to the use of or your ability to access or use the Bidding System, including but not limited to: any lost profits, lost opportunities, special, incidental, direct, indirect, consequential or punitive damages. By using this Bidding System, you and any entity you may represent have agreed to waive any claim against the City for such damages.

P. RELEASE AND INDEMNITY OF THE CITY

You and any entity you may be representing agrees to defend, indemnify, defend and save harmless the City, including members of Council, staff, agents, representatives, and its service providers from and against any and all liability, loss, costs, claims, suits, actions, demands, damages or expenses (including all legal fees) which it or they may suffer or be put to or which may be made or brought against the City, or them, by reason of (either directly or indirectly) any act or omission of you or the entity to which you represent relating to this Agreement or use of the Bidding System. You and any entity you may represent further releases the City from any and all liability, loss, costs, claims, suits, actions, demands, damages or expenses (including all legal fees) which you or they may suffer or be put to or which may be made or brought against you, or them, by reason of (either directly or indirectly) any act or omission of you or the entity to which you represent relating to this Agreement or use of the Bidding System.

Q. UNLAWFUL ACTIVITY

The City reserves the right to investigate complaints or reported violations of this Agreement and to take any action it deems appropriate, including but not limited to (i) excluding you or the entity you represent from the ability to access, use or participate in the Bidding System; (ii) reporting any suspected unlawful activity to law enforcement officials, regulators, or other third parties; (iii) and disclosing any information necessary or appropriate to such persons or entities relating to your profile, e-mail addresses, usage history, posted materials, IP addresses and traffic information.

R. HOW TO CONTACT THE CITY

Should you have any questions or concerns about this Agreement, please contact the Purchasing Department at 519.759.4150 x5435.