

## **Schedule 2- Bidding System Terms of Use Agreement**

**Revision Date (February 2, 2017)**

Welcome to our Bid Opportunities website (the "Bidding System"). The Bidding System provides information about and access to Bid Opportunities issued by the Town of Newmarket. 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, and you will therefore not be eligible to bid on Newmarket Bid Opportunities.

The term "Town" or "Owner" or "us" or "we" or "our" refers to the Corporation of the Town of Newmarket. The term "you" or "bidder" refers to the user or viewer of Bidding System. The term "Service Provider" means the Owner'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 us 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 us and you, 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 you and that entity represent and warrant to us that you have authority to do so. 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 us 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 your information in the Vendor account (including but not limited to your current delivery or invoicing address, fax number and email address) is accurate and up to date. The Owner is not responsible or liable whatsoever for misdirected notices of solicitations or for misdirected

Addenda/Addendum which may result from Registered Vendors who fail to update their contact information and/or invited additional company contacts that have failed to create their own login to the Bidding System.

### **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 e-mail address or password of another individual at any time. You agree to notify us immediately if you suspect any unauthorized use of your Vendor account or access to your password. You and the other contacts at your company are solely responsible for any and all use of your Vendor account.

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 Owner 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.

### **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 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 our 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 Town assumes no responsibility to you or any third party for the consequences of any errors or omissions.

When using our 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 our control and jurisdiction. As such, we assume 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.

#### **G. INTELLECTUAL PROPERTY**

The materials located on our Bidding System are protected by copyright, trademark and other forms of proprietary rights and are owned or controlled by us 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 copyrights, trademarks and other proprietary (including but not limited to intellectual property) Canadian laws. By registering as a Registered Plans Taker for a specific Bid Opportunity posted on this 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 this Bidding System.

#### **H. FUNCTIONALITY OF A VENDORS (COMPUTER) SYSTEM**

You must maintain the functionality of your own (computer) system. The Owner and the Owner's Provider do **not**;

- a. assume any responsibility for the functionality of your computer system; or
- b. agree to provide any User or any other person or entity with an alternate mode or method of submitting its bid, **except** if permitted by written addendum by the Owner.

#### **I. FEES**

It is understood and agreed that you may be required to pay a fee to (i) register as a Plan Taker for a Bid, (ii) to obtain the Bid document, and/or (iii) 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 Owner 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 Owner and Service Provider will not be responsible for any damages incurred respecting confidential information sent over the Internet to the Owner.

#### **K. PRIVACY AND CONSENT TO USE OF NAME**

The *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, CHAPTER M.56, as well as the Bidding System [Privacy Policy](#) govern the collection, use and / or disclosure of any personal information provided through the Bidding System.

You consent to the collection, use and disclosure of your personal information for the following purposes:

- i. to contact you;
- ii. to resolve disputes;
- iii. to identify or troubleshoot problems;
- iv. to detect and protect the Bidding System, and its agents and affiliates, against error, fraud and other illegal activity;
- v. to enforce the Terms and Conditions;
- vi. for comparison and review to identify errors, omissions and accuracy; and
- vii. as otherwise described to the Bidder at the time of collection, use or disclosure.

The Owner 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 selected Bidder.

Personal information may also be disclosed to:

- i. Service provider or agents engaged by the Owner 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. Town staff, an organization or entity engaged by the Owner to evaluate a bid for compliance;
- iv. a person who, in the reasonable judgment of the Owner, is providing or seeking the information as the Bidder's agent;
- v. the Owner's insurers;
- vi. the public through the display of bid results; and/or
- 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:

- viii. the Internet Protocol Address and domain name used;
- ix. the type of browser and operating system;
- x. the date and time of the visit; and
- xi. The web pages or services accessed.

## **L. SYSTEM INTEGRITY**

You may not use any device, software or routine to interfere or attempt to interfere with the proper working of the Bidding System. You may not take any action, which imposes

an unreasonable or disproportionately large load on the system and infrastructure supporting this 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 Town and the Town makes no representations whatsoever about any other Web site which you may access through this one. We cannot and do 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***

We do not represent or warrant that the Bidding System will be error-free, free of viruses or other harmful components, or that defects will be corrected. We may make changes to the features, functionality or content of the Bidding System at any time. We reserve the right in our sole discretion to edit or delete any documents, information or other content appearing on the Bidding System.

#### ***O. EXCLUSION OF LIABILITY***

The Town shall not be liable to you and/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 our 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 Town for such damages.

#### ***P. RELEASE AND INDEMNITY OF THE TOWN***

You and any entity you may be representing agree and to indemnify, defend and hold the Town, including members of Council, staff, agents and representatives, and our service providers harmless from any liability, loss, claim and expense, including reasonable legal fees, related to your violation of this Agreement or use of the Bidding System.

#### ***Q. UNLAWFUL ACTIVITY***

We reserve the right to investigate complaints or reported violations of this Agreement and to take any action we deem appropriate, including but not limited to reporting any suspected unlawful activity to law enforcement officials, regulators, or other third parties 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. GLOBAL FAILURE OF THE BIDDING SYSTEM**

The following will steps will be taken to ensure fairness to all Bidders and to preserve the sanctity of the public bidding process.

Where in the sole opinion of the Owner, the Bidding System has experienced or is experiencing an issue that affects the closing of bids or is affecting the receipt of multiple bids or there is a failure of the underlying infrastructure, the Owner reserves the right to extend the closing date of Bids, **without** prior public notice, where communication of the extension to Bidders is not possible through the Bidding System. This may include bid opportunity(s) that have been closed by the Bidding System which the Owner was unable to either extend the closing date or communicate the extension of the closing date due to failure of the Bidding System or the underlying infrastructure. Once the issue has been resolved, the Owner will communicate the re-activation of the Bidding System with a new closing date to all Plan Takers via an addendum released through the Bidding System.

Notwithstanding the foregoing, the Owner will make best efforts to advise Bidders that the closing date has been extended, as soon as reasonably practicable in the circumstances. Such notice may not specify the new closing date as the new closing date will be dependent upon the resolution of the issue.

Prior to the re-activation of the Bidding System, if and where possible, the Owner will make its best efforts to advise Plan Takers that the closing date has been extended through any of the following methods:

- 1) a public notice posted on the Newmarket's Bid Opportunity Site;
- 2) a public notice posted on other sites where the bid was originally advertised such as Biddingo and/or Merx; and/or
- 3) via email to all registered Plan Takers.

## **S. CANADA'S ANTI-SPAM LEGISLATION (CASL)**

As of July 1, 2014, Canada's Anti-Spam Legislation requires that Newmarket obtain your explicit consent in order for us to send you commercial electronic messages (CEMs). By agreeing to these Terms of Service you are providing consent for Newmarket to send you email notifications of New Bid Opportunities that match the Commodity Category(s) you have selected, Addendum notifications and other notifications during the bidding process.

## **T. HOW TO CONTACT US**

Should you have any questions or concerns about these Terms of Service, please contact the Procurement Services Department at 905-953-5335.