

# MAYOR'S INNOVATION CHALLENGE - 2021

## TERMS AND CONDITIONS FOR CALL FOR PARTICIPANTS

### 1. Definitions

**Call for Participants** means those documents issued by The City in respect of the Challenge.

**Challenge** means this Mayor's Innovation Challenge.

**City** or **The City** means the municipal corporation of The City of Calgary and includes its authorized representatives, agents, employees, elected officials, and designated officers.

**City Contact** means Senior Strategist, Office of the Mayor, at mayorschallenge@calgary.ca.

**Conflict of Interest** means any perceived, potential, or actual state of affairs or circumstances where, in relation to the Submission, the Challenge or The City, a Participant:

- (a) has other commitments, relationships, financial interests, or involvement in pending or ongoing litigation that:
  - (i) could or could be seen to exercise an improper influence over the objective, unbiased, and impartial exercise of independent judgment by any personnel of The City or its advisors; or
  - (ii) could or could be seen to compromise, impair, or be incompatible with the effective performance of the Participant's obligations if that Participant is selected pursuant to this process;
- (b) has contractual or other obligations to The City that could or could be seen to become compromised or otherwise impaired as a result of its participation in this process or the Challenge; or
- (c) has knowledge of Confidential Information of strategic and/or material relevance to this process or to the Challenge that is not available to other Participants and that could give or could be seen to give the Participant an unfair competitive advantage.

**Confidential Information** means all material, data, information, or any item in any form, whether oral or written, including in electronic or hard copy format, supplied by, obtained from, or otherwise provided by The City in connection with this process, the associated documents, or the Challenge, whether supplied, obtained from, or provided before or after the process that The City has identified or marked as confidential.

**Intellectual Property Rights** means any intellectual property right, industrial property right or other proprietary right of any type in any form, registered or unregistered, protected or protectable under the law of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual property rights, industrial property rights or proprietary rights protected or protectable by legislation, by common law or at equity.

**Participant** means a single legal entity or person that submits documents in response to this Call for Participants, both prior to and after making its Submission to The City.

**Submissions** means the documents and information provided to The City by the Participant in connection with this Call for Participants and the Challenge.

**Third-Party Intellectual Property Rights** means any Intellectual Property Rights owned by a party other than The City or the Supplier.

## **2. Intellectual Property**

Participants must not use or incorporate in their Submissions any information, concepts, products or processes that are subject to copyright, patents, trademarks or are otherwise the Intellectual Property Rights of third parties, unless the Participant has permission for the incorporation of any such information, concepts, products, processes or other Third-Party Intellectual Property Rights, and has, or will, obtain the right to use such information, concepts, products, processes or other Third-Party Intellectual Property Rights for the purposes of this Call for Participants and the Challenge.

The Participant represents and warrants that the Submission will not infringe or induce the infringement of any Third-Party Intellectual Property Rights. The Participant further represents and warrants that it has obtained assurances with respect to any of its own Intellectual Property Rights, as well as any Third-Party Intellectual Property Rights, that any rights of integrity or any other moral rights associated therewith have been waived.

Participants acknowledge and agree that any information, concepts, products or processes that are developed or created as a result of participation in this Call for Participants or the Challenge process, selection, or as a result of an award subsequent to this Challenge, whether or not they are subject to copyright, patents, trademarks or other intellectual property rights of the Participant or are Third-Party Intellectual Property Rights, will be subject to posting on a publicly-accessible, web-based forum.

The City shall not be responsible for, nor accept any liability for, any claims, damages, losses or causes of action related to the Intellectual Property Rights of the Participant or any third party arising from the Participant's participation in this Call for Participants or the Challenge. Participants are strongly encouraged to consult with their own legal advisors prior to providing their Submission.

## **3. Participants Will Bear Their Own Costs**

The Participant will bear all costs associated with or incurred in the preparation and presentation of its Submission and participation in the Challenge, including, if applicable, costs incurred for presentations, interviews or demonstrations.

## **4. Submission to Be Retained by The City**

All Submissions provided by Participants will be retained by The City, and will be administered in accordance with The City's Record Management Program.

## **5. Conditions of Participation**

### **5.1 Disqualification for Prohibited Conduct or Dispute**

The City may disqualify a Participant or rescind a selection or award subsequently issued if:

- (a) The City, in its sole and absolute discretion, determines the Participant has engaged in any conduct prohibited by this Call for Participants; or
- (b) The Participant is engaged in a Dispute with The City as defined in The City's Supplier Code of Conduct Policy.

### **5.2 Prohibited Conduct**

#### **(a) Conflict of Interest**

The City may disqualify a Participant for any conduct, situation or circumstances, determined by The City, in its sole and absolute discretion, to constitute a Conflict of Interest. A Participant must not engage in any Conflict of Interest or communications that could breach its Conflict of Interest obligations and must declare any actual or potential Conflict of Interest in the Participant Submission Form.

#### **(b) Unauthorized Communication**

A Participant may not at any time, issue or disseminate any media release or public announcement (whether for publication in the press, on the radio, television, internet or any other medium) in relation to this process or an award issued into pursuant to this process without first obtaining the written permission of The City, which permission may be arbitrarily withheld.

Participants must not make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Participant or their Submission, or publicly promote or advertise their own qualifications, or seek out or solicit support or 'support campaigns' from third parties with respect to this process or in the Challenge, without first obtaining the written permission of The City, which permission may be arbitrarily withheld.

Subject to the limitations set out above, Participants are permitted to utilize their own private social media channels to communicate their participation in the Challenge.

#### **(c) No Use of The City's Logo, Insignia or Trademarks**

A Participant shall not use any logo, insignia or trademark of The City ("The City Marks") except where it has received the prior written permission of The City to do so.

Notwithstanding the foregoing, and for the avoidance of doubt, Participants are advised that the social media posting functionality contained within The City's online application portal for the Challenge may automatically populate a Participant's social media post with certain of The City Marks. In such instance, permission is granted to the Participant to utilize The City Marks for that specific purpose, and for that specific social media posting, provided the content of said posting does not contravene the "Unauthorized

Communication" provisions noted above. The City reserves the right to revoke its permission to utilize The City Marks at any time in its sole and absolute discretion.

**(d) Lobbying**

A Participant may not, in relation to this process or the selection and award process, engage directly or indirectly in any form of political or other lobbying whatsoever to influence the evaluation of Participants and any future award.

Without limiting the generality of the above statement, at any time during the process, Participants and all of their respective employees or representatives are prohibited from contacting, or attempting to contact, either directly or indirectly, any of the following persons or organizations on matters related to this Challenge, the Call for Participants, or the Submissions:

- (i) any member of the evaluation committee or any member of any sub-committee of the evaluation committee (if applicable);
- (ii) any consultant, expert or advisor assisting The City or the evaluation committee;
- (iii) any person employed or engaged by The City, or any person who was previously employed by The City and who would have information relating to the Challenge or this Call for Participants, other than the City Contact;
- (iv) any member of the municipal council of The City or any member of a councillor's staff;
- (v) the Mayor of Calgary or any member of the Mayor of Calgary's staff other than the City Contact; or
- (vii) any directors, officers or consultants of any entity listed in Sections 5.2(d)(i) through (v).

**(e) Illegal or Unethical Conduct**

Participants must not engage in any illegal business practices, including activities such as bribery, fraud or collusion. Participants must not engage in any unethical conduct, including engaging in inappropriate communications, or offering gifts to members of Council, employees, officers or other representatives of The City, deceitfulness, submitting Submissions containing misrepresentations or other misleading or inaccurate information, or any other conduct that compromises or may be seen to compromise the process provided for in this Call for Participants and Challenge.

**(f) Other Grounds for Exclusion**

The City may also prohibit a Participant from participating in this process based on:

- (i) bankruptcy or insolvency;
- (ii) false declarations;
- (iii) significant or persistent deficiencies in the performance of any substantive requirement or obligation under a contract with The City;
- (iv) final judgment in respect of crimes or other offences;

- (v) prohibited conduct in a prior application or procurement process; or
- (vi) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Participant, including the failure to honour its commitments.

## **6. Confidential Information**

### **6.1 Confidential Information of City**

All information provided by or obtained from The City in any form in connection with this process either before or after the issuance of this Call for Participants, including any intellectual property information:

- (a) is the sole property of The City and must be treated as confidential;
- (b) is not to be used for any purpose other than responding to this Call for Participants, the Challenge, and in the performance under any award that may result;
- (c) must not be disclosed without prior written authorization from The City; and
- (d) must be returned by the Participants to The City, or destroyed if held in electronic format, immediately upon the request of The City.

### **6.2 Confidential Information of Applicant**

Participants are advised that The City is governed by Alberta's *Freedom of Information and Protection of Privacy Act* ("FOIP") and The City may be required to disclose all or part of a Participant's Submission pursuant to FOIP.

Participants are also advised that FOIP may provide protection for confidential and proprietary business information. Participants should identify any confidential or proprietary information in their Submission or any accompanying documentation and are advised to consult with their own legal advisors regarding the appropriate way in which such information should be identified. Subject to the provisions of FOIP, The City will make reasonable efforts to maintain the confidentiality of information identified as confidential or proprietary, except as otherwise required by law or by order of a court or tribunal or by order or decision of the Information and Privacy Commissioner (Alberta).

Participants are advised that their Submissions will, as necessary, be disclosed, on a confidential basis, to The City's advisers retained for the purpose of evaluating or participating in the evaluation of their Submissions and the selection process. If a Participant has any questions about the collection and use of personal information pursuant to this Call for Participants and Challenge, questions are to be submitted to the City Contact.

## **7. Process Non-binding**

### **7.1 No Contract A and No Claims**

This process is not intended to create and will not create a formal legally binding bidding process. For greater certainty and without limitation:

- (a) this process will not give rise to any Contract A-based tendering law duties or any other legal obligations arising out of any process contract or collateral contract; and

- (b) neither any Participant nor The City will have the right to make any claims (in contract, tort, or otherwise) against the other with respect to this Call for Participants and Challenge process, the making of a selection and award, failure to make a selection or award, or failure to honour a Submission to this Call for Participants and Challenge.

## **7.2 No Contract**

This Call for Participants and Challenge process is intended to identify interested parties for the purposes of holding a competition. No legal relationship or obligation regarding the solicitation or provision of any good or service will be created between the Participant and The City by this process, except as expressly set out herein.

## **7.3 Cancellation or Amendment**

The City may cancel or amend this Call for Participants and Challenge process without liability at any time.

## **8. Participant Agrees to Indemnify The City**

The Participant hereby agrees to indemnify, defend, and hold harmless The City from and against any and all claims and damages, by whomever made, sustained, incurred, brought or prosecuted, that the Submission infringes any Third-Party Intellectual Property Rights.

## **9. Governing Law and Interpretation**

The terms and conditions in this (a) are included for greater certainty and are intended to be interpreted (with no particular provision intended to limit the scope of any other provision); (b) are non-exhaustive; and (c) are to be governed by and construed in accordance with the laws of the province of Alberta and the federal laws of Canada applicable therein. Any action or proceeding relating to this Call for Participants and Challenge process must be brought in any court of competent jurisdiction in the Province of Alberta and for that purpose the Participant irrevocably and unconditionally submits to the jurisdiction of the Alberta courts.

## **10. Survival**

All obligations in these terms and conditions that necessarily extend beyond completion or termination of the Call for Participants and the Challenge in order to achieve their intended purpose will survive completion or termination, including the following:

- (a) indemnification obligations;
- (b) obligations in relation to Confidential Information of The City; and
- (c) any obligations in relation to Intellectual Property Rights.