

## **Appendix 2 - Community Housing Pre-Development Fund (CHPF) Program Call for Applications Terms and Conditions**

### **Table of Contents:**

1. Applicant's Responsibility
2. City Contacts and Questions
3. Addenda
4. Questions
5. Exceptions to Mandatory Requirements, Terms and Conditions
6. Incurred Costs
7. Post-Submission Adjustments and Withdrawal of Applications
8. Gifts or Favours Prohibited
9. Acceptance of Applications
10. Verification
11. Ownership, Confidentiality and Accuracy of City-Provided Data
12. Ownership and Disclosure of Application Documentation
13. Intellectual Property Rights
14. Failure or Default of Applicant
15. Governing Law
16. Call for Applications Dispute Procedure
17. Limitation of Liability

### **1. Applicant's Responsibility**

It shall be the responsibility of each Applicant:

- to examine all the components of the Call for Applications for the Community Housing Pre-Development Fund (CHPF) Program (the "Call for Applications"). The CHPF Guidelines, these terms and conditions, the Developer and Operator Code of Conduct and all appendices, template agreements, forms and addenda included with the CHPF Application Package (the Application) form part of the Call for Applications;
- to acquire a clear and comprehensive knowledge of the requirements before submitting an application;
- to become familiar, and comply, with all of the City's applicable policies and by-laws at <https://www.toronto.ca/business-economy/doing-business-with-the-city/understanding-the-procurement-process/purchasing-policies-legislation/>

The failure of any Applicant to receive or examine any document, form, addendum, Agreement or policy shall not relieve the Applicant of any obligation with respect to its Application or any Agreement entered into based on the Applicant's Application.

**a) Honesty and Good Faith**

Applicants shall respond to the City's Call for Applications in an honest, fair and comprehensive manner that accurately reflects their capacity to satisfy the requirements stipulated in the Application. Applicants shall make an Application only if they know they can satisfactorily perform all obligations of any resulting agreement(s) in good faith.

Applicants shall alert the City Contact to any factual errors, omissions and ambiguities that they discover in the Call for Applications as early as possible in the process.

**b) Conflicts of Interest or Unfair Advantage**

Applicants must declare and fully disclose any actual or potential conflicts of interest or unfair advantages related to the preparation of their Application or where the Applicant foresees an actual or potential conflict of interest in the performance of any resulting agreement(s). Such potential conflicts of interest or unfair advantages include, but are not limited to:

- a. Engaging current or former City employees or public office holders to take any part in the preparation of the Application or the performance of any resulting agreement(s) if awarded, any time within two (2) years of such persons having left the employ or public office of the City;
- b. Engaging any family members, friends or private business associates of any public office holder which may have, or appear to have, any influence on the selection process, or subsequent performance of any resulting agreement(s);
- c. Prior involvement by the Applicant or affiliated persons in developing any project specifications or requirements or other evaluation criteria for the Application;
- d. Prior access to confidential City information by the Applicant, or affiliated persons, that is materially related to the solicitation and that was not readily accessible to other prospective Applicants;
- e. The Applicant or its affiliated persons are indebted to or engaged in ongoing or proposed litigation with the City in relation to a previous agreement;
- f. The Applicant or any members of its team are not acting at arms' length to each other (this includes, but is not limited to, family members, spouses, related corporations and corporate subsidiaries); or
- g. Any City employee, Council member or member of a City agency, board or commission or employee thereof has a financial interest in the Application.

**c) Collusion or unethical practices**

No Applicant may discuss or communicate, directly or indirectly, with any other Applicant or their affiliated persons about the preparation of the Applicant's Application including, but not limited to, any connection, comparison of figures or arrangements with, or knowledge of any other Applicant making an Application for

the same project or program. Applicants shall disclose to the City Contact any affiliations or other relationships with other Applicants that might be seen to compromise the principle of fair competition, including any proposed subcontracting relationships.

**d) Interference prohibited**

No Applicant may threaten, intimidate, harass, or otherwise interfere with any City employee or public office holder in relation to their duties. No Applicant may likewise threaten, intimidate, harass, or otherwise interfere with an attempt by any other prospective Applicant to make an Application for a City project or to perform any resulting agreement(s) awarded by the City.

**e) Misrepresentations prohibited**

Applicants are prohibited from misrepresenting their relevant experience and qualifications in relation to any selection process and must acknowledge that the City's process of evaluation may include information provided by the Applicant in its Application as well as records of past performance on previous projects with the City or other public bodies.

## **2. City Contacts**

All communications concerning this Call for Applications should be sent by email to [HousingSecretariatRFP@toronto.ca](mailto:HousingSecretariatRFP@toronto.ca).

No City representative, whether an official, agent or employee, other than those identified "City Contacts" are authorized to speak for the City with respect to this Call for Applications, and any Applicant who uses any information, clarification or interpretation from any other representative does so entirely at the Applicant's own risk. **Not only shall the City not be bound by any representation made by an unauthorized person, but any attempt by an Applicant to bypass the Call for Applications process may be grounds for rejection of its Application.**

From and after the date of this Call for Applications until such time as an agreement is entered into with the Applicant, no communication with respect to this matter shall be made by any of the Applicant, or its representatives, including a third-party representative employed or retained by it (or any unpaid representatives acting on behalf of either), to promote its Application or oppose any competing Application, nor shall any Applicant, or its representatives, including a third party representative employed or retained by it (or any unpaid representatives acting on behalf of either), discuss the Call for Applications or its Application with any City staff, City officials or Council member(s), other than a communication with the "City Contact" identified in this Call for Applications.

**Applicants should be aware that communications in relation to this Call for Applications outside of those permitted by this Call for Applications**

contravene the Lobbying By-law, an offence for which a person is liable to a maximum fine of \$25,000.00 on a first conviction and \$100,000.00 on each subsequent conviction.

Notwithstanding anything to the contrary as set out in the Call for Applications, each Applicant shall comply with the obligations with respect to lobbying as set out in the City of Toronto Municipal Code, Chapter 140. The links to the City's Lobbying By-law and Interpretive Bulletin on Lobbying and Procurement are as follows:

- [http://www.toronto.ca/legdocs/municode/1184\\_140.pdf](http://www.toronto.ca/legdocs/municode/1184_140.pdf)
- <https://www.toronto.ca/city-government/accountability-operations-customer-service/accountability-officers/lobbyist-registrar/guidelines-regulatory-bulletins/interpretation-and-advisory-bulletins/>

### **3. Addenda**

If it becomes necessary to revise any part of this Call for Applications, the revisions will be by addendum posted electronically in Adobe PDF format on the City's website at <https://www.toronto.ca/community-people/community-partners/housing-partners/open-requests-for-proposals/>. The City will post Addenda with all questions and answers on the Affordable Housing website. No oral or written explanations, instructions or interpretations shall modify any of the requirements or provisions of the Call for Applications unless in the form of an addendum.

The City reserves the right to revise this Call for Applications at any time up to the closing deadline. When an addendum is issued, the date for submitting Applications may be revised by the City if, in its opinion, the City determines more time is necessary to enable Applicants to revise their Applications. The City's Housing Secretariat will make reasonable efforts to issue the final addendum (if any) in a sufficient time prior to the closing deadline to allow Applicants to submit their Applications.

Applicants and prospective Applicants should monitor the website <https://www.toronto.ca/community-people/community-partners/housing-partners/open-requests-for-proposals/> as frequently as they deem appropriate to inform themselves of any addenda, until the day of the deadline. The City is not responsible for any incomplete or incorrect Applications resulting from the issuance of an addendum or an Applicant's failure to update its Application in response to an addendum.

All Applicants must acknowledge receipt of all addenda in the space provided on the Mandatory Submission Form.

Any reference in the Call for Applications to any document comprising the Call for Applications includes any amendments to such document made in accordance with this section.

#### **4. Questions**

Applicants finding errors, omissions, conflicts, ambiguities or discrepancies in the Call for Applications or having questions, comments or concerns regarding the Call for Applications, its process and related matters ("Questions") may submit such Questions to the City Contact using the communication method set out in the Call for Applications.

The City will make reasonable efforts to respond to Questions received by the deadline for Questions set out in the Call for Applications. However, the City shall have no obligation to respond to any or all Questions, and the City's determination as to whether or not it will respond to any Question shall be in the City's sole and absolute discretion. The onus is on each Applicant to confirm the City has received all correspondence from the Applicant.

Although it is the City's practice to make available to all Questions received as well as responses to such Questions: (i) for Questions of an administrative nature; or (ii) where an Applicant's Question is identified as commercially confidential in nature and where, the City in its sole and absolute discretion deems the Question or response to be commercially confidential, the City may provide a response only to that Applicant. The City reserves the right to edit Questions for clarity and applicability to all Applicants generally.

Pursuant to the article above titled "Addenda", responses to Questions prepared and circulated by the City are not documents forming part of this Call for Applications and do not amend the Call for Applications, unless such responses form part of an Addendum.

#### **5. Exceptions to Mandatory Requirements, Terms and Conditions**

If an Applicant wishes to suggest a change to any mandatory requirement, term or condition set forth in any part of this Call for Applications, it should notify the City Contact in writing not later than the deadline for questions. The Applicant must clearly identify any such requirement, term or condition, the proposed change and the reason for it. If the City wishes to accept the proposed change, the City will issue an addendum as described in the article above titled "Addenda". The decision of the City shall be final and binding, from which there is no appeal. Changes to mandatory requirements, terms and conditions that have not been accepted by the City by the issuance of an addendum are not permitted and any Application that takes exception to or does not comply with the mandatory requirements, terms and conditions of this Call for Applications will be rejected.

#### **6. Incurred Costs**

The City will not be liable for, nor reimburse, any Applicant, as the case may be, for costs incurred in the preparation, submission or presentation of any Application, for interviews or any other activity that may be requested as part of the evaluation

process or the process for the negotiation or execution of an Agreement with the City, as the case may be.

The rejection or non-acceptance of any or all Applications shall not render the City liable for any costs or damages to any firm that submits an Application.

#### **7. Post-Submission Adjustments and Withdrawal of Applications**

Prior to the Submission Deadline, an Applicant may amend its Application at any time after email submission of the Application. Applications will not be viewed by the City until after the Submission Deadline and an Applicant may amend its Application one or more times if it so wishes prior to the Submission Deadline. If An Applicant amends its Application, the Applicant must resubmit the Application in full by email, indicating that it is a revised Application.

An Application may be withdrawn by delivering written notice of withdrawal to the City Contact by email. For clarity, an application may only be withdrawn by delivering such notice to the City Contact and cannot be withdrawn by any other means. Any Applications that are properly withdrawn before they have been examined or evaluated, will not be examined or evaluated for the purpose of the Call for Applications but shall be retained for the City's record retention purposes.

#### **8. Gifts or favours prohibited**

No Applicant and no employee, agent or representative of the Applicant, may offer or give any gifts, favours or inducements of any kind to any City employees or public office holders, or otherwise attempt to influence or interfere with their duties in relation to the selection process or management of any resulting agreement.

If the City determines that this article has been breached by or with respect to An Applicant, the City may exclude its Application from consideration, or if an Agreement has already been entered into, may terminate it without incurring any liability.

#### **9. Acceptance of Applications**

The City shall not be obliged to accept any Application in response to this Call for Applications. The City may, without notice or incurring any liability or cost to any Applicant:

- a) accept or reject any Application(s) at any time;
- b) waive immaterial defects and minor irregularities in any Applications;
- c) suspend, modify and/or cancel this Call for Applications (with or without the substitution of another Call for Applications) in whole or in part;
- d) enter into one or more Agreements in relation to this Call for Applications to as many Applicants as the City deems appropriate;
- e) if the Call for Applications is cancelled, the City may reissue a solicitation to one, some or all of the Applicants and/or any other person;

- f) exercise any other right or option provided for in, or in connection with this Call for Applications, including the rights and options set out in the applicable by-laws, policies and procedures established by the City;
- g) do nothing in relation to the Applications or the Call for Applications.

#### **10. Verification**

The City reserves the right to verify with any Applicant or with any other person any information provided in its Application but shall be under no obligation to receive further information. The City may rely on the representations, experience and expertise of the Applicants as set out in their Applications.

#### **11. Ownership, Confidentiality, and Accuracy of City-Provided Data**

The Call for Applications and all correspondence, documentation and information provided by City staff to any Applicant in connection with, or arising out of this Call for Applications, or the acceptance of any Application (the "City Materials") and all intellectual property rights therein:

- a) are and shall remain the sole property of the City;
- b) must be treated by Applicants as confidential;
- c) must not be used for any purpose other than for replying to this Call for Applications, and for fulfillment of any related subsequent Agreement; and
- d) immediately upon the request of the City, must be returned by the Applicant to the City and all electronic copies must be destroyed.

Unless and to the extent provided otherwise in any resulting agreement(s), the City and its advisers make no representation or warranty as to the accuracy or completeness of the City Materials, and disclaim all express and implied representations, warranties and conditions in connection with the City Materials. Any quantities shown or data contained in the City Materials are estimates only. Use of or reliance by Applicants on the City Materials shall be at the Applicant's sole risk and without recourse against the City.

#### **12. Ownership and Disclosure of Application Documentation**

The documentation comprising any Application submitted in response to this Call for Applications, along with all correspondence, documentation and information provided to the City by any Applicant in connection with, or arising out of this Call for Applications ("Application Materials"), once received by the City:

- shall become the property of the City and may be appended to the Agreement with the successful Applicant;
- shall become subject to the Municipal Freedom of Information and Protection of Privacy Act ("MFIPPA"), and may be released, pursuant to that Act.

**NOTE:** Because of *MFIPPA*, prospective Applicants are advised to identify in their Application material any scientific, technical, commercial, proprietary or similar confidential information, the disclosure of which could cause them injury.

Each Applicant's name and Application may be made public. Application Materials will, as necessary, be made available:

- on a confidential basis, to advisers retained by the City to advise or assist with the Call for Applications process;
- to members of Council in accordance with the City's procedures; and
- to members of the public pursuant to *MFIPPA*.

The City will not return the Application or any other Application Materials.

### **13. Intellectual Property Rights**

Each Applicant warrants that the information contained in its Application does not infringe any intellectual property right of any third party and agrees to indemnify, defend and save harmless the City and its agencies, boards, commissions, elected officials, officers, employees, servants, agents, volunteers, advisers and contracted personnel, if any, against all claims, actions, suits and proceedings brought against or losses, costs, expenses, or damages suffered, sustained or incurred by them which may be directly or indirectly attributable to, or arising or alleged to arise out of the infringement or alleged infringement of any patent, copyright, trademark, or other intellectual property right in connection with their Application.

### **14. Failure or Default of Applicant**

Without prejudice to any other right or remedy available to the City under the Call for Applications or at law, if the Applicant, for any reason, fails or defaults in respect of any matter or thing which is an obligation of the Applicant under the terms of the Call for Applications, the City may disqualify the Applicant from the Call for Applications and/or from competing for future solicitations issued by the City.

In addition, the City may withdraw any offer of assistance awarded to the Applicant as a result of its Application and a contravention of these terms and conditions may also be grounds for the termination of any agreement entered into with the Applicant in connection with the Call for Applications.

The Applicant and its affiliates, associates, third-party service providers, and subcontractors shall not release for publication any information in connection with this Call for Applications or any Agreement without prior written permission of the City.

### **15. Governing Law**

This Call for Applications and any Application submitted in response to it and the process contemplated by this Call for Applications including any ensuing Agreement shall be governed by and construed in accordance with the applicable City by-laws



and policies, the laws of the Province of Ontario, and the federal laws of Canada. Any dispute arising out of this Call for Applications or this Call for Applications process will be determined by a court of competent jurisdiction in the Province of Ontario.

If any provision of the Call for Applications or its application to any party or circumstance is unenforceable, the provision shall be ineffective only to the extent of the unenforceability without: (i) invalidating the remaining provisions of the Call for Applications; (ii) changing the fundamental nature of the obligations assumed by the parties; and (iii) affecting its application to other parties or circumstances.

## **16. Call for Applications Dispute Procedure**

- a) Applicants should seek a resolution of any dispute arising from the Call for Applications by communicating directly with the Executive Director, Housing Secretariat as soon as possible from the time when the basis for the dispute became known to them. Any dispute must be received in writing by the Executive Director, Housing Secretariat no later than ten (10) days after the date of the award notification, or where a debriefing has been requested, no later than five (5) days after such debriefing is received. Any dispute that is not timely received or in writing will not receive further consideration.
- b) Any written dispute that cannot be resolved by the Executive Director, Housing Secretariat through consultations with the Applicant, shall be referred by the Executive Director, Housing Secretariat to the Deputy City Manager, Development & Growth Services or their designate(s) for an impartial review, based on the following information:
  - (i) A specific description of each act or omission alleged to have materially breached the Call for Applications process;
  - (ii) A specific identification of the provision in the Call for Applications process that is alleged to have been breached;
  - (iii) A precise statement of the relevant facts;
  - (iv) An identification of the issues to be resolved;
  - (v) The Applicant's arguments, including any relevant supporting documentation; and
  - (vi) The Applicant's requested remedial action.
- c) The Deputy City Manager or their designate(s), in consultation with the City Solicitor, may:
  - (i) Dismiss the dispute;
  - (ii) Accept the dispute and direct the Executive Director, Housing Secretariat to take appropriate remedial action; or
  - (iii) Report to City Council with recommendations on the appropriate action, as applicable.

## **17. Limitation of Liability**

Notwithstanding anything in the Call for Applications and any express or implied duties or obligations of the City to the contrary, the City and each of its agencies, boards, commissions, elected officials, officers, employees, servants, agents, volunteers, suppliers, advisers and contracted personnel will have no liability to any person, including any Applicant and prospective Applicant for any damages, costs, liabilities, losses or expenses including direct, indirect, special or punitive damages, or for loss of profits, loss of opportunity or loss of reputation arising out of or otherwise relating to:

- a) the Call for Applications;
- b) participation of any such person in the Call for Applications process; or
- c) the City's acts or omissions in connection with the conduct of the Call for Applications process, including the acceptance, non-acceptance or delay in acceptance by the City of any Application. This limitation applies to all possible claims, whether arising in contract, tort, equity, or otherwise, including any claim for a breach by the City of a duty of fairness, if any.

By submitting an application to the City, each Applicant irrevocably and unconditionally waives any claims for damages, costs, liabilities, losses and expenses, and shall not seek any order for injunctive relief or specific performance, against the City, its agencies, boards, commissions, elected officials, officers, employees, servants, agents, volunteers, advisers and contracted personnel.

Each Applicant agrees that, despite this section or any limitations of liability or releases in favour of City, if the City is found to be liable, in any way whatsoever, for any act or omission in respect of the Call for Applications, the total liability of the City to any Applicant or any other person participating in the Call for Applications process, and the aggregate amount of damages recoverable against City for any matter relating to or arising from any act or omission by the City, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the City shall be no greater than the Applicant's cost of preparing its Application.

Notwithstanding the City's limitation of liability, the Applicant may seek a debriefing or may pursue a dispute of the Call for Applications process in accordance with Section 16 (Call for Applications Dispute Process).