



THE CITY OF WINNIPEG

REQUEST FOR PROPOSAL

RFP NO. 201-2014 B

**DESIGN, BUILD, FINANCE, (OPERATE) MAINTAIN
THE CITY OF WINNIPEG'S SOUTHWEST RAPID TRANSITWAY (STAGE 2)
AND PEMBINA HIGHWAY UNDERPASS**

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REQUEST FOR PROPOSALS

SECTION A - INTRODUCTION

A1. General

A1.1 This Request for Proposals (“**RFP**”) is issued by the City of Winnipeg in the province of Manitoba, Canada in respect of the project (the “**Project**”) that is briefly described in Schedule 1 to the RFP (the “**RFP Data Sheet**”).

A1.2 In this RFP, Prequalified Parties that submit documents in response to this RFP are referred to as “**Proponents**” and their submissions, as may be revised by RFP Section E3, if applicable, are referred to as “**Proposals**”. The entity that is selected by the City to enter into the Project Agreement is referred to as the “**Preferred Proponent**”. For the purposes of convenience, in this RFP the expression “**Proponents**” also includes Prequalified Parties prior to the submission of their Proposals.

A1.3 Except as provided in RFP Section A1.3(a), the procurement process to select a Preferred Proponent shall commence with the issuance of this RFP and shall terminate on Financial Close or on the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable) whichever is first (the “**RFP Process**”). Only Proponents that submit a Proposal in accordance with this RFP will acquire any rights under the RFP. Except as provided in RFP Sections C9.2 and C9.3, and except for the City’s obligation to pay a Break Payment or a Proposal Submission Fee, as applicable, all rights and obligations arising out of the RFP (the bidding contract or “**Contract A**”) terminate either on the cancellation of this RFP Process by the City, if such cancellation occurs, or,

(a) for the Preferred Proponent, on Financial Close (providing Commercial Close is reached prior to the expiration of the Proposal Validity Period, or extended Proposal Validity Period if applicable); and

(b) for the Proponents that are not the Preferred Proponent, on the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable) or Financial Close, whichever occurs first.

A1.4 The City shall manage the RFP Process and the City shall be the single point of contact for Proponents. During the RFP Process, Proponents shall contact the City only through the contact person(s) named in the RFP Data Sheet (the “**Contact Person**” or “**Contact Persons**”) as set out in RFP Section C2.1.

A1.5 A detailed description of the Project is contained in the documentation in the electronic data room established specifically for the Project (the “**Data Room**”). The scope of work and terms and conditions in respect of the Project are set out in the project agreement (“**Project Agreement**”) attached as Schedule 9 to this RFP.

A2. Prequalified Parties and Proponent Representatives

A2.1 Subject to RFP Section C6, only those parties that were prequalified through the Project’s Request for Qualifications (“**RFQ**”) process that preceded this RFP are eligible

to participate in the RFP Process. The prequalified parties are listed in the RFP Data Sheet (“**Prequalified Parties**”). The prequalification documents submitted by each of the Prequalified Parties in the RFQ process that preceded and was with respect to this RFP Process are referred to as a Prequalified Party’s “**Qualification Submission**”.

- A2.2 All correspondence from the City to a Proponent will be sent to the person identified, in the Proponent’s Qualification Submission, to receive information and notices on behalf of the Proponent (the “**Proponent Representative**”). Each Proponent is solely responsible to ensure that all contact information of the Proponent Representative is accurate and updated at all times during the RFP Process. Proponents may update or revise their Proponent Representatives’ information by notifying the Contact Person, in writing.

A3. Overview of the Stages of Project Procurement and Implementation

- A3.1 The City will carry out the procurement and implementation of the Project in accordance with the following stages:

- (a) Stage 1 – Prequalification Stage
 - (i) The prequalification stage (“**Prequalification Stage**”) preceded the RFP Process and identified the Prequalified Parties. The Prequalification Stage is a stand-alone independent stage and is complete once the Prequalified Parties are identified by the City (whether identified initially as Prequalified Parties or added subsequently in accordance with the RFQ documents) and have received notification by the City that they are prequalified for the RFP Process.
- (b) Stage 2 – RFP Procurement Process
 - (i) The RFP procurement process is the competitive procurement process described in detail in this RFP.
- (c) Stage 3 – Implementation of the Project Agreement
 - (i) Once the City and the Preferred Proponent have executed the Project Agreement, the terms and conditions of the Project Agreement shall determine how the Project is to proceed.

A4. Fairness Monitor

- A4.1 The City has appointed a Fairness Monitor to monitor this RFP Process. The name of the Fairness Monitor is set out in the RFP Data Sheet.

SECTION B - THE RFP DOCUMENTS AND THE DATA ROOM

B1. RFP Documents

- B1.1 The RFP Documents (the “**RFP Documents**”) are:

- (a) this RFP;

- (b) Schedule 1 – RFP Data Sheet;
- (c) Schedule 2 – Design Consultation Process;
- (d) Schedule 3 – Submission Requirements and Evaluation Criteria consisting of:
 - (i) Part 1 – Proposal Format and Evaluation Requirements
 - (ii) Part 2 – Technical Submission Requirements;
 - (iii) Part 3 – Financial Submission Requirements;
- (e) Schedule 4 – Proposal Submission Forms;
- (f) Schedule 5 – Proponent Team Member Declaration;
- (g) Schedule 6 – Price Submission Forms;
- (h) Schedule 7 – Form of Letter(s) of Credit;
- (i) Schedule 8 – Affordability and Re-scoping;
- (j) Schedule 9 – Project Agreement, including all related Schedules, appendices and attachments as listed in the RFP Data Sheet; and
- (k) Addenda to the RFP Documents, if any.

B1.2 Subject to RFP Section B2.1, the RFP Documents shall be read as a whole. The Schedules and Addenda, if any, constitute an integral part of this RFP and are incorporated by reference. For greater clarity, Background Information documents are not RFP Documents.

B2. Conflicts or Inconsistencies in Documents

- B2.1 For the purpose of the RFP Process, if there are any conflicts or inconsistencies among the terms and conditions of the documents comprising RFP Documents the following shall apply:
- (a) in respect of matters of interpretation related to the RFP Process and all competitive procurement process matters, this RFP shall prevail over the Schedules to this RFP during the RFP Process;
 - (b) in respect of all matters of interpretation of the Project and the Project Agreement during the RFP Process, the Project Agreement shall prevail over this RFP and all other Schedules to this RFP; and
 - (c) for the purpose of resolving conflicts or inconsistencies among the documents that constitute the Project Agreement, the provisions of the Project Agreement dealing with conflicts or inconsistencies shall govern.

B2.2 Despite RFP Section B2.1, if the Proponent believes that there is any term or condition in any RFP Document that is ambiguous, or that conflicts or is inconsistent with any other term or condition in the RFP Documents, the Proponent shall notify the City of that ambiguity, conflict or inconsistency in accordance with RFP Section C2.2 and, for greater clarity, by the deadline set out in the RFP Data Sheet for the submission of RFIs.

B2.3 If there is a conflict or inconsistency between:

- (a) the City's electronic version of an RFP Document as contained in the Data Room; and
- (b) any other version of the same RFP Document (whether in electronic or hard copy),

the City's latest electronic version as contained in the Data Room shall govern.

B2.4 If there is any conflict or inconsistency between documents, including RFP Documents, contained in the Data Room and documents that are downloaded by the Proponent, the documents contained in the Data Room shall govern.

B2.5 If there is any conflict or inconsistency between two versions of the same RFP Document contained in the Data Room, the RFP Document of the later date or version number shall prevail over the same RFP Document of an earlier date or version number. Unless otherwise indicated, for the purposes of this RFP Section B2.5, the date of each RFP Document shall be determined by the date and time when that document was placed in the Data Room by the City.

B3. Distribution of Documents to Proponents

B3.1 Except as provided in RFP Section B3.2, the City will circulate this RFP and all other RFP Documents, including Addenda, by placing them in the Data Room and notifying the Proponent Representatives by e-mail that RFP Documents or Addenda, as applicable, have been added to the Data Room. Notification to Proponents by the City that documents have been added to the Data Room is a courtesy only and Proponents are solely responsible to ensure that they review all documents in the Data Room in accordance with RFP Section B4.3 and, in particular, have reviewed all documents in the Data Room immediately prior to submitting Proposals.

B3.2 The City may circulate some RFP Documents in paper copy. If the City circulates any RFP Documents in paper copy, Proponents will be notified of a paper copy circulation by way of a notice in the Data Room.

B4. Data Room

B4.1 The City's electronic Data Room is at a secure website address and will be used for:

- (a) the distribution of RFP Documents, amended and restated RFP Documents, and Addenda (including "black-lined" RFP Documents revised by Addenda);

- (b) the provision of various types of background information for the Proponents' review ("**Background Information**"); and
 - (c) the receipt of RFIs from Proponents and the posting of responses to RFIs.
- B4.2 Subject to RFP Section C9.2, the Data Room will be accessible on approximately the date set out in the Timetable. The City may add, delete or amend documents in the Data Room at any time.
- B4.3 Each Proponent is solely responsible to ensure that it:
- (a) contacts the Contact Person at the coordinates set out in the RFP Data Sheet to arrange access to the Data Room and receipt of a Data Room password;
 - (b) has the appropriate software which allows the Proponent to access and download RFP Documents and Background Information from the Data Room; and
 - (c) checks the Data Room frequently for the addition, deletion or amendment of RFP Documents, Background Information and the posting of responses to RFIs and, at all times during the RFP Process, keeps itself informed of and takes into account the most current RFP Documents, Background Information and responses to RFIs.

B5. Proponent Investigations

- B5.1 Each Proponent and each of its Proponent Team Members is solely responsible, at its own cost and expense, to carry out its own independent research and due diligence and to perform any other investigations, including seeking independent advice, considered necessary by the Proponent to satisfy itself as to all existing conditions affecting the Project or the Project Agreement. The Proponents' and Proponent Team Members' obligations set out in this RFP Section B5 apply irrespective of any Background Information in the Data Room or information contained in the RFP Documents or in responses to RFIs. The Proponents' and Proponent Team Members' obligation to carry out independent research, investigations, due diligence or to seek independent advice or, if applicable, their ability to rely on information provided by the City is more particularly set out in the Project Agreement.
- B5.2 Except as explicitly provided in the Project Agreement, the City does not represent or warrant the accuracy or completeness of any information set out in the RFP Documents or made available to Proponents or Proponent Team Members in the Data Room as Background Information or of any other background or reference information or documents prepared by the City or by third parties and which may be made available to Proponents or Proponent Team Members by or through the City. Proponents and Proponent Team Members shall make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information as any use of or reliance by Proponents or Proponent Team Members on any and all such information shall be at the Proponents' and Proponent Team Members' sole risk and without recourse against the City.

SECTION C - THE RFP PROCESS

C1. RFP Process Timetable

C1.1 The deadlines for the submission of a Proponent's Technical Submission (the "**Technical Submission Deadline**") and the submission of a Proponent's Financial Submission (the "**Financial Submission Deadline**") and the general timetable for the RFP Process (the "**Timetable**") are set out in the RFP Data Sheet.

C1.2 The City may amend the Timetable in its sole discretion:

- (a) at any time before the Technical Submission Deadline for events that are to occur on or before the Technical Submission Deadline, including the Technical Submission Deadline itself;
- (b) at any time before the Financial Submission Deadline for events that are to occur on or before the Financial Submission Deadline, including the Financial Submission Deadline itself; and
- (c) at any time in the RFP Process for events that are to occur after the Financial Submission Deadline.

C2. Questions and RFP Documents Comments

C2.1 Contact Person

- (a) Except as set out in RFP Section C4.2, the Proponents shall submit all questions and other communications regarding the RFP Documents, the RFP Process and their Proposals to the Contact Person or Contact Persons, as applicable, electronically at the coordinates listed in the RFP Data Sheet and the questions shall be submitted in accordance with RFP Section C2.2 and shall be submitted in the form provided in the Data Room.

C2.2 Clarification/RFI Submission Process

- (a) In addition to the requirement set out in RFP Section C2.1, the following rules shall apply to Proponents when submitting questions or requests for information ("**RFIs**") to the City during the RFP Process:
 - (i) Proponents are permitted to submit RFIs categorized as follows:
 - (A) RFIs that are of general application and that would apply to other Proponents ("**General RFIs**"); and
 - (B) RFIs that the Proponent considers to be commercially sensitive or confidential to that particular Proponent ("**Commercially Confidential RFIs**").
 - (ii) If the City disagrees with the Proponent's categorization of an RFI as a Commercially Confidential RFI, the City will give the Proponent an

- opportunity to either categorize the RFI as a General RFI or to withdraw the RFI;
- (iii) If the City determines, in its sole discretion, that a Commercially Confidential RFI, even if it is withdrawn by a Proponent, is of general application or would provide a significant clarification of the RFP Documents or RFP Process to Proponents, the City may issue a clarification to Proponents that deals with the same subject matter as the withdrawn Commercially Confidential RFI; and
 - (iv) If the City agrees with the Proponent's categorization of a Commercially Confidential RFI, then the City will provide a response to that RFI to only the Proponent that submitted the RFI.
- (b) Responses to RFIs prepared and circulated by the City are not RFP Documents and do not amend the RFP Documents. If, in the City's sole discretion, responses to RFIs require an amendment to the RFP Documents, such amendment will be prepared and circulated by Addendum in accordance with RFP Section C8. Only a response to an RFI that has been incorporated into or issued as an Addendum will modify or amend the RFP Documents and, otherwise, RFIs will have no force or effect whatsoever and shall not be relied upon by any Proponent.
 - (c) Proponents shall submit RFIs in accordance with the deadlines set out in the Timetable.
 - (d) Proponents shall submit all RFIs to the Contact Person electronically in accordance with the instructions set out in the RFP Data Sheet.
 - (e) The City will respond to RFIs in writing and circulate to Proponents in accordance with the schedule set out in the Timetable. The City may, in its sole discretion, distribute responses to RFIs of a minor or administrative nature to only the Proponent who submitted the minor or administrative RFI.
 - (f) It is the Proponent's obligation to seek clarification from the City of any matter it considers to be unclear in accordance with RFP Section C2.2 and, for greater clarity, by the deadline set out in the Timetable for the submission of RFIs. The City is not responsible in any way whatsoever for any misunderstanding by the Proponent or any of its Proponent Team Members of the RFP Documents, Background Information, responses to RFIs, any documents placed in the Data Room or any other type of information provided by or communication made by the City.

C2.3 Project Agreement Comments

- (a) The City may, in its sole discretion, request Proponents to submit comments on the Project Agreement. Whether the City intends to permit or require the submission of such comments and the format for the submission of those comments is set out in the RFP Data Sheet. The schedule for the submission of comments is set out in the CCM Guidelines. The City is not obliged to respond to

each comment made by Proponents under this RFP Section C2.3. If the City accepts a comment, or part of a comment, and that acceptance requires a change to the RFP Documents, the City shall implement that change by Addendum.

C3. Communications Restrictions

C3.1 Communications with Municipalities, Other Government Authorities and Utilities

- (a) Subject to the restrictions in RFP Section C3.2 and any special rules set out in the RFP Data Sheet, Proponents, Proponent Team Members and their respective Advisors are permitted to communicate directly with any municipality, government authority or utility with respect to municipal, utility or other types of governmental requirements related to the Project. Under no circumstances will any special rules set out in the RFP Data Sheet in accordance with this RFP Section C3.1(a) override the provisions of RFP Section C3.2.
- (b) The City is not, in any way whatsoever, responsible for any representations, statements, assurances, commitments or agreements which Proponents, Proponent Team Members or their respective Advisors receive or believe they may have received from a municipality, a government authority, or a utility. Proponents, Proponent Team Members and their respective Advisors rely on any such representations, assurances, commitments or agreements at their sole risk without recourse against the City.

C3.2 Prohibited Contacts and Lobbying Prohibition

- (a) Proponents and Proponent Team Members and all of their respective Advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever in relation to the Project, or to influence the outcome of the RFP Process.
- (b) Without limiting the generality of RFP Section C3.2(a), neither Proponents or Proponent Team Members or any of their respective Advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following persons or organizations on matters related to the RFP Process, the RFP Documents, or the Proposals:
 - (i) any member of the Evaluation Committee, or any member of any sub-committee of the Evaluation Committee;
 - (ii) any Advisor to the City or the Evaluation Committee;
 - (iii) any person employed or engaged by the City, or any person who has been employed by the City, other than,
 - (A) the Contact Person;
 - (B) in accordance with RFP Section C3.1, as follows:

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- (I) City of Winnipeg Traffic Signals Branch
Contact: Michael Cantor, or individual acting in his role.
Phone: 204-986-2619
Email: mcantor@winnipeg.ca;
 - (II) City of Winnipeg Traffic Services Department
Contact: Greg Skinner, or individual acting in his role
Phone: 204-794-4294
Email: gskinner@winnipeg.ca;
 - (III) City of Winnipeg Underground Structures (for Accessing Record Drawings)
Contact: Jim Horne, or individual acting in his role
Phone: 204-986-2748
Email: jhorne@winnipeg.ca;
- (iv) any expert or advisor assisting the City or the Evaluation Committee;
 - (v) any member of the municipal council of the City or any member of a councillor's staff;
 - (vi) the Mayor of Winnipeg or any member of the Mayor of Winnipeg's staff;
 - (vii) any other Proponent or Proponent Representative thereof (except Proponent Team Members that are part of more than one Proponent);
 - (viii) any directors, officers or consultants of any entity listed in RFP Sections C3.2(b)(i) to C3.2(b)(vii);
 - (ix) any person employed or engaged by PPP Canada or any member of the board of directors of PPP Canada;
 - (x) any person employed or engaged by the Province of Manitoba or any member of the Provincial legislature;
 - (xi) any person employed or engaged by the U of M;
 - (xii) any person employed or engaged by CN;
 - (xiii) any person employed or engaged by Triple B Stadium Inc.;
 - (xiv) any person employed or engaged by Winnipeg Football Club; or
 - (xv) any person employed or engaged by The Bell Telephone Company of Canada or Bell Canada.
- (c) If a Proponent or a Proponent Team Member or any of their respective Advisors, employees or representatives, in the opinion of the City, contravenes RFP Section C3.2(a) or C3.2(b), the City may, in its sole discretion:

- (i) take any action in accordance with RFP Section G1.2; or
- (ii) impose conditions on the Proponent's or Proponent Team Member's continued participation in the RFP Process that the City considers, in its sole discretion, to be appropriate.

For clarity, the City is not obliged to take the actions set out in RFP Section C3.2(c)(i) or C3.2(c)(ii).

C3.3 Media Releases, Public Disclosures and Public Announcements

- (a) A Proponent shall not, and shall ensure that its Advisors, employees, representatives and Proponent Team Members, and their respective Advisors, employees and representatives do not, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) that relates to the RFP Process, the RFP Documents or the Project or any matters related thereto, without the prior written consent of the City, which consent may be withheld in the City's sole discretion.
- (b) Neither the Proponents or the Proponent Team Members or any of their respective Advisors, employees or representatives shall make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent or Proposal or to publicly promote or advertise their own qualifications, interest in or participation in the RFP Process without the City's prior written consent, which consent may be withheld in the City's sole discretion. Notwithstanding this RFP Section C3.3(b), Proponents, Proponent Team Members and their respective Advisors, employees and representatives are permitted to state publicly that they are participating in the RFP Process.
- (c) For the purpose of greater clarity, RFP Section C3.3(b) does not prohibit disclosures necessary to permit the Proponent to discuss the Project with prospective subcontractors but such disclosure is permitted only to the extent necessary to solicit those subcontractors' participation in the Project.

C3.4 Restrictions on Communications between Proponents – No Collusion

- (a) A Proponent shall not discuss or communicate, directly or indirectly, with any other Proponent, any information whatsoever regarding the preparation of its own Proposal or the Proposal of another Proponent in a fashion that would contravene Applicable Law. Proponents shall prepare and submit Proposals independently and without any connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Proponent.
- (b) For greater clarity, RFP Section C3.4(a) applies to Proponents and Proponent Team Members and their respective Advisors, employees and representatives.

C4. Meetings with Proponents

C4.1 General Proponents Meeting(s)

- (a) The City may, in its sole discretion, convene general Proponents meetings (each, a “**Proponents Meeting**”) on the dates and at the times set out in the Timetable and at the location and for the purposes set out in the RFP Data Sheet. While attendance at a Proponents Meeting is not mandatory, Proponents are strongly encouraged to attend. A Proponent’s failure to attend a Proponents Meeting is at the Proponent’s sole risk and responsibility.
- (b) Proponents may ask questions and seek clarifications at a Proponents Meeting. Notwithstanding that the City may give oral answers at a Proponents Meeting, those answers shall not be considered final unless issued in writing. Therefore, Proponents are strongly encouraged to submit these questions in accordance with RFP Section C2.2 for response in accordance with RFP Section C2.2.
- (c) No statement, consent, waiver, acceptance, approval or anything else said or done in any Proponents Meeting by the City or any of its respective Advisors, employees or representatives shall amend or waive any provision of the RFP Documents, or be binding on the City or be relied upon in any way by Proponents, Proponent Team Members or their Advisors, except when and only to the extent expressly confirmed in an Addendum to the RFP Documents issued in accordance with RFP Section C8.

C4.2 Commercially Confidential Proponent Meetings

- (a) The City may, in its sole discretion, convene commercially confidential meetings with Proponents (“**Commercially Confidential Meetings**” or “**CCM**”). These Commercially Confidential Meetings may be,
 - (i) bilateral meetings between the City (and its representatives and Advisors) and individual Proponents (and their representatives and Advisors), to discuss the Project Agreement and the Proponent’s suggested amendments to the Project Agreement;
 - (ii) bilateral meetings between the City (and its representatives and Advisors) and individual Proponents (and their representatives and Advisors) to discuss either,
 - (A) Project design issues (including Proponents’ proposed designs) in accordance with Schedule 2 to the RFP, or
 - (B) other matters; or
 - (iii) bilateral, ad hoc Commercially Confidential Meetings between the City (and its representatives and Advisors) and individual Proponents (and their representatives and Advisors), in accordance with Section C4.2(f).

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- (b) Whether the City intends to hold Commercially Confidential Meetings and the location of those meetings is set out in the RFP Data Sheet. The approximate date of Commercially Confidential Meetings is set out in the Timetable. While attendance at Commercially Confidential Meetings is not mandatory, Proponents are strongly encouraged to attend. A Proponent's failure to attend a Commercially Confidential Meeting is at the Proponent's sole risk and responsibility.
- (c) If the City holds Commercially Confidential Meetings, the Fairness Monitor may attend such Commercially Confidential Meetings.
- (d) No statement, consent, waiver, acceptance, approval or anything else said or done in any of these Commercially Confidential Meetings or pursuant to any Design Feedback by the City or any of its respective Advisors, employees or representatives shall amend or waive any provision of the RFP Documents, or be binding on the City or be relied upon in any way by Proponents, Proponent Team Members or their Advisors except when and only to the extent expressly confirmed in an Addendum to the RFP Documents issued in accordance with RFP Section C8.
- (e) The Proponent, its Proponent Team Members and their respective Advisors and representatives and any of their attendees at Commercially Confidential Meetings acknowledge and agree that:
- (i) any statement made at a Commercially Confidential Meeting or pursuant to any Design Feedback by the City or any of its Advisors or representatives is not and shall not be deemed or considered to be an indication of a preference by the City or a rejection by the City of anything said or done by the Proponent, Proponent Team Member or any of their respective Advisors or representatives;
 - (ii) any statement made at a Commercially Confidential Meeting or pursuant to any Design Feedback by the City or any of their Advisors or representatives shall not and will not be relied upon in any way by the Proponent, Proponent Team Member or any of their respective Advisors or representatives for any purpose, including any purpose in connection with the RFP, the Project Agreement, the Project or otherwise, except and only to the extent expressly confirmed by Addendum in accordance with RFP Section C8, provided that the City shall not be under any obligation to confirm any information by Addendum;
 - (iii) the City may share process-related information, including clarifying information, with all Proponents if the need arises; and
 - (iv) the Proponent, its Proponent Team Members and their respective Advisors and representatives:
 - (A) shall participate in the Commercially Confidential Meetings in accordance with the guidelines, procedures and processes set out in the RFP;

- (B) waive any and all rights to contest and/or protest the RFP and the processes and guidelines set out herein, including the Commercially Confidential Meetings or the Design Consultation Process, based on the fact that Commercially Confidential Meetings or Design Feedback occurred or on the basis that information may have been received during a Commercially Confidential Meeting or pursuant to Design Feedback by another Proponent, another Proponent's Proponent Team Member, or their respective Advisors or representatives that was not received by the Proponent, its own Proponent Team Member(s) or any of their respective Advisors or representatives; and
 - (C) agree that the Proponent, its Proponent Team Members and their respective Advisors and representatives must treat information received at a Commercially Confidential Meeting and pursuant to Design Feedback as Confidential Information.
- (f) Subject to Section C4.2(f)(ii) of this RFP, ad hoc Commercially Confidential Meetings ("**Ad Hoc CCMs**") may be requested by the City, the Design Consultation Team or the Proponent prior to the Technical Submission Deadline, and in accordance with the following:
- (i) The City shall consider all requests for Ad Hoc CCMs made by Proponents pursuant to Section C4.2(f). If the City concludes, in its sole discretion, that a requested Ad Hoc CCM is necessary, the City shall notify the applicable Proponent and the City shall suggest a date, time and location for the Ad Hoc CCM. For clarity, the City has the right to approve or reject any request for an Ad Hoc CCM, and the City shall not be obligated to provide reasons for any such decision.
 - (ii) If the City approves a request by a Proponent to conduct an Ad Hoc CCM pursuant to Section C4.2(f)(i), the Proponent requesting such meeting must submit the proposed agenda for the meeting at least 72 hours prior to the meeting.
- (g) All Proponents are strongly advised to review and abide by the CCM guidelines with respect to the various rules and requirements for the conduct of Commercially Confidential Meetings that have been posted by the City to the Data Room and updated by the City from time to time (the "**CCM Guidelines**"). While the CCM Guidelines are not RFP Documents and are not, therefore, binding on either the City or the Proponents, the City intends to follow the CCM Guidelines and expects the Proponents to do so, except in exceptional circumstances.

C5. Proponent Investigations and Visiting the Lands

C5.1 Scheduled Visits

- (a) If, in the RFP Data Sheet, the City has established scheduled dates and times for visits to see the Lands ("**Scheduled Visits**") for all Proponents, Proponent Team

Members and their respective representatives and Advisors, the dates and times of the Scheduled Visits will be set out in the Timetable. For clarity, Scheduled Visits are in addition to any Proponent visits scheduled in accordance with RFP Section C5.2.

- (b) The provisions of RFP Section C5.2(d) shall apply to Scheduled Visits.

C5.2 Proponent Investigations and Additional Visits to the Lands

- (a) Except for Scheduled Visits, Proponents are not permitted to access the Lands, except by prior written arrangement with the Contact Person.
- (b) If the City permits additional visits by Proponents to the Lands pursuant to this RFP Section C5.2(b) (the “**Additional Visit**”), the City may, in its sole discretion and through the Contact Person, require that a representative from the City be present to monitor the Proponent's activities during the Additional Visit. The Contact Person will confirm whether the representative from the City will be present at the Additional Visit at the time the Additional Visit is approved and scheduled. The period(s) during which the Additional Visit(s) will be permitted is set out in the Timetable.
- (c) A Proponent that wishes to arrange an Additional Visit shall submit a request to the Contact Person at least five (5) Business Days prior to the Proponent's proposed date and time for an Additional Visit. The request shall set out the:
 - (i) proposed date and time, and alternate date and time, of the proposed Additional Visit;
 - (ii) purpose of the Additional Visit;
 - (iii) areas of the Lands for which access is requested; and
 - (iv) names, titles and contact information of the Proponent's representatives who will be attending the Additional Visit.
- (d) If the Proponent has received approval for and written confirmation of an Additional Visit from the Contact Person, unless otherwise set out in the Contact Person's confirmation, the following shall apply to the Additional Visit:
 - (i) all Proponent and Proponent Team Member representatives shall strictly obey all instructions from the City's representatives during the visit and shall comply with all site-specific security, safety or other types of requirements.
- (e) The Proponent acknowledges that because the Lands are in use, unforeseen circumstances can arise at the Lands and the City may, in its sole discretion, cancel or reschedule the Additional Visit, change the areas of access of the Additional Visit or otherwise change the Additional Visit on short notice or no notice to the Proponent and Proponent Team Members or their representatives.

C5.3 Additional Geotechnical Investigations and Tests

- (a) If the City has decided to commission and provide to the Proponents further reports or results of geotechnical investigations in respect of the Lands, details of this are set out in the RFP Data Sheet.
- (b) Each Proponent is permitted to submit to the City, no later than the date set out in the Timetable, a proposed list identifying other geotechnical test(s) or investigation(s) in respect of the Lands that the Proponent requests the City to carry out (the "Proposed Test and Investigation List"). The City shall consolidate and compare all Proposed Test and Investigation Lists and shall notify the Proponents if the City intends to carry out any proposed geotechnical test(s) or investigation(s). For clarity, no Proposed Test and Investigation List is a confidential document.

C6. Review of Rail Subcontractors' Qualifications

- C6.1 The City will carry out a review and qualification process, during the RFP Process, with respect to the Proponent's proposed rail subcontractors performing Rail Work (the "Rail Subcontractor Review Process").
- C6.2 The Rail Subcontractor Review Process is set out in the RFP Data Sheet. All submission requirements with respect to the Rail Subcontractor Review Process are set out in the RFP Data Sheet and submission deadlines and City responses related to the Rail Subcontractor Review Process are set out in the Timetable.
- C6.3 The Rail Subcontractor Review Process will consist of a qualification of rail subcontractors proposed by Proponents in accordance with the times as set out in the Timetable (starting at the date of RFP issuance and continuing until no later than the date set out in the Data Sheet), that will result in the approval, by the City as determined by CN, of rail subcontractors who have successfully met the requirements of the Rail Subcontractor Review Process (the "Qualified Rail Subcontractors").
- C6.4 The evaluation criteria for the Rail Subcontractor Review Process are in the RFP Data Sheet. The City, or CN through the City, may in its sole discretion, reasonably request additional information to assess the rail subcontractors against the evaluation criteria. If the proposed rail subcontractor is not acceptable to the City, the Proponent shall propose an alternate rail subcontractor for review by the City in the same manner as the first proposed rail subcontractor and in accordance with the RFP Data Sheet.
- C6.5 Within the times set out in the Timetable the City will inform the Proponent that either the relevant rail subcontractor has not met the requirements of the Rail Subcontractor Review Process or that the rail subcontractor has been qualified as a Qualified Rail Subcontractor.
- C6.6 If the Preferred Proponent fails to include a Qualified Rail Subcontractors, to the satisfaction of the City in their sole discretion, the City may, in their sole discretion, disqualify the Proponent in accordance with RFP Section G1.2.

C7. Changes to Proponents and Proponent Team Members

- C7.1 A Proponent shall not change its shareholders (unless the Proponent is a company whose equity securities are listed on a recognized stock exchange), Proponent Team Members, proposed subcontractors, Key Individuals, or other parties identified in the Proponent's Qualification Submission (the "**Identified Proponent Parties**") without the prior written consent of the City.
- C7.2 Proponents are permitted to request a change in their Identified Proponent Parties in accordance with this RFP Section C7.
- C7.3 If, prior to the Technical Submission Deadline, a Proponent wishes to request a change in its Identified Proponent Parties, the Proponent shall notify the Contact Person as soon as possible and, in any event, no later than fourteen (14) days prior to the Technical Submission Deadline. That notification shall clearly identify the proposed change in the Identified Proponent Party (or Parties) including a proposed substitute and including sufficient documentation to demonstrate that the proposed substitute would have met or exceeded any applicable criteria applied during the Prequalification Stage.
- C7.4 In response to a request in accordance with RFP Section C7.3, the City may, in its sole discretion, provide the Proponent with instructions as to the type of information required by the City to consider the proposed change to the Identified Proponent Party (or Parties) as well as the deadlines for submission of information that the Proponent must meet in order to have its request considered by the City.
- C7.5 The Proponent shall provide any further documentation as may be reasonably requested by the City to assess any proposed substitute. If the City, in its sole discretion, considers the proposed substitute to be acceptable, the City may consent to the substitution. The City's consent to such substitution, however, may be subject to such terms and conditions as the City may require. If the proposed substitute is not acceptable to the City, the Proponent shall propose an alternate substitute for review by the City in the same manner as the first proposed substitute. The City may, in its sole discretion, disallow any actual or proposed change.
- C7.6 In the case of an actual change in the Identified Proponent Parties previously made by the Proponent without consent by the City or a change proposed after the Financial Submission Deadline, the City may, in its sole discretion, disqualify the Proponent and terminate the Proponent's continued involvement in the RFP Process or allow the Proponent to continue under such terms and conditions as the City, in its sole discretion, may require.
- C7.7 If, on or after the Financial Submission Deadline and prior to Commercial Close, there is an actual or proposed addition, deletion, substitution or other change in the membership or effective control of an Identified Proponent Party or if there is a change in circumstances that may materially adversely affect an Identified Proponent Party in a way which could impair the Proponent's or the Identified Proponent Party's ability to perform their respective obligations under the Project Agreement, then the Proponent shall promptly notify the City in writing by delivery or facsimile to the Contact Person. The City may, in its sole discretion, refuse to accept a change in an Identified Proponent Party that occurs or is requested by the Proponent after the Financial Submission

Deadline and may, in its sole discretion, disqualify the Proponent from continuing in the RFP Process.

C7.8 If, at any time prior to Commercial Close, and notwithstanding any other provision in this RFP, there is a Change in Control of a Proponent or of one of its Proponent Team Members (the “**Acquiree**”) by one of the other Proponents or one of the other Proponents’ Proponent Team Members (the “**Acquirer**”):

- (a) The Acquiree shall be immediately disqualified from further participation in this RFP Process. In the event that a Proponent Team Member is the Acquiree, the affected Proponent may request a replacement of the Acquiree with another Proponent Team Member and the City shall consider such request, in its sole discretion, in accordance with this RFP Section C7. In the event that such request to change the Proponent Team Member is rejected by the City, the City shall disqualify the Proponent from continuing in the RFP Process; and
- (b) The City, in its sole discretion, may allow the Acquirer to continue in the RFP Process; however, the City’s consent to continue may be subject to such terms and conditions as the City may require.

C8. Addenda/Changes to the RFP Documents

C8.1 The City may, in its sole discretion, amend or supplement the RFP Documents prior to the date or dates set out in the Timetable. The City shall issue changes to the RFP Documents by Addenda only. No other statement, whether oral or written, made by the City or the City’s Advisors, employees or representatives, including, for clarity, the Contact Person, or any other person, shall amend the RFP Documents. The approximate final date that the City will issue an Addendum in respect of the Project Agreement is set out in the Timetable. The City may issue other Addenda at any time.

C8.2 The Proponent is solely responsible to ensure that it has received all Addenda issued by the City. Proponents may, in writing, seek confirmation of the number of Addenda issued under this RFP from the Contact Person.

C8.3 The City shall issue Addenda by placing them in the Data Room and notifying the Proponents’ Representatives by e-mail that an Addendum has been placed in the Data Room.

C8.4 Any reference to any one or all of the RFP Documents in the RFP Documents includes any amendments to the RFP Documents made in accordance with this RFP Section C8.

C9. Freedom of Information, Confidentiality and Copyright Matters

C9.1 Freedom of Information

- (a) Proponents are advised that the City may be required to disclose the RFP Documents and a part or parts of any Proposal pursuant to The Freedom of Information and Protection of Privacy Act (Manitoba).

- (b) Proponents are also advised that The Freedom of Information and Protection of Privacy Act (Manitoba) may provide protection for confidential and proprietary business information. Proponents are strongly advised to consult their own legal Advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in their Proposals.
- (c) Subject to the provisions of The Freedom of Information and Protection of Privacy Act (Manitoba), the City will use reasonable commercial efforts to safeguard the confidentiality of any information identified by the Proponent as confidential but shall not be liable in any way whatsoever to any Proponent or Proponent Team Member if such information is disclosed based on Section 18 of The Freedom of Information and Protection of Privacy Act (Manitoba), or otherwise as required under Applicable Law.

C9.2 Confidentiality Agreements

- (a) Each Proponent Team Member must execute and deliver to the City a Confidentiality Agreement as a requirement to gain access to the Data Room and all Confidential Information (the “**Confidentiality Agreement**”). The Proponent agrees that Confidential Information and access to the Data Room shall not be shared with its employees, representatives and Advisors and its Proponent Team Members and each of their employees, representatives and Advisors until they have been advised of the obligations included in the Confidentiality Agreement and RFP Sections C9.2 and C9.3;

C9.3 Confidential Information

- (a) For the purpose of this RFP Process, “**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 the RFP Process, the RFP Documents or the Project, whether supplied, obtained from or provided before or after the RFP Process, as more fully detailed in the Confidentiality Agreement.
- (b) The Proponent agrees that all Confidential Information:
 - (i) shall remain the sole property of the City and the Proponent shall treat it as confidential;
 - (ii) shall not be used by the Proponent for any purpose other than developing and submitting a Proposal in response to this RFP Process or the performance of any subsequent agreement relating to the Project with the City;
 - (iii) shall not be disclosed by the Proponent to any person who is not involved in the preparation of the Proponent’s Proposal or the performance of any subsequent agreement relating to the Project with the City, without prior written consent of the City;
 - (iv) shall not be used in any way that is detrimental to the City; and

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- (v) if requested by the City, all Confidential Information shall be returned by the Proponent to the City no later than five (5) days after that request.
- (c) Each Proponent shall be responsible for any breach of the provisions of this RFP Section C9.3 by any person to whom it discloses the Confidential Information including, for greater clarity, the Proponent's employees, representatives and Advisors and its Proponent Team Members and their employees, representatives and Advisors. Each Proponent shall indemnify the City and its members of Council, consultants, employees, agents and representatives and save each of them fully harmless from and against any and all loss, cost, damage, expense, fine, suit, claim, penalty, demand, action, obligation and liability of any kind or nature (including, without limitation, professional fees on a full indemnity basis) suffered or incurred by any of them arising as a result of or in connection with any breach of any of the provisions of this RFP Section C9.3 by the Proponent or by any person to whom the Proponent has disclosed the Confidential Information.
- (d) Each Proponent acknowledges and agrees that, if a Proponent, a Proponent Team Member or any of their respective Advisors, prior to or following submission of the Proponent's Proposal, discovers a breach of any of the confidentiality obligations set out in RFP Sections C9.2 or C9.3, the Proponent shall promptly disclose all information with respect to such breach to the City in a written statement to the Contact Person.
- (e) Each Proponent acknowledges and agrees that a breach of the provisions of this RFP Section C9.3 would cause the City to suffer loss that could not be adequately compensated by damages, and that the City may, in addition to any other remedy or relief, seek and obtain injunctive relief against the Proponent for any breach or threatened breach of this RFP Section C9.3 by its employees, representatives and Advisors and each of their employees, and enforce any of the provisions of this RFP Section C9.3 upon application to a court of competent jurisdiction without proof of actual damage to the City.
- (f) Notwithstanding anything else to the contrary in this RFP, the provisions of this RFP Section C9.3 shall survive any cancellation of this RFP Process and the conclusion of the RFP Process and, for greater clarity, shall be legally binding on each Prequalified Party, whether or not it submits a Proposal in connection with the RFP Process.
- (g) The confidentiality obligations of the Proponent shall not apply to any information which falls within the following exceptions:
- (i) information that is lawfully in the public domain at the time of first disclosure to the Proponent, or which, after disclosure to the Proponent, becomes part of the public domain other than by a breach of the Proponent's confidentiality obligations or by any act or fault of the Proponent;

- (ii) information which was in the Proponent's possession prior to its disclosure to the Proponent by the City, and provided that it was not acquired by the Proponent under an obligation of confidence; or
- (iii) information which was lawfully obtained by the Proponent from a third party without restriction of disclosure, provided such third party was at the time of disclosure under no obligation of secrecy with respect to such information.

C9.4 Copyright and Use of Information in Proposals

- (a) The City's rights, as set out in this RFP Section C9.4, to the Proposal and all Proposal Information submitted by the Proponent during the RFP Process shall be granted to the City upon submission of the Proposal.
- (b) Proponents shall not use or incorporate into their Proposals any concepts, products or processes which are subject to copyright, patents, trademarks or other intellectual property rights of third parties unless Proponents have, or will procure through licensing without cost to the City, the right to use and employ such concepts, products and processes in and for the Project.
- (c) All requirements, designs, documents, plans and information supplied by the City to the Proponents in connection with this RFP are and shall remain the property of the City. Upon request of the City, all such designs, documents, plans and information (and any copies thereof in any format or medium created by or on behalf of the Proponent) must be returned to the City.
- (d) The Proponent shall grant to the City a non-exclusive, perpetual, irrevocable, world-wide, fully paid and royalty free license (fully assignable without the consent of the Proponent and with the right to sub-license without the consent of the Proponent) to use the Proposal Information (the "**Proposal Information Licence**"). Without limiting the foregoing, the Proposal Information Licence shall include the right to modify the Proposal Information, and, where applicable, to use it, or any modified form of it, anywhere in the world. Under no circumstances shall the Proponent, except Project Co in relation to this Project, be liable to the City or to any other person or entity for any damages, losses, costs, expenses, claims or actions whatsoever arising directly or indirectly from the use of the Proposal Information pursuant to the Proposal Information Licence.
- (e) For the purpose of this RFP Section C9.4, "**Proposal Information**" includes:
 - (i) all information contained in a Proposal or which is disclosed by or through a Proponent to the City during the evaluation of Proposals or during the process of executing any Project Agreement; and
 - (ii) any and all ideas, concepts, products, alternatives, processes, recommendations and suggestions developed by or through a Proponent and revealed to or discovered by the City, including any and all those which may be connected in any way to the preparation, submission, review or negotiation of any Proposal or the Project Agreement.

- (f) Proponents shall ensure that all intellectual property rights associated with any and all of the Proposal Information (including copyright and moral rights but excluding patent rights) provide for and give the City the rights set out in this RFP Section C9.4. It is expressly understood and agreed that any actual or purported restriction in the future on the ability of the City to use any of the Proposal Information, or anything else obtained by or through Proponents, shall be absolutely null and void and unenforceable as against the City and each of its respective Advisors, and that the provisions of this RFP Section C9.4 shall take precedence and govern.

C10. Conflict of Interest and Ineligible Persons

C10.1 Conflict of Interest

- (a) If a Proponent, a Proponent Team Member or any of their respective Advisors, prior to or following submission of the Proponent's Proposal, discovers any Conflict of Interest as defined in RFP Section C10.1(g), the Proponent shall promptly disclose the Conflict of Interest to the City in a written statement to the Contact Person and is under a continuing obligation to declare all Conflicts of Interest that exist.
- (b) Proponents and Proponent Team Members and each of their Advisors shall disclose, in the Proposal Submission Form and the Proponent Team Member Declarations (in respect of Proponent Team Members), all Conflicts of Interest. For clarity, the Proponent, Proponent Team Members and each of their Advisors shall make such disclosures in the Proposal Submission Form and Proponent Team Member Declarations whether or not a Conflict of Interest has been disclosed to the City prior to the submission of Proposals.
- (c) At the request of the City, the Proponent shall provide the City with the Proponent's proposed means to mitigate and minimize to the greatest extent practicable any Conflict of Interest. The Proponent shall submit any additional information to the City that the City considers necessary to properly assess the Conflict of Interest.
- (d) The City may, in its sole discretion, exclude any Proponent Team Member or Proponent Advisor on the grounds of Conflict of Interest.
- (e) Without limiting the generality of RFP Sections C10.1(d) or C10.1(f), the City may, in its sole discretion, require the Proponent, Proponent Team Member or a Proponent's Advisor to substitute a new person or entity for the person or entity giving rise to the Conflict of Interest.
- (f) The City may, in its sole discretion, waive any and all Conflicts of Interest of Proponents or Proponent Team Members, or any of their respective Advisors. A waiver may be upon such terms and conditions as the City, in its sole discretion, requires to satisfy itself that the Conflict of Interest has been appropriately managed, mitigated and minimized, including requiring the Proponent to put into place such policies, procedures, measures and other safeguards as may be

required by and be acceptable to the City, in its sole discretion, to manage, mitigate and minimize the impact of such Conflict of Interest.

- (g) For the purposes of this RFP Process “**Conflict of Interest**” includes any perceived, potential, or actual situation or circumstance where, in relation to the Project, a Proponent or any Proponent Team Member or Proponent Advisor:
- (i) has other commitments, relationships financial interests or involvement in ongoing litigation that:
 - (A) 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
 - (B) could or could be seen to compromise, impair or be incompatible with the effective performance of a Proponent’s obligations under the Project Agreement if that Proponent was determined to be the Preferred Proponent under the RFP Process; or
 - (ii) has contractual or other obligations to the City that could or could be seen to have been compromised or otherwise impaired as a result of its participation in the RFP Process or the Project; or
 - (iii) has knowledge of confidential information (other than Confidential Information disclosed by the City in the normal course of the RFP Process) of strategic and/or material relevance to the RFP Process or to the Project that is not available to other Proponents and that could or could be seen to give the Proponent an unfair competitive advantage.

C10.2 Ineligible Persons

- (a) As a result of their involvement in the Project, the persons named in the RFP Data Sheet as “**Ineligible Persons**”, their employees, and any of their subcontractors, advisors, consultants or representatives engaged in respect of this Project and, subject to RFP Sections C10.2(c) and C10.2(d), any person controlled by, that controls or that is under common control with the Ineligible Persons (each an “**Ineligible Person’s Affiliate**”) are not eligible to participate as a Proponent Team Member, Advisor to the Proponent, Financial Services Provider or Advisor to a Financial Services Provider in respect of this Project.
- (b) The City may amend the Ineligible Persons list in the RFP Data Sheet from time to time during the RFP Process.
- (c) An Ineligible Person’s Affiliate may be eligible to participate as a Proponent Team Member, Advisor to the Proponent, Financial Services Provider or Advisor to a Financial Services Provider in respect of this Project only after it has obtained a written consent from the City permitting it to participate as a Proponent Team Member, Advisor to the Proponent, Financial Services Provider or Advisor to a Financial Services Provider in respect of this Project. To obtain consent for an Ineligible Person’s Affiliate to participate as a Proponent Team

Member, Advisor to the Proponent, Financial Services Provider or Advisor to a Financial Services Provider in respect of this Project, the Proponent must submit a request for consent to the Contact Person that includes the following information:

- (i) the full legal name of the Ineligible Person's Affiliate that the Proponent wishes to include on its team or as a Proponent Team Member, Advisor to the Proponent, Financial Services Provider or Advisor to a Financial Services Provider;
 - (ii) information regarding the Ineligible Person's Affiliate's relationship to the Ineligible Person listed in the RFP Data Sheet; and
 - (iii) a description of the policies and procedures that will be put in place to manage, mitigate or minimize the impact of any potential Conflict of Interest.
- (d) Upon the Contact Person's receipt of a Proponent's properly completed request for consent in accordance with RFP Section C10.2(c), the City shall, in its sole discretion, make a determination as to whether it considers there to be a Conflict of Interest and whether the impact of such real perceived or potential Conflict of Interest can be appropriately managed, mitigated or minimized. The Proponent shall be notified of the City's decision by means of a consent letter setting out the nature of the consent and the management, mitigation or minimization measures required as a condition of consent. If the Ineligible Person's Affiliate is considered by the City to have a Conflict of Interest, the impact of which cannot be properly managed, mitigated or minimized, the City shall add the Ineligible Person's Affiliate to the Ineligible Persons list by Addendum.

C11. Proponent Costs

C11.1 The Proponent and the Proponent Team Members shall bear all costs and expenses incurred by them relating to any aspect of their participation in this RFP Process, including all costs and expenses related to the Proponent's involvement in,

- (a) the preparation, presentation and submission of its Proposal;
- (b) attendance at any Proponents Meeting, Commercially Confidential Meeting or any other meeting with the City;
- (c) due diligence and information gathering processes;
- (d) Scheduled Visits or Additional Visits;
- (e) preparation of responses to questions or requests for information from the City;
- (f) preparation of the Proponent's own RFIs during the clarification process; and
- (g) negotiations.

C11.2 Except as explicitly provided in RFP Section J3.2, J3.3 and J4.3, as applicable, the City is not liable to pay any costs or expenses of any Proponent or to reimburse or compensate a Proponent under any circumstances, regardless of the outcome of the RFP Process.

C12. Affordability and Re-scoping

C12.1 The City may, in its sole discretion, apply an affordability threshold (the “**Affordability Threshold**”) and re-scoping process in this RFP Process. Whether or not an Affordability Threshold is applicable to this RFP Process is set out in the RFP Data Sheet. In the event that,

- (a) an Affordability Threshold applies to this RFP Process; and
- (b) the Affordability Price included in the Financial Submissions of all Proponents exceed the Affordability Threshold,

the rules that shall apply are set out in Schedule 8 to this RFP.

C13. Insurance and Workers Compensation

C13.1 Insurance Required during the RFP Process

- (a) During the RFP Process, the Proponent is required to obtain, and to cause all Proponent Team Members and other persons listed in this RFP Section C13.1(a) to obtain, and at all times keep and maintain in force the insurance set out in RFP Sections C13.1(a)(i) and C13.1(a)(ii), whenever the Proponent, a Proponent Team Member, or any of their respective directors, officers, employees, consultants, Advisors, agents or representatives are present at the Lands, or any part thereof, or at any facilities or premises of the City for any purpose whatsoever:
 - (i) Commercial/Comprehensive General Liability insurance, having an inclusive limit of not less than \$2,000,000 for each occurrence or accident and covering all sums which the Proponent, a Proponent Team Member or any other persons listed above may become legally obligated to pay for damages as a result of bodily injury (including death at any time resulting there from) sustained by any person or persons or because of damage to, destruction of, or loss of use of property caused by an occurrence or accident arising out of any operations or activities carried out in connection with this RFP or RFP Process. The policy or policies shall include as insureds or additional insureds the City (and each of its employees, legislators, members, officials, consultants and agents), and an endorsement specifying that the policy shall be primary and without right of contribution from any insurance otherwise maintained by the City; and
 - (ii) Motor Vehicle Liability insurance, in the amount of \$2,000,000 per accident, for vehicles used by Proponents or Proponent Team Members (or their respective directors, officers, employees, consultants, Advisors

and agents) while on or at the Lands or at any facilities or premises of the City.

- (b) As a condition of allowing access to the Lands or to the facilities or premises of the City, the City may, in its sole discretion, require Proponents to provide evidence acceptable to the City that the insurance required by RFP Sections C13.1(a)(i) and C13.1(a)(ii) is in place.
- (c) If a Proponent proposes to perform any investigations on the Lands the risk related to which may not be fully insured under the policies set out in RFP Sections C13.1(a)(i) and C13.1(a)(ii), the City may, in its sole discretion, require the Proponent, at its own cost and expense, to obtain insurance additional to that specified in RFP Sections C13.1(a)(i) and C13.1(a)(ii).
- (d) All insurance policies required to be obtained by Proponents shall provide that the insurance shall not be cancelled, reduced, restricted, modified or changed in any way without the insurer giving at least 30 days prior written notice to the City.

C13.2 Applicable Law and Insurance During the RFP Process

- (a) As a condition of allowing access to the Lands or any facilities or premises of the City, the City may, in its sole discretion, require Proponents to provide evidence acceptable to the City that,
 - (i) the Proponent and its Proponent Team Members are compliant with Applicable Law relating to workplace safety, workers' compensation and labour relations; and
 - (ii) the Proponent and its Proponent Team Members have employer's liability insurance in amounts and on terms and conditions acceptable to the City.

SECTION D - PROPOSAL FORM AND CONTENT REQUIREMENTS

D1. Format and Content of the Proposal

D1.1 Proponents shall submit Proposals organized in accordance with and in the format set out in Schedules 3 to 6 to this RFP.

D1.2 Proponents shall submit Proposals in two parts as follows:

- (a) Part A – Technical Submission consisting of,
 - (i) Proposal Submission Form (Technical) and a Proponent Team Member Declaration for each Proponent Team Member; and
 - (ii) the Technical Submission Information.
- (b) Part B – Financial Submission consisting of:
 - (i) Proposal Submission Form (Financial);

- (ii) the Price Submission;
- (iii) the Financial Submission Information;
- (iv) the Financial Model;
- (v) the Re-scoping Price Submission(s), as applicable; and
- (vi) the Re-scoping Financial Model(s), as applicable.

D1.3 Each Proponent shall submit its Technical Submission and Financial Submission in accordance with the requirements and instructions set out in Schedules 3 to 6 to this RFP and in accordance with the Timetable.

SECTION E - SUBMISSION, WITHDRAWAL, MODIFICATION OF THE PROPOSAL AND LENDER REQUIREMENTS

E1. Submission of Proposal

- E1.1 Each Proponent shall submit its Technical Submission on or before the Technical Submission Deadline and its Financial Submission on or before the Financial Submission Deadline. For the purposes of the RFP Process, the determination of whether the Technical Submission or Financial Submission has been submitted on or before the Technical Submission Deadline or the Financial Submission Deadline, as applicable, shall be based on the time and date stamp the Proponent must ensure it receives from the City at the address for submission set out in the RFP Data Sheet. A Technical Submission or Financial Submission received after the Technical Submission Deadline or the Financial Submission Deadline, as applicable, in each case as documented by the time and date stamp, shall be returned unopened to the sender.
- E1.2 Each Proponent shall submit its Technical Submission and Financial Submission by sending it by pre-paid courier or hand delivery to the City at the address set out in the RFP Data Sheet. It is the sole responsibility of the Proponent to ensure that each of its Technical Submission and its Financial Submission is received by the City on or before the Technical Submission Deadline or the Financial Submission Deadline, as applicable, and to ensure both the Technical Submission and Financial Submission receive a date and time stamp receipt from the City confirming such timely delivery of the Technical Submission or Financial Submission, as applicable. The City will not accept Technical Submissions or Financial Submissions delivered by electronic mail.
- E1.3 Proponents shall provide such number and type of hard and electronic copies of the Technical Submission and the Financial Submission as specified in Schedule 3, Part 1 to this RFP.
- E1.4 If there is any difference whatsoever between the electronic copy of a Proposal, or any part thereof, and the original hard copy of the Proposal, the original hard copy of the Proposal shall govern.
- E1.5 For clarity, a Proponent's obligation to comply with the terms and conditions of this RFP (and the bidding contract or Contract A) arises on the Proponent's submission of a

compliant Technical Submission in accordance with this RFP. If a Proponent has submitted a compliant Technical Submission, the Proponent, subject to the City's cancellation of this RFP Process pursuant to RFP Section J1.1, is obliged to submit a Financial Submission.

E2. Withdrawal of Proposals

E2.1 A Proponent may withdraw its Technical Submission only by giving written notice before the Technical Submission Deadline to the Contact Person. The City will return, unopened, a Technical Submission that has been withdrawn in accordance with this RFP Section E2.

E3. Amendment of Proposal

E3.1 A Proponent may amend its Technical Submission and its Financial Submission after submission but only if the Technical Submission or Financial Submission, as applicable, is resubmitted on or before the Technical Submission Deadline or the Financial Submission Deadline, as applicable, in accordance with the following:

- (a) the Proponent shall withdraw its original Technical Submission or Financial Submission, as applicable, by notifying the Contact Person in writing before the Technical Submission Deadline or the Financial Submission Deadline, as applicable; and
- (b) the Proponent shall submit a revised replacement Technical Submission or Financial Submission, as applicable, in accordance with the RFP Documents and on or before the Technical Submission Deadline or the Financial Submission Deadline, as applicable, in accordance with the requirements of RFP Section E1.

E4. Proposal Irrevocability

E4.1 Except as provided in RFP Sections E7.1 and E7.3 and subject to the Proponent's right to withdraw a Technical Submission before the Technical Submission Deadline set out in RFP Section E2.1, the Proposals shall be irrevocable and shall remain in effect and open for acceptance for the number of days set out in the RFP Data Sheet from the Financial Submission Deadline (the "**Proposal Validity Period**") or until Financial Close, whichever occurs first.

E5. Lenders' Commitment Letter

E5.1 In a written notice given to the Preferred Proponent, the City shall prescribe the date (provided the City may give further notice of a revised date in their sole discretion) on which the Preferred Proponent shall submit to the City a letter, the form and substance of which shall be satisfactory to the City, acting reasonably, on the letterhead of its Lenders and executed by the Lenders (the "**Lenders' Commitment Letter**") addressed to the Preferred Proponent, confirming:

- (a) the Lenders' unconditional funding commitment to provide the financing described in the Financial Submission including as revised in accordance with Section E of Schedule 3, Part 3 of the RFP and including, for clarity, a

confirmation that the funding commitment does not contain material adverse change, market flex or any other similar conditions, or if such conditions were originally applicable that the Lenders have now waived such conditions; and

(b) that the Lenders accept the Project Agreement without any material change.

E5.2 Prior to the issuance of the Lenders' Commitment Letter, and no later than five (5) Business Days prior to the due date of the Lenders' Commitment Letter as prescribed by the City pursuant to this RFP Section E5, the Preferred Proponent shall submit a draft thereof (the "**Draft Lenders' Commitment Letter**") to the City for review and comment by the City.

E6. Credit Spread Election Facility Resolution Process

E6.1 If (i) in respect of the Credit Spread Election Facilities, the amendment or confirmation of the Credit Spreads under Section E of Schedule 3, Part 3 of the RFP are not consistent with the Credit Spread Benchmarks of the Preferred Proponent, in the sole discretion of the City, or (ii) in respect of the Credit Spread Election Facilities, the written explanations justifying the amendment or confirmation of the Credit Spreads under Section E of Schedule 3, Part 3 of the RFP are not, in the sole discretion of the City, acceptable to the City, or (iii) any other of the requirements respecting the amendment or confirmation of the Credit Spreads under Section E of Schedule 3, Part 3 of the RFP have not, in the sole discretion of the City, been satisfied or complied with, or (iv) the Preferred Proponent's Lenders have not provided a Lenders Commitment Letter which, in the City's sole discretion, satisfies the requirements of Section E5 of the RFP, then:

(a) The City shall, no later than seven Business Days after the Final Credit Spread Lock-In Date or the date of receipt by the City of the Lenders Commitment Letter, give written notice to the Preferred Proponent setting out the manner in which any of the foregoing requirements of Section E of Schedule 3, Part 3 and Section E5 of the RFP have not been satisfied or complied with (the "**Rectification Notice**"). The Preferred Proponent shall have seven Business Days following the date of the Rectification Notice to rectify the failure to satisfy the requirements as set out in the Rectification Notice (for greater certainty, including the resubmission of an updated Financial Model that provides for revised Credit Spreads that are consistent with the changes to the Credit Spread Benchmarks of the Preferred Proponent or the resubmission of the Lenders Commitment Letter) by submitting to the City a response to the Rectification Notice (the "**Rectification Notice Response**").

(b) If the City, in their sole discretion: (A) are not satisfied with the Rectification Notice Response or with the Draft Lenders Commitment Letter; and/or (B) determine that the Affordability Price of the Preferred Proponent's Proposal as revised by Section E of Schedule 3, Part 3 of the RFP exceeds the Affordability Threshold for the Project; and/or (C) determine that the Proposal Price of the Preferred Proponent's Proposal as revised in accordance with Section E of Schedule 3, Part 3 of the RFP changes the overall rank of the Preferred Proponent relative to the other Proponents, the City may, in their discretion and without limitation to any other right under this RFP:

- (i) Request the Second Negotiations Proponent (as referred to in RFP Section H) to confirm or change its Credit Spreads in accordance with Section E of Schedule 3, Part 3 of the RFP, and at the same time request the Preferred Proponent to again confirm or change its Credit Spreads in accordance with Section E of Schedule 3, Part 3 of the RFP, and based on the results thereof, re-run the evaluation process to determine which of the Preferred Proponent or the Second Negotiations Proponent is then the highest ranked Proponent. If the Second Negotiations Proponent is then the highest ranked Proponent then the Second Negotiations Proponent shall then become the Preferred Proponent in place of the first selected Preferred Proponent for all purposes of this RFP;
- (ii) Commence negotiations with the Second Negotiations Proponent in accordance with RFP Section H including requesting the Second Negotiations Proponent to confirm or change its Credit Spreads in accordance with Section E of Schedule 3, Part 3 of the RFP. If the Second Negotiations Proponent is then the highest ranked Proponent then the Second Negotiations Proponent shall then become the Preferred Proponent in place of the first selected Preferred Proponent for all purposes of this RFP; or
- (iii) Request the Second Negotiations Proponent and the Preferred Proponent to resubmit their respective Financial Proposals for evaluation under and in accordance with this RFP, and for such purpose shall establish a new Financial Submission Deadline.

The City may, in their sole discretion and for greater clarity, elect to change which of the processes in RFP Section E6.1(b) to employ at any time during the application of RFP Section E6.1(b). In the event that the City has determined to proceed under any of RFP Section E6.1(b), then the provisions of RFP Sections H1.2, H1.3 and H1.4 shall apply to such processes. Without limitation to the foregoing, and in their discretion, the City may, if they are not satisfied with the Rectification Notice Response or the Lenders Commitment Letter, at any time notify the Preferred Proponent in a written notice (the "**Termination Notice**") that the Preferred Proponent is disqualified and is no longer entitled to participate in the RFP Process. In such latter circumstance, the City may consider the performance of the Preferred Proponent and the Proponent Team Members of the Preferred Proponent and the fact of the giving of the Termination Notice to the Preferred Proponent in any future requests for qualifications issued by the City.

- (c) The City may, in their sole discretion, exercise any of their rights under RFP Section E6.1(b) in the event that the City determine, in their discretion, that the Lenders have made any change to the Draft Lenders Commitment Letter in the Lenders Commitment Letter;
- (d) In the sole discretion of the City, the Letter(s) of Credit provided by the Preferred Proponent in accordance with RFP Section I1.2 may be returned to the Preferred Proponent within 3 days of delivery by the City of the Termination Notice and/or such Preferred Proponent may be paid the amount, if any, of the Proposal

Submission Fee or the Break Fee under RFP Sections J3.2 and J3.3. The return of the Letter(s) of Credit and/or the payment of the Proposal Submission Fee or the Break Fee to such Preferred Proponent shall represent full and final satisfaction of any obligation or liability of the City to the Preferred Proponent and the Proponent Team Members of the Preferred Proponent in connection with this RFP, and the City's decision to return the Letter(s) of Credit and/or pay the Proposal Submission Fee and the Break Fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to the City, from such Preferred Proponent and the Proponent Team Members of the Preferred Proponent to that effect.

E7. Extension of Proposal Validity Period

- E7.1 If the City wishes to extend the Proposal Validity Period, the City shall submit a request to extend to those Proponents whose Proposals, in the City's sole discretion, are still under consideration in the RFP Process. For greater clarity, the City may issue a request to extend the Proposal Validity Period after the Negotiations Proponent(s) or the Preferred Proponent have already been identified. A Proponent may, in its discretion, refuse to extend the Proposal Validity Period in accordance with the following:
- (a) notwithstanding a Proponent's refusal to extend the Proposal Validity Period, that Proponent's Proposal shall continue to be valid in accordance with the original Proposal Validity Period; and
 - (b) if the City determines that it will be unable to determine the Preferred Proponent or reach Commercial Close prior to the expiration of the original Proposal Validity Period, the City may discontinue the evaluation or consideration of a Proponent or may discontinue negotiations with a Negotiations Proponent or finalization of a Project Agreement with a Preferred Proponent if that Proponent has refused the City's request to extend the Proposal Validity Period and may continue the RFP Process with only those Proponents that have agreed to an extension of the Proposal Validity Period.
- E7.2 In respect of the Preferred Proponent, the City shall be considered to have accepted the Preferred Proponent's Proposal, including its Financial Submission and its revised Credit Spreads pursuant to Section E of Schedule 3, Part 3 of the RFP prior to the expiration of the Proposal Validity Period if the City and the Preferred Proponent reach Commercial Close prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable). For greater clarity, the Preferred Proponent shall maintain its prices as set out in its Price Submission and its Re-scoping Price Submission, as applicable (as submitted on the Financial Submission Deadline, or, if applicable, as amended pursuant to Section E of Schedule 3, Part 3 of the RFP, or pursuant to Schedule 9 to the RFP, as applicable, or, if applicable, amended pursuant to or during any negotiations process pursuant to this RFP) from Commercial Close until Financial Close, subject only to certain allowable adjustments to the Benchmark Rates on Financial Close as described in Part 3 of Schedule 3 to this RFP.
- E7.3 Notwithstanding RFP Section E7.1, if, during the course of negotiations between a Negotiations Proponent and the City, the Negotiations Proponent resubmits its prices to the City or agrees to revised terms and conditions of the Project Agreement or the

Negotiations Proponent's Proposal prior to the expiration of the Proposal Validity Period, that Negotiations Proponent is deemed to have agreed to an extension of the Proposal Validity Period for the Negotiations Proponent's amended Proposal for the number of days set out in the RFP Data Sheet after the date of the Proponent's submission to the City of the revised prices or revised terms and conditions, as applicable. For greater clarity, notwithstanding the submission by a Negotiations Proponent or Preferred Proponent of an amended Proposal in accordance with this RFP Section E7.3, the Proponent's original Proposal continues to exist in accordance with the original Proposal Validity Period.

E8. Lender Requirements

E8.1 At any time during the RFP Process, the Proponents shall not enter into exclusivity arrangements with any Lenders, including prospective Lenders. Each Proponent is required to confirm in its Proposal Submission Form that the Lenders have not entered into any exclusivity arrangement with the Proponent with respect to the Project. Notwithstanding any other provision of this RFP, but subject to the following proviso, the Lenders may act in the capacity of Lenders for more than one Proponent under this RFP Process, provided the Lenders have agreed with each Proponent,

- (a) to establish industry standard confidentiality and conflict of interest screens to ensure that each Proponent is represented by a discrete team of Lender personnel;
- (b) to prohibit any communication regarding this RFP Process between members of different teams of Lender personnel;
- (c) to physically separate all documentation under the control of each team of Lender personnel;
- (d) to keep all computer based information and data discrete and control access to prohibit persons other than on a team of Lender personnel to have access to that Proponent team's information; and
- (e) that any breaches of such confidentiality requirements are appropriately sanctioned including possible dismissal.

E8.2 Lenders participating in a Proposal ("Participating Lenders") shall not be Affiliates of any of the Proponent Team Members participating in that Proposal ("Participating Proponent Team Members") (other than any other Participating Lender or a financial advisor wholly owned by a Participating Lender) and shall act at all times at arm's length to every other Participating Proponent Team Member (other than any other Participating Lender or a financial advisor wholly owned by a Participating Lender).

SECTION F - EVALUATION, CLARIFICATION AND VERIFICATION OF PROPOSALS

F1. Evaluation Committee and Advisors

F1.1 The City will establish an evaluation committee (the "**Evaluation Committee**") for the purpose of evaluating Proposals in accordance with the RFP Documents. The City, in

its sole discretion, will determine the size, structure and composition of the Evaluation Committee and any sub-committees of the Evaluation Committee. The Evaluation Committee may be assisted by and receive advice from any of the City's Advisors, and any other employees or representatives of the City in any manner determined necessary or desirable by the City.

- F1.2 If a member of the Evaluation Committee or, if applicable, an evaluation sub-committee becomes unable to continue serving on the Evaluation Committee or evaluation sub-committee before the completion of a step in the evaluation process, the evaluation comments and scores of that individual, in respect of the uncompleted steps in the evaluation process only, shall be ignored. For greater clarity, if an Evaluation Committee or sub-committee member becomes unable to continue serving on the Evaluation Committee or a sub-committee after the full completion of a step in the evaluation process, the results of the completed steps of the evaluation process are unaffected and remain valid. Whether or not an Evaluation Committee or sub-committee member, in these circumstances, is replaced is in the sole discretion of the City.

F2. The City's Clarification and Verification of Proposals

- F2.1 The City may,
- (a) require the Proponent to clarify or verify the contents of its Proposal or any statement made by the Proponent;
 - (b) require the Proponent to submit supplementary documentation clarifying or verifying any matters contained in its Proposal; and
 - (c) seek a Proponent's acknowledgement of the City's interpretation of the Proposal or any part of the Proposal.
- F2.2 The City is not obliged to seek clarification or verification of any aspect of a Proposal or any statement by a Proponent, including an ambiguity in a Proposal or in a statement made by a Proponent.
- F2.3 Any written information received by the City from a Proponent pursuant to a request for clarification or verification from the City as part of the RFP Process may, in the City's sole discretion, be considered as an integral part of the applicable Proposal.

F3. Steps in the Evaluation Process

- F3.1 Step 1 – Compliance of Proposals
- (a) In Step 1 of the evaluation process, the City will open each Proposal and will review the contents of the Proposal to assess whether it is in compliance with the terms and conditions of the RFP Documents, including whether all documents required to be submitted have been appropriately submitted. For clarity, the City may, in its sole discretion, review the contents of each Proponent's Technical Submission prior to the submission of the Financial Submission, and may eliminate the Proponent from the RFP Process prior to the submission of its Financial Submission.

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- (b) If, in the sole discretion of the City, a Proposal does not comply with the requirements set out in the RFP Documents, the City may, in its sole discretion, without liability, cost or penalty, eliminate the Proposal and the Proposal shall not be given any further consideration. For clarity, if the City determines that a Proponent's Technical Submission is not in compliance with the terms and conditions of the RFP Documents pursuant to RFP Section F3.1(a), the City may, in its sole discretion, eliminate the Proponent from the RFP Process prior to the submission of that Proponent's Financial Submission.
- (c) For purposes of this RFP, "comply" and "compliance" mean that the Proposal conforms to the requirements of the RFP Documents without material deviation. A "material deviation" in a Proposal is any failure to comply with an RFP Document requirement that, in the sole discretion of the City,
- (i) impedes, in any material way, the ability of the City to evaluate the Proposal;
 - (ii) affects the City's ability to enforce the Proponent's obligations pursuant to the RFP Documents; or
 - (iii) constitutes an attempt by the Proponent to revise the City's or the Proponent's rights or obligations under the RFP Documents in a way not permitted by this RFP.
- (d) A requirement in this RFP or in the Schedules to this RFP that a Proponent "must" or "shall" do anything is not intended to supersede this RFP Section F3.1 or, for greater clarity, to supersede the concepts of "comply", "compliance" or "material deviation" set out in this RFP Section F3.1.
- (e) A Proponent's submission of a complete but poor quality Proposal shall not be considered a failure to comply but may affect the Proponent's evaluated score.
- (f) If, during Step 1 of the evaluation process or at any time during the RFP Process, the City determines that a Proposal is non-compliant pursuant to this RFP Section F3.1, the City may, in its sole discretion and without liability, cost or penalty, declare the Proposal to be non-compliant and the Proposal shall not be given any further consideration.
- (g) For greater clarity, each Proponent acknowledges and agrees that the City's evaluation of compliance with the RFP Documents is not an evaluation of absolute compliance and that the City may waive failures to comply that, in the City's sole discretion, do not constitute a material deviation in accordance with this RFP Section F3.1. For greater clarity, the City may also waive a material deviation pursuant to RFP Section J2.3.
- (h) With the exception of a material deviation that has not been waived by the City pursuant to RFP Section J2.3, an omission or error in connection with the requirements of the RFP will not lead to the automatic rejection of the Proposal concerned, provided that, if requested by the City, the Proponent remedies the error or omission to the City's satisfaction within the time determined by the City,

which must be at least two (2) Business Days following the date on which the Proponent receives a written request to that effect from the Contact Person.

F3.2 Step 2 – Review of the Proposal Submission Form

- (a) In Step 2 of the evaluation process, the City shall review the Proposal Submission Form (Technical) to,
 - (i) ensure that the form has been properly completed and signed;
 - (ii) ensure that there have been no changes to the Proponent or Proponent Team Members from their Qualification Submissions, except for changes that have been approved by the City in accordance with RFP Section C6; and
 - (iii) assess the Conflict of Interest and Confidential Information section of the Proposal Submission Form.

F3.3 Step 3 – Review and Scoring of the Technical Submission

- (a) In Step 3 of the evaluation process, the Evaluation Committee or, as applicable, a sub-committee of the Evaluation Committee will evaluate and score the Technical Submission and determine whether the Technical Submission has achieved a “pass” or a “fail” in accordance with Parts 1 and 2 of Schedule 3 to this RFP. Only those Proponents that achieve a “pass” on their Technical Submissions will be considered in Step 4 of the evaluation process.

F3.4 Step 4 – Review and Scoring of the Financial Submission

- (a) In Step 4 of the evaluation process, the Evaluation Committee or, as applicable, a sub-committee of the Evaluation Committee will evaluate and score the Financial Submissions in accordance with Parts 1 and 3 of Schedule 3 to this RFP to assess which Financial Submission presents the best value for the City. For clarity, only those Proponents that have received a “pass” on their Technical Submissions will have their Financial Submissions scored.

F3.5 Step 5 – Ranking the Proponents

- (a) In Step 5 of the evaluation process,
 - (i) if an Affordability Threshold applies to this RFP Process, the Evaluation Committee will determine whether all the Affordability Prices in the Financial Submissions exceed the Affordability Threshold and, if they do, the Evaluation Committee will apply the rules and process set out in Schedule 8 to this RFP to establish a ranking of the Proponents; or
 - (ii) if ,
 - (A) an Affordability Threshold does not apply to this RFP Process; or

- (B) an Affordability Threshold does apply but at least one of the Financial Submissions is below the Affordability Threshold,

the Evaluation Committee will rank the Proponents based on their total score by combining their points from their Technical Submission and Financial Submission in accordance with Part 1 of Schedule 3 to this RFP.

- (b) The Evaluation Committee shall rank only those Proponents that have met all requirements in Steps 1 through 4.
- (c) In the event of a tie in the Proposal Prices between two Proponents (or the corresponding Proposal Prices, as adjusted by a Re-scoping Price Adjustment, as applicable), the City may, in its sole discretion, give the higher ranking to the Proponent with the higher score for its Technical Submission.

SECTION G - GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS

G1.1 The City's Discretion in Determining Compliance, Scoring and Ranking

- (a) The City shall, in its sole discretion, determine:
 - (i) the membership of the Evaluation Committee and any sub-committees of the Evaluation Committee;
 - (ii) whether a Technical Submission, Financial Submission or Proposal is compliant with the RFP Documents;
 - (iii) whether a failure to comply constitutes a material deviation;
 - (iv) whether a Proponent's Technical Submission has achieved a "pass" in accordance with Parts 1 and 2 of Schedule 3 to this RFP ;
 - (v) the rankings of the Proposals; and
 - (vi) whether a Proposal or a Proponent,
 - (A) is disqualified; or
 - (B) will cease to be considered in the evaluation process.
- (b) The City's discretion in determining compliance, scores, ranking and disqualification of the Proponents and their Proposal is not limited or restricted in any way by the fact that a prequalification process preceded this RFP Process.
- (c) The City has the right, at any time and in its sole discretion, to consider in the evaluation of the Proposals or in the exercise of any of the City's rights under this RFP:

- (i) any instances of poor performance by a Proponent or a Proponent Team Member that the City has experienced; and/or
- (ii) any publicly available information about a Proponent or a Proponent Team Member that is, in the City's sole discretion, credible information.

G1.2 Disqualification

- (a) The City may, in its sole discretion, disqualify a Proponent, a Proponent Team Member, or a Proposal or reverse their decision to make an award (even if the award has already been made to a Preferred Proponent under this RFP) at any time prior to Commercial Close with respect to the Preferred Proponent and at any time prior to Financial Close with respect to the remaining Proponents, if,
 - (i) the Proposal is determined to be non-compliant pursuant to RFP Section F3.1;
 - (ii) the Proponent fails to cooperate in any attempt by the City to verify any information provided by the Proponent in its Proposal or interview;
 - (iii) the Proponent contravenes RFP Sections C3.2 or C3.3;
 - (iv) the Proponent fails to comply with Applicable Law;
 - (v) the Proposal contains false or misleading information or a misrepresentation;
 - (vi) the Proposal, in the opinion of the City, reveals a material Conflict of Interest as described in RFP Section C10 and the Proponent,
 - (A) does not receive a waiver from the City in accordance with RFP Section C10.1(f) or does not receive a consent in accordance with RFP Section C10.2(d), as applicable; or
 - (B) fails to substitute the person or entity giving rise to the Conflict of Interest in accordance with RFP Section C10.1(e);
 - (vii) in the opinion of the City, acting reasonably, the Proponent or a Proponent Team Member or any of their respective Advisors, employees or representatives directly or indirectly colluded with one or more other Proponents or its Proponent Team Members or any of their respective Advisors, employees or representatives in the preparation or submission of a Proponent's Proposal or otherwise contravened RFP Section C3.4;
 - (viii) the Proponent has committed a material breach of any existing agreement between the Proponent and the City;
 - (ix) the Proponent or any Proponent Team Member has been convicted of an offence in connection with any services rendered to the City; or

- (x) there are any convictions related to inappropriate bidding practices or unethical behaviour by a Proponent or a Proponent Team Member or any of their Affiliates in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction.

SECTION H - COMPETITION, NEGOTIATIONS AND THE IDENTIFICATION OF A PREFERRED PROPONENT

H1. Evaluation Results and the Identification of a Preferred Proponent or Negotiations Proponents

- H1.1 Based on the ranking established pursuant to RFP Section F3.5, the City may, in its sole discretion, at any time prior to the expiration of the Proposal Validity Period:
- (a) identify the highest ranked Proponent as the Preferred Proponent and accept the Proponent's Proposal as submitted;
 - (b) identify the two highest ranking Proponents as the "**First Negotiations Proponent**" (highest ranked) and the "**Second Negotiations Proponent**" (second highest ranked) (the "**Negotiations Proponents**") and enter into negotiations with the First Negotiations Proponent and, failing successful negotiations, enter into negotiations with the Second Negotiations Proponent and identify the Proponent with whom the City concludes successful negotiations as the Preferred Proponent; or
 - (c) enter into separate and distinct but contemporaneous negotiations with the First and Second Negotiations Proponents and identify a Preferred Proponent as a result of those negotiations.
- H1.2 The City may use the negotiations process to negotiate any aspect of a Negotiations Proponent's Proposal or the Project Agreement, or both, including, for greater clarity, any amendments to the Project Agreement that are reasonably required to:
- (a) accommodate a Negotiations Proponents' financing arrangements; or
 - (b) revise the scope of the Project in the event that all Financial Submissions/NPVs have exceeded the City's Affordability Threshold.
- H1.3 Except as provided in RFP Section E7.3, notwithstanding any negotiations between the City and a Negotiations Proponent, the Proposals of all Proponents shall remain valid and irrevocable until the expiration of the Proposal Validity Period or until Financial Close, in accordance with RFP Section E4.1.
- H1.4 If, in accordance with RFP Sections H1.1(b) or H1.1(c) the Proponent and the City negotiate revisions to the Project Agreement, the City and the Preferred Proponent shall develop a revised Project Agreement and, for the purposes of RFP Section I, the revised Project Agreement shall be the "**Project Agreement**".

H1.5 For greater clarity, the City may, in its sole discretion, elect to change the selection of which of the RFP Section H1.1 negotiations processes to employ at any time during the application of RFP Section H.

SECTION I - PREFERRED PROPONENT

I1. Identification of the Preferred Proponent and the Letter(s) of Credit

I1.1 Subject to RFP Sections J1 and J2, the City intends to identify a Preferred Proponent in accordance with RFP Section H1.

I1.2 No later than three (3) Business Days after a Proponent's receipt of a notice from the Contact Person that the Proponent is the Preferred Proponent, the Preferred Proponent shall provide an irrevocable standby letter of credit (the "**Letter(s) of Credit**") in the amount specified in the RFP Data Sheet and in the form attached as Schedule 7 to this RFP to secure the Preferred Proponent's obligations in accordance with RFP Section I1.2. The initial expiry date of the Letter(s) of Credit shall be ten (10) days following the later of the Commercial Close Target Date or the Proposal Validity Period.

I1.3 The Preferred Proponent may, with the prior written consent of the City, which consent may be withheld in the sole discretion of the City, provide multiple irrevocable standby letters of credit from Proponent Team Members as approved and confirmed by the City (each a "**Letter of Credit Provider**") totalling the amount specified in the RFP Data Sheet and in the form attached as Schedule 7 to this RFP to secure the Preferred Proponent's obligations in accordance with RFP Section I1.2.

I1.4 If the Preferred Proponent delivers multiple Letters of Credit from multiple Letter of Credit Providers in accordance with RFP Section I1.3, the Preferred Proponent acknowledges and agrees that:

- (a) the City may draw upon any Letter of Credit provided by any Letter of Credit Provider in any specified ratable amount;
- (b) the City may draw on any Letter of Credit provided by any Letter of Credit Provider in a disproportionate amount to such Letter of Credit Provider's contribution to security;
- (c) the City may draw upon any letter of credit provided by any Letter of Credit Provider even in the event that such Letter of Credit Provider is no longer a Proponent Team Member; and
- (d) the provision of multiple letters of credit shall not in any way prejudice or adversely affect the rights of the City to draw on any Letter of Credit in accordance with this RFP, including in the event that the City is entitled to draw on the Letter for Credit in accordance with RFP Section I1.7 and such circumstance is not the result of any act or omission of the Letter of Credit Provider whose Letter of Credit is drawn upon.

I1.5 If the Preferred Proponent does not provide the Letter of Credit(s) to the City as required by this RFP Section I1 the City may, in its sole discretion, by written notice to the

- Preferred Proponent, cease all discussions with the Preferred Proponent, terminate any obligations of the City to the Preferred Proponent under any agreement or understanding relating to the Project, and, for greater certainty, the Preferred Proponent will not be entitled to or receive any payment or compensation of any kind relating to the Project.
- 11.6 Subject to the City's right to retain and apply the Letter of Credit(s) as liquidated damages as provided in this RFP or in the Project Agreement, the Letter of Credit(s) shall be returned to the Preferred Proponent as follows:
- (a) if the City gives notice to the Preferred Proponent that it is cancelling or discontinuing the RFP Process, no later than ten (10) days after receipt by the City of a written demand for the Letter of Credit(s) by the Preferred Proponent; or
 - (b) unless the City and the Preferred Proponent agree that the Letter of Credit(s) shall be amended and delivered to the City in satisfaction of Project Co's obligations in accordance with the Project Agreement, upon Commercial Close.
- 11.7 The City shall be entitled to draw on the Letter of Credit(s) and retain and apply the proceeds thereof as liquidated damages if,
- (a) there is a breach of the Preferred Proponent obligations set out in RFP Section I2 by the Preferred Proponent;
 - (b) Commercial Close has not occurred (for reasons other than the failure of the City to execute the Project Agreement in accordance with its terms),
 - (i) on or before the Commercial Close Target Date; or
 - (ii) if the Commercial Close Target Date has passed and the City has given its consent, on or before the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable); or
 - (c) the Preferred Proponent has notified the City in writing that it wishes to cease all discussions with the City relating to the Project and/or the Preferred Proponent wishes to withdraw its Proposal.
- 11.8 The City shall not be required to give any prior written notice to the Preferred Proponent of its intention to draw on the Letter of Credit(s). If the Preferred Proponent notifies the Contact Person in writing that the Preferred Proponent disputes the City's right to draw on the Letter of Credit(s) and to retain the proceeds as liquidated damages, then the City shall nonetheless be entitled to draw on the Letter of Credit(s), but will remain liable to repay all or a portion of the amount drawn, together with interest charges at the rate prescribed on that amount, until such dispute has been finally resolved. If the Preferred Proponent fails to renew or extend the Letter of Credit(s) at least thirty (30) days prior to its expiry date, the City may, at any time without notice to the Preferred Proponent, draw on the Letter of Credit(s) and hold the proceeds thereof in the same manner and for the same purposes as the Letter of Credit(s).

I2. Preferred Proponent Obligations

I2.1 The Preferred Proponent shall,

- (a) achieve Commercial Close,
 - (i) prior to the Commercial Close Target Date; or
 - (ii) if the Commercial Close Target Date has passed, unless the City has given its consent, prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable)

based on the Project Agreement in substantially the same form and content as finalized prior to the Financial Submission Deadline or on the Project Agreement as revised and agreed to by the Proponent and the City; and

- (b) execute the Project Agreement, subject only to revision in respect of the following:
 - (i) minor changes, additions and modifications necessary to create a legally complete and binding agreement;
 - (ii) changes, additions and modifications to those provisions which require:
 - (A) the insertion or addition of information relating to the Preferred Proponent's corporate and funding structure which are not inconsistent with the principles set out in the Project Agreement;
 - (B) the insertion or addition of information or the modification of provisions of the Project Agreement required in order to reflect accurately the nature of the Preferred Proponent's relationships with its principal subcontractors; or
 - (C) the revision of provisions in the Project Agreement to more accurately reflect the result of negotiations in accordance with RFP Section H1;
 - (iii) changes, additions and modifications required in order to complete (based on the Proposal) any provision of the Project Agreement (where contemplated in or required under the terms of the RFP Documents) or to complete any Schedules to the Project Agreement; and
 - (iv) changes, additions and modifications to those parts of the Project Agreement which are indicated in the Project Agreement as being subject to completion or finalization,

provided, that, in each case the changes, additions or modifications identified in RFP Section I2.1(b) are consistent with the principles set out in the Project Agreement and otherwise acceptable to the City, acting reasonably; and

- (c) maintain its prices in accordance with the terms and conditions of this RFP, subject only to revisions to the price explicitly agreed to by the City.
- I2.2 The Preferred Proponent shall not later than five (5) days after receipt of notice from the City that it is the Preferred Proponent, deliver to the Contact Person a timetable setting out its schedule for achieving the following Financial Close milestone dates:
- (a) commencement and completion of financing documentation;
 - (b) receipt of final ratings from rating agencies (if applicable); and
 - (c) final pricing based on the base rate reset process as set out in Schedule 3, Part 3 to the RFP,
- (the “**Financing Timetable**”). The City may elect, in its sole discretion, to extend one or more of the dates identified in the Financing Timetable.
- I2.3 The Preferred Proponent, shall, no later than thirty (30) days prior to the Commercial Close Target Date, deliver to the Contact Person drafts of all Financial Close deliverables as set out in Section B.4 of the Project Agreement.
- I2.4 The Preferred Proponent shall provide access and shall promptly make available to the City and its Advisors, agents and representatives such documentation, financial and technical information as may be reasonably requested by the City from time to time in connection with the City’s due diligence investigations including, without limitation, copies of any written representations, statements, assurances, commitments or agreements which the Preferred Proponent, any Preferred Proponent Team Member or any of their respective Advisors have received from any municipality, governmental authority or utility relating to the Project. The Preferred Proponent shall provide to the City, in a timely fashion, final draft versions of all documents required to be delivered by the Preferred Proponent in accordance with the Project Agreement, together with such other documentation as the City may reasonably request from time to time.

I3. The City’s Authorization and Approvals

- I3.1 The Preferred Proponent acknowledges and agrees that the entering into of the Project Agreement by the City is conditional on and subject to the City obtaining any necessary authorizations and approvals required in connection with the Project, including, for greater certainty, the approval of any relevant government authority.

SECTION J - GENERAL LEGAL MATTERS AND RIGHT TO ACCEPT OR REJECT

J1. General Rights of the City

J1.1 The City may, in its sole discretion:

- (a) reject any or all of the Proposals;
- (b) accept any Proposal;

- (c) if only one Proposal is received, elect to accept or reject it;
 - (d) elect to discontinue the RFP Process at any time before the end of the RFP Process, including after the identification of a Preferred Proponent but before Commercial Close;
 - (e) alter the Timetable, the RFP Process or any other aspect of this RFP, which for greater certainty, includes the right to schedule Financial Close on the day after Commercial Close; and
 - (f) cancel this RFP Process and subsequently advertise or call for new submissions for the same or different subject matter of these RFP Documents with the same or different participants.
- J1.2 Without limitation to any other rights of the City hereunder, in order to ensure the integrity, openness and transparency of the RFP Process, the City may, in its sole discretion:
- (a) impose at any time on all Proponents and any Proponent Team Members additional conditions, requirements or measures with respect to bidding practices or ethical behaviour of the Proponents and Proponent Team Members; and
 - (b) require that any or all Proponents and/or any Proponent Team Member at any time during the RFP Process provide the City with copies of its internal policies, processes and controls establishing ethical standards for its bidding practices and evidence of compliance by the Proponent and all Proponent Team Members with such policies, processes and controls.
- J1.3 If a financial institution put forward as a Proponent Team Member and acting in a financial advisory capacity is not an Affiliate of any of the Proponent Team Members of the Applicant ("**Exempt Financial Institution**"), then RFP Section J1.2 shall not apply to any such Exempt Financial Institution.
- J1.4 Further to RFP Section J1.2, and in the event that any Proponent and/or Proponent Team Member:
- (a) fails to comply with any requirement prescribed by the City pursuant to RFP Section J1.2; or
 - (b) complies with the City's requirement as prescribed in accordance with RFP Section J1.2, but the City determines that any Proponent and/or Proponent Team Member has or may have engaged in inappropriate bidding practices or unethical behaviour,

the City shall have the right, at any time and in its sole discretion to reject and not consider a Proposal from a Proponent, or pursuant to RFP Section C6 require the Proponent to remove and/or replace any Proponent Team Member.

J2. Special Circumstances

J2.1 If the City determines that all of the Proposals submitted are non-compliant in accordance with RFP Section F3.1, the City may, in its sole discretion:

- (a) take any action in accordance with RFP Section J1;
- (b) carry out a process whereby all Proponents are directed to correct the material deviations in their Proposals for re-submission, without a change in their Proposal Prices, including, for clarity, their Proposal Prices as adjusted by a Re-scoping Price Adjustment, as applicable; or
- (c) enter into negotiations with any one of the Proponents to attempt to finalize an agreement.

J2.2 If the City receives,

- (a) one Proposal and that Proposal is compliant; or
- (b) more than one Proposal, but only one compliant Proposal,

The City may, in its sole discretion:

- (a) take any action in accordance with RFP Section J1.1; or
- (b) cancel this RFP and subsequently enter into negotiations with the Proponent that submitted a compliant Proposal.

J2.3 The City, in its sole discretion, may waive a material deviation in a Proposal and, therefore, waive a material failure to comply with the requirements of the RFP Documents. The City may, in its sole discretion, decline to disqualify a non-compliant Proposal.

J3. The City's Liability for Proponent's Costs

J3.1 General

- (a) Except as provided in RFP Section J3.2 and J3.3, the City shall not be liable for any expense, cost, loss or damage incurred or suffered by any Proponent, any Proponent Team Member, any Proponent Advisor or any person connected with any one of them, as a result of any action taken by the City in accordance with RFP Sections J1 or J2.

J3.2 Proposal Submission Fee

- (a) If the City specifies in the RFP Data Sheet that it offers a Proposal Submission Fee for this Project, such Proposal Submission Fee, inclusive of any applicable taxes, shall be paid to each Proponent other than the Proponent that achieves Commercial Close under the Project Agreement, subject to the following conditions:

- (i) A Proponent must submit a full and proper Proposal for that Proponent to be eligible for the Proposal Submission Fee, provided that the City shall determine whether a Proposal is full and proper based on factors that include whether the Proposal is compliant with this RFP (as determined in accordance with RFP Section F3.1) and whether the Proponent's Technical Submission received a score of at least seventy per cent (70%);
 - (ii) A Proponent must transfer to the City, all intellectual property rights, including waiver of moral rights, contained within the Proponent's Proposal, in accordance with RFP Section C9.4;
 - (iii) A Proponent must not withdraw from this RFP Process or fail to submit a Financial Submission after the Technical Submission Deadline in contravention of this RFP; and
 - (iv) If the City draws upon a Proponent's Letter of Credit(s) in accordance with this RFP, then such Proponent will not be eligible for the Proposal Submission Fee.
- (b) The amount of the Proposal Submission Fee that will be paid to each eligible Proponent in accordance with RFP Section J3.2(a) is set out in the RFP Data Sheet
 - (c) Payment of a Proposal Submission Fee shall represent full and final satisfaction of any obligation or liability of the City to the Proponent and Proponent Team Members in connection with this RFP, and the City's obligation to pay the Proposal Submission Fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to the City, from the Proponent and Proponent Team Members to that effect.

J3.3 Break Payment

- (a) If the City offers a Break Payment for this Project as set out in the RFP Data Sheet, such Break Payment, inclusive of any applicable taxes, shall be paid by the City in accordance with the following:
 - (i) only a Proponent who has demonstrated, to the City's satisfaction, active participation in the RFP Process will be eligible to receive a Break Payment;
 - (ii) the City may require a Proponent to substantiate its active participation in the RFP Process in order to receive a Break Payment; and
 - (iii) if the RFP Process is cancelled after the Technical Submission Deadline, a Break Payment will be paid to a Proponent that has submitted a full and proper Technical Submission.

For clarity, active participation in the RFP Process shall include submission of all materials related to the Design Consultation Process set out in RFP Schedule 2 – Design Consultation Process.

- (b) The amount of the Break Payment payable to each eligible Proponent will depend on the point in the RFP Process that cancellation occurs, in accordance with the principles set out in the RFP Data Sheet. The base amount of the Break Payment (the “Base Break Payment”) is set out in the RFP Data Sheet.
- (c) Payment of a Break Payment shall represent full and final satisfaction of any obligation or liability of the City to the Proponent and Proponent Team Members in connection with this RFP, and the City’s obligation to pay the Break Payment shall be contingent on the receipt of a waiver, in form and substance satisfactory to the City, from the Proponent and Proponent Team Members to that effect.
- (d) For greater certainty, a Proponent shall not be eligible to receive both a Break Payment and a Proposal Submission Fee relating to the Proponent’s participation in the RFP Process for this Project.

J4. Applicable Law, Attornment and Limit on Liability

J4.1 This RFP shall be governed and construed in accordance with Applicable Law as defined in the Project Agreement.

J4.2 The Proponent agrees that,

- (a) any action or proceeding relating to this RFP Process shall be brought in any court of competent jurisdiction in the province of Manitoba and for that purpose the Proponent irrevocably and unconditionally attorns and submits to the jurisdiction of that Manitoba court;
- (b) it irrevocably waives any right to and shall not oppose any Manitoba action or proceeding relating to this RFP Process on any jurisdictional basis, including forum non conveniens; and
- (c) it shall not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from a Manitoba court as contemplated by this RFP Section J4.2J3.3.

J4.3 Except as provided in RFP Section J3.2 and J3.3, the Proponent agrees that if the City or the City’s Advisors commit a material breach of their obligations under or in connection with this RFP (that is, a material breach of the bidding contract or Contract A), the City’s liability to the Proponent and the aggregate amount of damages recoverable against the City for any matter relating to or arising from that material breach, 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 the lesser of,

- (a) the Proposal preparation costs that the Proponent seeking damages from the City can demonstrate; and

- (b) **28 (1)(c)(iii)** including any applicable taxes.

J5. Licenses, Permits, etc.

- J5.1 If a Proponent is required by Applicable Law to hold or obtain a licence, permit, consent or authorization to carry on an activity contemplated in its Proposal or in the Project Agreement, neither acceptance of the Proposal nor execution of the Project Agreement by the City shall be considered to be approval by the City of carrying on such activity without the requisite licence, permit, consent or authorization and the Proponent will not undertake or perform any activity until it has obtained all licenses, permits, consents or authorizations required under Applicable Law or the Project Agreement.

J6. Power of Municipal Council of the City

- J6.1 Applicants are advised that no provision of this RFP (including a provision stating the intention of the City) is intended to operate, nor shall any such provision have the effect of operating, in any way, so as to interfere with or otherwise fetter the discretion of the municipal council of the City in the exercise of its statutory powers.

J7. Trade Agreements

- J7.1 This RFP Process falls within the scope of Chapter 5, but only as specified in Annex 502.4 of the Agreement on Internal Trade, and is subject to Chapter 5, but only as specified in Annex 502.4, however, the rights and obligations of the parties are governed by the specific terms of this RFP.

SECTION K - NOTIFICATION AND DEBRIEFING

- K1.1 After the Preferred Proponent has been identified, the City will formally notify all Proponents who were not successful in the RFP Process that they have not been selected. Notwithstanding such notification, the Proponents' Proposals shall be irrevocable until the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable) or Financial Close, in accordance with RFP Section E4.
- K1.2 After Financial Close, the City, and a member or members of the Evaluation Committee will meet with any unsuccessful Proponents, at the request of the unsuccessful Proponent to the Contact Person in writing, to provide a de-briefing.

SECTION L - DEFINITIONS

L1. General

- L1.1 Unless otherwise defined in this RFP Section L, capitalized terms and expressions used in this RFP have the meaning given to them in the Project Agreement. In this RFP, the singular shall include the plural and the plural shall include the singular, except where the context otherwise requires.
- L1.2 All references in this RFP to the City's "discretion" or "sole discretion" means in the sole and absolute discretion of the party exercising the discretion.

L1.3 All references in this RFP to “day” or “days” means calendar days, unless otherwise stated.

L2. RFP Definitions

L2.1 Whenever used in the RFP:

- (a) “**Acquiree**” is defined in RFP Section C7.8;
- (b) “**Acquirer**” is defined in RFP Section C7.8;
- (c) “**Act**” refers to The Public Private Partnerships Transparency and Accountability Act (Manitoba);
- (d) “**Ad Hoc CCM**” is defined in RFP Section C4.2(f);
- (e) “**Addendum**” means a written addendum to the RFP Documents issued by the City as set out in RFP Section C8;
- (f) “**Additional Visit**” is defined in RFP Section C5.2(b);
- (g) “**Advisors**” means any person or firm retained to provide professional advice to any one of the City, a Proponent, a Proponent Team Member or a Financial Services Provider, as applicable;
- (h) “**Affiliate**” is as defined in the *Corporations Act* (Manitoba);
- (i) “**Affordability Price**” is defined in Schedule 8 to this RFP;
- (j) “**Affordability Threshold**” is defined in RFP Section C12.1, and has the value set out in Schedule 8 to this RFP;
- (k) “**Affordability Threshold Event**” is defined in Schedule 8 to this RFP;
- (l) “**Background Information**” means various types of information provided by the City and is defined in RFP Section B4.1(b);
- (m) “**Base Break Payment**” is defined in RFP Section J3.3(b);
- (n) “**Benchmark Rate**” has the meaning given in Schedule 3, Part 3 to this RFP;
- (o) “**Break Payment**” means an amount to compensate a Proponent for some of the costs the Proponent had incurred in developing and submitting a Proposal in the event that the RFP Process is cancelled, as determined by the City in accordance with RFP Section J3.3;
- (p) “**Business Day**” means any day other than a Saturday, a Sunday, a statutory holiday in the province of Manitoba or any day on which banks are not open for business in the city of Winnipeg, Manitoba;

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- (q) “**CCM Guidelines**” is defined in RFP Section C4.2(g);
 - (r) “**City**” means the City of Winnipeg as continued under The City of Winnipeg Charter, Statutes of Manitoba 2002, c. 39, and any subsequent amendments thereto;
 - (s) “**City Council**” means the Council of the City of Winnipeg;
 - (t) “**CN**” means the Canadian National Railway Company;
 - (u) “**CN Detour**” means a temporary realignment of CN tracks, commonly referred to as a shoo fly, to accommodate construction activities;
 - (v) “**Commercial Close**” means the date the Project Agreement is signed by the Preferred Proponent and the City;
 - (w) “**Commercial Close Target Date**” means the date set out as the Commercial Close Target Date in the Timetable;
 - (x) “**Commercially Confidential Meetings**” is defined in RFP Section C4.2(a);
 - (y) “**Commercially Confidential RFIs**” is defined in RFP Section C2.2(a)(i)(B);
 - (z) “**Confidential Information**” is defined in RFP Section C9.3(a);
 - (aa) “**Confidentiality Agreement**” means the non-disclosure agreement set out RFP Section C9.2;
 - (bb) “**Conflict of Interest**” is defined in RFP Section C10.1(g);
 - (cc) “**Contact Person**” or “**Contact Persons**” is defined in RFP Section A1.4;
 - (dd) “**Control**” has the meaning ascribed thereto in the Corporations Act (Manitoba), and “Controlled”, “Controls” and “Controlling” have corresponding meanings;
 - (ee) “**Data Room**” is defined in RFP Section A1.5;
 - (ff) “**Deloitte**” refers to Deloitte LLP, the City’s procurement and financial advisor on the Project, as a sub-consultant to Dillon;
 - (gg) “**Design Consultation Process**” is defined in Schedule 2 to this RFP;
 - (hh) “**Design Consultation Team**” is defined in Schedule 2 to this RFP;
 - (ii) “**Design Feedback**” is defined in Schedule 2 to this RFP;
 - (jj) “**Design Presentation Meeting**” is defined in Schedule 2 to this RFP;
 - (kk) “**Dillon**” refers to Dillon Consulting Limited, the City’s advisor on the Project to provide professional consulting services for Stage 2 of the Southwest Transitway

- functional design - P3 business case and VFM analysis – procurement - owner’s advocate;

- (ll) **“Draft Lenders’ Commitment Letter”** is defined in RFP Section E5.2;
- (mm) **“Evaluation Categories”** is defined in Part B of Part 1 of Schedule 3 to this RFP and “Evaluation Category” shall be construed accordingly;
- (nn) **“Evaluation Committee”** is defined in RFP Section F1.1;
- (oo) **“Exempt Financial Institution”** is defined in RFP Section J1.3;
- (pp) **“Fairness Monitor”** is defined in the RFP Data Sheet;
- (qq) **“Financial Close”** is defined in the Project Agreement;
- (rr) **“Financial Model”** means the computer model a Proponent has used and which is proposed to become the Financial Model under the Project Agreement in the format specified in Part 3 of Schedule 3 to this RFP;
- (ss) **“Financial Services Provider”** means any Lender and any other provider of financial services or products;
- (tt) **“Financial Submission”** means the component of the Proposal submitted in response to the requirements set out in Part 3 of Schedule 3 to this RFP;
- (uu) **“Financial Submission Deadline”** is defined in RFP Section C1.1;
- (vv) **“Financial Submission Information”** means the information contained in the Proponent’s Financial Submission, excluding the Proposal Submission Form (Financial), the Price Submission, the Financial Model, any Re-scoping Financial Model(s) and any Re-scoping Price Submission(s);
- (ww) **“Financing Timetable”** is defined in RFP Section I2.2;
- (xx) **“First Negotiations Proponent”** is defined in RFP Section H1.1(b);
- (yy) **“General RFIs”** is defined in RFP Section C2.2(a)(i)(A);
- (zz) **“Identified Proponent Parties”** is defined in RFP Section C7.1;
- (aaa) **“includes”** and **“including”** means “includes without limitation” and “including without limitation” respectively;
- (bbb) **“Ineligible Person’s Affiliate”** is defined in RFP Section C10.2(a);
- (ccc) **“Ineligible Persons”** is defined in RFP Section C10.2(a);
- (ddd) **“Key Individuals”** means those individuals identified in the Proponent’s Qualification Submission as key individuals;

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- (eee) “**Lenders**” means the lenders providing the debt financing described in the Financial Submission;
- (fff) “**Lenders’ Commitment Letter**” is defined in RFP Section E5.1;
- (ggg) “**Letter of Credit(s)**” is defined in RFP Section I1.2;
- (hhh) “**Manitoba Hydro**” refers to Manitoba Hydro, the electric power and natural gas utility in the province of Manitoba;
- (iii) “**Negotiations Proponents**” is defined in RFP Section H1.1(b);
- (jjj) “**NPV**” means net present value;
- (kkk) “**P3**” means ‘public-private-partnership’ and is an acronym for a method for public sector procurement and contracting intended to solicit innovative solutions and engage a well-qualified team of private sector participants in the design, construction, long-term financing, operation and/or maintenance of large public infrastructure projects;
- (lll) “**Participating Lenders**” is defined in Section E8.2;
- (mmm) “**Participating Proponent Team Member**” is defined in Section E8.2;
- (nnn) “**PPP Canada**” refers to PPP Canada Inc., a Federal Crown Corporation whose mandate is to improve the delivery of public infrastructure by achieving better value, timelines and accountability to taxpayers, through P3s;
- (ooo) “**Preferred Proponent**” is defined in RFP Section A1.2;
- (ppp) “**Prequalification Stage**” is defined in RFP Section A3.1(a);
- (qqq) “**Prequalified Parties**” is defined in RFP Section A2.1;
- (rrr) “**Price Submission**” is defined in Schedule 3, Part 3 to this RFP;
- (sss) “**Project**” is defined in RFP Section A1.1;
- (ttt) “**Project Agreement**” is defined in RFP Section A1.5;
- (uuu) “**Project Co**” is the Preferred Proponent that has executed the Project Agreement with the City;
- (vvv) “**Project Re-scoping**” is defined in Schedule 8 to this RFP;
- (www) “**Proposed Test and Investigation List**” is defined in Section C5.3(b) to this RFP;
- (xxx) “**Proponent**” is defined in RFP Section A1.2;

- (yyy) **“Proponent Representative”** is defined in RFP Section A2.2;
- (zzz) **“Proponent Team Members”** or **“Team Member”** means all members of the Proponent team that were identified in the RFQ process and were prequalified as a Proponent team to submit a Proposal in this RFP Process;
- (aaaa) **“Proponents Meeting”** is defined in RFP Section C4.1(a);
- (bbbb) **“Proposal”** is defined in RFP Section A1.2;
- (cccc) **“Proposal Information”** is defined in RFP Section C9.4(e);
- (dddd) **“Proposal Information Licence”** is defined in RFP Section C9.4(d);
- (eeee) **“Proposal Price”** means the Proponent’s price calculated in accordance with Schedule 6 and Schedule 3, Part 3 to this RFP that shall be used in the evaluation of the Proponent’s Financial Submission;
- (ffff) **“Proposal Submission Fee”** means an amount to compensate a Proponent for some of the costs the Proponent had incurred in developing and submitting a Proposal, as determined by the City in accordance with RFP Section J3.2, and which was referred to as an Honorarium in the RFQ;
- (gggg) **“Proposal Validity Period”** is defined in RFP Section E4.1;
- (hhhh) **“Qualification Submission”** is defined in RFP Section A2.1;
- (iiii) **“Re-scope Component”** is defined in Schedule 8 to this RFP;
- (jjjj) **“Re-scoping Financial Model”** is defined in Schedule 3, Part 3 to this RFP;
- (kkkk) **“Re-scoping Price Adjustment”** is defined in Schedule 8 to this RFP;
- (llll) **“Re-scoping Price Submission”** is defined in Schedule 3, Part 3 to this RFP;
- (mmmm) **“RFI”** is defined in RFP Section C2.2(a);
- (nnnn) **“RFP”** means this Request for Proposals;
- (oooo) **“RFP Data Sheet”** means Schedule 1 to this RFP;
- (pppp) **“RFP Documents”** is defined in RFP Section B1.1;
- (qqqq) **“RFP Process”** is defined in RFP Section A1.3;
- (rrrr) **“RFQ”** is defined in RFP Section A2.1;
- (ssss) **“Scheduled Visits”** is defined in RFP Section C5.1(a);
- (tttt) **“Second Negotiations Proponent”** is defined in RFP Section H1.1(b);

- (uuuu) “**Stage 1**” refers to the existing stage of the City’s Southwest Transitway which connects Queen Elizabeth Way in downtown Winnipeg to the Jubilee/Pembina intersection, which was completed and put into full service in the spring of 2012;
- (vvvv) “**Stage 2**” refers to the 7.6 km extension of the existing infrastructure of Stage 1 of the Southwest Transitway from Pembina Highway and Jubilee Avenue southward toward the University of Manitoba;
- (www) “**Southwest Transitway**” refers to existing Stage 1 and future Stage 2 of the Southwest Rapid Transit Corridor in Winnipeg;
- (xxxx) “**Submission Requirements**” means all of the submission requirements for the Proponents’ Proposals as set out in the RFP Documents;
- (yyyy) “**SWT**” is an abbreviation for the Southwest Transitway;
- (zzzz) “**Technical Submission**” means the component of the Proposal submitted in response to the requirements set out in Part 2 of Schedule 3 to this RFP;
- (aaaa) “**Technical Submission Deadline**” is defined in RFP Section C1.1;
- (bbbb) “**Technical Submission Information**” means the information contained in the Proponent’s Technical Submission;
- (cccc) “**Timetable**” is defined in RFP Section C1.1;
- (dddd) “**Total Capitalized Cost**” means the sum of all Project capital costs financed by Project Co during the Construction Period including Design and Construction costs, financing charges, interest and other costs incurred by Project Co;
- (eeee) “**Transitway**” has the same meaning as “Southwest Transitway”; and
- (ffff) “**U of M**” refers to the University of Manitoba.