



THE CITY OF WINNIPEG

REQUEST FOR PROPOSALS

RFP NO. 659-2018B

DESIGN BUILD
OF
NORTH END SEWAGE TREATMENT PLANT (NEWPCC) UPGRADE:
HEADWORKS FACILITIES

Version 1.0

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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 that is briefly described in Schedule 1 to the RFP (the “**RFP Data Sheet**”).
- A1.2 In this RFP, Prequalified Proponents 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 Design Build Agreement is referred to as the “**Preferred Proponent**”. For the purposes of convenience, in this RFP the expression Proponents also includes Prequalified Proponents 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 Execution of the Design Build Agreement and receipt of the Performance Security in accordance with the DBA, 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 C8.4 and C8.5, and except for the City’s obligation to pay a Break Payment or a Proposal Submission Fee, if 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 Execution of the Design Build Agreement and receipt of the Performance Security (providing Execution of the Design Build Agreement 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 on Execution of the Design Build Agreement by the Preferred Proponent and receipt of the Preferred Proponent’s Performance Security, 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 Design Build Agreement (“**Design Build Agreement**”) attached as Schedule 9 to this RFP.

A2. Prequalified Proponents and Proponent Representatives

- A2.1 Subject to RFP Section C6, only those proponents 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 proponents are listed in the RFP Data Sheet ("**Prequalified Proponents**"). The prequalification documents submitted by each of the Prequalified Proponents in the RFQ process that preceded and was with respect to this RFP Process are referred to as a Prequalified Proponent'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 Proponents. The Prequalification Stage is a stand-alone independent stage and is complete once the Prequalified Proponents are identified by the City (whether identified initially as Prequalified Proponents 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 Design Build Agreement
 - (i) Once the City and the Preferred Proponent have executed the Design Build Agreement, the terms and conditions of the Design Build Agreement shall determine how the Project is to proceed.

A4. Fairness Advisor

- A4.1 The City has appointed a Fairness Advisor that will oversee the RFP Process.

A4.2 The Fairness Advisor's role is to provide third party independent oversight to confirm the RFP Process is open and transparent and decisions resulting are fair and consistent with the RFP Process evaluation and criteria laid out for the Project in this RFP.

A4.3 The name of the Fairness Advisor is set out in the RFP Data Sheet.

A5. Independent Certifier

A5.1 An independent certifier (the "**Independent Certifier**") will be engaged jointly by the City and Design Builder to provide certification and other related services which will be detailed in the Design Build Agreement.

A5.2 The role of the Independent Certifier will be to act impartially, fairly and independently in carrying out its duties and in representing the interests of both the City and Design Builder for the duration of the Design Build Agreement.

A6. Referee

A6.1 A referee (the "**Referee**") will be engaged jointly by the City and Design Builder to provide dispute resolution services which will be detailed in the Design Build Agreement.

A6.2 The role of the Referee will be to act impartially, fairly and independently in carrying out its duties for the duration of the Design Build Agreement.

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; and
 - (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 Proposal Security;

- (i) Schedule 8 – Commercially Confidential Meeting Guidelines;
- (j) Schedule 9– Design Build 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, Project 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 Design Build Agreement during the RFP Process, the Design Build 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 Design Build Agreement, the provisions of the Design Build 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. 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 in their entirety, 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 ("**Project Background Information**");
- (c) the receipt of RFIs from Proponents and the posting of responses to RFIs;
- (d) the receipt of Design Presentation Submittals from the Proponents;
- (e) the provision of feedback to Proponents based upon their Design Presentation Submittals; and
- (f) other correspondence between the Proponents and the City, as indicated in the RFP.

B4.2 Subject to C8.3, 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 Project 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, Project Background Information, responses to RFIs, and other correspondence related to the RFP.

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 Design Build Agreement. The Proponents' and Proponent Team Members' obligations set out in this RFP Section B5 apply irrespective of any Project 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 Design Build Agreement.
- B5.2 Except as explicitly provided in the Design Build 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 Project 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 deadline for the submission of a Proponent's Technical Submission and the Proponent's Financial Submission (the "**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 Submission Deadline for events that are to occur on or before the Submission Deadline, including the Submission Deadline itself; and

- (b) at any time in the RFP Process for events that are to occur after the 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 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 made by Addendum in accordance with RFP Section C7. Only an Addendum will modify or amend the RFP Documents and, otherwise, RFI responses 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 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, Project 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 Design Build Agreement Comments

- (a) The City may, in its sole discretion, request Proponents to submit comments on the Design Build Agreement. The submission and the format for the submission of comments are set out in the RFP Data Sheet. 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 Team, or any member of any sub-team of the Evaluation Team;
 - (ii) any Advisor to the City or the Evaluation Team;
 - (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; and
 - (B) in accordance with RFP Section C3.1.
 - (iv) any expert or Advisor assisting the City or the Evaluation Team;
 - (v) any member of Council 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 representatives of the Province of Manitoba Sustainable Development;
 - (viii) any other Proponent or Proponent Representative thereof; or
 - (ix) any directors, officers or consultants of any entity listed in RFP Sections C3.2(b)(i) to C3.2(b)(viii).
- (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 the Proponents Meeting. Notwithstanding that the City may give oral answers at a Proponents Meeting, those answers shall not be considered final unless issued subsequently 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 C7.

C4.2 Commercially Confidential Proponent Meetings

- (a) The City may, in its sole discretion, convene commercially confidential meetings with Proponents (“**Commercially Confidential Meetings**”). 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 Design Build Agreement and the Proponent’s suggested amendments to the Design Build 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) and any proposed innovations to the Technical Requirements in accordance with Schedule 2 to the RFP;
 - (B) or 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).

- (b) The dates and approximate location of Commercially Confidential Meetings are set out in the RFP Data Sheet. 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) The Fairness Advisor will attend all 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 C7.
- (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 Design Build Agreement, the Project or otherwise, except and only to the extent expressly confirmed by Addendum in accordance with RFP Section C7, 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 follow the guidelines, procedures and processes set out in the RFP when participating in Commercially Confidential Meetings;
 - (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 shall 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 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; and
 - (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 shall submit the proposed agenda for the meeting at least 2 Business Days prior to the meeting.
- (g) All Proponents are strongly advised to review and abide by the CCM guidelines as set out in RFP Schedule 8 – Commercially Confidential Meeting Guidelines with respect to the various rules and requirements for the conduct of Commercially Confidential Meetings (the "**CCM Guidelines**"). The City intends to follow the CCM Guidelines and expects the Proponents to do so, except in exceptional circumstances.

C5. Visiting the NEWPCC Facility

C5.1 Scheduled Visits

- (a) In the RFP Data Sheet, the City has established scheduled dates and times for visits to see the NEWPCC Facility (“**Scheduled Visits**”) for all Proponents, Proponent Team Members and their respective representatives and Advisors. For clarity, Scheduled Visits do not include the Proponent Geotechnical Investigations or any Proponent Additional Visit scheduled in accordance with RFP Section C5.2 and Section C5.3, respectively.
- (b) The provisions of RFP Section C5.3 shall apply to Scheduled Visits.

C5.2 Proponent Geotechnical Investigations

- (a) During the RFP Process, the City will arrange a date for additional geotechnical investigations (the “**Proponent Geotechnical Investigations**”) for the Proponents.
- (b) The process for the Proponent Geotechnical Investigations is outlined as follows:
 - (i) The Technical Requirements provides existing geotechnical data that the Proponents may rely on for its design of the Infrastructure. Proponents shall review this data and determine desired locations for additional boreholes. Each Proponent shall provide the City with the locations for up to 6 additional boreholes.
 - (ii) The City will compile the locations from each Proponent and then provide the Proponents with the proposed locations for up to 6 additional boreholes. These locations will be based on the locations provided by the Proponents and may also include locations chosen by the City at its discretion.
 - (iii) The Proponents shall review the proposed locations and may suggest adjustments and/or additions to the proposed locations.
 - (iv) The City will review any suggestions from the Proponents to make adjustments and/or make additions to the proposed locations and make any changes at its discretion. The City will then provide the Proponents with the final borehole locations for the Proponent Geotechnical Investigations.
 - (v) The Proponents shall review the final locations and provide written confirmation to the City accepting the final locations of the additional boreholes.
 - (vi) The City will then, in consultation with the Proponents, arrange a date at the NEWPCC Facility for the Proponent Geotechnical Investigations. The City will arrange for a geotechnical investigation

firm, acceptable to all Proponents, to carry out the investigations and conduct laboratory analysis on the soil samples.

- (vii) The Proponents may attend and observe the Proponent Geotechnical Investigations. The Proponents may also take soil samples from the boreholes for their own testing.
- (viii) The City will provide the results of the laboratory analysis of the soil samples taken by the geotechnical investigation firm to the Proponents. The Proponents may rely on this data in its designs for the Infrastructure.
- (c) The provisions of RFP Section C5.3 shall apply to the Proponent Geotechnical Investigations.
- (d) All communications related to the Proponent Geotechnical Investigations shall be through the Contact Person and the Data Room.

C5.3 NEWPCC Facility Visit Requirements

- (a) The following shall apply to all NEWPCC Facility visits:
 - (i) all Proponent and Proponent Team Member representatives upon arrival at the NEWPCC Facility shall report to the Main Administration Building at the NEWPCC Facility and sign in as required by the NEWPCC Facility;
 - (ii) the Proponents will meet with the assigned City representatives who will be present and guide the Proponents for the visit. The Proponents will not be permitted to visit the NEWPCC Facility without the presence of City's representatives for the purposes of this RFP;
 - (iii) all Proponent and Proponent Team Member representatives shall strictly obey all instructions from the City's representatives during the visit and other requirements;
 - (iv) all Proponent and Proponent Team Member representatives shall have and wear, as applicable, Canadian Standards Association compliant personal protection equipment (PPE) including but not limited to, hard hat, protective footwear, safety glasses, and high visibility vest (hearing protection can be provided by the City if required); and
 - (v) the Proponent and Proponent Team Member representatives shall visit only those specific areas of the NEWPCC Facility to which the Proponent has been granted access in the Contact Person's confirmation.
- (b) The Proponent acknowledges that because the NEWPCC Facility is in use, unforeseen circumstances can arise at the NEWPCC Facility and the City

may, in its sole discretion, cancel or reschedule the visit, change the areas of access or otherwise change the visit on short notice or no notice to the Proponent and Proponent Team Members or their representatives.

C6. Changes to Proponents and Proponent Team Members

- C6.1 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 (which includes its proposed subcontractors and proposed sub-consultants), Key Individuals, or other parties identified in the Proponent's Qualification Submission (the "**Identified Proponent Parties**") without the prior written consent of the City.
- C6.2 Proponents are permitted to request a change in their Identified Proponent Parties in accordance with this RFP Section C6.
- C6.3 If, prior to the 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 fifteen (15) Business Days prior to the 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.
- C6.4 In response to a request in accordance with RFP Section C6.3, 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.
- C6.5 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.
- C6.6 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 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.
- C6.7 If, on or after the Submission Deadline and prior to Execution of the Design Build Agreement, 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 Design Build Agreement, then the

Proponent shall promptly notify the City via the Data Room 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 Submission Deadline and may, in its sole discretion, disqualify the Proponent from continuing in the RFP Process.

C6.8 If, at any time prior to the Execution of the Design Build Agreement, 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 C6. 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, in its sole discretion, may require.

C7. Addenda/Changes to the RFP Documents

C7.1 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 Design Build Agreement is set out in the Timetable. The City may issue other Addenda at any time.

C7.2 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.

C7.3 The City shall issue Addenda by placing them in the Data Room.

C7.4 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 C7.

C8. Release of Information, Freedom of Information, Confidentiality and Copyright Matters

C8.1 Release of Information

- (a) The following information will be posted to the City’s Material Management website (<https://www.winnipeg.ca/matmgt/>) to the public:

- (i) the initial version of the RFP when issued to the Prequalified Proponents;
 - (ii) the initial draft of the Design Build Agreement when issued to the Prequalified Proponents;
 - (iii) the name of the Preferred Proponent selected for the Project award, and to enter into a Design Build Agreement with the City; and
 - (iv) the contract value after execution of the Design Build Agreement;
- (b) The RFP and the draft Design Build Agreement will be redacted to protect sensitive confidential information about the Project and NEWPCC.

C8.2 Freedom of Information

- (a) The protection of personal information and privacy will be fundamental aspects of the RFQ Process, RFP Process and the Project. Proponents and their respective Proponent Team Members shall comply with all applicable privacy legislation, including but not limited to the Personal Information Protection and Electronic Documents Act (Canada) (“PIPEDA”). In addition, Proponents are advised that the City is subject to The Freedom of Information and Protection of Privacy Act (Manitoba) (“FIPPA”) and that the Proponent and Proponent Team Members will be expected to comply with the obligations imposed upon the City pursuant to FIPPA.
- (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.

C8.3 Confidentiality Agreements

- (a) The Proponent shall cause each of its Proponent Team Members to execute and deliver to the City a Confidentiality Agreement provided by the City as a requirement to gain access to the Data Room and all Confidential Information (the “**Confidentiality Agreement**”).
- (b) 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 C8.4 and C8.5.

C8.4 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 Proponent’s preparation of its 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
 - (v) if requested by the City, all Confidential Information shall be returned by the Proponent to the City no later than five (5) Business Days after that request;
- (c) Each Proponent shall be responsible for any breach of the provisions of this RFP Section C8.4 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 C8.4 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 C8.3 or C8.4, 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 C8.4 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 C8.4 by its employees, representatives and Advisors and each of their employees, and enforce any of the provisions of this RFP Section C8.4 upon application to a court of competent jurisdiction without proof of actual damage to the City. Notwithstanding anything else to the contrary in this RFP, the provisions of this RFP Section C8.4 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 Proponent, whether or not it submits a Proposal in connection with the RFP.
- (f) 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.

C8.5 Copyright and Use of Information in Proposals

- (a) The City's rights, as set out in this RFP Section C8.5, 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 Design Builder 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 C8.5, 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 Design Build 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 Design Build 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 C8.5. 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 C8.5 shall take precedence and govern.

C9. Conflict of Interest and Ineligible Persons

C9.1 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:

- (a) has other commitments, relationships or financial interests that:

- (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of independent judgment by any personnel of the City or its Advisors; or
- (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of a Proponent's obligations under the Design Build Agreement if that Proponent was determined to be the Preferred Proponent under the RFP Process; or
- (b) 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
- (c) 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.

C9.2 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 C9.1, 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's Advisor on the grounds of Conflict of Interest.
- (e) Without limiting the generality of RFP Sections C9.2(d) or C9.2(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.

C9.3 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 C9.3(c) and C9.3(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 or Advisor to the Proponent 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 or Advisor to the Proponent 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 or Advisor to the Proponent in respect of this Project. To obtain consent for an Ineligible Person’s Affiliate to participate as a Proponent Team Member or Advisor to the Proponent 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 or Advisor to the Proponent;
 - (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 C9.3(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.

C9.4 Disclosure

- (a) Various Persons provided information or services with respect to the NEWPCC Facility which are related to the Work.
- (b) The Persons and additional material are listed in the RFP Data Sheet.
- (c) In the City's opinion, this relationship or association does not create a conflict of interest because of this full disclosure.

C10. Proponent Costs

C10.1 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 development and integration of Proponent commercial entity if applicable, and partnering and commercial arrangements between Proponent Team Members, including associated legal and commercial fees;
- (b) the preparation, presentation and submission of its Proposal;
- (c) attendance at any Proponents Meeting, Commercially Confidential Meeting or any other meeting with the City;
- (d) due diligence and information gathering processes;
- (e) Scheduled Visits including any Proponent Geotechnical Investigations authorized by the City;
- (f) preparation of responses to questions or requests for information from the City;
- (g) preparation of the Proponent's own RFIs during the clarification process; and
- (h) negotiations.

C10.2 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.

C11. Affordability Threshold

C11.1 The City has an anticipated price (the “**Affordability Threshold**”) for the Work. The Affordability Threshold is set out in the RFP Data Sheet.

C11.2 In the event that all the evaluated Price Submissions exceed the Affordability Threshold, the City may, in its sole discretion:

- (a) elect to identify a Negotiations Proponent(s) or Preferred Proponent on the basis of the Proponents' Proposals as submitted; or
- (b) elect to discontinue the RFP Process in accordance with RFP Section J1.

C12. Insurance and Workers Compensation

C12.1 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 C12.1(a) to obtain, and at all times keep and maintain in force the insurance set out in RFP Sections C12.1(a)(i) and C12.1(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 NEWPCC Facility 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 a cross liability clause and as insureds or additional insureds the City (and each of its employees, legislators, members, officials, consultants and agents), and the policy shall be primary and without right of contribution from any insurance otherwise maintained by the City; and
 - (ii) automobile 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 NEWPCC Facility or at any facilities or premises of the City.
- (b) As a condition of allowing access to the NEWPCC Facility 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 C12.1(a)(i) and C12.1(a)(ii) is in place.

- (c) If a Proponent proposes to perform any investigations at the NEWPCC Facility the risk related to which may not be fully insured under the policies set out in RFP Sections C12.1(a)(i) and C12.1(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 C12.1(a)(i) and C12.1(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.

C12.2 Applicable Law and Insurance During the RFP Process

- (a) As a condition of allowing access to the NEWPCC Facility 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) for the Proponent and its Proponent Team Members that are not legislated and do not carry worker's compensation to include employer's liability insurance in C12.1(a)(i) 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 Proposal Security;

- (iii) financial material changes from the RFQ (if applicable); and
- (iv) the Price Submission Form.

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 of this RFP and in accordance with the Timetable.

D2. Proposal Security

The Proponent shall provide Proposal Security in the form of a bid bond, in the amount given in the RFP Data Sheet, and agreement to bond of a company registered to conduct the business of a surety in Manitoba, in the form included in Schedule 7 – Form of Proposal Security (the “**Proposal Security**”). The Proponent shall sign the bid bond. The Surety shall sign and affix its corporate seal on the Proposal Security. All signatures on the Proposal Security shall be original.

D2.1 Subject to RFP Section E4.2, the City shall return the Proposal Security as follows:

- (a) to the Preferred Proponent upon Execution of the Design Build Agreement and receipt of the Design Build Agreement Security; and
- (b) to the other Proponents (other than the Preferred Proponent) no later than the date of Execution of the Design Build Agreement; or
- (c) to all Proponents upon expiry of the Proposal Validity Period; or
- (d) to all Proponents upon the cancellation or discontinuance of the RFP Process by the City in accordance with this RFP.

D3. Design Build Agreement Security

D3.1 The Preferred Proponent shall provide and maintain the Design Build Agreement Security as required in the Design Build Agreement.

SECTION E - SUBMISSION, WITHDRAWAL AND MODIFICATION OF THE PROPOSAL

E1. Submission of Proposal

E1.1 Each Proponent shall submit its Technical Submission and its Financial Submission on or before the 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 Submission Deadline, as applicable, shall be based on the time and date stamp. A Technical Submission or Financial Submission received after the Submission Deadline, as documented by the time and date stamp, shall remain unopened and the Proponent will be notified as such.

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 Submission Deadline 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 or facsimile.

- 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 Proposal in accordance with this RFP.

E2. Withdrawal of Proposals

- E2.1 A Proponent may withdraw its Proposal only by giving written notice before the Submission Deadline, to the Contact Person. The City will return, unopened, a Proposal 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 Submission Deadline, in accordance with the following:
 - (a) the Proponent shall withdraw its original Technical Submission and/or Financial Submission, as applicable, by notifying the Contact Person in writing before the Submission Deadline; and
 - (b) the Proponent shall submit a revised replacement Technical Submission and/or Financial Submission, as applicable, in accordance with the RFP Documents and on or before the Submission Deadline, in accordance with the requirements of RFP Section E1.

E4. Proposal Irrevocability

- E4.1 Except as provided in RFP Sections E5.1 and E5.2 and subject to the Proponent's right to withdraw its Proposal before the 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 Submission Deadline (the "**Proposal Validity Period**") or until the Execution of the Design Build Agreement and receipt of the Performance Security, whichever occurs first.

E4.2 A Proponent who withdraws its Proposal in a manner not permitted by the above RFP Section E4.1 shall be liable for such damages as are imposed upon the Proponent by law and subject to such sanctions as the Chief Administrative Officer considers appropriate in the circumstances. The City, in such event, shall be entitled to all rights and remedies available to it at law, including the right to retain the Proponent's Proposal Security.

E5. Extension of Proposal Validity Period

E5.1 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 execute the Design Build Agreement 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 the Design Build 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.

E5.2 In respect of the Preferred Proponent, the City shall be considered to have accepted the Preferred Proponent's Proposal, including its Financial Submission prior to the expiration of the Proposal Validity Period if the City and the Preferred Proponent execute the Design Build Agreement prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable).

E5.3 Notwithstanding RFP Section E5.1, 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 Design Build Agreement or the Negotiations Proponent's Proposal prior to the expiration of the Proposal Validity Period, the 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 E5.3, the Proponent's original Proposal continues to be valid in accordance with the original Proposal Validity Period.

SECTION F - EVALUATION, CLARIFICATION AND VERIFICATION OF PROPOSALS

F1. Evaluation Team and Advisors

- F1.1 The City will establish an evaluation team (the “**Evaluation Team**”) 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 Team and any sub-teams of the Evaluation Team. The Evaluation Team 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 Team or, if applicable, an evaluation sub-team becomes unable to continue serving on the Evaluation Team or evaluation sub-team 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 Team or sub-team member becomes unable to continue serving on the Evaluation Team or a sub-team 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 Team or sub-team 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 – Completeness and Legal Review
- (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 commencement of evaluation of the Financial Submission, and may eliminate the Proponent from the RFP Process prior to commencement of evaluation of its Financial Submission.
- (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 commencement of evaluation 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 3 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 Team or, as applicable, a sub-team of the Evaluation Team will evaluate and score the Technical Submission and determine whether the Technical Submission has achieved a "pass" 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 Team or, as applicable, a sub-team of the Evaluation Team will open, 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.
- (b) If applicable, in accordance with Parts 1 and 3 of Schedule 3 to this RFP, the Evaluation Team will open, evaluate and determine whether the business and financial information receives a "pass" in accordance with B44 of RFQ 659-2018A.

F3.5 Step 5 – Ranking the Proponents

- (a) The Evaluation Team will rank the Proponents based on a sum of the Proponent's Technical and Financial Score, (the "**Final Score**") as follows:
 - (i) Technical Score 700 pts, and
 - (ii) Financial Score 300 pts.
- (b) The Evaluation Team shall rank only those Proponents that have met all requirements in Steps 1 through 4.
- (c) In the event of a tie in the Final Scores between two Proponents, the City may, in its sole discretion, give the higher ranking to the Proponent with the higher technical score.

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 Team and any sub-teams of the Evaluation Team;
 - (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) whether a Proponent's Financial Submission has achieved a "pass" in accordance with Schedule 3 Part 1 of this RFP;
 - (vi) the rankings of the Proposals; and
 - (vii) 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 Stage 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 its 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 the Execution of the Design Build Agreement, 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;
 - (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 C9 and the Proponent:
 - (A) does not receive a waiver from the City in accordance with RFP Section C9.2(f) or does not receive a consent in accordance with RFP Section C9.3(c), as applicable; or
 - (B) fails to substitute the person or entity giving rise to the Conflict of Interest in accordance with RFP Section C9.2(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;
- (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; or
- (xi) the Proponent, any Proponent Team Member or any of their Affiliates have been convicted under the Corruption of Foreign Public Officials Act (Canada).

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 F3.4(b), 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, based upon 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 Design Build Agreement, or both, including, without limitation, any amendments to the Design Build Agreement that are reasonably required, to the scope of the Project, in the event that all Proposal Prices, when combined with the Cash Allowance Amount, have exceeded the City's Affordability Threshold.

H1.3 Except as provided in RFP Section E5.2, 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 the Execution of the Design Build Agreement and receipt of the Performance Security, 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 Design Build Agreement, the City and the Preferred Proponent shall reflect those revisions in a revised Design Build Agreement and, for the purposes of RFP Section I, the revised Design Build Agreement shall be the “**Design Build 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

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

I2. Preferred Proponent Obligations

I2.1 The Preferred Proponent shall:

- (a) execute Design Build Agreement;
 - (i) prior to the Execution of the Design Build Agreement Target Date; or
 - (ii) if the Execution of the Design Build Agreement 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); and
 - (iii) based on the Design Build Agreement in substantially the same form and content as finalized prior to the Submission Deadline or on the Design Build Agreement as revised and agreed to by the Proponent and the City.
- (b) execute the Design Build 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 structure which are not inconsistent with the principles set out in the Design Build Agreement;
 - (B) the insertion or addition of information or the modification of provisions of the Design Build 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 Design Build 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 Design Build Agreement (where contemplated in or required under the terms of the RFP Documents) or to complete any Schedules to the Design Build Agreement; and
- (iv) changes, additions and modifications to those parts of the Design Build Agreement which are indicated in the Design Build 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 Design Build 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 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 Design Build 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 Design Build 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 Governmental 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 Execution of the Design Build Agreement;
- (e) alter the Timetable, the RFP Process or any other aspect of this RFP; 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 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; 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 Execution of the Design Build Agreement under the Design Build Agreement, subject to the following conditions:
 - (i) a Proponent shall submit a full and proper Proposal for that Proponent to be eligible for the Proposal Submission Fee, provided that the City has determined that the 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 has received a passing score as referenced in Schedule 3 Part 1 – Proposal Format and Evaluation;

- (ii) a Proponent shall transfer to the City, all intellectual property rights, including waiver of moral rights, contained within the Proponent's Proposal, in accordance with RFP Section C8.5;
 - (iii) a Proponent shall not withdraw from this RFP Process after the Submission Deadline in contravention of this RFP; and
 - (iv) if the City retains the Proposal Security 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 Submission Deadline, a Break Payment will be paid to a Proponent that has submitted a full and proper Technical and Financial 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 Design Build 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.

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 misconduct 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) the Proposal Submission Fee.

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 Design Build Agreement, neither acceptance of the Proposal nor Execution of the Design Build

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 Design Build 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 will be consistent with the *Canadian Free Trade Agreement*, the *Comprehensive Economic and Trade Agreement* and the *New West Partnership Trade Agreement* as they apply, or may apply in the future, however the rights and obligations of the parties are governed by the specific terms of this RFP.

SECTION K - NOTIFICATION AND DEBRIEFING

K1.1 Any time 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) in accordance with RFP Section E4.

K1.2 After Execution of the Design Build Agreement and receipt of the Performance Security, upon request to the City from an unsuccessful Proponent, the City will provide the unsuccessful Proponent with an explanation of the reasons the Proponent was not selected.

K1.3 The City is not obliged to debrief the Preferred Proponent, who enters the Design Build Agreement, with respect to their participation in the RFP Process. The information provided to a Proponent in the debriefing will relate solely to that Proponent and its Proposal, and not to any other Proponent or Proposal.

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 Design Build 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 City.

L1.3 All references in this RFP to "day" or "days" mean calendar days, unless otherwise stated.

L1.4 References containing terms such as:

- (a) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Design Build Agreement taken as a whole; and
- (b) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.

L2. RFP Definitions

L2.1 Whenever used in the RFP:

- (a) “**Acquiree**” is defined in RFP Section C6.8;
- (b) “**Acquirer**” is defined in RFP Section C6.8;
- (c) “**Addendum**” means a written addendum to the RFP Documents issued by the City as set out in RFP Section C7;
- (d) “**Ad Hoc CCM**” is defined in RFP Section C4.2(f);
- (e) “**Advisors**” means any person or firm retained to provide professional advice to any one of the City, a Proponent or a Proponent Team Member, as applicable;
- (f) “**Affiliate**” is as defined in The Corporations Act (Manitoba);
- (g) “**Affordability Threshold**” is defined in RFP Section C11.1;
- (h) “**Break Payment**” means the sum of money referred to in A1.3, payable to each Prequalified Proponent for Proposal development costs in the event that the procurement process is terminated by the City after issuance of the RFP at a time when the City recognizes that Prequalified Proponents have expended significant time and effort preparing to respond to the RFP, under the specific conditions set out in J3.3;
- (i) “**CCM Guidelines**” is defined in RFP Section C4.2(g);
- (j) “**Commercially Confidential Meetings**” or “**CCMs**” is defined in RFP Section C4.2(a);
- (k) “**Commercially Confidential RFIs**” is defined in RFP Section C2.2(a)(i)(B);
- (l) “**Confidential Information**” is defined in RFP Section C8.4(a);
- (m) “**Confidentiality Agreement**” is defined in RFP Section C8.3);

- (n) **“Conflict of Interest”** is defined in RFP Section C9.1;
- (o) **“Contact Person”** or **“Contact Persons”** is defined in RFP Section A1.4;
- (p) **“Control”** has the meaning ascribed thereto in *The Corporations Act* (Manitoba);
- (q) **“Data Room”** is defined in RFP Section A1.5;
- (r) **“Design Build Agreement”** or **“DBA”** is defined in RFP Section A1.5;
- (s) **“Design Builder”** is the Preferred Proponent that has executed the Design Build Agreement with the City;
- (t) **“Design Consultation Process”** is defined in Schedule 2 to this RFP;
- (u) **“Design Consultation Team”** is defined in Schedule 2 to this RFP;
- (v) **“Design Feedback”** is defined in Schedule 2 to this RFP;
- (w) **“Design Presentation Meeting”** is defined in Schedule 2 to this RFP;
- (x) **“Design Presentation Submittal”** is defined in Schedule 2 to this RFP;
- (y) **“Evaluation Categories”** is defined in Part B of Part 1 of Schedule 3 to this RFP and “Evaluation Category” shall be construed accordingly;
- (z) **“Evaluation Team”** is defined in RFP Section F1.1;
- (aa) **“Execution of the Design Build Agreement”** means the date the Design Build Agreement is signed by both the Preferred Proponent and the City;
- (bb) **“Execution of the Design Build Agreement Target Date”** means the date set out as the Execution of the Design Build Agreement Target Date in the Timetable;
- (cc) **“Fairness Advisor”** is defined in the RFP Data Sheet;
- (dd) **“Final Score”** is defined in RFP Section F3.5(a);
- (ee) **“Financial Score”** is defined in Schedule 3 Part 3 of this RFP;
- (ff) **“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;
- (gg) **“Financial Submission Information”** means the information contained in the Proponent’s Financial Submission, excluding the Proposal Submission Form (Financial) and the Price Submission;
- (hh) **“First Negotiations Proponent”** is defined in RFP Section H1.1(b);

- (ii) **“General RFIs”** is defined in RFP Section C2.2(a)(i)(A);
- (jj) **“Identified Proponent Parties”** is defined in RFP Section C6.1;
- (kk) **“Independent Certifier”** is defined in RFP Section A5;
- (ll) **“Ineligible Person’s Affiliate”** is defined in RFP Section C9.3(a);
- (mm) **“Ineligible Persons”** is defined in RFP Section C9.3(a);
- (nn) **“Key Individuals”** means those individuals identified in the Proponent’s Qualification Submission as key individuals;
- (oo) **“Negotiations Proponents”** is defined in RFP Section H1.1(b);
- (pp) **“NEWPCC Facility”** means the lands, buildings, equipment and facilities which comprise the North End Sewage Treatment Plant, and which lands are described and illustrated in DBA Schedule 12 – Lands, Site(s), Facility(ies);
- (qq) **“Person”** means an individual, firm, partnership or corporation, or any combination thereof, or other legal entities and includes heirs, administrators, executors or legal representatives of a person;
- (rr) **“Preferred Proponent”** is defined in RFP Section A1.2;
- (ss) **“Prequalification Stage”** is defined in RFP Section A3.1(a);
- (tt) **“Prequalified Proponents”** is defined in RFP Section A2.1;
- (uu) **“Price Submission”** is defined in Schedule 3, Part 3 to this RFP;
- (vv) **“Project”** is defined in Schedule 1 – RFP Data Sheet;
- (ww) **“Project Background Information”** means various types of information provided by the City and is defined in RFP Section B4.1(b);
- (xx) **“Proponent”** is defined in RFP Section A1.2;
- (yy) **“Proponent Geotechnical Investigations”** is defined in RFP Section C5.2(a);
- (zz) **“Proponent Representative”** is defined in RFP Section A2.2;
- (aaa) **“Proponent Team Members”** 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;
- (bbb) **“Proponent Team Member Declaration”** is provided in Schedule 5 of this RFP;
- (ccc) **“Proponents Meeting”** is defined in RFP Section C4.1(a);

- (ddd) **“Proposal”** is defined in RFP Section A1.2;
- (eee) **“Proposal Information”** is defined in RFP Section C8.5(e);
- (fff) **“Proposal Information Licence”** is defined in RFP Section C8.5(d);
- (ggg) **“Proposal Price”** is defined in Schedule 3, Part 3 to this RFP;
- (hhh) **“Proposal Security”** is defined in RFP Section D2;
- (iii) **“Proposal Submission Fee”** means the sum of money referred to in A1.3, payable to certain unsuccessful Prequalified Proponents under the RFP Process under the specific conditions set out in J3.2;
- (jjj) **“Proposal Submission Form”** is provided in Schedule 4 of this RFP;
- (kkk) **“Proposal Validity Period”** is defined in RFP Section E4.1;
- (lll) **“Qualification Submission”** is defined in RFP Section A2.1;
- (mmm) **“Referee”** is defined in RFP Section A6.1;
- (nnn) **“RFIs”** is defined in RFP Section C2.2(a);
- (ooo) **“RFP”** means this Request for Proposals;
- (ppp) **“RFP Data Sheet”** means Schedule 1 to this RFP;
- (qqq) **“RFP Documents”** is defined in RFP Section B1.1;
- (rrr) **“RFP Process”** is defined in RFP Section A1.3;
- (sss) **“RFQ”** is defined in RFP Section A2.1;
- (ttt) **“Scheduled Visits”** is defined in RFP Section C5.1(a);
- (uuu) **“Second Negotiations Proponent”** is defined in RFP Section H1.1(b);
- (vvv) **“Submission Deadline”** is defined in RFP Section C1.1;
- (www) **“Submission Requirements”** means all of the submission requirements for the Proponents’ Proposals as set out in the RFP Documents;
- (xxx) **“Technical Requirements”** means Schedule 18 of the draft Design Build Agreement including all appendices;
- (yyy) **“Technical Score”** is defined in Schedule 3 Part 1 of this RFP;
- (zzz) **“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 Information”** means the information contained in the Proponent’s Technical Submission; and
- (bbbb) **“Timetable”** is defined in RFP Section C1.1.