



Request for Proposals

John Hart Generating Station Replacement Project

RFP # EC12-1164

Release Date: June 27, 2012



SUMMARY OF KEY INFORMATION

RFP TITLE	The title of this RFP is: John Hart Generating Station Replacement Project RFP # EC12-1164 Proponents should use this title on all correspondence.
CONTACT PERSON	The Contact Person for this RFP is: Dawn Hart Email: dawn.hart@bchydro.com Please direct all Enquiries, in writing, to the above named Contact Person. No telephone or fax enquiries please.
ENQUIRIES	Proponents are encouraged to submit Enquiries at an early date to permit consideration by BC Hydro; BC Hydro may, in its discretion, decide not to respond to any Enquiry received after 12:00 pm PST on January 18, 2013.
INTERIM FINANCIAL REVIEW ON AFFORDABILITY	November 20, 2012 11:00 am PST
SUBMISSION TIME FOR TECHNICAL SUBMISSIONS	February 6, 2013 11:00 am PST
SUBMISSION TIME FOR BASE RATE(S) AND CREDIT SPREAD BENCHMARKS	February 25, 2013 11:00 am PST
SUBMISSION TIME FOR FINANCIAL SUBMISSIONS	May 6, 2013 11:00 am PST
SUBMISSION LOCATION	The Submission Location is: BC Hydro Bid Station 535 Hamilton Street Vancouver, BC V6B 2R1 Canada Attention: Dawn Hart
DELIVERY HOURS	Deliveries will be accepted at the Submission Location on weekdays (excluding Statutory Holidays) from 08:30 to 16:00 PST

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1 INTRODUCTION

1.1 PURPOSE OF THIS RFP

The purpose of this request for proposals (“**Request for Proposals**” or “**RFP**”) is to invite eligible proponents (“**Proponents**”) to prepare and submit competitive Proposals (“**Proposals**”) for the design, construction, partial financing and rehabilitation of a new facility to replace the existing John Hart Generating Station (collectively the “**Project**” or the “**Facility**”) under a long-term project agreement (the “**Project Agreement**”).

1.2 ELIGIBILITY TO PARTICIPATE IN THIS RFP

Through a request for qualifications (“**Request for Qualifications**” or “**RFQ**”) issued March 13, 2012 by BC Hydro, the following consortia are qualified to participate in this RFP:

- Elk Falls Energy Partners;
- Salmon River Energy Partners; and
- SNC-Lavalin Inc.

Only these three Proponents, subject to changes in proponent team (“**Proponent Team**”) membership as permitted by this RFP, may submit Proposals or otherwise participate in this RFP.

Prior to the Submission Time for Technical Submissions, BC Hydro may invite another consortium to submit Proposals or otherwise participate in this RFP, or invite a Proponent to make a change to its Proponent Team, if BC Hydro determines, in its sole discretion, that as a result of an adverse development affecting a Prime Team Member a Proponent will likely be disqualified or unable or unwilling to continue through their participation in this RFP in the manner and on the terms contemplated by this RFP. BC Hydro will only invite another consortium to participate in this RFP in these circumstances if that consortium previously participated in the RFQ process and satisfied the minimum requirements (Table 1, Part 2 of Appendix A) of the RFQ evaluation criteria.

2 RFP PROCUREMENT PROCESS

2.1 ESTIMATED TIMELINE

The following is BC Hydro's estimated timeline for the Project:

Activity	Timeline
Issue RFP	June 27, 2012
Issue Initial Draft Project Agreement to Proponents	July 3, 2012
First Collaborative Meetings	August 7 – 14, 2012
Second Collaborative Meetings	September 27 – October 4, 2012
Submission Time for Interim Financial Review on Affordability	11:00 am on November 20, 2012
Third Collaborative Meeting	November 29 – December 6, 2012
Issue Final Draft Project Agreement	January 8, 2013
Submission Time for Technical Submissions	11:00 am on February 6, 2013
Submission Time for Base Rate(s) and Credit Spread Benchmarks	11:00 am on February 25, 2013
Invitation to Submit Financial Submission	April 15, 2013
Submission Time for Financial Submissions	11:00 am on May 6, 2013
Credit Spread Refresh Lock-In Date	A date prior to the selection of the Preferred Proponent, to be set out in a notice from BC Hydro given at least 10 days in advance of such date
Selection of Preferred Proponent	May 2013
Finalization of the Project Agreement	June-July 2013
Financial Close	July 2013
Construction Commences	July 2013
Target Commercial Operation Date – Third Generating Unit and Target Service Commencement Date	January 2018
Target Bypass System Completion Date	November 2018
Target Total Completion Date	November 2018

This estimated timeline is subject to change at the sole and absolute discretion of BC Hydro.

2.2 COLLABORATIVE MEETINGS

Prior to the Submission Time for Technical Submissions (“**Submission Time for Technical Submissions**”), BC Hydro will make available certain of its personnel, consultants and advisors (the “**BC**”

Hydro Representatives) to participate in collaborative meetings (**“Collaborative Meetings”**) with the Proponents. BC Hydro expects the Collaborative Meetings to take place as follows:

- (a) the purpose of the Collaborative Meetings is to provide a process that will assist the Proponents to develop optimal solutions for the Project while minimizing the risk that a Proponent’s solution is unresponsive to BC Hydro’s requirements, and in particular:
 - (1) to permit the Proponent’s Representatives to provide the BC Hydro Representatives with comments and feedback on material issues such as affordability or key provisions of the Initial Draft Project Agreement (**“Initial Draft Project Agreement”**); and
 - (2) to permit a Proponent to discuss with BC Hydro potential solutions and approaches that the Proponent may be considering for various aspects of its Proposal;
- (b) at least 5 business days (**“Business Days”**) in advance of each Collaborative Meeting (10 Business Days in the case of any Collaborative Meeting with respect to insurance or geotechnical matters), each Proponent should provide BC Hydro with a proposed meeting agenda, a list of prioritized issues it would like to discuss, and any materials relevant to such issues. BC Hydro may provide Proponents with comments on the agenda and a list of any prioritized issues BC Hydro would like to discuss;
- (c) BC Hydro will determine which BC Hydro Representatives will be present at any Collaborative Meeting;
- (d) at each Collaborative Meeting, a Proponent may have such officers, directors, employees, consultants and agents of the Proponent and the Proponent Team members present as the Proponent considers reasonably necessary for effective communication with BC Hydro and to fulfil the objectives of the Collaborative Meeting provided that BC Hydro may, in its discretion, limit the number of participants at any one meeting. Participation in Collaborative Meetings is in person only;
- (e) to facilitate free and open discussion at the Collaborative Meetings, Proponents should note that any comments provided by or on behalf of BC Hydro during any Collaborative Meeting, including in respect of any particular matter raised by a Proponent or which is included in any documents or information provided by a Proponent prior to or during the Collaborative Meeting, and any positive or negative views, encouragement or endorsements expressed by or on behalf of BC Hydro during the Collaborative Meetings to anything said or provided by Proponents, will not in any way bind BC Hydro and will not be deemed or considered to be an indication of a preference by BC Hydro even if adopted by the Proponent;

- (f) if for the purposes of the preparation of its Proposal a Proponent wishes to rely upon anything said or indicated at a Collaborative Meeting, then the Proponent must submit an enquiry (“**Enquiry**”) describing the information it would like to have confirmed and request that BC Hydro provide that information to the Proponent in written form and, if such information relates to a clarification, explanation or change to a provision of this RFP or the Project Agreement, request an addendum (“**Addendum**”) to this RFP clarifying and amending the provision in question;
- (g) by participating in the Collaborative Meetings a Proponent confirms its agreement with these procedures and acknowledges that the meetings are an integral part of the procurement process as described in this RFP and are in the interests of all parties;
- (h) BC Hydro anticipates holding three or more Collaborative Meetings with each Proponent prior to the Submission Time for Technical Submissions. Following the release of the RFP, BC Hydro will consult with each Proponent to confirm specific dates for Collaborative Meetings. If BC Hydro considers it desirable or necessary to schedule additional or fewer Collaborative Meetings, BC Hydro may, in its discretion, amend the anticipated schedule; and
- (i) Proponents may request that BC Hydro schedule additional Collaborative Meetings on specific topics by providing the request in writing to the Contact Person (“**Contact Person**”) with proposed dates and details of the topic or topics to be discussed.

2.3 COMMENTS ON THE PROJECT AGREEMENT

Each Proponent should review the Initial Draft Project Agreement for the purpose of identifying any issues or provisions that the Proponent would like to see clarified or amended. Following such review:

- (a) BC Hydro will invite Proponents as part of the Collaborative Meeting process to discuss possible clarifications or amendments to the Initial Draft Project Agreement, including with respect to commercial, legal, design and construction, and facilities maintenance services matters;
- (b) at least 5 Business Days in advance of the Collaborative Meeting at which a Proponent wishes to discuss the Initial Draft Project Agreement, each Proponent should provide BC Hydro with a prioritized list of requested changes, if any, to the Initial Draft Project Agreement using the Proponent Comments Form attached as Appendix E, together with the agenda and issues list described in this Section 2.3(b); and
- (c) BC Hydro will consider all comments and requested clarifications or amendments received from the Proponents in the Collaborative Meetings and may respond to some or all of the comments received, and will amend the Initial Draft Project Agreement as BC Hydro may determine in its discretion.

Prior to the Submission Time for Technical Submissions, BC Hydro intends to issue by Addendum one or more revised drafts of the Project Agreement, including one that will be identified as the final draft Project Agreement (“**Final Draft Project Agreement**”). BC Hydro may further modify the Final Draft Project Agreement by Addendum prior to the Submission Time for Financial Submissions (“**Submission Time for Financial Submissions**”). The Final Draft Project Agreement will be the common basis for the preparation of all Proposals, and Proponents should not in their Proposal make any modifications, changes or additions to the Final Draft Project Agreement except for modifications, changes or additions as provided for in Section 8.2.

2.4 DATA ROOM

BC Hydro has established a website to be used as an electronic data room (the “**Data Room**”) in which it has placed documents in the possession of BC Hydro that BC Hydro has identified as relevant to the Project and to the Project site, and that may be useful to Proponents. BC Hydro does not make any representation as to the relevance, accuracy or completeness of any of the information available in the Data Room except as BC Hydro may advise in writing with respect to a specific document. BC Hydro will grant Proponents access to the Data Room and will require Proponents to execute an agreement to keep information contained in the Data Room confidential.

The information in the Data Room may be supplemented with distributions of, or granted access to, hard copy material or with updated additional material for the electronic Data Room from time to time. Although BC Hydro will attempt to notify Proponents of all updates, Proponents are solely responsible for ensuring they check the Data Room frequently for updates and to ensure the information used by the Proponents is the most current, updated information.

2.5 INTERIM FINANCIAL REVIEW ON AFFORDABILITY

It is in the interests of BC Hydro and all Proponents to identify at an early stage of the procurement whether the Project, as defined in this RFP, is affordable within the limits set out in Section 4. Accordingly, as part of the Collaborative Meetings, Proponents and BC Hydro will conduct an interim financial review as follows:

- (a) the purpose of the interim financial review is to give early warning of any difficulty Proponents may have in staying within the affordability ceiling (“**Affordability Ceiling**”), and to permit BC Hydro and the Proponents to consider and implement steps so that the competitive selection process (“**Competitive Selection Process**”) can proceed with confidence that Proposals will be within the Affordability Ceiling;
- (b) at least 5 days prior to the interim financial Collaborative Meeting, each Proponent should submit to BC Hydro its best estimate of the anticipated Proposal Net Present Cost using the Affordability

Model as described in Section 4.2 based upon its expected funding terms, and a summary of the proposed financing plan (the “**Financing Plan**”) containing the high level aspects of information contemplated in Section 4.6.1 of Appendix B. While not prescribing the form of the submission, BC Hydro is expecting it to be no more than 10 pages in length and to include cost and input assumptions in sufficient detail to allow BC Hydro to understand the Proponent’s cost base (with at least all major cost headings included) and financing structure. Each Proponent should also submit its draft Base Rate(s) and Credit Spread Benchmark Submissions;

- (c) BC Hydro will retain each of the interim financial submissions as strictly confidential, and will invite each Proponent, as part of the interim financial Collaborative Meeting, to discuss any aspect of its submission, including any recommendations for amendment of the Project requirements if a Proponent determines that the Project as described in this RFP and the Initial Draft Project Agreement will exceed the Affordability Ceiling; and
- (d) unless expressly referred to or included by reference in its Proposal, a Proponent’s interim financial submission will not be considered part of its Proposal and BC Hydro will not consider or evaluate it as to adequacy, quality, content or otherwise.

BC Hydro understands that the values indicated in a Proponent’s interim financial submission are not a commitment and that all aspects of the submission could change in the final Proposal.

3 SCOPE OF WORK AND PROJECT AGREEMENT HIGHLIGHTS

The Initial Draft Project Agreement will contain, among other things, the technical requirements and specifications for the Project and commercial terms, including with respect to the design, construction, partial financing, services, and end-of-term requirements, as well as the allocation of risks as between Project Co (the “**Project Co**”) and BC Hydro. Prior to the replacement facility becoming fully operational, Project Co’s undertaking of the Project shall be in consideration of the continued operation of the Existing Facility by BC Hydro.

Any description or overview of the Initial Draft Project Agreement or Final Draft Project Agreement in this RFP is provided for convenience only and does not replace, supersede, supplement or alter the Initial Draft Project Agreement or Final Draft Project Agreement. If there are any inconsistencies between the terms of the Initial Draft Project Agreement or Final Draft Project Agreement and the description or overview of those terms set out in this RFP, the terms of the Initial Draft Project Agreement or Final Draft Project Agreement, as applicable, will prevail.

3.1 BC HYDRO WORKS

BC Hydro anticipates undertaking minor work on site (“**BC Hydro Works**”) prior to Financial Close. The scope of this work is currently under review.

It is anticipated that the BC Hydro Works will include but is not limited to the following:

3.1.1 Parking and Pedestrian Bridge

BC Hydro anticipates building a 75-car parking lot with pedestrian bridge across the wood stave penstocks to allow public access to Elk Falls Provincial Park. It is anticipated that this work will allow for continued park access while Brewster Lake Road access to the Park is closed during construction.

3.1.2 Community Site Office

BC Hydro anticipates building a small community communication office in the newly installed Elk Falls Park access parking lot discussed above. The Community Site Office will provide a venue for the public to learn about the Project.

3.1.3 Access Road Improvements

Following approval of the Park Boundary Adjustment, BC Hydro anticipates upgrading access to Elk Falls Park from Highway 28 as well as upgrading the existing access roads through the Park to facilitate construction.

During construction, Project Co will be required to maintain each of the BC Hydro Works described above.

3.2 APPROVALS AND PERMITTING

In accordance with the Project Agreement, Project Co will be responsible for obtaining all permits and approvals required for the design and construction of the Facility, including all permits required under environmental laws, with the exception of those approvals identified below as being obtained by BC Hydro. See Schedules 5, 8 and 10 of the Project Agreement for additional detail on permits and approvals required.

BC Hydro is pursuing the following approvals:

- (a) A Certificate of Public Convenience and Necessity (“**CPCN**”) from the British Columbia Utilities Commission (“**BCUC**”);
- (b) Environmental approval for the Project from Fisheries and Oceans Canada pursuant to the Canadian Environmental Assessment Act (“**CEAA**”);
- (c) An amendment to the Elk Falls Provincial Park boundary, subject to legislative amendment, to facilitate construction access and flexibility in locating certain Project elements; and
- (d) An amended water licence(s) in support of the Project, which provides the framework for the Leave to Commence approval process performed by Project Co for the Project’s construction and alterations to the Dams.

BC Hydro anticipates that these approvals will be obtained prior to Financial Close and has prepared the Initial Draft Project Agreement on this basis.

3.3 DESIGN AND CONSTRUCTION

Project Co will be responsible for all aspects of design and construction in accordance with the Project Agreement, including Schedules 5 and 6 of the Project Agreement.

BC Hydro has completed a reference concept, which does not fully reflect the requirements described within the Project Agreement, but was used for the preparation of a project budget, the CEAA environmental application, and advance site preparation. The reference concept has been uploaded to the Data Room. Any use by Proponents of any or all aspects of the reference concept shall be entirely at the Proponent’s own risk.

At a high-level, Project Co will be responsible for:

- (a) Obtaining necessary permits, approvals and authorizations, including those required pursuant to applicable federal and provincial regulatory requirements and legislation and excluding only those approvals obtained by BC Hydro as referenced in Section 3.2 above and in the Project Agreement;

- (b) Site preparation, including road and other civil works required to accommodate the Project;
- (c) All design and construction obligations according to the requirements outlined in the Project Agreement;
- (d) Integration of the Project with existing infrastructure as required;
- (e) The provision of utilities and other site services;
- (f) Testing and commissioning of the Project;
- (g) Substantial completion of the Project by the Target Service Commencement Date; and
- (h) Decommissioning and disposal of facilities and assets no longer required by BC Hydro.

3.3.1 BC Hydro Directed Works – Grouting and Concrete Liner

In the course of the construction of the Tunnel Work, BC Hydro may direct Project Co to perform specific work associated with protecting the tunnel sections under the Middle Earth Dam (“**MED**”) and in the vicinity of Elk Falls Canyon (“**EFC**”) to prevent excessive groundwater inflow, or inflow with excessive sediment, to negate exfiltration that may cause destabilization in these areas. Such work will be at BC Hydro’s discretion and includes additional concrete liner (“**BC Hydro Directed Works**”) in the tunnel and as described in Schedule 6 of the Project Agreement.

To account for the cost of the BC Hydro Directed Works in its Proposal and its Proposal Net Present Cost, each Proponent will include an amount in the form of a provisional sum for a provisional quantity of concrete liner, in accordance with Appendix B of this RFP, for work under the MED and EFC. BC Hydro may, at its discretion, direct Project Co to perform some, none, or all of the BC Hydro Works.

For any BC Hydro Directed Works, Project Co will retain the responsibility for the performance of the Tunnel Work in accordance with the Project Agreement, including performance associated with tunnel conductivity and the Performance Guarantees.

3.3.2 Existing Facility

The existing John Hart Generating Station contains a number of components that will or may require modification to or interface with in order to complete the Project. BC Hydro has undertaken investigations of some of these components and made the results of such investigations available in the Data Room.

3.3.3 Brewster Bridge

The existing Brewster Lake Bridge will be the responsibility of Project Co during construction and will not meet Project Co’s load requirements for construction activities. Project Co will be required to upgrade or

replace the bridge to perform the construction of the Project. During construction, Brewster Bridge may require closure for an extended period as contemplated in the Project Agreement.

Following construction, Project Co will be required to return Brewster Bridge to service subject to a minimum load rating and service life.

3.3.4 City of Campbell River Drinking Water Supply

The City of Campbell River ("the City") currently draws water for its domestic drinking water supply from each of the three existing steel penstocks at the John Hart Generating Station. Prior to the decommissioning of the existing penstocks a replacement intake and connection to the City's existing drinking water infrastructure will be required. BC Hydro and the City are discussing relocation options for the City's intake. Additional details will be provided during the Competitive Selection Process.

3.3.5 Design and Construction Activity Considerations

Provided Project Co does not require its demolition to complete the Project, BC Hydro will consider requests from the Proponents to use all or part of the existing administration building during construction subject to further discussion on use and hand back condition. Irrespective of any impact to the existing administration building, BC Hydro staff will maintain a presence at John Hart with additional supporting maintenance personnel providing support to the Existing Facilities as required.

Project Co will be responsible for designing and constructing the Project adjacent to a sensitive fishery and within a Class A park Provincial Park. As a result, the design and construction activities of the Project will require consideration of both fish flow requirements of the Campbell River and worker and public safety in and around the Campbell River and Elk Falls Park.

The John Hart dams are provincially classified as Extreme Consequence, therefore design and construction activities of the Project will require consideration of dam safety. The alterations of the dams required for the Project will be Project Co's responsibility, managed through the Leave to Commence process of the amended water licence.

3.4 PERFORMANCE GUARANTEES

Project Co will be required to provide Performance Guarantees, as described in this RFP and the Project Agreement, including Schedule 6 and 13 of the Project Agreement.

The intent of the Performance Guarantees mechanism is twofold:

- (a) To give credit in the RFP evaluation for designs that deliver enhanced performance; and
- (b) To hold the successful Proponent, who becomes Project Co, accountable for achieving the level of performance proposed.

3.4.1 Performance Guarantees

BC Hydro requires both water-to-wire energy conversion efficiency as well as dependable capacity. The independent performance of each of the major sub-components (specifically the turbine, generator and tunnel) is also important. The Performance Guarantees for the Project consist of the following:

- (a) Plant Capacity Guarantee;
- (b) Plant Energy Guarantee;
- (c) Common Conduit Head Loss Guarantee;
- (d) Turbine Model Efficiency Guarantee; and
- (e) Generator Efficiency Guarantee.

Appendix A of the RFP describes how the Performance Guarantees will be evaluated and the criteria BC Hydro will use to determine the value of the credit to assign to a Proponent's Proposal. Proponents will be required to propose their Performance Guarantees in accordance with the Technical Submission requirements in Appendix B.

The successful Proponent's proposed performance standards as set out in its Proposal shall establish the basis for Performance Guarantees in the Project Agreement. Actual or achieved performance, determined through the Performance Verification Tests, will be measured against the Performance Guarantees and if the actual or achieved performance is below the Performance Guarantees, a Performance Guarantee Payment may become due and will be calculated in accordance with the provisions of Schedule 13. Actual or achieved Performance that falls below the minimum requirements stated in Schedule 6 will constitute a deficiency that must be remedied by Project Co. Details of the Performance Verification Tests and the calculation of the Performance Guarantee Payment are set out in Schedule 13 of the Project Agreement.

3.5 CONSTRUCTION OUTAGE COST ADJUSTMENT

Construction Outage costs will be determined by taking the Proponent's schedule of construction outages of the existing plant (to the hour) and applying the applicable \$/hr outage cost for the Proponent's schedule – the Proponent's committed Construction Outage costs.

The Proponent's committed Construction Outage costs will be benchmarked as part of Valued Item 3 - see Construction Outage Table B4-4 of Appendix B for instructions regarding the calculation of the Construction Outage Adjustment, which is applied for evaluation scoring purposes only.

The successful Proponent's committed outage schedule will be incorporated into the Project Agreement in accordance with the provisions of Schedule 13 as the free Permissible Existing Unit Planned Outages.

3.6 GEOTECHNICAL AND DIFFERING SITE CONDITIONS

Project Co will be responsible for the interpretation of all geotechnical requirements related to all design and construction obligations, subject to the exclusions described in Sections 3.6.1 and 3.6.4 below.

High-level details of the anticipated approach are described below. Additional details are provided within the Project Agreement, including Schedules 6 and 28.

3.6.1 Subsurface Condition Report

As described in Schedule 6 of the Project Agreement, Project Co will be responsible for all geotechnical risk except for the Tunnel Work where a shared approach shall be used, subject to the Subsurface Risk Adjustment Valued Item described in Appendix A. Schedule 28, which is only applicable to the Tunnel Work, describes the subsurface conditions that Project Co can rely upon for contractual purposes. A draft Subsurface Condition Report (“**Subsurface Condition Report**”) will be provided by BC Hydro which is Disclosed Data.

3.6.2 Differing Site Condition

If ground conditions are encountered by Project Co, which are determined to be different than those defined in Schedule 28, then such an occurrence will be deemed to be a Differing Site Condition Event whereby BC Hydro will compensate Project Co for additional costs in accordance with the Project Agreement and Schedule 28.

As described in the Project Agreement, losses associated with schedule delays due to a Differing Site Condition Event(s) will not be compensable unless in aggregate the schedule delays exceed eight months.

3.6.3 Transfer of all Geotechnical Risk to Project Co

Proponents have the option to accept all risk associated with the Tunnel Work, other than any Disclosed Data on which Project Co is specifically able to rely, via the Optional Valued Item described in Appendix A. In doing so, Schedule 28 would be deleted from the Project Agreement.

3.6.4 Other Geotechnical Risks

The risks associated with geotechnical conditions in other areas of the Project, including the new intake, the low level outlet, the upstream downshaft, the tunnel portal, the powerhouse and the balance of the site, are the responsibility of Project Co. Reliance may be placed only on specific data identified as such and provided by BC Hydro in the Data Room.

3.6.5 Proponent Requested Borings

Proponents will be afforded the opportunity during the RFP phase to request additional borings, as described below:

- (a) Each Proponent may request up to two additional borings, with a combined depth of no more than 100 metres. Proponents must inform BC Hydro of their proposed boring locations;
- (b) The proposed drilling locations must be on BC Hydro property, readily accessible and must not require special permits or consultation. The borings may be within or outside of the area covered by the Subsurface Condition Report. BC Hydro will cause to be performed the drilling, supervision, laboratory analysis and data report writing;
- (c) BC Hydro reserves the right, in its discretion, to consider the value of the additionally requested borings and only carry out only those borings BC Hydro deems to be of value to the Project;
- (d) BC Hydro will provide all Proponents with access to all the data resulting from the borings, whether the data is specific to one or more Proponent's requested borings or not, simultaneously. BC Hydro may update the initial draft Subsurface Condition Report (if necessary) based on new information obtained from the borings; and
- (e) BC Hydro will pay for the cost of the borings, analysis, and report writing it chooses to carry out.

The anticipated schedule for the Proponent requested borings is as follows:

Task	Schedule
Proponents request borings	July 20, 2012
Subsurface Condition Report amended and issued to Proponents (if necessary)	November 2, 2012

3.7 QUALITY MANAGEMENT

Project Co will be required to develop, implement, and maintain a Quality Management System in accordance with Schedule 9 of the Project Agreement. The Quality Management System shall be certified as compliant with the ISO 9001:2008 Standard. Project Co will undertake internal and external quality audits of the Quality Management System throughout the term as required under the Project Agreement.

3.8 ENVIRONMENTAL MANAGEMENT

Project Co will be responsible to manage disclosed contamination and hazardous substances in accordance with the requirements of the Project Agreement, including environmental management and sustainability requirements, as described in Schedule 8 of the Project Agreement. Among other requirements, Project Co will be responsible for:

- (a) Developing and complying with an environmental management plan;
- (b) Supporting BC Hydro in its consultation with First Nations in regard to Project Co's environmental management plan;
- (c) Complying with commitments and conditions pursuant to the CEAA approval; and
- (d) Remedying identified/existing contamination and hazardous substances to stipulated standards.

Changes to Federal environmental legislation underway may lead to changes in the nature of the requirements for CEAA approval for the Project but are not expected to materially alter Project Co's responsibilities regarding environmental management, approvals, and permitting.

3.9 LANDS

Ownership of the Project related lands and facility will at all times be held by BC Hydro. Project Co's rights with respect to the Project lands are set out in Schedule 10 of the Project Agreement.

BC Hydro is pursuing a Park Boundary Adjustment and other miscellaneous land interests to facilitate the construction of the replacement powerhouse, tailrace and access roads. Details of the requested boundary adjustment are described in the Park Boundary Adjustment application, provided in the Data Room.

3.10 SERVICES

Project Co will be required to carry out the maintenance and rehabilitation of the Facility in accordance with the Project Agreement, including Schedule 7 of the Project Agreement. Among other requirements, Project Co will be responsible to:

- (a) Create the program for all required maintenance including, but not limited to, routine, planned, and corrective maintenance;
- (b) Direct, oversee, and ensure quality control in respect of BC Hydro's implementation of routine maintenance or any other maintenance within the capacity and expertise of BC Hydro personnel;
- (c) Implement any maintenance required that exceeds either the maximum number of maintenance hours provided annually by BC Hydro or the capacity or expertise of BC Hydro personnel; and
- (d) Analyse and determine the origin of any unplanned interruption in Facility availability (e.g. a forced outage) and direct BC Hydro as to the appropriate course of action to return the plant to service.

BC Hydro will be responsible to:

- (e) Plan and dispatch the generation operations of the Facility;

- (f) Supply personnel for the implementation of Project Co's maintenance program to a maximum number of hours annually;
- (g) Supply personnel for the performance of equipment isolation as necessary;
- (h) Supply personnel in response to any unplanned interruption in plant availability;
- (i) Provide initial response and make the plant safe as BC Hydro deems appropriate;
- (j) Supply personnel for the implementation of Project Co's recommended course of action to return the plant to service; and
- (k) Return the plant to service as required.

Schedule 7 of the Project Agreement details the roles and responsibilities of each party with respect to the Services.

3.10.1 BC Hydro Labour Pool

As described in Schedule 7 of the Project Agreement, BC Hydro will supply and schedule personnel, subject to certain requirements and conditions, to perform maintenance in accordance with the Maintenance Plan and schedule prepared by Project Co. The BC Hydro personnel will be available to implement Project Co's Planned Maintenance program to a set aggregate threshold of available hours. The BC Hydro Labour Pool in Schedule 7 of the Project Agreement describes the annual hour allocation for various BC Hydro personnel.

3.11 FIRST NATIONS

Project Co will be required to deliver the First Nations obligations as described in the Project Agreement, including Schedule 8 and 24 of the Project Agreement. Among other requirements, Project Co will be responsible for:

- (a) Supporting BC Hydro in the First Nations consultation activities;
- (b) Procuring specific services from First Nations contractors;
- (c) Identifying additional opportunities for First Nation participation in the Project; and
- (d) Adhering generally to BC Hydro policy on First Nation procurement opportunities.

3.12 SAFETY AND SECURITY

Project Co will be responsible to develop and execute plans that support and comply with BC Hydro's requirements regarding safety and security, as described in the Project Agreement, including Schedule 12 of the Project Agreement.

Project Co will be responsible for:

- (a) Safety and security during construction;
- (b) Providing permanent physical security requirements for the Facility
- (c) Complying with BC Hydro site safety and security requirements;
- (d) Ensuring all personnel engaged in security sensitive work are cleared by a background check in accordance with Schedule 12 of the Project Agreement; and
- (e) Developing and implementing Project safety and security plans.

3.13 PUBLIC USE AND SAFETY

As described in the Project Agreement, including Schedule 23 of the Project Agreement, Project Co will be responsible for:

- (a) Developing and implementing the public safety management plans during both the construction phase and the operations phase to ensure safety to the public in its access to and use of property areas cutting through and adjacent to the Project work site; and
- (b) Developing and implementing a traffic management plan.

3.14 COMMUNICATION AND CONSULTATION

An extensive public, community and stakeholder communications and consultation program has been developed for the Project. This program has provided, and will continue to provide, opportunities for stakeholders and members of the public to learn about the Project and provide input.

As described in Schedule 11 of the Project Agreement, BC Hydro will lead all community relations, public consultation, media relations and crisis communications programs for the Project, while Project Co will be required to provide support in these activities.

3.15 FINANCING

Project Co will be required to provide partial financing for the design and construction of the new Project Infrastructure and for the rehabilitation of specific components of the current infrastructure. Project Co will recover its financing costs through progress payments during construction, a decommissioning payment, and a regular availability payment over the term of the Project Agreement. Section 4 of the RFP details the Project's funding requirement.

4 AFFORDABILITY

A key objective of the Competitive Selection Process is to minimize the Project cost while still meeting the requirements of the Project Agreement.

4.1 AFFORDABILITY CEILING

BC Hydro has identified a mandatory Affordability Ceiling for the Project of \$520.6 million, being the net present cost of the:

- Progress Payments during construction;
- Decommissioning Payment; and
- Availability Payments following service commencement.

Project approvals by BC Hydro have been based on this Affordability Ceiling.

To determine the Affordability Ceiling, BC Hydro and its advisors developed a shadow bid financial model to estimate the Availability Payments for the minimum acceptable scope which meets the requirements of the Initial Draft Project Agreement and the performance specifications. The model assumes no deductions from the Availability Payments and a funding structure and financing terms representative of the likely market for funding based on current markets and where the markets are estimated to be when the Project reaches financial close (“**Financial Close**”).

4.2 AFFORDABILITY MODEL

BC Hydro has developed a financial model (the “**Affordability Model**”) to determine the Proposal Net Present Cost to BC Hydro of the Project. The Affordability Model discounts the cash flows to July 1, 2013 at a discount rate of 7.5%.

Each Proponent is required to calculate the Proposal Net Present Cost as calculated using the Affordability Model provided by BC Hydro. The Affordability Model is available in the Data Room as “AffordabilityModel.xls”, and is to be completed by linking to the appropriate outputs from the Proponent’s Financial Model (the “**Financial Model**”). BC Hydro reserves the right to recalculate or make such adjustments to the Affordability Model as may be required by BC Hydro in its analysis.

4.3 PROVINCIAL SALES TAX

Proponents should prepare all proposals and submissions on the basis of a full reversion to the PST regime as it existed prior to the introduction of the current HST regime. As specific details of the proposed transition back to PST become clear (currently anticipated in Spring 2013), the Proponent may be provided with further instructions in the form of Addenda to this RFP.

5 PROPOSAL REQUIREMENTS

5.1 PARTICIPATION AGREEMENT

As a condition of participating in this RFP each Proponent and each of its equity members (the “**Equity Members**”) must sign and deliver to the Contact Person a participation agreement (the “**Participation Agreement**”), substantially in the form attached as Appendix F or otherwise acceptable to BC Hydro in its discretion. Proponents will not be provided with access to the Data Room (including the Initial Draft Project Agreement), be invited to participate in Collaborative Meetings or participate further in the Competitive Selection Process unless and until they have signed and delivered a Participation Agreement as required by this Section.

5.2 PROPOSAL FORM AND CONTENT

Proposals should be in the form and include the content described in Appendix B. Each Proponent will be entitled to submit a maximum of one technical submission (the “**Technical Submission**”) and, if invited to do so, one financial submission (the “**Financial Submission**”).

5.3 FINANCING PLAN

Proponents should include, in their Financial Submission, a Financing Plan as contemplated in Section 4.6.1 of Appendix B.

In its Financing Plan, each Proponent should advise BC Hydro in writing:

- (a) which form(s) of lending facility, if any, for which it will hold credit spreads (the “**Credit Spread**”) from Financial Submission to Financial Close (the “**Credit Spread Hold Facilities**”); and
- (b) which form(s) of lending facility, if any, in respect of which the Credit Spread will be determined on the credit spread refresh lock-in date (the “**Credit Spread Refresh Lock-in Date**”). For a Credit Spread Refresh Facility (the “**Credit Spread Refresh Facility**”), the credit spread on the facility will be reset on the Credit Spread Refresh Lock-in Date to reflect the movement in the credit spread benchmark (the “**Credit Spread Benchmark**”) as defined in Section 5.4.

5.4 CREDIT SPREAD BENCHMARKS

If a Proponent wishes to designate some or all of its lending facilities as Credit Spread Refresh Facilities, the Proponent should, at or before the Submission Time for Base Rate(s) and Credit Spread Benchmarks (the “**Submission Time for Base Rate(s) and Credit Spread Benchmarks**”), make a Credit Spread Benchmark submission to BC Hydro as described in Appendix K.

Within 5 Business Days after such submission, BC Hydro will advise each Proponent whether, in BC Hydro's sole discretion, the Proponent's proposed Credit Spread Benchmark is satisfactory. If BC Hydro advises a Proponent, with particulars, that its proposed Credit Spread Benchmark is unsatisfactory, the Proponent should within 5 Business Days of receiving such advice, submit a revised Credit Spread Benchmark submission that addresses BC Hydro's concerns and BC Hydro will advise the Proponent within a further 3 Business Days whether the revised Credit Spread Benchmark submission is acceptable. The process will be repeated until an acceptable Credit Spread Benchmark is provided.

The Credit Spread Benchmark submission, as revised if applicable, will be deemed to be a part of the Proponent's Financial Submission for evaluation purposes.

5.5 BASE RATE FLUCTUATION RISK

BC Hydro assumes the risk of fluctuations in the base rate (the "**Base Rate**") for:

- (a) senior debt financing facilities (and not for subordinated debt, or equity) up to Financial Close, as set out in this Section, subject to BC Hydro's rights under this RFP, including Sections 8.7 and 10.1; and
- (b) reinvestment products associated with senior debt facilities during construction, if applicable (and not for working capital or reserve accounts), up to Financial Close, as set out in this Section 5.5, subject to BC Hydro's rights under this RFP, including Sections 8.7 and 10.1.

At Financial Close, the Availability Payments will be set to reflect the Base Rate for senior debt financing agreements and any reinvestment products (if applicable) determined as at Financial Close.

If a Proponent's Financing Plan contains several senior finance facilities, each having a different Base Rate, the Availability Payment adjustment will take into account fluctuations (positive or negative, as the case may be) in the Base Rate for each senior finance facility.

5.6 BASE RATE BENCHMARKS

At or before the Submission Time for Base Rate(s) and Credit Spread Benchmarks, Proponents should identify the benchmark securities and other information, from the list provided by BC Hydro in accordance with Appendix K that it will propose to use in its Financial Submission. Requirements of this submission are described in Appendix K.

With the exception of the potential switches described in Appendix K, no changes to a Proponent's selected benchmark securities and other information used to build the Base Rate(s) will be permitted after the Submission Time for Base Rate(s) and Credit Spread Benchmarks.

Based on the information provided by the Proponent at or before the Submission Time for Base Rate(s) and Credit Spread Benchmarks, BC Hydro will confirm within approximately 5 Business Days the Base Rate(s) that the Proponent should use in preparation of its Financial Submission. BC Hydro will verify the respective Base Rate(s) to each Proponent independently and such information will not be provided to other Proponents. These Base Rate(s) will be updated and provided to Proponents for use in their Financial Submission as described in Appendix K.

6 SUBMISSION INSTRUCTIONS

6.1 SUBMISSION TIMES AND SUBMISSION LOCATION

With respect to the delivery of Proposals:

- (a) **Technical Submission:** Proponents must submit the technical portion of the Proposal to the Submission Location (“**Submission Location**”) by the Submission Time for Technical Submissions. The Technical Submission should be made up of the following:
 - (1) the cover letter (and all attachments) to the Technical Submission as described in the Technical Submission Section of Appendix B; and
 - (2) the portion of the proposal requirements (the “**Proposal Requirements**”) described in the Technical Submission Section of Appendix B.
- (b) **Financial Submission:** If invited to do so pursuant to Section 7.1, Proponents must submit the financial portion of the Proposal to the Submission Location by the Submission Time for Financial Submissions. The Financial Submission should be made up of the following:
 - (1) a completed Proposal Declaration Form in the form attached as Appendix C;
 - (2) the cover letter (and all attachments) to the Financial Submission as described in the Financial Submission Section of Appendix B;
 - (3) one or more commitment letters, substantially in the form of Appendix G, which for Credit Spread Hold Facilities should include confirmation of the Credit Spread that will be applicable to such facility until Financial Close;
 - (4) the portion of the Proposal Requirements described in the Financial Submission Section of Appendix B;
 - (5) the completed pricing forms (the “**Pricing Forms**”) as described in Appendix B; and
 - (6) an independent Financial Model audit, for the benefit of, and reliance of, BC Hydro.

6.2 NUMBER OF COPIES

For each of its Technical Submission and Financial Submission, a Proponent should submit six hard copies (five bound copies numbered 1 through 5; plus one unbound copy marked as “Master”) and one electronic copy (USB flash drive, with a label on each describing its contents) appropriately packaged and clearly marked “Request for Proposals for John Hart Generating Station Replacement Project, RFP # EC12-1164”, except the Financial Model should be submitted in electronic (USB flash drive) form only.

6.3 NO FAX OR EMAIL SUBMISSION

Proposals submitted by fax or email will not be accepted.

6.4 LANGUAGE OF PROPOSALS

Proposals should be in English. Any portion of a Proposal not in English may not be evaluated.

6.5 RECEIPT OF COMPLETE RFP

Proponents are responsible to ensure that they have received the complete RFP, as listed in the table of contents of this RFP, plus any Addenda. A submitted Proposal will be deemed to have been prepared on the basis of the entire RFP issued prior to the Submission Time for Technical Submissions. BC Hydro accepts no responsibility for any Proponent lacking any portion of this RFP.

6.6 ENQUIRIES

All Enquiries regarding any aspect of this RFP should be directed to the Contact Person by email, and the following applies to any Enquiry:

- (a) responses to an Enquiry will be in writing;
- (b) all Enquiries, and all responses to Enquiries from the Contact Person, will be recorded by BC Hydro;
- (c) BC Hydro is not required to provide a response to any Enquiry;
- (d) a Proponent may request that a response to an Enquiry be kept confidential by clearly marking the Enquiry "Commercial in Confidence" if the Proponent considers that the Enquiry is commercially confidential to the Proponent;
- (e) if BC Hydro decides that an Enquiry marked "Commercial in Confidence", or BC Hydro's response to such an Enquiry, must be distributed to all Proponents, then BC Hydro will permit the enquirer to withdraw the Enquiry rather than receive a response and if the Proponent does not withdraw the Enquiry, then BC Hydro may provide its response to all Proponents;
- (f) notwithstanding Sections 6.6 (d) and 6.6 (e):
 - (1) if one or more other Proponents submits an Enquiry on the same or similar topic to an Enquiry previously submitted by another Proponent as "Commercial in Confidence", BC Hydro may provide a response to such Enquiry to all Proponents; and

- (2) if BC Hydro determines there is any matter which should be brought to the attention of all Proponents, whether or not such matter was the subject of an Enquiry, including an Enquiry marked “Commercial in Confidence”, BC Hydro may, in its discretion, distribute the Enquiry, response or information with respect to such matter to all Proponents.

Information offered from sources other than the Contact Person with regard to this RFP is not official, may be inaccurate, and should not be relied on in any way, by any person for any purpose.

6.7 ELECTRONIC COMMUNICATION

Proponents should not communicate with the Contact Person by fax. The Contact Person will not respond to any communications sent by fax.

The following provisions will apply to any email communications with the Contact Person, or the delivery of documents to the Contact Person by email where such email communications or deliveries are permitted by the terms of this RFP:

- (a) BC Hydro does not assume any risk or responsibility or liability whatsoever to any Proponent:
 - (1) for ensuring that any electronic email system being operated for BC Hydro or Partnerships BC (“**Partnerships BC**”) is in good working order, able to receive transmissions, or not engaged in receiving other transmissions such that a Proponent’s transmission cannot be received; or
 - (2) if a permitted email communication or delivery is not received by BC Hydro or Partnerships BC, or received in less than its entirety, within any time limit specified by this RFP; and
- (b) all permitted email communications with, or delivery of documents by email to, the Contact Person will be deemed as having been received by the Contact Person on the dates and times indicated on the Contact Person’s electronic equipment.

6.8 ADDENDA

BC Hydro may, in its sole and absolute discretion through the Contact Person, modify the Competitive Selection Process, including amend this RFP, at any time by issuing a written Addendum. Written Addenda are the only means of amending or clarifying this RFP, and no other form of communication whether written or oral, including written responses to Enquiries as provided by Section 6.6, will be included in, or in any way amend, this RFP. Only the Contact Person is authorized to amend or clarify this RFP by issuing an Addendum. No other employee or agent of BC Hydro is authorized to amend or clarify this RFP. BC Hydro will provide a copy of all Addenda to all Proponents.

6.9 INTELLECTUAL PROPERTY RIGHTS

(a) Grant of Licence

Subject to Section 6.9 (b), by submitting a Proposal, each Proponent will, and will be deemed to have:

- (1) granted to BC Hydro a royalty-free licence without restriction to use for this Project any and all of the information, ideas, concepts, products, alternatives, processes, recommendations, suggestions and other intellectual property or trade secrets (collectively the “**Intellectual Property Rights**”) contained in the Proponent’s Proposal, or that are otherwise disclosed by the Proponent to BC Hydro; and
- (2) waived or obtained a waiver of all moral rights contained in the Proposal.

Proponents will not be responsible or liable for any use by BC Hydro or any sub-licensee or assignee of BC Hydro of any Intellectual Property Rights contained in a Proposal.

(b) Exceptions to Licence

The licence granted under Section 6.9 (a) does not extend to third party intellectual property rights (“**Third Party Intellectual Property Rights**”) to non-specialized third-party technology and software that are generally commercially available. By submitting a Proposal, each Proponent represents to BC Hydro that it owns or has, and will continue to own or have at the Submission Time for Technical Submissions, all necessary rights to all Third Party Intellectual Property Rights contained in its Proposal or otherwise disclosed by the Proponent to BC Hydro and, subject to the foregoing exceptions, has the right to grant a licence of such Third Party Intellectual Property Rights in accordance with Section 6.9 (a).

6.10 DEFINITIVE RECORD

The electronic conformed version of the RFP in the custody and control of BC Hydro prevails.

6.11 AMENDMENTS TO PROPOSALS

A Proponent may:

- (a) amend any aspect of its Technical Submission by delivering written notice, or written amendments, to the Submission Location prior to the Submission Time for Technical Submissions;

- (b) amend any aspect of its Financial Submission by delivering written notice, or written amendments, to the Submission Location prior to the Submission Time for Financial Submissions; and
- (c) in its Financial Submission, amend its Technical Submission as contemplated in Section 6.1 (b).

A Proponent may not amend any aspect of its Proposal except as set out above.

6.12 CHANGES TO PROPONENT TEAMS

If for any reason a Proponent wishes or requires to change a member of its Proponent Team after it was shortlisted by BC Hydro under the RFQ, or to remove a member of its team, or to include new members on its team, or there is a material change in ownership or control of the Proponent Team or a team member, or changes to the legal relationship between the Proponent or individual team members, then the Proponent must submit a written application to BC Hydro for approval, including supporting information that may assist BC Hydro in evaluating the change. BC Hydro, in its sole and absolute discretion, may grant or refuse an application under this Section, and in exercising its discretion BC Hydro will consider the objective of achieving a competitive procurement process that is not unfair to the other Proponents. For clarity:

- (a) BC Hydro may refuse to permit a change to the Proponent Team if the change would, in the BC Hydro's judgment, result in a weaker team than the Proponent Team originally shortlisted; or
- (b) BC Hydro may, in the exercise of its discretion, permit any changes to a Proponent Team, including changes as may be requested arising from changes in ownership or control of a Proponent or a team member, or changes to the legal relationship between the Proponent or individual team members, such as the creation of a new joint venture or other legal entity or relationship in place of the Proponent Team originally shortlisted.

BC Hydro's approval may include such terms and conditions as BC Hydro may consider appropriate.

At any time prior to the Submission Time for Technical Submissions, BC Hydro may invite a Proponent to consider proposing a change to its Proponent Team if a material adverse development has occurred to a Prime Team Member as contemplated by Section 1.2.

6.13 VALIDITY OF PROPOSALS

By submitting a Proposal, each Proponent agrees that:

- (a) its Proposal, including all prices and input costs (except senior debt margins), will remain fixed and irrevocable from the Submission Time for Financial Submissions until midnight at the end of

the 120th day following the Submission Time for Financial Submissions (the “**Proposal Validity Period**”); and

- (b) after the expiry of the Proposal Validity Period, all prices and input costs (except senior debt margins) in its Proposal may not be adjusted unless the Proponent provides notice to BC Hydro of any proposed adjustment and demonstrates to the satisfaction of BC Hydro that the Proponent has used its best efforts to continue to maintain the prices and input costs firm and valid, but that despite such best efforts, the specified adjustments to the prices and input costs are required solely as a direct result of one or more events that:
- (1) are external to the Proponent and the Proponent Team members;
 - (2) could not have been prevented by, and are beyond the control of, the Proponent and any of its Proponent Team members; and
 - (3) constitute a material adverse change to the conditions underlying the prices and input costs that are subject to the adjustment.

A Proponent may indicate in its Proposal a Proposal Validity Period that exceeds 120 days.

6.14 MATERIAL CHANGE BEFORE OR AFTER SUBMISSION TIME FOR FINANCIAL SUBMISSIONS

A Proponent will give immediate notice to BC Hydro of any material change that occurs to a Proponent before or after the Submission Time for Financial Submissions, including a change to its membership or a change to the Proponent’s financial capability or an adverse change or development to a Prime Team Member as contemplated by Section 1.2. As set out in Section 7.3 (b), BC Hydro may make its own enquiries or investigations regarding a Proponent and may determine that a material adverse change or development to a Prime Team Member has occurred which may result in BC Hydro exercising its right:

- (a) to act upon this change or development in inviting the Proponent to make a change in a Proponent Team (Section 6.12); or
- (b) to disqualify the Proponent (Section 7.3(f) or Section 10.6(c)); and/or
- (c) to invite another consortia to participate in the Competitive Selection Process (as per Section 1.2).

7 EVALUATION

7.1 MANDATORY REQUIREMENTS

BC Hydro has determined that the following are the mandatory requirements (the “**Mandatory Requirements**”):

- (a) the Proponent and each of its Equity Members must have signed and delivered to the Contact Person the Participation Agreement in accordance with Section 5.1;
- (b) the Technical Submission must be received at the Submission Location before the Submission Time for Technical Submissions and the Financial Submission must be received at the Submission Location before the Submission Time for Financial Submissions; and
- (c) the Proposal Net Present Cost as at the Submission Time for Financial Submissions must not exceed the Affordability Ceiling.

Subject to Section 7.3, BC Hydro reserves the right to evaluate any Proposal where the Affordability Ceiling requirements have not been met, but will do so only in the event that the Proposals received from all the Proponents do not meet the Affordability Ceiling requirement as per Section 7.1 (c) above.

7.2 MATERIAL COMPLIANCE

In addition to the other evaluation criteria in Appendix A, BC Hydro will review each Technical Submission to determine whether, in BC Hydro’s sole discretion, such Technical Submission fails to meet, to a material extent, an important or essential requirement of the Final Draft Project Agreement (a “**Material Non-Compliance**”). Each Proponent, by submitting its Technical Submission, recognizes that the nature of the Competitive Selection Process and the process under the Project Agreement when awarded, are such that the Technical Submission is only indicative of the Proponent’s interpretation at the Submission Time for Technical Submissions of how the Proponent proposes to meet the requirements of the Final Draft Project Agreement and that the Technical Submission will not relieve the successful Proponent from meeting the requirements of the Final Draft Project Agreement.

BC Hydro will, in its sole discretion, provide one of the following responses to each Technical Submission:

- (a) an invitation to provide a Financial Submission;
- (b) a list of items that, in BC Hydro’s sole discretion, appear to be Material Non-Compliances, together with an invitation to provide a Financial Submission on the condition that the Proponent agrees in writing prior to the Submission Time for Financial Submissions that, if selected, the Proponent will address all Material Non-Compliances, whether listed or not, such that the Proponent will meet all of the requirements of the Final Draft Project Agreement. A Proponent

receiving such list and invitation will not be required to revise or resubmit the Technical Submission and BC Hydro will not review any resubmission; or

- (c) a letter advising the Proponent that it will not be invited to provide a Financial Submission.

BC Hydro is not responsible for identifying all Material Non-Compliances, and irrespective of whether BC Hydro has identified or has failed to identify a Material Non-Compliance, a Proponent is not relieved in any way from meeting the requirements of this RFP.

7.3 EVALUATION OF PROPOSALS

BC Hydro will evaluate Proposals in the manner set out in Appendix A.

BC Hydro may, in its sole discretion, take any one or more of the following steps, at any time and from time to time, in connection with the review and evaluation, including ranking, of any aspect of a Proposal, including if BC Hydro considers that any Proposal, including the Technical Submission or the Financial Submission, or any part of a Proposal, requires clarification or more complete information, contains defects, alterations, qualifications, omissions, inaccuracies or misstatements, or does not for any reason whatsoever satisfy any requirements of this RFP at any time, or for any other reason BC Hydro in its discretion deems appropriate and in the interests of BC Hydro and this RFP and Competitive Selection Process, or any of them:

- (a) waive any such defect, ambiguity, alteration, qualification, omission, inaccuracy, misstatement or failure to satisfy, and any resulting ineligibility on the part of the Proponent, or any member of the Proponent Team;
- (b) independently consider, investigate, research, analyze, request or verify any information or documentation whether or not contained in any Proposal;
- (c) request interviews or presentations with any, all or none of the Proponents to clarify any questions or considerations based on the information included in Proposals during the evaluation process, with such interviews or presentations conducted in the discretion of BC Hydro, including the time, location, length and agenda for such interviews or presentations;
- (d) conduct reference checks relevant to the Project with any or all of the references cited in a Proposal and any other persons (including persons other than those listed by Proponents in any part of their Proposals) to verify any and all information regarding a Proponent, inclusive of its directors/officers and key individuals (the “**Key Individuals**”), and to conduct any background investigations that it considers necessary in the course of the Competitive Selection Process, and rely on and consider any relevant information from such cited references in the evaluation of Proposals;

- (e) conduct credit, criminal record, litigation, bankruptcy, taxpayer information and other checks;
- (f) not proceed to review and evaluate, or discontinue the evaluation of any Proposals, including any Technical Submission or Financial Submission, and disqualify the Proponent from this RFP; and
- (g) seek clarification or invite more complete, supplementary, replacement or additional information or documentation from any Proponent or in connection with any Proposal, including with any Technical Submission or Financial Submission or any part of their component packages.

Without limiting the foregoing, BC Hydro may in its discretion, decline to review, evaluate or rank, or may reject outright any Proposal which in the opinion of BC Hydro is materially incomplete or irregular, which contains omissions, exceptions or variations not acceptable to, or material to, BC Hydro, which contains any false or misleading statements, claims (“**Claims**”) or information, or for which background investigations reveal any false statements or criminal affiliations or activities by a Proponent or Proponent Team member.

To enable BC Hydro to take any one or more of the above-listed steps, BC Hydro may enter into separate and confidential communications of any kind whatsoever, with any person, including any Proponent. BC Hydro has no obligation whatsoever to take the same steps, or to enter into the same or any communications in respect of all Proponents and Proposals, or in respect of any Proponent, including the Proponent whose Proposal is the subject of the review or evaluation, as the case may be.

The review and evaluation, including the ranking, of any Proposal may rely on, take into account and include any information and documentation, including any clarification, more complete, supplementary and additional or replacement information or documentation, including information and documentation obtained through any of the above-listed investigations, research, analyses, checks, and verifications.

Proponents will not submit any clarifications, information or documentation in respect of the Technical Submission after the Submission Time for Technical Submissions and in respect of the Financial Submission after the Submission Time for Financial Submissions, without the prior written approval of BC Hydro or without an invitation or request by BC Hydro.

If any information, including information as to experience or capacity, contained in a Proposal is not verified to BC Hydro’s satisfaction, BC Hydro may, in its discretion, not consider such cited experience, capacity or other information.

BC Hydro is not bound by industry custom or practice in taking any of the steps listed above, in exercising any of its discretions, in formulating its opinions and considerations, exercising its discretions in making any decisions and determinations, or in discharging its functions under or in connection with this RFP, or in connection with any Proponent, Proposal, or any part of any Proposal, including any Technical Submission or Financial Submission.

BC Hydro's decision, in its discretion, as to whether or not a Technical Submission contains a Material Non-Compliance will be final and BC Hydro need not consult with any Proponent in making its decision.

8 SELECTION OF PREFERRED PROPONENT AND AWARD

8.1 SELECTION AND AWARD

If BC Hydro selects a preferred proponent (the “**Preferred Proponent**”), the Proponent with the lowest Adjusted Proposal Net Present Cost will be selected as the Preferred Proponent, and BC Hydro will invite the Preferred Proponent to enter into final discussions to settle all terms of the Project Agreement, based on the Preferred Proponent’s Proposal, including any clarifications that the Preferred Proponent may have provided during the evaluation of Proposals.

If for any reason BC Hydro determines that it is unlikely to reach final agreement with the Preferred Proponent, then BC Hydro may terminate the discussions with the Preferred Proponent and proceed in any manner that BC Hydro may decide, in consideration of its own best interests, including:

- (a) terminating the procurement process entirely and proceeding with some or all of the Project in some other manner, including using other contractors; or
- (b) inviting one of the other Proponents to enter into discussions to reach final agreement for completing the Project.

Any final approvals required by BC Hydro, such as from the BC Hydro Board of Directors and the BCUC will be conditions precedent to the final execution or commencement of the Project Agreement.

8.2 FINAL DRAFT PROJECT AGREEMENT

It is the intention of BC Hydro that:

- (a) any issues with respect to the Project Agreement will be discussed during the Collaborative Meetings and fully considered prior to issuance of the Final Draft Project Agreement; and
- (b) once issued, the Final Draft Project Agreement will not be further substantively modified and will be executed by the Preferred Proponent without further substantive amendment, except for changes, modifications and additions:
 - (1) relating to the determination by BC Hydro, in its discretion, of which:
 - i. parts, if any, of the Proposal are to be incorporated by reference or otherwise, into the Project Agreement or otherwise pursuant to express provisions of the Project Agreement.
 - (2) to those provisions or parts of the Final Draft Project Agreement that are indicated as being subject to completion or finalization, or which BC Hydro determines in its discretion require completion or finalization, including provisions that require:

- i. modification or the insertion or addition of information relating to the Proponent's formation (e.g., corporate, partnership or trust structure) and funding structure; and
 - ii. modification or the insertion or addition of information in order to reflect accurately the nature of the Proponent's relationships with its principal subcontractors (including each of the project contractors);
- (3) required by BC Hydro to complete, based on the Proposal, any provision of the Final Draft Project Agreement, including changes, modifications and additions contemplated in or required under the terms of the Final Draft Project Agreement;
 - (4) that are necessary to create or provide for a legally complete, enforceable and binding agreement;
 - (5) that enhance clarity in legal drafting; or
 - (6) that may be required as a consequence of Changed Funding Arrangements.

BC Hydro also reserves the right in its discretion to negotiate changes to the Final Draft Project Agreement and to the Preferred Proponent's Proposal.

Upon Financial Close, the Project Agreement, and the instruments and documents to be executed and delivered pursuant to it, supersede (except as expressly incorporated therein) the RFP and the Proposal submitted in respect of Project Co.

8.3 PREFERRED PROPONENT SECURITY DEPOSIT

Subject to the terms of this RFP:

- (a) BC Hydro will invite the Preferred Proponent to deliver the Preferred Proponent security deposit (the "**Preferred Proponent Security Deposit**") on or before the date and time specified by BC Hydro, such date not to be earlier than 5 Business Days after notification of the appointment of the Preferred Proponent; and
- (b) the Preferred Proponent's eligibility to remain the Preferred Proponent is conditional upon the Preferred Proponent delivering the Preferred Proponent Security Deposit to BC Hydro on or before the date and time specified by BC Hydro.

8.4 RETURN OF SECURITY DEPOSIT

Subject to Section 8.5, BC Hydro will return the Preferred Proponent Security Deposit to the Preferred Proponent:

- (a) within 10 days after receipt by BC Hydro of notice of demand from the Preferred Proponent, if:

- (1) BC Hydro exercises its right under Section 10.1 to terminate this RFP prior to entering into the Project Agreement for reasons unrelated to the Preferred Proponent or any member of the Preferred Proponent's Proponent Team; or
- (2) BC Hydro fails, within the Proposal Validity Period, to execute and deliver an agreement substantially in the form of the Final Draft Project Agreement finalized by BC Hydro in accordance with Section 8.2, provided that such failure is not the result of:
 - i. the failure of the Preferred Proponent to satisfy any conditions set out in the Final Draft Project Agreement; or
 - ii. any extensions to the Proposal Validity Period arising from any agreement by BC Hydro to negotiate changes to the Final Draft Project Agreement pursuant to Section 8.2; or

(b) within 10 days after Financial Close with such Preferred Proponent.

8.5 RETENTION OF SECURITY DEPOSIT

Notwithstanding any receipt by BC Hydro of the notice described in Section 8.4, BC Hydro may, in its discretion, draw on, retain and apply the proceeds of the Preferred Proponent Security Deposit for BC Hydro's own use as liquidated damages, if:

(a) the Proponent or any Proponent Team member is in material breach of any term of this RFP or the Participation Agreement; or

(b) after receipt of written notice from BC Hydro:

- (1) the Preferred Proponent fails to execute and deliver an agreement substantially in the form of the Final Draft Project Agreement finalized by BC Hydro in accordance with Section 8.2; or
- (2) Financial Close fails to occur within 30 days (or such longer period as the parties may agree) of receipt of such notice from BC Hydro,

unless:

- (3) any such failure was the result of a significant event which could not have been reasonably prevented by, or was beyond the reasonable control of, the Preferred Proponent; and
- (4) the Preferred Proponent demonstrates to BC Hydro's satisfaction, acting reasonably, that the occurrence of such significant event would materially frustrate or render it

impossible for the Preferred Proponent to perform its obligations under the Project Agreement for a continuous period of 180 days as if the Project Agreement was in force and effect.

8.6 COMMUNICATION REGARDING PROGRESS TO FINANCIAL CLOSE

Between selection as Preferred Proponent and Financial Close, the Preferred Proponent must communicate regularly with BC Hydro with respect to progress towards Financial Close and also keep BC Hydro fully apprised on any credit market issues or other circumstances that could lead to changes in Base Rates and Credit Spreads.

Prior to Financial Close, the Preferred Proponent will undertake several “dry runs” with BC Hydro so that the parties are familiar with, and agree on, the technical process for determining the final Base Rate(s) and Credit Spreads to be included in the Financial Model.

8.7 CHANGED FUNDING ARRANGEMENTS

Without limiting BC Hydro’s rights under this RFP, if at any time after selection of the Preferred Proponent the Preferred Proponent’s Proposal Net Present Cost exceeds the Affordability Ceiling, BC Hydro may request the Preferred Proponent to seek alternative funding arrangements, subject to the review and approval of BC Hydro; or BC Hydro may obtain additional or other funding; or BC Hydro and the Preferred Proponent may together seek any alternative funding arrangements (collectively, the “**Changed Funding Arrangements**”), and the parties may negotiate the Changed Funding Arrangements and any related matter.

8.8 CREDIT SPREAD REFRESH LOCK-IN

The Credit Spread Refresh Lock-In Date will be the date, not to be later than the Business Day prior to Financial Close, when the Preferred Proponent will either confirm the Credit Spread applicable to each Credit Spread Refresh Facility or change the Credit Spread applicable to each Credit Spread Refresh Facility by submitting to BC Hydro:

- (a) the revised Credit Spreads calculated using the Credit Spread Benchmark and formulae approved pursuant to Section 5.4 (including all detail for BC Hydro to confirm the movement in the Credit Spread Benchmark and applicable revision to the Credit Spread);
- (b) a fully optimized Financial Model that has been revised only to reflect the then-current value for the Base Rate and Credit Spread on each Credit Spread Refresh Facility;
- (c) pricing schedules revised only with respect to the then-current value for the Base Rate and Credit Spread on each Credit Spread Refresh Facilities; and

- (d) if applicable and exclusively as a result of a change of Base Rate and Credit Spread on the Credit Spread Refresh Facilities, a revised schedule of Availability Payments reflecting the financial effect of the revised Base Rate and Credit Spread.

As of the Credit Spread Refresh Lock-In Date, but subject to all other rights of BC Hydro under this RFP, the revised Credit Spread(s) on the Credit Spread Refresh Facilities and any re-optimization of its Financial Model and any revisions to its Financing Plan provided by the Preferred Proponent will apply through to Financial Close.

Prior to the Credit Spread Refresh Lock-In Date the Preferred Proponent will undertake several “dry runs” with BC Hydro so that the parties are familiar with, and agree on, the technical process for determining the final Credit Spread and Financial Model.

8.9 SPREAD DECREASE ON CREDIT SPREAD HOLD FACILITIES

With respect to Credit Spread Hold Facilities, if the Preferred Proponent or any affiliate (the “**Affiliated Persons**”) of the Preferred Proponent is able to secure financing for the Project on terms more favourable than the terms submitted at the Submission Time for Financial Submissions, the resulting gain will accrue 50% to the Preferred Proponent and 50% to BC Hydro. The mechanism and process to be used to calculate and apportion such gain will be substantially similar to that used to calculate a Refinancing Gain under the Project Agreement.

8.10 PARTIAL COMPENSATION FOR PARTICIPATION IN THIS RFP

Upon execution of the Project Agreement, BC Hydro will pay \$1,000,000 [inclusive of any GST/HST (the “**GST/HST**”) payable] to each unsuccessful Proponent that:

- (a) submitted a bona fide and responsive Technical Submission and Financial Submission;
- (b) has not withdrawn from the Competitive Selection Process or been disqualified by BC Hydro in accordance with the terms of this RFP; and
- (c) provides to BC Hydro written acknowledgment of:
 - (1) the disclaimers, limitations and waivers of liability and Claims contained in this RFP, including Section 10.13; and
 - (2) the grant of Intellectual Property Rights to BC Hydro and waiver of moral rights pursuant to Section 6.9.

If BC Hydro exercises its right under Section 10.1 to terminate the RFP process prior to entering into the Project Agreement with a Proponent, BC Hydro will pay to each Proponent the lesser of:

- (a) \$1,000,000 (inclusive of any GST/HST payable); and
- (b) the substantiated out-of-pocket costs reasonably incurred by the Proponent in preparing its Proposal,

provided that if BC Hydro exercises such rights after the selection of a Preferred Proponent, the Preferred Proponent must have delivered the Preferred Proponent Security Deposit in accordance with Section 8.3 to be entitled to receive any such payment.

In determining whether to make available the partial compensation described in this Section 8.10, BC Hydro considered the potential value of obtaining the licence to BC Hydro of rights to the Intellectual Property Rights and the waiver of moral rights pursuant to Section 6.9. Accordingly, after selection of the Preferred Proponent, Financial Close or the expiry of the Proposal Validity Period, BC Hydro may be willing to consider payment of up to \$1,000,000 (inclusive of any GST/HST payable) to a Proponent that fails to meet the Mandatory Requirements on conditions satisfactory to BC Hydro and the Proponent. The conditions may include BC Hydro reviewing the Intellectual Property Rights (such as for a Proposal that was returned) and being satisfied with the value of such rights and the Proponent entering into an agreement with BC Hydro granting licence rights to BC Hydro. Such arrangements will not be governed by this RFP.

8.11 DEBRIEFS

BC Hydro will, following Financial Close, upon request from a Proponent within 60 days of Financial Close, conduct a debriefing for that Proponent.

9 CONFLICT OF INTEREST AND RELATIONSHIP DISCLOSURE

9.1 RESERVATION OF RIGHTS

BC Hydro reserves the right to disqualify any Proponent that in BC Hydro's opinion has a conflict of interest or an unfair advantage (including access to any confidential information not available to all Proponents), whether real, perceived, existing now or likely to arise in the future, or may permit the Proponent to continue and impose such conditions as BC Hydro may consider to be in the public interest or otherwise required by BC Hydro.

9.2 RELATIONSHIP DISCLOSURE

Each Proponent, including each member of the Proponent Team, should fully disclose all relationships they may have with BC Hydro, any restricted party ("**Restricted Party**"), or any other Person providing advice or services to BC Hydro with respect to the Project or any other matter that gives rise, or might give rise, to a conflict of interest or an unfair advantage:

- (a) by submission of completed relationship disclosure forms (the "**Relationship Disclosure Forms**") with its Proposal; and
- (b) thereafter during the Competitive Selection Process by written notice addressed to the Contact Person promptly after becoming aware of any such relationship.

At the time of such disclosure, the Proponent will include sufficient information and documentation to demonstrate that appropriate measures have been, or will be, implemented to mitigate, minimize or eliminate the actual, perceived or potential conflict of interest or unfair advantage, as applicable. The Proponent will provide such additional information and documentation and implement such additional measures as BC Hydro may require in its discretion in connection with BC Hydro's consideration of the disclosed relationship and proposed measures.

9.3 USE OR INCLUSION OF RESTRICTED PARTIES

BC Hydro may, in its discretion, disqualify a Proponent, or may permit a Proponent to continue and impose such conditions as BC Hydro may consider to be in the public interest or otherwise required by BC Hydro, if the Proponent is a Restricted Party, or if the Proponent uses a Restricted Party:

- (a) to advise or otherwise assist the Proponent respecting the Proponent's participation in the Competitive Selection Process; or
- (b) as a Proponent Team member or as an employee, advisor or consultant to the Proponent or a Proponent Team member.

Each Proponent is responsible to ensure that neither the Proponent nor any Proponent Team member uses or seeks advice or assistance from any Restricted Party, or includes any Restricted Party in the Proponent Team.

9.4 CURRENT RESTRICTED PARTIES

At this RFP stage, and without limiting the definition of Restricted Parties, BC Hydro has identified the following persons, firms or organizations as Restricted Parties:

- (a) Boughton Law Corporation (COI Adjudicator);
- (b) Singleton Urquhart LLP (Fairness Advisor);
- (c) Ernst & Young Orenda Corporate Finance Inc. (Business Advisor);
- (d) Borden Ladner Gervais LLP (Legal Advisor);
- (e) BTY Quantity Surveyors B.C. Ltd;
- (f) DCF Consulting Ltd.;
- (g) Dennis Moore Engineering Inc.;
- (h) Derek Martin Consulting Inc.;
- (i) Evert Hoek Consulting Eng. Inc.;
- (j) Golder Associates Ltd.;
- (k) Hemmera Envirochem Inc.;
- (l) JE Project Solutions Ltd.;
- (m) Jian Kwei Lou;
- (n) Jim Kozak;
- (o) Kathy Hochachka;
- (p) KPMG LLP;
- (q) Lawson Lundell LLP;
- (r) McElhanney Consulting Services Ltd.;
- (s) MWH Global Inc.
- (t) Omicron Canada Inc.
- (u) R.T. Penney Property Services;

- (v) Roger Stilwell;
- (w) T.E. Little Engineering;
- (x) Utility Contract Services Corporation;
- (y) Vince Collins Management Services Inc.
- (z) Wiselink Consultants Co. Ltd.; and
- (aa) BC Hydro and Partnerships BC, including their former and current employees who fall within the definition of Restricted Party.

This is not an exhaustive list of Restricted Parties. Additional persons, firms or organizations may be added to, or deleted from, the list during any stage of the Competitive Selection Process through an Addendum.

9.5 CONFLICT OF INTEREST ADJUDICATOR

BC Hydro has appointed a conflict of interest adjudicator (the “**Conflict of Interest Adjudicator**” or “**COI Adjudicator**”) to provide decisions on conflicts of interest or unfair advantage issues, including whether any person is a Restricted Party. BC Hydro may, at its discretion, refer matters to the COI Adjudicator.

9.6 REQUEST FOR ADVANCE DECISION

A Proponent or a prospective member or advisor of a Proponent who has any concerns regarding whether a current or prospective employee, advisor or member of that Proponent is, or may be, a Restricted Party, or has a concern about any conflict or unfair advantage it may have, is encouraged to request an advance decision by submitting to the Contact Person, not less than 10 days prior to the Submission Time for Technical Submissions, by email, the following information:

- (a) names and contact information of the Proponent and the person or firm for which the advance opinion is requested;
- (b) a description of the relationship that raises the possibility or perception of a conflict of interest or unfair advantage;
- (c) a description of the steps taken to date, and future steps proposed to be taken, to mitigate the conflict of interest or unfair advantage, including the effect of confidential information; and
- (d) copies of any relevant documentation.

BC Hydro may make an advance decision or may refer the request for an advance decision to the COI Adjudicator. If BC Hydro refers the request to the COI Adjudicator, BC Hydro may make its own submission to the COI Adjudicator.

If a Proponent or prospective team member or advisor becomes a Restricted Party, it may be listed in an Addendum or in subsequent Competitive Selection Process documents as a Restricted Party.

9.7 BC HYDRO MAY REQUEST ADVANCE DECISIONS

BC Hydro may also independently make advance decisions, or may seek an advance decision from the COI Adjudicator, where BC Hydro identifies a potential conflict, unfair advantage, or a person who may be a Restricted Party. BC Hydro will, if it seeks an advance decision from the COI Adjudicator, provide the COI Adjudicator with relevant information in its possession. If BC Hydro seeks an advance decision from the COI Adjudicator, BC Hydro will give notice to the Proponent, and may give notice to the possible Restricted Party so that it may make its own response to the COI Adjudicator.

The onus is on the Proponent to clear any potential conflict, unfair advantage, or Restricted Party, or to establish any conditions for continued participation, and BC Hydro may require that the Proponent make an application under Section 9.6.

9.8 DECISIONS FINAL AND BINDING

The decision of BC Hydro or the COI Adjudicator, as applicable, is final and binding on the persons requesting the ruling and all other parties including Proponents, Proponent Team members and BC Hydro. BC Hydro or the COI Adjudicator, as applicable, has discretion to establish the relevant processes from time to time, including any circumstances in which a decision may be reconsidered.

BC Hydro may provide any decision by BC Hydro or the COI Adjudicator regarding conflicts of interest to all Proponents if BC Hydro, in its discretion, determines that the decision is of general application.

9.9 SHARED USE

A shared use person ("**Shared Use Person**") is a person identified by BC Hydro as eligible to do work for more than one Proponent, including a person who has unique or specialized information or skills such that BC Hydro considers in its discretion their availability to all Proponents to be desirable in the interests of the Competitive Selection Process. Any Shared Use Person will be required to agree not to enter into exclusive arrangements with any Proponent. At this time there are no Shared Use Persons that have been designated as such by BC Hydro.

9.10 EXCLUSIVITY

Unless permitted by BC Hydro in its sole and absolute discretion or permitted as a Shared Use Person, the following may only participate as a member of one Proponent Team:

- a prime team member ("**Prime Team Member**");

- a Key Individual; and
- the Affiliated Persons of a Prime Team Member or a Key Individual.

If any Proponent, Prime Team Members, Key Individuals or their respective Affiliated Persons contravenes the foregoing, BC Hydro reserves the right to disqualify any or all of affected Proponents, or may permit any or all such Proponents to continue and impose such conditions as may be required by BC Hydro. Each Proponent is responsible, and bears the onus, to ensure that the Proponent, its Prime Team Members and Key Individuals and their respective Affiliated Persons do not contravene the foregoing.

A Proponent or a prospective Prime Team Member or a Key Individual of a Proponent who has any concerns regarding whether participation does or will contravene the foregoing is encouraged to request an advance decision in accordance with this Section through the following process:

- (a) to request an advance decision on matters related to exclusivity, the Proponent or prospective Prime Team Member or Key Individual of that Respondent should submit to the Contact Person, not less than 10 days prior to the Submission Time by email, the following information:
 - (1) names and contact information of the Proponent or Prime Team Member or a Key Individual or prospective Proponent or Prime Team Member or a Key Individual making the disclosure;
 - (2) a description of the relationship that raises the possibility of non-exclusivity;
 - (3) a description of the steps taken to date, and future steps proposed to be taken, to mitigate any material adverse or potential material adverse effect of the non-exclusivity on the competitiveness or integrity of the Competitive Selection Process; and
 - (4) copies of any relevant documentation.

BC Hydro may require additional information or documentation to demonstrate to the satisfaction of BC Hydro in its discretion that no such non-exclusivity exists or, if it does, that measures satisfactory to BC Hydro in its discretion have been or will be implemented to eliminate or mitigate any risk to the competitiveness or integrity of the Competitive Selection Process.

10 RFP TERMS AND CONDITIONS

10.1 NO OBLIGATION TO PROCEED

This RFP does not commit BC Hydro to select a Preferred Proponent or enter into a Project Agreement, and BC Hydro reserves the complete right to at any time reject all Proposals, and to terminate this RFP and the Competitive Selection Process and proceed with the Project in some other manner.

10.2 NO CONTRACT

Other than to the extent provided in the Participation Agreement, this RFP is not a contract between BC Hydro and any Proponent, nor is this RFP an offer or an agreement to purchase work, goods or services. No contract of any kind for work, goods or services whatsoever is formed under, or arises from this RFP, or as a result of, or in connection with, the submission of a Proposal, unless BC Hydro and the Preferred Proponent execute and deliver the Project Agreement, and then only to the extent expressly set out in the Project Agreement.

10.3 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

All documents and other records in the custody of, or under the control of, BC Hydro are subject to the Freedom of Information and Protection of Privacy Act (“**FOIPPA**”) and other applicable legislation.

By submitting a Proposal, the Proponent represents and warrants to BC Hydro that the Proponent has complied with applicable Laws, including by obtaining from each Person any required consents and authorizations to the collection of information relating to such individual and to the submission of such information to BC Hydro and the use, distribution and disclosure of such information as part of the Proposal for the purposes of, or in connection with, this RFP and the Competitive Selection Process.

10.4 COST OF PREPARING THE PROPOSAL

Subject to Section 8.10, each Proponent is solely responsible for all costs it incurs in the preparation of its Proposal, including all costs of providing information requested by BC Hydro, attending meetings and conducting due diligence.

10.5 CONFIDENTIALITY OF INFORMATION

All information pertaining to the Project received by any Proponent or Proponent Team member through participation in this RFP is confidential and may not be disclosed without written authorization from the Contact Person, and in no event will a Proponent discuss the Project with any member of the public or the media without the prior written approval of BC Hydro.

Except as expressly stated in this RFP, and subject to FOIPPA or other applicable legislation, all documents and other records submitted in response to this RFP will be considered confidential.

10.6 RESERVATION OF RIGHTS

BC Hydro reserves the right, in its discretion, to:

- (a) amend the scope of the Project and/or modify, cancel or suspend the Competitive Selection Process at any time for any reason;
- (b) accept or reject any Proposal based on BC Hydro's evaluation of the Proposals in accordance with Appendix A;
- (c) disqualify a Proposal that fails to meet the Mandatory Requirements;
- (d) waive a defect, irregularity, non-conformity or non-compliance in or with respect to a Proposal or failure to comply with the requirements of this RFP except for Mandatory Requirements, and accept that Proposal even if such a defect, irregularity, non-conformity or non-compliance or failure to comply with the requirements of this RFP would otherwise render the Proposal null and void;
- (e) reject, disqualify or not accept any or all Proposals without any obligation, compensation or reimbursement to any Proponent or any of its team members subject to any payment required pursuant to Section 8.10;
- (f) re-advertise for new Proposals to this or a modified RFP, call for quotes, proposals or tenders, or enter into negotiations for this Project or for work of a similar nature;
- (g) make any changes to the terms of the business opportunity described in this RFP;
- (h) negotiate any aspects of a Preferred Proponent's Proposal; and
- (i) amend, from time to time, any date, time period or deadline provided in this RFP, upon written notice to all Proponents.

10.7 NO COLLUSION

Proponents and Proponent Team members, their employees and representatives involved with the Proposal, including Key Individuals, will not discuss or communicate, directly or indirectly, with any other Proponent or any director, officer, employee, consultant, advisor, agent or representative of any other Proponent (including any Proponent Team member or Key Individual of such other Proponent) regarding the preparation, content or representation of their Proposals.

By submitting a Proposal, a Proponent, on its own behalf and as authorized agent of each firm, corporation or individual member of the Proponent and Proponent Team, represents and confirms to BC Hydro, with the knowledge and intention that BC Hydro may rely on such representation and confirmation, that its Proposal has been prepared without collusion or fraud, and in fair competition with Proposals from other Proponents.

10.8 NO LOBBYING

Proponents, Proponent Team members and Key Individuals, and their respective directors, officers, employees, consultants, agents, advisors and representatives will not engage in any form of political or other lobbying whatsoever in relation to the Project, this RFP, or the Competitive Selection Process, including for the purpose of influencing the outcome of the Competitive Selection Process. Further, no such person (other than as expressly contemplated by this RFP) will attempt to communicate in relation to the Project, this RFP, or the Competitive Selection Process, directly or indirectly, with any representative of BC Hydro, the Government of British Columbia (including any Minister or Deputy Minister, any member of the Executive Council or any Members of the Legislative Assembly), Partnerships BC, any Restricted Parties, or any director, officer, employee, agent, advisor, consultant or representative of any of the foregoing, as applicable, for any purpose whatsoever, including for purposes of:

- (a) commenting on, or attempting to influence views on, the merits of the Proponent's Proposal, or in relation to Proposals of other Proponents;
- (b) influencing, or attempting to influence, the evaluation and ranking of Proposals, the selection of the Preferred Proponent, or any negotiations with the Preferred Proponent;
- (c) promoting the Proponent or its interests in the Project, including in preference to that of other Proponents;
- (d) commenting on or criticizing aspects of this RFP, the Competitive Selection Process, the Project, or the Project Agreement, including in a manner which may give the Proponent a competitive or other advantage over other Proponents; and
- (e) criticizing the Proposals of other Proponents.

In the event of any lobbying or communication in contravention of this Section, BC Hydro in its discretion may at any time, but will not be required to, reject any and all Proposals submitted by that Proponent without further consideration and the Proponent will not be eligible for, or receive, the partial compensation as set out in Section 8.10.

10.9 PARTNERSHIPS BC PROJECTS

BC Hydro may at any time, including without limitation for purposes of evaluation and negotiation, take into account any relevant information that becomes available to it from any source. Without limiting the foregoing, BC Hydro has engaged Partnerships BC, which is currently engaged in projects across a variety of sectors, and BC Hydro may receive information in respect of those other projects which may be relevant to Proponents or Proponent Team members. Subject to Section 2.2, BC Hydro may share information that is available from this Project with Partnerships BC and other projects. BC Hydro assumes no responsibility to identify relevant information from other projects and Proponents remain fully responsible to submit a complete Proposal.

10.10 OWNERSHIP OF PROPOSALS

All Proposals submitted to BC Hydro become the property of BC Hydro and will be received and held in confidence by BC Hydro, subject to the provisions of FOIPPA and this RFP.

10.11 DISCLOSURE AND TRANSPARENCY

BC Hydro is committed to an open and transparent procurement process. To assist BC Hydro in meeting its commitment, Proponents will cooperate and extend all reasonable accommodation to this endeavour.

BC Hydro expects to publicly disclose the following information during this stage of the Competitive Selection Process:

- (a) the RFP;
- (b) the number of Proponents; and
- (c) the name of Proponents.

Following Financial Close, BC Hydro expects to publicly disclose:

- (a) the Fairness Advisor's report;
- (b) a Project Report; and
- (c) the final Project Agreement excluding those portions that may be redacted pursuant to the application of FOIPPA.

Each Proponent agrees that:

- (a) to ensure that all public information generated about the Project is fair and accurate and will not inadvertently or otherwise influence the RFP process, the disclosure of any public information

generated in relation to the Project, including communications with the media and the public, must be coordinated with, and is subject to prior written approval of, BC Hydro;

- (b) it will notify BC Hydro of any and all requests for information or interviews received from the media; and
- (c) it will ensure that all of the Proponent Team members and others associated with the Proponent comply with the requirements of this RFP.

10.12 FAIRNESS ADVISOR

BC Hydro has appointed John Singleton (the “**Fairness Advisor**”) to monitor the Competitive Selection Process. The Fairness Advisor will provide a written report to BC Hydro that BC Hydro will make public.

The Fairness Advisor will be:

- (a) provided with full access to all documents, meetings and information related to the evaluation processes under this RFP that the Fairness Advisor, in its discretion, decides is required; and
- (b) kept fully informed by BC Hydro of all documents and activities associated with this RFP.

Proponents may contact the Fairness Advisor directly with regard to concerns about the fairness of the Competitive Selection Process.

10.13 LIMITATION OF DAMAGES

Each Proponent on its own behalf and on behalf of the Proponent Team and any member of a Proponent Team:

- (a) agrees not to bring any Claim against BC Hydro or any of its employees, advisors or representatives for damages in excess of the amount equivalent to the reasonable costs incurred by the Proponent in preparing its Proposal for any matter in respect of this RFP or Competitive Selection Process, including:
 - (1) if BC Hydro accepts a non-compliant proposal or otherwise breaches, or fundamentally breaches, the terms of this RFP or the Competitive Selection Process; or
 - (2) if the Project or Competitive Selection Process is modified, suspended or cancelled for any reason (including modification of the scope of the Project or modification of this RFP or both) or BC Hydro exercises any rights under this RFP; and

(b) waives any and all Claims against BC Hydro or any of its employees, advisors or representatives for loss of anticipated profits or loss of opportunity if no agreement is made between BC Hydro and the Proponent for any reason, including:

- (1) if BC Hydro accepts a non-compliant proposal or otherwise breaches or fundamentally breaches the terms of this RFP or the Competitive Selection Process;
or
- (2) if the Project or Competitive Selection Process is modified, suspended or cancelled for any reason (including modification of the scope of the Project or modification of this RFP or both) or BC Hydro exercises any rights under this RFP.

This Section does not limit BC Hydro's obligation to make payment under Section 8.10, but in no event will BC Hydro's liability exceed the amount calculated pursuant to Section 8.10.

11 INTERPRETATION

11.1 DEFINITIONS

In this RFP:

Capitalized terms in this RFP that are not defined in this Section have the meaning given in the Project Agreement.

“Addenda” or **“Addendum”** means an addendum to this RFP issued by the Contact Person as described in Section 6.8.

“Adjusted Proposal Net Present Cost” has the meaning set out in Appendix A.

“Affiliated Persons”, or affiliated persons, or persons affiliated with each other, are:

- (a) a corporation and
 - (1) a person by whom the corporation is controlled,
 - (2) each member of an affiliated group of persons by which the corporation is controlled, and
 - (3) a spouse or common-law partner of a person described in subparagraph (1) or (2);
- (b) two corporations, if
 - (1) each corporation is controlled by a person, and the person by whom one corporation is controlled is affiliated with the person by whom the other corporation is controlled,
 - (2) one corporation is controlled by a person, the other corporation is controlled by a group of persons, and each member of that group is affiliated with that person, or
 - (3) each corporation is controlled by a group of persons, and each member of each group is affiliated with at least one member of the other group;
- (c) a corporation and a partnership, if the corporation is controlled by a particular group of persons each member of which is affiliated with at least one member of a majority-interest group of partners of the partnership, and each member of that majority-interest group is affiliated with at least one member of the particular group;
- (d) a partnership and a majority-interest partner of the partnership;
- (e) two partnerships, if
 - (1) the same person is a majority-interest partner of both partnerships,

- (2) a majority-interest partner of one partnership is affiliated with each member of a majority-interest group of partners of the other partnership, or
 - (3) each member of a majority-interest group of partners of each partnership is affiliated with at least one member of a majority-interest group of partners of the other partnership;
- (f) a person and a trust, if the person
- (1) is a majority-interest beneficiary of the trust, or
 - (2) would, if this subsection were read without reference to this paragraph, be affiliated with a majority-interest beneficiary of the trust; and
- (g) two trusts, if a contributor to one of the trusts is affiliated with a contributor to the other trust and
- (1) a majority-interest beneficiary of one of the trusts is affiliated with a majority-interest beneficiary of the other trust,
 - (2) a majority-interest beneficiary of one of the trusts is affiliated with each member of a majority-interest group of beneficiaries of the other trust, or
 - (3) each member of a majority-interest group of beneficiaries of each of the trusts is affiliated with at least one member of a majority-interest group of beneficiaries of the other trust.

“Affordability Ceiling” has the meaning set out in Section 4.1.

“Affordability Model” has the meaning set out in Section 4.2.

“Base Rate” means the base interest rate for any proposed senior debt facility as shown in the Proponent’s Financial Model.

“BC Hydro” means BC Hydro and Power Authority.

“BC Hydro Representatives” has the meaning set out in Section 2.2.

“BC Hydro Directed Works” has the meaning set out in Section 3.3.1.

“BC Hydro Works” has the meaning set out in Section 3.1.

“BCUC” means the British Columbia Utilities Commission.

“Business Day(s)” means a standard day for conducting business, excluding government holidays and weekends.

“CEAA” means the *Canadian Environmental Assessment Act* (Canada).

“**CPCN**” means a Certificate of Public Convenience and Necessity.

“**Changed Funding Arrangements**” has the meaning set out in Section 8.7.

“**City**” means the City of Campbell River.

“**Claim**” means any claim, demand, suit, action, or cause of action, whether arising in contract, tort or otherwise, and all costs and expenses relating thereto.

“**Collaborative Meetings**” has the meaning set out in Section 2.2.

“**Competitive Selection Process**” means the overall process for the selection of a Preferred Proponent for the Project including, but not limited to, this RFP stage.

“**Comptroller of Water Rights**” has the meaning set out in B.C.’s *Water Act*.

“**Conflict of Interest Adjudicator**” or “**COI Adjudicator**” means the person described in Section 9.5.

“**Contact Person**” means the person identified as such in the Summary of Key Information.

“**Credit Spread**” means for any debt facility the rate of interest applicable to the amount of such debt facility as shown in the Financial Model minus the applicable Base Rate.

“**Credit Spread Benchmark**” means publicly verifiable and observable tools/rates or a basket of tools/rates used to measure the movement of the Credit Spread.

“**Credit Spread Hold Facilities**” has the meaning set out in Section 5.3.

“**Credit Spread Refresh Facilities**” has the meaning set out in Section 5.3.

“**Credit Spread Refresh Lock-In Date**” has the meaning set out in Section 8.8.

“**Credit Spread Refresh Protocol**” has the meaning set out in Appendix K.

“**Data Room**” has the meaning set out in Section 2.4.

“**DB Contractor**” means individuals, corporations, other entities or the underlying legal entities that make up joint ventures and partnerships who have the direct responsibility to design and build the Project, as described in the Proposal.

“**DBSS**” means the Project’s Design-Build Standard Specification.

“**DSC**” means Differing Site Conditions.

“**EAC**” means the Environmental Assessment Certificate.

“**EFC**” means the Elk Falls Canyon.

“**Enquiry**” has the meaning set out in Section 6.6.

“**Equity Member**” of a Proponent means an individual, corporation, joint venture, partnership or other legal entity who will have an ownership, risk capital or equity interest in the Project, as described in the Proposal.

“**Evaluation Adjustments**” has the meaning set out in Appendix A.

“**Extreme Consequence**” is defined in the Dam Safety Regulations under the British Columbia *Water Act*.

“**Facility**” has the meaning set out in Section 1.1 and as further defined in the Project Agreement.

“**Fairness Advisor**” has the meaning set out in Section 10.12.

“**Final Draft Project Agreement**” has the meaning set out in Section 2.3.

“**Financial Close**” means the time when the Project Agreement and all financing and other agreements related to the Project have been executed and delivered and all conditions to the effectiveness of the Project Agreement and Project financing agreements have been satisfied.

“**Financial Model**” has the meaning set out in Section 4.5 of Appendix B.

“**Financial Submission**” has the meaning set out in Appendix B.

“**Financing Plan**” has the meaning set out in Section 2.5(b).

“**First Nations**” means the following identified first nations, aboriginal groups or Indian bands of K’omoks, We Wai Kai (Cape Mudge) or Campbell River Indian Band (CRIB).

“**Freedom of Information and Protection of Privacy Act**” or “**FOIPPA**” has the meaning set out in Section 10.3.

“**Generator**” means the components and systems including, but not limited to, the rotor, stator, windings, ring bus, brushgear/sliprings, generator thrust and guide bearing, upper and lower bracket, and primary cooling systems.

“**GST**” at any given time means the tax imposed at that time pursuant to Section IX of the *Excise Tax Act* (Canada).

“**Initial Draft Project Agreement**” means the draft Project Agreement labelled “Initial Draft Project Agreement” and posted in the Data Room.

“**Intellectual Property Rights**” has the meaning set out in Section 6.9.

“Interim Financial Review on Affordability” has the meaning set out in Section 2.5.

“ISO 9001:2008 Standard” has the meaning set out by the International Organization for Standardization.

“Key Individuals” has the meaning set out in Schedule 3 of the Project Agreement.

“Lands” has the meaning ascribed to it in the Project Agreement and on the assumption that BC Hydro obtains from the Province the further land tenure and rights that it is seeking.

“Mandatory Requirements” means the Proposal Requirements described in Section 7.1.

“Material Non-Compliance” has the meaning set out in Section 7.2.

“MED” means the Middle Earth Dam.

“Participation Agreement” has the meaning set out in Section 5.1.

“Partnerships BC” means Partnerships British Columbia Inc.

“Performance Guarantees” means collectively the Plant Capacity Guarantee, the Plant Energy Guarantee, the Common Conduit Head Loss Guarantee, the Turbine Model Efficiency Guarantee and the Generator Efficiency Guarantee as further defined in the Project Agreement.

“Performance Guarantee Payment” means the payment calculated in accordance with Section 5.2 of Schedule 13 of the Project Agreement.

“Performance Specifications” means the specifications for the design, construction and maintenance of the Facility as set out in the Project Agreement, including Schedule 6 and Schedule 7.

“Performance Verification Tests” means the tests carried out pursuant to Appendix G of Schedule 13 of the Project Agreement.

“Preferred Proponent” means the Proponent selected pursuant to this RFP to enter into negotiations with BC Hydro for a Project Agreement.

“Preferred Proponent Security Deposit” means an irrevocable letter of credit in the amount of \$10,000,000 in the form set out in Appendix H or in such other form acceptable BC Hydro in its discretion.

“Pricing Forms” means the forms set out in Appendix B.

“Prime Team Member” means an individual or entity that:

- (a) is the Proponent;
- (b) will undertake the lead development role in respect of the Project;

- (c) has or will have a risk capital interest in Project Co;
- (d) is the DB Contractor;
- (e) is the Turbine and / or Generator supplier; or
- (f) is the Services Provider.

“Project” means the design, construction, financing, commissioning and maintenance and other specified services of and for the Facility and all other works ancillary to the Facility, and as more specifically described in Section 1.5 of Schedule G of the Project agreement.

“Project Agreement” has the meaning set out in Section 1.1.

“Project Co” means the entity that enters into the Project Agreement with BC Hydro.

“Proponent” means one of the consortia identified in Section 1.2.

“Proponent Team” means a Proponent, its Equity Members, DB Contractor, Turbine/Generator Supplier, Service Provider and Key Individuals.

“Proposal” means a proposal submitted in response to this RFP.

“Proposal Net Present Cost” of a Proposal means the sum of the present value of the Progress Payments during construction, the Decommissioning Payment and the Availability Payments following substantial completion that would be payable under the Project Agreement, as calculated using the Affordability Model.

“Proposal Requirements” means the requirements described in Appendix B.

“Proposal Validity Period” has the meaning set out in Section 6.13.

“PST” means the Provincial social services and sales tax under the *Social Services Tax Act*, as amended.

“Relationship Disclosure Form” means a form substantially as set out in Appendix D or as otherwise acceptable to BC Hydro.

“Request for Proposals” or **“RFP”** means this request for proposals.

“Request for Qualifications” or **“RFQ”** has the meaning set out in Section 1.2.

“Restricted Party” means those persons or firms (including their former and current employees) who had, or currently have, participation or involvement in the Competitive Selection Process or the design, planning or implementation of the Project, and who may provide a material unfair advantage or

confidential information to any Proponent that is not, or would not reasonably be expected to be, available to other Proponents.

“Services” means the maintenance and life cycle rehabilitation services described in Schedule 7 of the Project Agreement.

“Service Provider” means the entity that will perform the Services in support of the Facility.

“Shared Use Person” has the meaning set out in Section 9.9.

“Submission Location” means the submission location identified as such in the Summary of Key Information.

“Submission Time for Base Rate(s) and Credit Spread Benchmarks” means the date and time identified as such in the Summary of Key Information.

“Submission Time for Financial Submissions” means the date and time identified as such in the Summary of Key Information.

“Submission Time for Technical Submissions” means the date and time identified as such in the Summary of Key Information.

“Subsurface Condition Report” means the report entitled “Subsurface Condition Report – Tunnel Work” located in the Data Room.

“Technical Submission” has the meaning set out in Appendix B.

“Third Party Intellectual Property Rights” means all Intellectual Property Rights of any Person which is not a member of, or a related party to, a member of the Proponent Team.

“Tunnel Work” means all work and activities of or required of Project Co and its sub-contractors in connection with the performance of any obligations of Project Co under the Project Agreement, and the conduct of all work and operations of Project Co and the sub-contractors on or in relation to all works and component required to complete the portion of the power tunnel between the bottom of the intake or upstream drop shaft, as applicable, and the downstream tunnel portal.

“Turbine” means the components and systems including, but not limited to, the scroll case, stay vanes, wicket gates, headcover, operating mechanisms, turbine shaft, guide bearing, seals, runner, bottom ring, discharge ring, and draft tube.

“Turbine/Generator Supplier” means the supplier or suppliers of the Turbine and/or the Generators for the Facility.

“Valued Item” means any of the Valued Items described in Table 1 of Appendix A of this RFP.

11.2 INTERPRETATION

In this RFP:

- (a) the use of headings is for convenience only and headings are not to be used in the interpretation of this RFP;
- (b) a reference to a Section or Appendix, unless otherwise indicated, is a reference to a Section of, or Appendix to, this RFP;
- (c) words imputing any gender include all genders, as the context requires, and words in the singular include the plural and vice versa;
- (d) the word “including” when used in this RFP is not to be read as limiting; and
- (e) each Appendix attached to this RFP is an integral part of this RFP as if set out at length in the body of this RFP.