



Request for Proposals
Oak Bay High School Replacement Project

February 4, 2013

SUMMARY OF KEY INFORMATION

RFP TITLE	The title of this RFP is: Oak Bay High School Replacement Project Proponents should use this title on all correspondence.
CONTACT PERSON	The Contact Person for this RFP is: Catherine Silman Email: Catherine.silman@partnershipsbc.ca 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 and prior to 15:00 Pacific Time on April 23, 2013 to permit consideration by the Owner; the Owner may, in its discretion, decide not to respond to any Enquiry.
SUBMISSION TIME FOR TECHNICAL SUBMISSIONS	May 7, 2013 11:00 Pacific Time
SUBMISSION TIME FOR FINANCIAL SUBMISSIONS	June 25, 2013 11:00 Pacific Time
SUBMISSION LOCATION	The Submission Location is: 300 – 707 Fort Street Victoria BC V8W 3G3
DELIVERY HOURS	Deliveries will be accepted at the Submission Location on weekdays (excluding Statutory Holidays) from 08:30 to 16:00 Pacific Time.

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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 to prepare and submit competitive Proposals to design and build the Oak Bay High School Replacement Project (the “**Project**”) under a design-build agreement (the “**Design-Build Agreement**”).

1.2 ELIGIBILITY TO PARTICIPATE IN THIS RFP

Through a request for qualifications (“**Request for Qualifications**” or “**RFQ**”) issued July 11, 2012 by the Greater Victoria School District (the “**Owner**”), the following Proponents are qualified to participate in this RFP:

- Bouygues Building Canada Inc.;
- Farmer Construction Ltd.; and
- Yellowridge Design Build Ltd.

Only these three Proponents, subject to changes in Proponent Team membership as permitted by this RFP, may submit Proposals or otherwise participate in this RFP.

2 RFP PROCUREMENT PROCESS

2.1 ESTIMATED TIMELINE

The following is the Owner's estimated timeline for the Project:

Activity	Timeline
Issue RFP and Initial Draft Design-Build Agreement to Proponents	February 4, 2013
Oak Bay Site and Existing School Tour	February 15, 2013
First Collaborative Meeting	Week of February 25, 2013
Collaborative Meeting to Review Interim Phasing Plan	Week of April 2, 2013
Second Collaborative Meeting	Week of April 2, 2013
Final Comments on Initial Draft Design-Build Agreement	April 15, 2013
Issue Final Draft Design-Build Agreement	April 23, 2013
Submission Time for Technical Submissions	May 7, 2013
Invitation to Submit Financial Submission	June 7, 2013
Submission Time for Financial Submissions	June 25, 2013
Selection of Preferred Proponent	July 5, 2013
Contract Execution	July 2013
Design and Construction Commences	July 2013
Building Substantial Completion	July 2015
Performing Arts Wing Substantial Completion	December 2015
Project Substantial Completion	July 2016

This estimated timeline is subject to change at the sole and absolute discretion of the Owner. Refer to section 3.12 for detailed information on the phases identified above.

2.2 COLLABORATIVE MEETINGS

Prior to the Submission Time for Technical Submissions, the Owner will make available certain of its personnel, consultants and advisors (the "**Owner Representatives**") to participate in Collaborative Meetings with the Proponents. The Owner 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 the Owner's requirements, and in particular:

- (1) to permit the Proponent's Representatives to provide the Owner's Representatives with comments and feedback on material issues such as affordability or provisions of the Initial Draft Design-Build Agreement; and
 - (2) to permit a Proponent to discuss with the Owner potential solutions and approaches that the Proponent may be considering for various aspects of its Proposal;
- (b) at least 5 Business Days in advance of each Collaborative Meeting (10 Business Days in the case of any Collaborative Meeting with respect to insurance matters), each Proponent should provide the Owner with a proposed meeting agenda, a list of prioritized issues it would like to discuss, and any materials relevant to such issues. The Owner may provide Proponents with comments on the agenda and a list of any prioritized issues the Owner would like to discuss;
 - (c) the Owner will determine which Owner 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 the Owner and to fulfil the objectives of the Collaborative Meeting provided that the Owner 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 the Owner 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 the Owner during the Collaborative Meetings to anything said or provided by Proponents, will not in any way bind the Owner and will not be deemed or considered to be an indication of a preference by the Owner 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 describing the information it would like to have confirmed and request that the Owner 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 Design-Build Agreement, request an 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) the Owner anticipates holding two Collaborative Meetings with each Proponent prior to the Submission Time for Technical Submissions. Following the release of the RFP, the Owner will consult with each Proponent to confirm specific dates for Collaborative Meetings. If the Owner considers it desirable or necessary to schedule additional or fewer Collaborative Meetings, the Owner may, in its discretion, amend the anticipated schedule;
- (i) Proponents may request that the Owner schedule additional Collaborative Meetings on specific topics by providing the request in writing to the Contact Person with proposed dates and details of the topic or topics to be discussed; and
- (j) for convenience the Owner may, as part of, or in conjunction with, a Collaborative Meeting, invite other persons to meet with Proponents. Proponents are advised that the confidentiality of the Collaborative Meetings is not expected to apply to such other persons.

2.3 COMMENTS ON THE DESIGN-BUILD AGREEMENT

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

- (a) the Owner will invite Proponents as part of the Collaborative Meeting process to discuss possible clarifications or amendments to the Initial Draft Design-Build Agreement, including with respect to commercial, legal, and design and construction aspects of the Project;
- (b) at least 5 Business Days in advance of the Collaborative Meeting at which a Proponent wishes to discuss the Initial Draft Design-Build Agreement, each Proponent should provide the Owner with a prioritized list of requested changes, if any, to the Initial Draft Design-Build 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) the Owner 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 Design-Build Agreement as the Owner may determine in its discretion.

Prior to the Submission Time for Technical Submissions, the Owner intends to issue by Addendum one or more revised drafts of the Design-Build Agreement, including one that will be identified as the Final Draft Design-Build Agreement. The Owner may further modify the Final Draft Design-Build Agreement by Addendum prior to the Submission Time for Financial Submissions. The Final Draft Design-Build

Agreement will be the basis for the preparation of all Proposals, and Proponents should not in their Proposal make any modifications, changes or additions to the Final Draft Design-Build Agreement except for modifications, changes or additions provided for in Section 8.2.

2.4 DATA ROOM

The Owner has established a website to be used as an electronic Data Room in which it has placed documents in the possession of the Owner that the Owner has identified as relevant to the Project that may be useful to Proponents. The Owner does not make any representation as to the relevance, accuracy or completeness of any of the information available in the Data Room except as the Owner may advise in writing with respect to a specific document. The Owner 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 or updated from time to time. Although the Owner 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 REVIEW OF PHASING PLAN

It is in the interests of the Owner and all Proponents to identify at an early stage of the procurement whether the Project phasing plan is achievable within the limits set out in Section 3.12. Accordingly, as part of the Collaborative Meetings, Proponents and the Owner will conduct an interim review of the phasing plan as follows:

- (a) the purpose of the interim review of the phasing plan is to give early warning of any difficulty in achieving the Project Schedule submitted by the Proponents;
- (b) at least 5 Business Days prior to the Collaborative Meeting at which the interim phasing plan will be reviewed (anticipated to be the Second Collaborative Meeting), each Proponent should submit to the Owner its best estimate of the Project schedule and interim phasing plan. While not prescribing the form of the submission, the Owner is expecting it to be no more than 5 pages in length and to include schedule assumptions in sufficient detail to allow the Owner to understand the Proponent's approach to phasing;
- (c) the Owner will retain the interim phasing plan as strictly confidential, and will invite each Proponent, as part of the Collaborative Meeting to review its interim phasing plan, to discuss any aspect of its interim phasing plan, including any recommendations for amendment of the Project requirements if the dates are difficult or costly to achieve; and

- (d) unless expressly referred to or included by reference in its Proposal, the interim phasing plan will not be considered part of its Proposal and the Owner will not consider or evaluate it as to adequacy, quality, content or otherwise.

The Owner understands that the interim phasing plan submitted by Proponents is not a commitment as to the schedule and that all aspects could change in the final Proposal.

2.6 INTERIM FINANCIAL REVIEW ON AFFORDABILITY

It is in the interests of the Owner 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 the Owner will conduct an interim financial review as follows:

- (e) the purpose of the interim financial review is to give early warning of any difficulty in staying within the Design-Build Price Ceiling, and to permit the Owner and the Proponents to consider and implement steps so that the Competitive Selection Process can proceed with confidence that Proposals will be within the Design-Build Price Ceiling;
- (f) at least 5 Business Days prior to the Collaborative Meeting at which affordability will be reviewed (anticipated to be the Second Collaborative Meeting), each Proponent should submit to the Owner its best estimate of the anticipated Nominal Cost of the Proposal. While not prescribing the form of the interim financial submission by Proponents who anticipate difficulty staying within the Design-Build Price Ceiling, the Owner is expecting it to be no more than 10 pages in length, and to include cost and input assumptions in sufficient detail to allow the Owner to understand the Proponent's cost base (with at least all major cost headings included);
- (g) the Owner 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 will exceed the Design-Build Price Ceiling; and
- (h) 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 the Owner will not consider or evaluate it as to adequacy, quality, content or otherwise.

3 SCOPE OF WORK AND KEY PROJECT ISSUES

The Initial Draft Design-Build Agreement will contain, among other things, the technical requirements and specifications for the Project and commercial terms, including the allocation of risks as between the Design-Builder and the Owner.

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

3.1 SUMMARY OF PROJECT SCOPE

The Design-Builder will be required to plan, design and build facilities on the Oak Bay High School site to address the educational, physical, and social needs of secondary students. The functional requirements are detailed in the Design-Build Agreement.

The Project will be constructed on the existing Oak Bay High School Site. The 18.1 acre site is relatively flat and surrounded by a mix of residential and civic development.

3.2 DESIGN-BUILDER

The Design-Builder will be responsible for all aspects of the Project in accordance with the Design-Build Agreement.

3.3 MUNICIPAL APPROVALS

In accordance with the Design-Build Agreement, the Design-Builder will be responsible for obtaining all permits and approvals required for the design and construction of the Project (including Development Permit), and to ensure that its design for the Project complies with the applicable zoning and other Corporation of the District of Oak Bay (the “City”) requirements. In addition, the Design-Builder will be responsible for all off-site development costs, development cost charges, and development and building permit fees. The Design-Builder may apply for bylaw amendments as necessary to support its design.

3.3.1 Variance Approvals (November 2012)

The Owner has received approval for four variances required to implement the Project. The variances can be found in the Data Room (summarized below):

3.3.1.1 Bylaw 4570 Change Land Use Designation

This bylaw changes the land use designation in the Official Community Plan from Single Family to Institutional.

3.3.1.2 Bylaw 4571 Change Zoning of 2283 Cranmore

This bylaw changes the zoning of 2283 Cranmore from RS5 (Residential) to P1 (General Institutional Use).

3.3.1.3 Bylaw 4572 Spot Zoning of Oak Bay High School Lands

This bylaw consolidates the nine lots into a single site. This allows the nine lots to be considered as a single site for the purposes of set-back and parking requirements; it allows greater height (in those areas indicated on the plan); and it states that the Neighbourhood Learning Centres, Community Theatre, and Arts Facilities are permitted uses.

3.3.1.4 Bylaw 4573 Confirmation of Parking Requirements

The required number of parking spaces for the Oak Bay High School Lands is 195.

3.4 COMMUNICATION WITH CITY

Proponents may request separate and confidential meetings with the City prior to the Submission Time for Technical Submissions to allow Proponents to obtain information they may require for the preparation of Proposals. All requests for Proponent meetings with the City must be made to the Contact Person. All Proponent meetings with the City may include an Owner Representative, at the Owner's discretion. Proponents are not permitted to schedule meetings directly with the City with regard to the Project

3.5 TECHNICAL REPORTS

The Owner has made available certain reports in the Data Room describing Site conditions (the "**Technical Reports**") for reference by Proponents. The Owner has also made available letters from the authors of some of the reports regarding reliance on the reports.

While not an exhaustive list, the following Technical Reports are available in the Data Room:

- (a) Topographical and site surveys;
- (b) Traffic Impact Study;
- (c) Parking Study and Traffic Management Plan Requirements;
- (d) Project Definition Report;

- (e) Geotechnical investigation; and
 - the Owner will make available the geotechnical investigations in its possession which it considers appropriate, without warranty regarding any recommendations for bearing pressures, settlements and the like, which may be contained in these reports;
- (f) Existing School Hazardous Materials Report.

The Design-Builder is responsible to conduct its own analysis and review of the Project and take all steps it considers necessary to satisfy itself as to the accuracy, completeness and applicability of any information contained within the Technical Reports, and to assess all risks related to the Project.

If Proponents request further Existing School or Site condition information the Owner may, in its discretion, choose to work with Proponents to establish a process to address these requests in a timely and cost-effective manner.

3.6 EXISTING SCHOOL TOUR AND SITE MEETINGS

3.6.1 Oak Bay Site and Existing School Tour

The Oak Bay Site and Existing School Tour will start with a presentation to all Proponents from the Owner on the Project's Indicative Design. After this presentation, the Owner will meet with each Proponent individually, host an Oak Bay Site and Existing School Tour, and respond to questions.

3.6.2 Site Meetings

The Owner, in its discretion and within five days of receiving a written request from a Proponent, will facilitate a Site meeting with the Proponent separately for the purposes of further investigations related to Site conditions. The written request should describe the purpose of further investigations and any specific questions.

The Owner will not facilitate Site meetings before the Oak Bay Site and Existing School Tour.

Without the written consent of the Owner, Proponents may not visit or otherwise access the Existing School or Site, or contact the Existing School occupants.

3.7 SPACE REQUIREMENTS AND INDICATIVE DESIGN

The Design-Builder will be required to design and construct the Project to accommodate the spaces, activities, functions, design features and adjacencies described in the Design-Build Agreement.

The Indicative Design reflects program areas and significant design. Functionality has been reviewed with users who have provided input on the general layout, and adjacencies. The Indicative Design should not

be relied on by Proponents. It is for illustrative and general guidance purposes only and does not relieve the Design-Builder in any way of all responsibility for meeting the requirements of the Design-Build Agreement.

Drawings describing the Indicative Design for the Project are available in the Data Room.

3.8 EQUIPMENT

The Design-Builder will complete the Project to accommodate equipment, including all required electrical and plumbing connections, structural support, seismic restraints and space for efficient access, all to the tolerances and specifications as may be specified and required by the manufacturers or suppliers of the equipment, and in accordance with the Design-Build Agreement.

The Design-Builder is required to coordinate equipment installation with the building construction schedule while allowing delivery/installation prior to and as close to Substantial Completion as possible. All equipment that is Design-Builder installed is expected to be completed prior to Substantial Completion unless otherwise noted in the equipment list.

3.9 LEED[®]/ENERGY

The Design-Builder will be required to obtain LEED[®] Gold Certification for the Project. The Owner has registered the Project with the Canadian Green Building Council under the LEED[®] Canada-NC 1.0 rating system (Project #13531). The registration will be transferred to the Design-Builder upon Contract Execution.

The Project's LEED[®] registration confirmation can be found in the Data Room.

3.10 WOOD FIRST

As required by the Wood First Act (British Columbia), the Design-Builder will be required to use wood wherever the building code requirements permit.

3.11 AVAILABILITY OF SCHOOL FACILITIES

The Owner expects the Design-Builder to plan and implement construction to allow sufficient time to facilitate moves from the existing school facilities to new school facilities to avoid, or minimize, disruption to school operations and, especially, curriculum delivery to the students by teachers and staff:

3.11.1 Constraints to Moves

The Design-Builder will not be permitted to take any teaching space (including gymnasiums) out of service until the Owner has moved into new equivalent space. However, the Owner may, in its discretion, consider moving to suitable alternative temporary spaces for short durations if necessary to permit new space to be completed.

The Owner will accept any minor moves (less than 12 teaching spaces) during the Summer Vacation, Winter Vacation, or Spring Vacation. The Owner will accept major moves (greater than 12 teaching spaces) only during Summer Vacation.

3.12 PHASING PLAN

The Project schedule that supports the dates included in the Estimated Timeline (Section 2.1) is called the Indicative Design Phasing Plan and is available in the Data Room. The Project milestones referencing Substantial Completion contained in Section 2.1 have the meaning set out in Section 3.1 of the Design-Build Agreement.

3.13 PARKING

Construction of the Project will affect existing parking capacity at Oak Bay High School during construction, as well as create additional parking demands on the Site upon completion. Accordingly, the Owner is seeking proposals that address parking issues during construction, and provide additional parking spaces upon completion.

3.13.1 Temporary Parking during Construction

As described in the Statement of Requirements, the Owner will require the Preferred Proponent to provide temporary parking stalls for staff, students and visitors during the construction of the Project to replace any existing parking stalls that are made unavailable due to construction.

In addition, and as described in the Statement of Requirements, the Owner will require the successful proponent to prepare Traffic and Parking Management Plans which will include identification of locations where construction workers will be required to park. This requirement is elaborated upon further in the letter report by Boulevard Transportation Group dated October 30, 2012 which is located in the Data Room.

3.13.2 Permanent Parking Solution

As described in the Statement of Requirements, the Owner will require the successful proponent to provide a minimum total of 195 parking stalls to meet expected future parking demands for the Project.

4 AFFORDABILITY

A key objective of the Competitive Selection Process is to maximize the Project scope while meeting the Design-Build Price Ceiling requirement of the Project.

4.1 DESIGN-BUILD PRICE CEILING

The Owner has identified a mandatory Design-Build Price Ceiling of \$46,500,000.00 for the Nominal Cost of the Proposal. Project approvals by the Owner have been based on this Design-Build Price Ceiling.

4.2 NOMINAL COST CALCULATION

Each Proponent must calculate the Nominal Cost of the Proposal and should use the Form A1 - Breakdown of Contract Price provided by the Owner. The completed Breakdown of Contract Price and the Nominal Cost of the Proposal should be submitted with the Proponent's Proposal. The Nominal Cost of the Proposal will be compared to the Design-Build Price Ceiling for evaluation purposes as described in Appendix A of this RFP.

The Breakdown of Contract Price is available in the Data Room as "Form A1 – Breakdown of Contract Price.xls".

5 PROPOSAL REQUIREMENTS

5.1 PARTICIPATION AGREEMENT

As a condition of participating in this RFP each Proponent must sign and deliver to the Contact Person a Participation Agreement, substantially in the form attached as Appendix F or otherwise acceptable to the Owner in its discretion. Proponents will not be permitted to participate in the Oak Bay Site and Existing School Tour, 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 of this RFP. Each Proponent may only submit one Technical Submission and, if invited to do so, one Financial Submission.

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 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 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; and
 - (3) the portion of the Proposal Requirements described in the Financial Submission section of Appendix B.

6.2 NUMBER OF COPIES

For each of its Technical Submission and Financial Submission, a Proponent should submit five hard copies (four bound copies numbered 1 through 4; one bound copy marked as “Master”) and one electronic copy (CD or USB flash drive in PDF format, with a label on each describing its contents) appropriately packaged and clearly marked “Request for Proposals for the Oak Bay High School Replacement Project”.

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. The Owner accepts no responsibility for any Proponent lacking any portion of this RFP.

6.6 ENQUIRIES

Proponents are encouraged to submit Enquiries at an early date and prior to 15:00 Pacific Time on April 23, 2013 to permit consideration by the Owner; the Owner may, in its discretion, decide not to respond to any Enquiry.

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 the Owner;
- (c) the Owner 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 the Owner decides that an Enquiry marked "Commercial in Confidence", or the Owner's response to such an Enquiry, must be distributed to all Proponents, then the Owner will permit the enquirer to withdraw the Enquiry rather than receive a response and if the Proponent does not withdraw the Enquiry, then the Owner 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", the Owner may provide a response to such Enquiry to all Proponents; and
 - (2) if the Owner 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", the Owner 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) the Owner does not assume any risk or responsibility or liability whatsoever to any Proponent:
 - (1) for ensuring that any electronic email system being operated for the Owner or 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 the Owner 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

The Owner may, in its sole and absolute discretion through the Contact Person, 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 the Owner is authorized to amend or clarify this RFP. The Owner 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 the Owner 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 the Owner; 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 the Owner or any sub-licensee or assignee of the Owner 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 to non-specialized third-party technology and software that are generally commercially available. By submitting a Proposal, each Proponent represents to the Owner 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 the Owner 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 the Owner 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; and

- (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.

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 add, remove or otherwise change a member of its Proponent Team after it was shortlisted by the Owner 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 the Owner for approval, including supporting information that may assist the Owner in evaluating the change. The Owner, in its sole and absolute discretion, may grant or refuse an application under this Section, and in exercising its discretion the Owner will consider the objective of achieving a competitive procurement process that is not unfair to the other Proponents. For clarity:

- (a) the Owner may refuse to permit a change to the Proponent Team if the change would, in the Owner's judgment, result in a weaker team than the Proponent Team originally shortlisted; or
- (b) the Owner 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.

The Owner's approval may include such terms and conditions as the Owner may consider appropriate.

6.13 VALIDITY OF PROPOSALS

By submitting a Proposal, each Proponent agrees that:

- (a) its Proposal, including all prices and input costs, will remain fixed and irrevocable from the Submission Time for Financial Submissions until midnight at the end of the 90th Business 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 in its Proposal may not be adjusted unless the Proponent provides notice to the Owner of any proposed adjustment and demonstrates to the satisfaction of the Owner 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 90 Business Days.

6.14 MATERIAL CHANGE AFTER SUBMISSION TIME FOR FINANCIAL SUBMISSIONS

A Proponent will give immediate notice to the Owner of any material change that occurs to a Proponent after the Submission Time for Financial Submissions, including a change to its membership or a change to the Proponent's financial capability.

7 EVALUATION

7.1 MANDATORY REQUIREMENTS

The Owner has determined that the following are the Mandatory Requirements:

- (a) the Proponent 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, if invited to submit such, the Financial Submission must be received at the Submission Location before the Submission Time for Financial Submissions; and
- (c) the Nominal Cost of the Proposal as at the Submission Time for Financial Submissions must not exceed the Design-Build Price Ceiling.

7.2 MATERIAL COMPLIANCE

In addition to the other Evaluation Criteria in Appendix A, the Owner will review each Technical Submission to determine whether, in the Owner's sole discretion, such Technical Submission fails to meet, to a material extent, an important or essential requirement of the Final Draft Design-Build 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 Design-Build 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 Design-Build Agreement and that the Technical Submission will not relieve the successful Proponent from meeting the requirements of the Final Draft Design-Build Agreement.

The Owner 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 the Owner's 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 Design-Build Agreement. A Proponent receiving such list and invitation will not be required to revise or resubmit the Technical Submission and the Owner will not review any resubmission; or

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

The Owner is not responsible for identifying all Material Non-Compliances, and irrespective of whether the Owner 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

The Owner will evaluate Proposals in the manner set out in Appendix A. The Owner will not evaluate a Proposal if it has been rejected, or if the applicable Proponent has been disqualified, in accordance with this RFP.

The Owner 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 the Owner 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 the Owner in its discretion deems appropriate and in the interests of the Owner and this RFP, or either 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 the Owner, 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, 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, the Owner may in its discretion, decline to review, evaluate or rank, or may reject outright any Proposal:

- (a) which in the opinion of the Owner is materially incomplete or irregular;
- (b) which contains omissions, exceptions or variations (including any modifications, changes or additions to the Final Draft Project Agreement, except as provided for in Section 8.2) not acceptable to, or material to, the Owner;
- (c) which contains any false or misleading statements, claims or information; or
- (d) for which background investigations reveal any false statements or criminal affiliations or activities by a Proponent or Proponent Team member.

To enable the Owner to take any one or more of the above-listed steps, the Owner may enter into separate and confidential communications of any kind whatsoever, with any Person, including any Proponent. The Owner 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 the Owner or without an invitation or request by the Owner.

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

The Owner 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.

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

8 SELECTION OF PREFERRED PROPONENT AND AWARD

8.1 SELECTION AND AWARD

If the Owner selects a Preferred Proponent, the Proponent with the highest ranked Proposal will be selected as the Preferred Proponent, and the Owner will invite the Preferred Proponent to enter into final discussions to settle all terms of the Design-Build 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 the Owner determines that it is unlikely to reach final agreement with the Preferred Proponent, then the Owner may terminate the discussions with the Preferred Proponent and proceed in any manner that the Owner 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 the Owner, such as from the Provincial Government, will be conditions precedent to the final execution or commencement of the Design-Build Agreement.

8.2 FINAL DRAFT DESIGN-BUILD AGREEMENT

It is the intention of the Owner that:

- (a) any issues with respect to the Initial Draft Design-Build Agreement will be discussed during the Collaborative Meetings and fully considered prior to issuance of the Final Draft Design-Build Agreement; and
- (b) once issued, the Final Draft Design-Build 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 the Owner, in its discretion, of which parts, if any, of the Proposal are to be incorporated by reference or otherwise, into the Design-Build Agreement or otherwise pursuant to express provisions of the Design-Build Agreement;
 - (2) to those provisions or parts of the Final Draft Design-Build Agreement that are indicated as being subject to completion or finalization, or which the Owner 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 the Owner to complete, based on the Proposal, any provision of the Final Draft Design-Build Agreement, including changes, modifications and additions contemplated in or required under the terms of the Final Draft Design-Build Agreement;
- (4) that are necessary to create or provide for a legally complete, enforceable and binding agreement; or
- (5) that enhance clarity in legal drafting.

The Owner also reserves the right in its discretion to negotiate changes to the Final Draft Design-Build Agreement and to the Preferred Proponent's Proposal.

Upon Contract Execution, the Design-Build 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 the Design-Builder.

8.3 RETURN OF PROPONENT SECURITY DEPOSIT

Upon the receipt of a bona fide and responsive Technical Submission from a Proponent, the Owner will return the \$25,000 Proponent Security Deposit received when the Proponent was shortlisted.

8.4 PREFERRED PROPONENT SECURITY DEPOSIT

Subject to the terms of this RFP:

- (a) the Owner will invite the Preferred Proponent to deliver the Preferred Proponent Security Deposit on or before the date and time specified by the Owner, such date not to be earlier than five 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 the Owner on or before the date and time specified by the Owner.

8.5 RETURN OF SECURITY DEPOSIT

Subject to Section 8.6, the Owner will return the Preferred Proponent Security Deposit to the Preferred Proponent:

- (a) within 10 Business Days after receipt by the Owner of notice of demand from the Preferred Proponent, if:
 - (1) the Owner exercises its right under Section 10.1 to terminate this RFP prior to entering into the Design-Build Agreement for reasons unrelated to the Preferred Proponent or any member of the Preferred Proponent's Proponent Team; or
 - (2) the Owner fails, within the Proposal Validity Period, to execute and deliver an agreement substantially in the form of the Final Draft Design-Build Agreement finalized by the Owner 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 Design-Build Agreement; or
 - ii. any extensions to the Proposal Validity Period arising from any agreement by the Owner to negotiate changes to the Final Draft Design-Build Agreement pursuant to Section 8.2:
or
- (b) within 10 Business Days after Contract Execution with such Preferred Proponent.

8.6 RETENTION OF SECURITY DEPOSIT

Notwithstanding any receipt by the Owner of the notice described in Section 8.3, the Owner may, in its discretion, draw on, retain and apply the proceeds of the Preferred Proponent Security Deposit for the Owner'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 the Owner:
 - (1) the Preferred Proponent fails to execute and deliver an agreement substantially in the form of the Final Draft Design-Build Agreement finalized by the Owner in accordance with Section 8.2; or
 - (2) Contract Execution fails to occur within 20 Business Days (or such longer period as the parties may agree) of receipt of such notice from the Owner,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 the Owner'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 Design-Build Agreement for a continuous period of 125 Business Days as if the Design-Build Agreement was in force and effect.

8.7 PARTIAL COMPENSATION FOR PARTICIPATION IN THIS RFP

Upon execution of the Design-Build Agreement, the Owner will pay \$175,000.00 [inclusive of any GST/HST payable] to each unsuccessful Proponent that:

- (a) complied with the Mandatory Requirements;
- (b) submitted a bona fide and responsive Technical Submission and Financial Submission;
- (c) has not withdrawn from the Competitive Selection Process or been disqualified by the Owner in accordance with the terms of this RFP; and
- (d) provides to the Owner 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 the Owner and waiver of moral rights pursuant to Section 6.9.

If the Owner exercises its right under Section 10.1 to terminate the RFP process prior to entering into the Design-Build Agreement with a Proponent, the Owner will pay to each Proponent that satisfies the requirements (to the extent applicable) set out in Section 8.7 (a) through (d), the lesser of:

- (a) \$100,000.00 (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 the Owner 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 8.4 to be entitled to receive any such payment.

In determining whether to make available the partial compensation described in this Section 8.7, the Owner considered the potential value of obtaining the licence to the Owner of rights to the Intellectual

Property Rights and the waiver of moral rights pursuant to Section 6.9. Accordingly, the Owner may, in its discretion, offer to pay up to \$100,000.00 (inclusive of any GST/PST payable) to a Proponent that is not otherwise entitled to payment under this Section 8.7 on conditions established by the Owner in its discretion. The conditions may include the Owner 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 the Owner granting licence rights to the Owner. Such arrangements will not be governed by this RFP.

8.8 DEBRIEFS

The Owner will, following Contract Execution, upon request from a Proponent within 40 Business Days of Contract Execution, conduct a debriefing for that Proponent.

9 CONFLICT OF INTEREST AND RELATIONSHIP DISCLOSURE

9.1 RESERVATION OF RIGHTS

The Owner reserves the right to disqualify any Proponent that in the Owner'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 the Owner may consider to be in the public interest or otherwise required by the Owner.

9.2 RELATIONSHIP DISCLOSURE

Each Proponent, including each member of the Proponent Team, should fully disclose all relationships they may have with the Owner, any Restricted Party, or any other Person providing advice or services to the Owner 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 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 the Owner or the COI Adjudicator may require in its discretion in connection with the consideration of the disclosed relationship and proposed measures.

9.3 USE OR INCLUSION OF RESTRICTED PARTIES

The Owner may, in its discretion, disqualify a Proponent, or may permit a Proponent to continue and impose such conditions as the Owner may consider to be in the public interest or otherwise required by the Owner, 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 obtains advice or assistance in relation to the Project 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, the Owner has identified the following persons as Restricted Parties:

- (a) Boughton Law Corporation (COI Adjudicator);
- (b) B. Larkin and Associates Ltd.(Fairness Advisor);
- (c) Miller Thomson LLP (Legal Advisor);
- (d) CEI Architecture Planning Interiors;
- (e) John Wallace engineering Ltd.
- (f) Burrmech Consultants Inc.;
- (g) Prior Engineering Ltd.;
- (h) Westbrook Consulting Ltd.;
- (i) LADR Landscape Architects Inc.;
- (j) Trillium Business Strategies Inc.,
- (k) Advicas Group Consultants Inc.; and
- (l) the Owner 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 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

The Owner has appointed a conflict of interest adjudicator (the “**Conflict of Interest Adjudicator**” or “**COI Adjudicator**”) to provide decisions on conflicts of interest, unfair advantage or exclusivity issues, including whether any person is a Restricted Party. The Owner 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 Business 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 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.

The Owner may make an advance decision or may refer the request for an advance decision to the COI Adjudicator. If the Owner refers the request to the COI Adjudicator, the Owner 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 THE OWNER MAY REQUEST ADVANCE DECISIONS

The Owner may also independently make advance decisions, or may seek an advance decision from the COI Adjudicator, where the Owner identifies a potential conflict, unfair advantage, or a person who may be a Restricted Party. The Owner will, if it seeks an advance decision from the COI Adjudicator, provide the COI Adjudicator with relevant information in its possession. If the Owner seeks an advance decision from the COI Adjudicator, the Owner 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 the Owner may require that the Proponent make an application under Section 9.6.

9.8 DECISIONS FINAL AND BINDING

The decision of the Owner 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 the Owner. The Owner 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.

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

9.9 SHARED USE

A Shared Use Person is a person identified by the Owner as eligible to do work for more than one Proponent, including a person who has unique or specialized information or skills such that the Owner 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.

As of the date of this RFP, no Shared Use Persons have been identified.

9.10 EXCLUSIVITY

Unless permitted by the Owner 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;
- 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, the Owner 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 the Owner. 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 Business 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.

The Owner may require additional information or documentation to demonstrate to the satisfaction of the Owner in its discretion that no such non-exclusivity exists or, if it does, that measures satisfactory to the Owner 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.

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

9.10.1 The Owner May Request Advance Decisions

The Owner may also independently make advance decisions, or may seek an advance decision from the COI Adjudicator, where the Owner identifies a matter of exclusivity. The Owner will, if it seeks an advance decision from the COI Adjudicator, provide the COI Adjudicator with relevant information in its possession. If the Owner seeks an advance decision from the COI Adjudicator, the Owner will give notice to the Proponent so that it may make its own response to the COI Adjudicator.

The onus is on the Proponent to clear any matter related to exclusivity, or to establish any conditions for continued participation, and the Owner may require that the Proponent make an application under Section 9.10

9.10.2 Decisions Final and Binding

The decision of the Owner 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 the Owner. The Owner 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.

The Owner may provide any decision by the Owner or the COI Adjudicator regarding matters related to exclusivity to all Proponents if the Owner, in its discretion, determines that the decision is of general application.

10 RFP TERMS AND CONDITIONS

10.1 NO OBLIGATION TO PROCEED

This RFP does not commit the Owner to select a Preferred Proponent or enter into a Design-Build Agreement, and the Owner 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 the Owner 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 the Owner and the Preferred Proponent execute and deliver the Design-Build Agreement, and then only to the extent expressly set out in the Design-Build 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, the Owner 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 the Owner 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 the Owner 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 8.7, each Proponent is solely responsible for all costs it incurs in the preparation of its Proposal, including all costs of providing information requested by the Owner, 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 the Owner. 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

The Owner 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 the Owner's evaluation of the Proposals in accordance with Appendix B, and in particular the Owner is not obliged to select the Proposal with the lowest Nominal Cost of the Proposal;
- (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 8.7;
- (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 the Owner, with the knowledge and intention that the Owner 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 including 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 the Owner, the Government of British Columbia (including any Minister or Deputy Minister, any member of the Executive Council, any Members of the Legislative Assembly), or any trustee or School Board member, or any employee of the Greater Victoria School District, or any employee of the Ministry of Education, 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.

In the event of any lobbying or communication in contravention of this Section, the Owner 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 8.7.

10.9 PARTNERSHIPS BC

The Owner 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, the Owner has engaged Partnerships BC, which is currently engaged in projects across a variety of sectors, and the Owner may receive information in respect of those other projects which may be relevant to Proponents or Proponent Team members. Subject to Section 2.2, the Owner may share information that is available from this Project with Partnerships BC and other projects. The Owner 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 the Owner become the property of the Owner and will be received and held in confidence by the Owner, subject to the provisions of FOIPPA and this RFP.

10.11 DISCLOSURE AND TRANSPARENCY

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

The Owner 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 names of Proponents.

Following Contract Execution, the Owner expects to publicly disclose the Fairness Advisor's report.

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, the Owner;
- (b) it will notify the Owner 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

The Owner has appointed Bill Larkin (the "**Fairness Advisor**") to monitor the Competitive Selection Process. The Fairness Advisor will provide a written report to the Owner that the Owner 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 the Owner 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 the Owner or any of its employees, advisors or representatives (including the Fairness Advisor and COI Adjudicator) 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 the Owner 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 the Owner exercises any rights under this RFP; and
- (b) waives any and all Claims against the Owner or any of its employees, advisors or representatives (including the Fairness Advisor and COI Adjudicator) for loss of anticipated profits or loss of opportunity if no agreement is made between the Owner and the Proponent for any reason, including:
- (1) if the Owner 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 the Owner exercises any rights under this RFP.

This Section does not limit the Owner's obligation to make payment under Section 8.7, but in no event will the Owner's liability exceed the amount calculated pursuant to Section 8.7.

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 Design-Build Agreement.

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

“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.

“Architect” means the individual responsible for leading the design of the Project.

“Breakdown of Contract Price” means the form in which Proponents are to provide the Owner costing of the Project and the calculation of the Nominal Cost of the Proposal as set out in Section 4 and Appendix B.

“Building” means the new replacement Oak Bay High School building.

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

“City” means the Corporation of the District of Oak Bay.

“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.

“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.

“Contract Execution” means the time when the Design-Build Agreement and all other agreements related to the Project have been executed and delivered and all conditions to the effectiveness of the Design-Build Agreement have been satisfied.

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

“Design-Build Agreement” has the meaning set out in Section 1.1.

“Design-Build Price Ceiling” has the meaning set out in Section 4.1.

“Design-Builder” means the entity that enters into the Design-Build Agreement with the Owner.

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

“Evaluation Criteria” means the criteria contained in Appendix A to this RFP.

“Facility” means the Building and the Performing Arts Wing.

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

“Final Draft Design-Build Agreement” has the meaning set out in Section 2.3.

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

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

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

“Indicative Design” has the meaning set out in Schedule 1 [Statement of Requirements].

“Initial Draft Design-Build Agreement” means the draft Design-Build Agreement labelled “Initial Draft Design-Build Agreement” and posted in the Data Room.

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

“Key Individuals” of a Proponent means the specific persons, exclusive to the Proponent, filling the following roles (or equivalent) in the Proponent’s Proposal:

- Architect;
- Project Manager / General Contractor;
- Structural Engineer;

- Mechanical Engineer;
- Electrical Engineer; and
- Civil Engineer.

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

“Material Non-Compliance” has the meaning set out in Section 7.1.

“Nominal Cost of the Proposal” means the nominal sum of the values in the Breakdown of Contract Price.

“Owner” means the the Board of Education of School District No. 61 (Greater Victoria).

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

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

“Partnerships BC” means Partnerships British Columbia Inc.

“Performing Arts Wing” means the new east gym and the new performing arts wing including the facilities as described in the State of Requirements.

“Preferred Proponent” means the Proponent selected pursuant to this RFP to enter into negotiations with the Owner for a Design-Build Agreement.

“Preferred Proponent Security Deposit” means an irrevocable letter of credit in the amount of \$100,000.00 in the form set out in Appendix H or in such other form acceptable to the Owner in its discretion.

“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; or
- (c) is the Design-Builder.

“Project” means the design and construction of the Facility and all other works ancillary to the Facility in accordance with the Design-Build Agreement.

“Project Manager / General Contractor” means the individual who represents the Design-Builder and has overall responsibility to design and build the Project, as described in the Proponent’s Response.

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

“Proponent Security Deposit” has the meaning set out in Section 8.3.

“Proponent Team” means a Proponent and its Key Individuals.

“Proposal” means a Technical Submission and Financial Submission submitted in response to this RFP.

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

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

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

“Request for Proposals” or **“RFP”** means this request for proposals, including any Addenda.

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

“Restricted Party” means those persons (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.

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

“Site” means the Okay Bay High School site.

“Spring Vacation” means the time the school is closed in the spring. For the 2012-13 school year, Spring Vacation is March 11, 2013 to March 22, 2013.

“Statement of Requirements” means the functional requirements and specifications for the design and construction of the Facility as set out in the Design-Build Agreement, including Schedule 1 [Statement of Requirements].

“Submission Location” means the submission location 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.

“Summer Vacation” means the time that the school is closed during the summer months. For the 2012-13 school year, Summer Vacation starts on June 28, 2013.

“Technical Reports” has the meaning set out in section 3.5.

“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.

“Total Facility Development and Capital Costs” of a Proposal means the amount described as such in, and calculated in accordance with, Pricing Form A6 (Total Facility Development and Capital Cost).

“Winter Vacation” means the time around the holiday season that the school is closed. For the 2012-13 school year, the Winter Vacation was between December 24, 2012 to January 4, 2013.

11.2 INTERPRETATION

In this RFP:

- (a) any action, decision, determination, consent, approval or any other thing to be performed, made or exercised by, or on behalf of, the Owner, including the exercise of “discretion”, or words of like effect, unless the contract requires it, is at the sole, absolute and unfettered discretion of the Owner;
- (b) the use of headings is for convenience only and headings are not to be used in the interpretation of this RFP;
- (c) a reference to a Section or Appendix, unless otherwise indicated, is a reference to a Section of, or Appendix to, this RFP;
- (d) words imputing any gender include all genders, as the context requires, and words in the singular include the plural and vice versa;
- (e) a reference to a person includes an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, limited liability company, association, unincorporated organization, union or governmental authority;
- (f) the word “including” when used in this RFP is not to be read as limiting; and
- (g) 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.

APPENDIX A EVALUATION OF PROPOSALS

Provided as a separate document.

APPENDIX B PROPOSAL REQUIREMENTS

Provided as separate document.

APPENDIX C PROPOSAL DECLARATION FORM

This Proposal Declaration must be executed by the Proponent. By executing this Proposal Declaration, the Proponent agrees to the provisions of the RFP and this Proposal Declaration. Capitalized terms are defined in Section 11.1 of this RFP.

[RFP Proponent's Letterhead]

To: Greater Victoria School District No. 61
c/o Partnerships British Columbia Inc.
300 – 707 Fort Street
Victoria, BC V8W 3G3

Attention: Catherine Silman

In consideration of the Owner's agreement to consider our Proposal in accordance with the terms of the RFP, the Proponent hereby agrees, confirms and acknowledges on its own behalf and on behalf of each member of the Proponent Team, that:

1. Proposal

- (a) this Proposal Declaration Form has been duly authorized and validly executed by the Proponent;
- (b) the Proponent is bound by all statements and representations in its Proposal;
- (c) its Proposal strictly conforms with the RFP and that any failure to strictly conform with the RFP may, in the discretion of the Owner, be cause for rejection of its Proposal;
- (d) its Proposal is made without collusion or fraud; and
- (e) the Owner reserves the right to verify information in its Proposal and conduct any background investigations including criminal record investigations, verification of the Proposal, credit enquiries, litigation searches, bankruptcy registrations and other investigations on all or any of the Proponent Team members, and by submitting a Proposal, the Proponent and each Proponent Team member agrees that they consent to the conduct of all or any of those investigations by the Owner.

2. Acknowledgements with Respect to the RFP

- (a) the Proponent and each Proponent Team member has received, read, examined and understood the entire RFP including all of the terms and conditions, all documents listed in the RFP “Table of Contents”, and any and all Addenda;
- (b) the Proponent has provided a Proposal that does not exceed the Design-Build Price Ceiling as defined in the RFP;
- (c) the Proponent and each Proponent Team member agrees to be bound by the entire RFP including all of the terms and conditions, all documents listed in the RFP Table of Contents, and any and all Addenda;
- (d) the Proponent’s representative identified below is fully authorized to represent the Proponent and each Proponent Team member in any and all matters related to its Proposal, including but not limited to providing clarifications and additional information that may be requested in association with the RFP;
- (e) the Proponent has disclosed all relevant relationships of the Proponent and each Proponent Team member, in accordance with the instructions and format outlined in the Relationship Disclosure Form; and
- (f) the Final Draft Design-Build Agreement is in a form acceptable to the Proponent.

3. Consent of Proponent Team

- (a) the Proponent has obtained the express written consent and agreement of each member of the Proponent Team, as listed below, to all terms of this Proposal Declaration Form to the extent applicable to such Proponent Team member.

4. The Proponent Team consists of:

Name	Address	Key Individual

PROPONENT REPRESENTATIVE

Name

Name of Employer

Address

Email Address

Name of Authorized Signatory

Telephone

Signature

If the Proponent is a joint venture, consortium or special purpose entity – by each of its joint venture or consortium members, as applicable, as identified in the response to the RFQ as the respondent or the respondent team lead(s), or as otherwise acceptable to the Owner.

APPENDIX D RELATIONSHIP DISCLOSURE FORM

This form must be completed by the Proponent on its own behalf and on behalf of each member of the Proponent Team.

The Proponent declares on its own behalf and on behalf of each member of the Proponent Team that:

- (b) this declaration is made to the best of the knowledge of the Proponent and, with respect to relationships of each member of the Proponent Team, to the best of the knowledge of that member;
- (c) the Proponent and the members of the Proponent Team have reviewed the definition of Restricted Parties and the non-exhaustive list of Restricted Parties;
- (d) the following is a full disclosure of all known relationships the Proponent and each member of the Proponent Team has, or has had, with:
 - (1) the Owner;
 - (2) any listed Restricted Party;
 - (3) any current employees, shareholders, directors or officers, as applicable, of the Owner or any listed Restricted Party;
 - (4) any former shareholders, directors or officers, as applicable, of the Owner or any listed Restricted Party, who ceased to hold such position within two calendar years prior to the Submission Time for Technical Submissions; and
 - (5) any other person who, on behalf of the Owner or a listed Restricted Party, has participated or been involved in the Competitive Selection Process or the design, planning or implementation of the Project, or has confidential information about the Project or the Competitive Selection Process.

Name of Proponent Team Member and Relevant Individual of Proponent Team Member (if applicable)	Name of Party with Relationship (e.g., Owner, Restricted Party)	Details of the Nature of the Relationship (e.g., <i>Proponent Team member was an advisor to the Restricted Party from 2005-2006</i>)

NAME OF PROPONENT:

Name of Firm – Proponent:

Address:

Email Address:

Telephone:

Name of Authorized Signatory for Proponent:

Signature:

If the Proponent is a joint venture, consortium or special purpose entity – by each of its joint venture or consortium members, as applicable, as identified in the response to the RFQ as the respondent or the respondent team lead(s), or as otherwise acceptable to the Owner.

APPENDIX E PROPONENT COMMENTS FORM

(Collaborative Meetings – s. 2.3(b))

Oak Bay High School Replacement Project

Section	Proposed Change (including detailed drafting)	Reasons for Proposed Change	Owner Response

APPENDIX F PARTICIPATION AGREEMENT

[Insert Month, Day Year]

The Board of Education of School District No. 61
c/o Partnerships British Columbia Inc.
300 – 707 Fort Street
Victoria, BC V8W 3G3

Attention: Catherine Silman, Contact Person

Dear Sirs/Mesdames:

Re: Oak Bay High School Replacement Project – Participation Agreement in respect of the Request for Proposals issued by the Board of Education of School District No. 61 (Greater Victoria) (the Owner) on [Insert Month, Day Year], as amended or otherwise clarified from time to time, including by all Addenda (the “RFP”).

This letter agreement sets out the terms and conditions of the Participation Agreement between [Insert Name of Proponent] (the “Proponent”) and the Owner, pursuant to which the Proponent agrees with the Owner as follows:

- (a) **Defined Terms.** Capitalized terms not otherwise defined in this Participation Agreement have the meanings given to them in the RFP
- (b) **Participation.** The Proponent agrees that as a condition of participating in the RFP, including the Competitive Selection Process, Collaborative Meetings and access to the Data Room, the Proponent will comply with the terms of this Participation Agreement and the terms of the RFP.
- (c) **Confidentiality.** The Proponent will comply with, and will ensure that all of the Proponent Team members and others associated with the Proponent also comply with, the confidentiality conditions attached as Schedule 1 to this Participation Agreement, all of which conditions are expressly included as part of this Participation Agreement.
- (d) **Terms of RFP.** The Proponent will comply with and be bound by, and will ensure that all of the Proponent Team members and others associated with the Proponent also comply with and are bound by, the provisions of the RFP, all of which are incorporated into this Participation Agreement by reference. Without limiting the foregoing the Proponent agrees:
 - (1) that the terms of this Participation Agreement do not limit the Proponent’s obligations and requirements under the RFP, any Data Room agreement, or any other document or requirement of the Owner;

- (2) to be bound by the disclaimers, limitations and waivers of liability and Claims and any indemnities contained in the RFP, including Section 10.13 (Limitation of Damages) of the RFP. In no event will the liability of the Owner exceed the amount calculated pursuant to Section 8.7 (Partial Compensation for Participation in the RFP) of the RFP;
 - (3) that the Owner's and the Proponent's obligations in respect of payments of partial compensation or other similar payment are as set out in Section 8.7 (Partial Compensation for Participation in the RFP) of the RFP; and
 - (4) that the Owner's and the Proponent's obligations in respect of the Preferred Proponent Security Deposit are as set out in Sections 8.3, 8.3 and 8.6 of the RFP.
- (e) **Amendments.** The Proponent acknowledges and agrees that:
- (1) the Owner may in its sole and absolute discretion amend the RFP at any time and from time to time; and
 - (2) by submitting a Proposal the Proponent accepts, and agrees to comply with, all such amendments and, if the Proponent does not agree to any such amendment, the Proponent's sole recourse is not to submit a Proposal.
- (f) **General.**
- (1) *Capacity to Enter Agreement.* The Proponent hereby represents and warrants that:
 - i. it has the requisite power, authority and capacity to execute and deliver this Participation Agreement;
 - ii. this Participation Agreement has been duly and validly executed by it, or on its behalf by the Proponent's duly authorized representatives; and
 - iii. this Participation Agreement constitutes a legal, valid and binding agreement enforceable against it in accordance with its terms.
 - (2) *Survival following cancellation of the RFP.* Notwithstanding anything else in this Participation Agreement, if the Owner, for any reason, cancels the Competitive Selection Process or the RFP, the Proponent agrees that it continues to be bound by, and will continue to comply with, Section (c) of this Participation Agreement.
 - (3) *Severability.* If any portion of this Participation Agreement is found to be invalid or unenforceable by law by a court of competent jurisdiction, then that portion will be severed and the remaining portion will remain in full force and effect.
 - (4) *Enurement.* This Participation Agreement enures to the benefit of the Owner and binds the Proponent and its successors.

- (5) *Applicable Law.* This Participation Agreement is deemed to be made pursuant to the laws of the Province of British Columbia and the laws of Canada applicable therein and will be governed by and construed in accordance with such laws.
- (6) *Headings.* The use of headings is for convenience only and headings are not to be used in the interpretation of this Participation Agreement.
- (7) *Gender and Number.* In this Participation Agreement, words imputing any gender include all genders, as the context requires, and words in the singular include the plural and vice versa.
- (8) *Including.* The word including when used in this Participation Agreement is not to be read as limiting.

Yours truly,

(Name of Proponent)

Authorized Signatory

Name of Authorized Signatory
(please print)

SCHEDULE 1 – Confidentiality Conditions

(a) Definitions. In these confidentiality conditions:

- (1) **Confidential Information** means all documents, knowledge and information provided by the Disclosing Party to, or otherwise obtained by, the Receiving Party, whether before or after the date of the RFP, whether orally, in writing or other visual or electronic form in connection with or relevant to the Project, the RFP, the RFQ or the Competitive Selection Process, including, without limitation, all design, operational and financial information, together with all analyses, compilations, data, studies, photographs, specifications, manuals, memoranda, notes, reports, maps, documents, computer records or other information in hard copy, electronic or other form obtained from the Disclosing Party or prepared by the Receiving Party containing or based upon any such information. Notwithstanding the foregoing, Confidential Information does not include information which:
 - i. is or subsequently becomes available to the public, other than through a breach by the Receiving Party of the terms of this Schedule 1;
 - ii. is subsequently communicated to the Receiving Party by an independent third party, other than a third party introduced to the Receiving Party by the Disclosing Party or connected with the Project, without breach of this Schedule 1 and which party did not receive such information directly or indirectly under obligations of confidentiality;
 - iii. was rightfully in the possession of the Receiving Party or was known to the Receiving Party before the date of the RFP and did not originate, directly or indirectly, from the Disclosing Party;
 - iv. was developed independently by the Receiving Party without the use of any Confidential Information; or
 - v. is required to be disclosed pursuant to any judicial, regulatory or governmental order validly issued under applicable law;
- (2) **Disclosing Party** means the Owner or any of its Representatives;
- (3) **Permitted Purposes** means evaluating the Project, preparing a Proposal, and any other use permitted by the RFP or this Participation Agreement;
- (4) **Receiving Party** means a Proponent or any of its Representatives;
- (5) **Representative** means a director, officer, employee, agent, accountant, lawyer, consultant, financial advisor, subcontractor, Key Individual, Proponent Team member or any other person contributing to or involved with the preparation or evaluation of Proposals or

- proposals, as the case may be, or otherwise retained by the Receiving Party, the Owner or Partnerships BC in connection with the Project.
- (b) **Confidentiality.** The Receiving Party will keep all Confidential Information strictly confidential and will not without the prior written consent of the Owner, which may be unreasonably withheld, disclose, or allow any of its Representatives to disclose, in any manner whatsoever, in whole or in part, or use, or allow any of its Representatives to use, directly or indirectly, the Confidential Information for any purpose other than the Permitted Purposes. The Receiving Party will make all reasonable, necessary, and appropriate efforts to safeguard the Confidential Information from disclosure to any other person except as permitted in this Schedule 1, and will ensure that each of its Representatives agrees to keep such information confidential and to act in accordance with the terms contained herein.
- (c) **Ownership of Confidential Information.** The Owner owns all right, title and interest in the Confidential Information and, subject to any disclosure requirements under applicable law, and except as permitted by this Schedule 1, the Receiving Party will keep all Confidential Information that the Receiving Party receives, has access to, or otherwise obtains strictly confidential for a period of three years after the date of the RFP, and will not, without the prior express written consent of an authorized representative of the Owner, which may be unreasonably withheld, use, divulge, give, release or permit or suffer to be used, divulged, given or released, any portion of the Confidential Information to any other person for any purpose whatsoever.
- (d) **Limited Disclosure.** The Receiving Party may disclose Confidential Information only to those of its Representatives who need to know the Confidential Information for the purpose of evaluating the Project and preparing its Proposal or proposal as applicable and on the condition that all such Confidential Information be retained by each of those Representatives as strictly confidential. The Receiving Party will notify Partnerships BC, on request, of the identity of each Representative to whom any Confidential Information has been delivered or disclosed.
- (e) **Destruction on Demand.** On written request, the Receiving Party will promptly deliver to Partnerships BC or destroy all documents and copies thereof in its possession or control constituting or based on the Confidential Information and the Receiving Party will confirm that delivery or destruction to Partnerships BC in writing, all in accordance with the instructions of Partnerships BC (for this purpose information stored electronically will be deemed destroyed upon removal from all storage systems and devices); provided, however, that the Receiving Party may retain one copy of any Confidential Information which it may be required to retain or furnish to a court or regulatory authority pursuant to applicable law.
- (f) **Acknowledgment of Irreparable Harm.** The Receiving Party acknowledges and agrees that the Confidential Information is proprietary and confidential and that the Owner or Partnerships BC

may be irreparably harmed if any provision of this Schedule 1 were not performed by the Receiving Party or any party to whom the Receiving Party provides Confidential Information in accordance with its terms, and that any such harm could not be compensated reasonably or adequately in damages. The Receiving Party further acknowledges and agrees that the Owner will be entitled to injunctive and other equitable relief to prevent or restrain breaches of any provision of this Schedule 1 by the Receiving Party or any of its Representatives, or to enforce the terms and provisions hereof, by an action instituted in a court of competent jurisdiction, which remedy or remedies are in addition to any other remedy to which the Owner may be entitled at law or in equity.

- (g) **Waiver.** No failure to exercise, and no delay in exercising, any right or remedy under this Schedule 1 by the Owner will be deemed to be a waiver of that right or remedy.

APPENDIX G PREFERRED PROPONENT SECURITY DEPOSIT

[Note: The Preferred Proponent Security Deposit should be a Letter of Credit substantially in the following form, issued by, or confirmed by, a Canadian chartered bank acceptable to the Owner in its discretion and be callable at the bank's counters in Vancouver, British Columbia.]

TO: The Board of Education of School District No. 61 (Greater Victoria)

<>

(the "Beneficiary")

RE PREFERRED PROPONENT SECURITY DEPOSIT

IRREVOCABLE LETTER OF CREDIT NO: __

Dear Sirs:

At the request of our client, _____ (the Customer), we hereby issue in your favour our irrevocable letter of credit No. _____ (Letter of Credit) for a sum not exceeding in the aggregate One Hundred Thousand Dollars (CDN \$100,000.00) effective immediately.

This bank will immediately pay to you under this Letter of Credit any amount or amounts claimed, not exceeding in the aggregate the sum of CDN \$100,000.00 upon your written demand(s) for payment being made upon us at our counter during normal business hours, **[Note: insert address of Bank in Vancouver, British Columbia]**, Canada referencing this irrevocable Letter of Credit No.

_____ dated _____.

Partial drawings are permitted.

This Letter of Credit is issued subject to Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600.

Drawings up to the full amount of the Letter of Credit may be made where the drawing is accompanied by a certificate executed by an authorized signatory of the Beneficiary stating that:

- (a) the person signing the certificate is an authorized signatory of the Beneficiary; and

(b) the Beneficiary is entitled to draw upon this Letter of Credit.

Any drawings made under this Letter of Credit must be accompanied by the original or certified copy of this Letter of Credit, together with an original certificate complying with the conditions set out above.

We will honour your written demand(s) for payment on presentation without enquiring whether you have a legitimate claim between yourself and our said Customer.

All banking charges are for the account of the Customer.

This Letter of Credit will remain in full force and effect and, unless renewed, will expire at the close of business on [Insert Date].

Notice of non-renewal will be provided to the Beneficiary in writing by registered mail by not later than 20 Business Days before the expiry date.

Authorized Signatory

Authorized Signatory

APPENDIX H INITIAL DRAFT DESIGN-BUILD AGREEMENT

Posted in the Data Room.

APPENDIX I BONDING UNDERTAKING

Date: _____, 20 ____

No. _____

TO: The Board of Education of School District No. 61 (Greater Victoria)

**Re: Request for Proposals
Oak Bay High School Replacement (the Project)**

We _____ (name of Surety), a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in Canada as Surety, are the Surety for _____ (Proponent). Our client has demonstrated to us in the past an ability to complete its projects in accordance with the conditions of its contracts and we have no hesitation in recommending its services to you.

Our client wishes to submit a Proposal for the captioned Project, which we understand will require a Performance Bond of 50% of the Nominal Cost of the Proposal and a Labour and Materials Payment Bond of 50% of the Nominal Cost of the Proposal. Based on the information available at this time, and subject to our assessment of the Oak Bay High School Replacement Project, and our client's work program at the time of submission of its Proposal, we do not anticipate a problem in supporting the captioned Project and supplying the requisite bonds if asked to do so. However, the execution of any bonds will be subject to an assessment of the final contract terms, conditions, financing and bond forms by our client and us.

If we can provide any further assurances or assistance, please don't hesitate to call upon us.

(Name of Surety)

_____ (Seal)

Attorney-In-Fact

