



MINISTRY OF JUSTICE

MINISTRY OF
TECHNOLOGY,
INNOVATION AND
CITIZENS' SERVICES

Request for Proposals

Okanagan Correctional Centre

CONFORMED – January 14, 2014

SUMMARY OF KEY INFORMATION

RFP TITLE	The title of this RFP is: Okanagan Correctional Centre 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 by email only. Other methods, including telephone or fax Enquires are not permitted.
ENQUIRIES	Proponents are encouraged to submit Enquiries at an early date and: <ul style="list-style-type: none"> ▪ for Enquiries of a technical nature: prior to 14:00 Pacific Time on the day that is 10 Business Days before the Submission Time for Technical Submissions ▪ for Enquiries of a financial nature: prior to 14:00 Pacific Time on the day that is 5 Business Days before the Submission Time for Financial Submissions to permit consideration by the Province. The Province may, in its discretion, decide not to respond to any Enquiry.
SUBMISSION TIME FOR INTERIM FINANCIAL REVIEW SUBMISSIONS	July 8, 2013 11:00 Pacific Time
INITIAL AIRS SUBMISSION TIME	September 25, 2013 11: 00 Pacific Time
SUBMISSION TIME FOR TECHNICAL SUBMISSIONS	October 8, 2013 11:00 Pacific Time
INTERIM AIRS SUBMISSION TIME	6 weeks before the Submission Time for Financial Submissions: October 21, 2013 11:00 Pacific Time
FINAL AIRS SUBMISSION TIME	2 weeks before the Submission Time for Financial Submissions: November 18, 2013

	11:00 Pacific Time
SUBMISSION TIME FOR FINANCIAL SUBMISSIONS	December 3, 2013 11:00 Pacific Time
SUBMISSION LOCATION	The Submission Location is: Attention: Catherine Silman Partnerships BC 2320 – 1111 West Georgia Street Vancouver BC, V6E 4M3
SUBMISSION LOCATION FOR INITIAL AIRS, INTERIM AIRS AND FINAL AIRS	The Submission Location for Initial AIRS, Interim AIRS and Final AIRS is via email to the Contact Person: Catherine.silman@partnershipsbc.ca
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 (the “**RFP**”) is to invite eligible Proponents to prepare and submit competitive Proposals for the design, construction, financing and maintenance of the Okanagan Correctional Centre Project (the “**Project**”) under a long-term Project Agreement.

1.2 ELIGIBILITY TO PARTICIPATE IN THIS RFP

Through the RFQ issued December 12, 2012 by the Province, the following consortia are qualified to participate in this RFP:

- BC Community Partners;
- Brookfield-EllisDon-Fengate Justice Partners; and
- Plenary Justice.

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 Province's estimated timeline for the Project:

Activity	Timeline
Issue RFP and Initial Draft Project Agreement to Proponents	March 20, 2013
First Collaborative Meeting	Week of April 15, 2013
Second Collaborative Meeting	Week of June 3, 2013
Submission Time for Interim Financial Review Submissions	July 8, 2013
Third Collaborative Meeting (discuss Interim Financial Review Submission)	Week of July 8, 2013
Fourth Collaborative Meeting	Week of August 5, 2013
Issue Final Draft Project Agreement	August 28, 2013
Initial AIRS Submission Time	September 25, 2013
Submission Time for Technical Submissions	October 8, 2013
Interim AIRS Submission Time	October 21, 2013
Invitation to Submit Financial Submissions	November 8, 2013
Final AIRS Submission Time	November 18, 2013
Submission Time for Financial Submissions	December 3, 2013
Selection of Preferred Proponent	January 2014
Finalization of the Project Agreement	January – February 2014
Financial Close	March 2014
Construction Commences	March 2014
Target Service Commencement Date	September 2016

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

2.2 COLLABORATIVE MEETINGS

The Province will make available certain of its personnel, consultants and advisors (the “**Province Representatives**”) to participate in Collaborative Meetings with the Proponents. The Province 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 Province's requirements, and in particular:
- (1) to permit the Proponent's Representatives to provide the Province's Representatives with comments and feedback on material issues such as affordability or provisions of the Initial Draft Project Agreement; and
 - (2) to permit a Proponent to discuss with the Province 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 round of Collaborative Meetings (10 Business Days in the case of any Collaborative Meeting with respect to insurance matters), each Proponent should provide the Province with a proposed meeting agenda, a list of prioritized issues it would like to discuss, and any materials relevant (e.g. drawings) to such issues.
- (c) the Province will determine which Province 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 Province and to fulfil the objectives of the Collaborative Meeting provided that the Province 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 Province 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 Province during the Collaborative Meetings to anything said or provided by Proponents, will not in any way bind the Province and will not be deemed or considered to be an indication of a preference by the Province 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 Province provide

that information to the Proponent in written form and, if such information relates to a clarification, explanation or change to a provision of this RFP or the Project Agreement, request an Addendum 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 Province anticipates holding four or more Collaborative Meetings with each Proponent. Following the release of the RFP, the Province will consult with each Proponent to confirm specific dates for Collaborative Meetings. If the Province considers it desirable or necessary to schedule additional or fewer Collaborative Meetings, the Province may, in its discretion, amend the anticipated schedule;
- (i) Proponents may request that the Province 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;
- (j) If Proponents wish to discuss any issues with respect to the Lands or the Site with representatives of the Osoyoos Indian Band, Proponents should submit a request in writing to the Contact Person, including the proposed dates and details of the topic(s) to be discussed. Upon receipt of a request, the Province will endeavour to arrange a Collaborative Meeting with representatives of the Osoyoos Indian Band; and
- (k) it is expected that the Collaborative Meetings will be held in Vancouver.

2.3 COMMENTS ON THE PROJECT AGREEMENT

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

- (a) the Province will invite Proponents as part of the Collaborative Meeting process to discuss possible clarifications or amendments to the Initial Draft Project Agreement, including with respect to commercial, legal, design and construction, and facilities management matters;
- (b) at least 5 Business Days in advance of each round of the Collaborative Meetings at which a Proponent wishes to discuss the Initial Draft Project Agreement, each Proponent should provide the Province with a prioritized list of requested changes, if any, to the Initial Draft Project

Agreement using the Proponent Comments Form attached as Appendix E, together with the agenda and issues list described in this Section 2.3(b); and

- (c) the Province will consider all comments and requested clarifications or amendments received from the Proponents in the Collaborative Meetings and may respond to some or all of the comments received, and will amend the Initial Draft Project Agreement as the Province may determine at its discretion.

Prior to the Submission Time for Technical Submissions, the Province intends to issue by Addendum one or more revised drafts of the Project Agreement, including one that will be identified as the Final Draft Project Agreement. The Province may further modify the Final Draft Project Agreement by Addendum prior to the Submission Time for Financial Submissions. The Final Draft Project Agreement will be the common basis for the preparation of all Proposals, and Proponents should not in their Proposal make any modifications, changes or additions to the Final Draft Project Agreement except for modifications, changes or additions to the Performance Specifications as provided for in Section 4.4 or modifications, changes or additions provided for in Section 8.2.

2.4 DATA ROOM

The Province has established a website to be used as an electronic Data Room in which it has placed documents in the possession of the Province that the Province has identified as relevant to the Project and to the Project Site, and that may be useful to Proponents. The Province 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 Province may advise in writing with respect to a specific document. The Province 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 Province will attempt to notify Proponents of all updates, Proponents are solely responsible for ensuring they check the Data Room frequently for updates and to ensure the information used by the Proponents is the most current, updated information.

2.5 INTERIM FINANCIAL REVIEW SUBMISSION

It is in the interests of the Province 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, the Proponents and the Province will conduct an interim financial review as follows:

- (a) the purpose of the interim financial review is to give early warning of any difficulty in staying within the Affordability Requirements, and to permit the Province and the Proponents to consider and implement steps so that the Competitive Selection Process can proceed with confidence that Proposals will be within the Affordability Requirements;
- (b) prior to the Submission Time for Interim Financial Review Submissions, each Proponent should submit to the Province:
 - (1) its best estimate of the anticipated Proposal Net Present Cost and Proposal Total Capital Cost; and
 - (2) a summary of the proposed Financing Plan containing the high level aspects of information contemplated in Section 4.6.1 of Appendix B.

While not prescribing the exact form of the Interim Financial Review Submission, the Province 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 Province to understand the Proponent's cost base (with at least all major cost headings included) and financing structure;

- (c) the Province will retain each of the Interim Financial Review Submissions as strictly confidential, and will invite each Proponent, as part of the third 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 Affordability Requirements; and
- (d) a Proponent's Interim Financial Review Submission will not be considered part of its Proposal and the Province will not consider or evaluate it as to adequacy, quality, content or otherwise.

The Province understands that the values indicated in a Proponent's Interim Financial Review Submission are not a commitment and that all aspects could change in the final Proposal.



3 KEY PROJECT ELEMENTS

The Initial Draft Project Agreement will contain, among other things, the technical requirements and specifications for the Project and commercial terms, including with respect to the design, construction, partial financing, services, and end-of-term requirements, as well as the allocation of risks between Project Co and the Province.

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

3.1 PROVINCE ADVANCE SITE WORKS

The Province anticipates undertaking work on the Site prior to Financial Close. A development services agreement between the Province and the Osoyoos Indian Band has been signed, which covers the provision of water, sewer, roads infrastructure and maintenance, fire protection and geothermal power to the Facility. The agreement also covers the movement of existing utilities to prepare the Site for construction.

3.2 APPROVALS AND PERMITTING

Pursuant to the Project Agreement, Project Co will be responsible for obtaining all permits and approvals required for the design and construction of the Facility, including all permits required under environmental laws, with the exception of those approvals identified below as being obtained by the Province.

3.2.1 Environmental

The Province has been working together with Aboriginal Affairs and Northern Development Canada to receive environmental approval for the Project. Project Co will be responsible for complying with the environmental commitments which have been integrated directly into Schedules 2, 3 and 4 of the Project Agreement.



3.3 DESIGN AND CONSTRUCTION

Project Co will be responsible for all aspects of design and construction in accordance with the Project Agreement.

The Province has completed an Indicative Design, which does not fully reflect the requirements described within the Project Agreement, but was used for the preparation of a project budget and advance site preparation. The Indicative Design will be uploaded to the Data Room. Any use by Proponents of any or all aspects of the Indicative Design will be entirely at the Proponent's own risk.

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

- (a) Obtaining necessary permits, approvals and authorizations, including those required pursuant to applicable federal and provincial regulatory requirements and legislation and excluding only those approvals obtained by the Province as referenced in Section 3.2 above and in the Project Agreement, including Schedule 2 of the Project Agreement;
- (b) Site preparation, including road and other civil works required to accommodate the Project;
- (c) All design and construction obligations according to the requirements outlined in the Project Agreement;
- (d) The connection of utilities and other site services at the property line;
- (e) Testing and commissioning the Facility; and
- (f) Substantial completion of the Facility by the Target Service Commencement Date.

3.3.1 Senkulmen Business Park Design Guidelines

The Senkulmen Business Park Design Guidelines (available publicly online) outline the expectations around designing a facility within the park. All of the elements of these guidelines that have been deemed significant by the Province have been directly incorporated into Schedules 3 and 4 of the Project Agreement. Therefore, the Proponent will not be obligated to follow any part of the guidelines as such, unless incorporated into Schedules 3 and 4 of the Project Agreement.

3.4 SERVICES

Project Co will be responsible for providing the following services over the term of the Project Agreement:

- (a) roads, grounds and landscape maintenance services (see Appendix 4B of the Project Agreement);



- (b) plant services (see Appendix 4D of the Project Agreement);
- (c) help desk services (see Appendix 4F of the Project Agreement);
- (d) utilities management services (see Appendix 4G of the Project Agreement); and
- (e) environmental and sustainability services (see Appendix 4H of the Project Agreement).

Project Co will also be responsible for handing back the Facility in a prescribed state as outlined in Appendix 4C of the Project Agreement.

3.5 LANDS

Project Co's rights with respect to the Project lands are set out in Schedule 7 of the Project Agreement. As described in the schedule, a Transfer of Administration and Control has been signed between Her Majesty in Right of Canada, as landlord, the Osoyoos Indian Band as the First Nation having possession of the Lands, and the Province, as tenant. Ownership of the Facility will at all times be held by the Province.

If Proponents wish to communicate with representatives of the Osoyoos Indian Band with respect to the Lands or the Site, Proponents will provide at least 10 days advance written notice to the Contact Person, including details of the time and place of such communications, the topic or topics to be discussed and the representatives from each of the Proponent Team and the Osoyoos Indian Band who are scheduled to participate. The Province will be permitted, but will not be required, to be present for any such communications between Proponents and representatives of the Osoyoos Indian Band. To the extent Proponents have already had discussions with representatives of the Osoyoos Indian Band with respect to the Lands or the Site, a brief note summarizing these past discussions must be submitted to the Contact Person.

3.6 FINANCING

During the construction period, the Province will pay monthly Construction Period Payments based on a percentage of Eligible Costs, in accordance with Schedule 8 of the Project Agreement. Project Co will be responsible for obtaining all other financing required in order to complete the scope of work as included in the Project.



3.7 EARLY WORKS AGREEMENT

In order to secure completion of the Facility at the earliest opportunity, after selection of the Preferred Proponent and before Financial Close, the Province intends to execute an early works agreement (the “**Early Works Agreement**”) with a nominee of the Preferred Proponent, substantially in the form attached as Appendix M (the “**Draft Early Works Agreement**”). The scope of the Early Works Agreement is not yet determined, as it is contingent on the conditions imposed by the SARA Permit that the Province is applying for. It is anticipated that minor seasonal work relating to certain plant species will be required in order to comply with these conditions.

Proponents should review and submit any comments they may have on the Draft Early Works Agreement, as indicated in Section 2.3, using the Proponent comments form attached as Appendix E. A revised Draft Early Works Agreement will be included with the RFP Addendum that will be used to distribute the Final Draft Project Agreement.



4 AFFORDABILITY

4.1 AFFORDABILITY REQUIREMENTS

A key objective of the Competitive Selection Process is to maximize the Project scope while meeting the Project's Affordability Requirements.

The Affordability Requirements consist of two requirements to demonstrate the affordability of a Proponent's Proposal. They are:

- (a) a mandatory Affordability Ceiling for the Project of \$196.5 million. The Affordability Ceiling represents the sum of the estimated net present costs of the:
 - the Construction Period Payments consisting of progress payments made during construction, which are treated, for the purposes of the Affordability Ceiling calculation only, as a notional loan made to the Project, repaid with notional interest during the operating period; and
 - the Service Payments following service commencement.
- (b) a mandatory Capital Cost Ceiling for the Project of \$207.4 million. The Capital Cost Ceiling represents the Project's maximum total nominal capital costs calculated using the Affordability Model.

Project approvals by the Province have been based on these Affordability Requirements.

4.2 AFFORDABILITY MODEL

The Province has developed an Affordability Model for the Proponents to use to determine their Proposal Net Present Cost and Proposal Total Capital Cost to test against the Affordability Ceiling and Capital Cost Ceiling respectively.

Proponents are to incorporate the Affordability Model into their Financial Model and ensure that inputs to the Affordability Model are consistent with the outputs from the Financial Model.

The Affordability Model workbook includes instructions on how it is to be populated and run. The Affordability Model is available in the Data Room and is to be completed by linking to the appropriate outputs from the Proponent's Financial Model. The Province reserves the right to recalculate or make such adjustments to the Affordability Model as may be required by the Province in its analysis.



4.3 LIFE CYCLE COSTS

Each Proponent may propose that the portion of its proposed Service Payments that covers life cycle costs be either uniform or non-uniform. If proposing a non-uniform approach, the proposed life cycle payments schedule should be consistent with the Proponent's life cycle/capital replacement plan as contemplated under the Final Draft Project Agreement and Section 3.3.10 of Appendix B.

4.4 SCOPE LADDER

If not all of the elements of the Performance Specifications are achievable within the Affordability Requirements, a Proponent may propose to reduce the scope of the Project by one or more of the scope items set out in an approved list (the “**Scope Ladder**”). Proponents proposing reductions to the scope of the Project should limit their proposed reductions to items identified by the Province in the Scope Ladder, and reductions should only be made in the order set out in the Scope Ladder.

Scope Ladder:

No.	Scope Ladder Item	Current Drafting	Revised Drafting
1	Deletion of Women's Unit	Schedule 3 Table 3.2A Component - 7.400 Women's Housing	Removal of: Component - 7.400 Women's Housing
		Schedule 3 Table 3.3A Classification Women's Unit	Removal of: Classification Women's Unit
		Appendix 3A: Functional Programme Table 1 Component - 7.400 Women's Housing	Removal of: Component - 7.400 Women's Housing
		Appendix 3A: Functional Programme clause 1.5.7.2(2) Women will be housed in an 18-cell Living Unit with 17 double-occupancy cells and a single occupancy accessible cell.	Removal of: Women will be housed in an 18-cell Living Unit with 17 double-occupancy cells and a single occupancy accessible cell.
		Appendix 3A: Functional Programme clause 1.5.7.2(3) The design capacity, as shown in Table 8, is 378 including the 10 standard 36-cell Living Units and the 18 cells for women. Each of these Living Units has been programmed to accommodate a 50% double occupancy level making the 10 men's units capable of	Revised Drafting: The design capacity, as shown in Table 8, is 360 consisting of 10 standard 36-cell Living Units. Each of these Living Units has been programmed to accommodate a 50% double occupancy level making the 10 men's units capable of managing 54

No.	Scope Ladder Item	Current Drafting	Revised Drafting
		managing 54 Inmates; the 18-cell women's unit capable of holding 27 Inmates;	inmates;
		Appendix 3A: Functional Programme Table 8: Inmate Housing Spatial Allocation 7.400 Women's Living Unit	Removal of: Women's Living Unit
		Appendix 3A: Functional Programme 7.000 Inmate Housing Figure 16 - Functional Adjacency Diagram: 7.400 Women's Housing	Removal of: Figure 16
		Appendix 3A: Functional Programme 1.5.7.5(1) Space Allocation The components are sized as follows: 680.87 net SM for a General Population Living Unit of 36 cells; 690.16 net SM for an Open Living Unit; 445.18 net SM for Segregation/Observation Housing of 36 cells; 390.74 net SM for Women's Living Unit of 18 cells;	Revised Drafting: The components are sized as follows: 680.87 net SM for a General Population Living Unit of 36 cells; 690.16 net SM for an Open Living Unit; 445.18 net SM for Segregation/Observation Housing of 36 cells;
		Appendix 3B: Windows and Doors Table 1 - Window Schedule 7.401 Dayroom to 7.420 Laundry Room	Removal of: 7.401 Dayroom to 7.420 Laundry Room
		Appendix 3B: Windows and Doors Table 2 - Door Schedule 7.401 Dayroom to 7.420 Laundry Room	Removal of: 7.401 Dayroom to 7.420 Laundry Room
		Appendix 3G: FF&E Table 3 - FF&E Data 7.401 Dayroom to 7.420 Laundry Room	Removal of: 7.401 Dayroom to 7.420 Laundry Room
		Appendix 3G: FF&E Table 5 - Fitness Equipment Universal Weight Station for 12 Exercise Stations 12	Revised Drafting: Universal Weight Station for 12 Exercise Stations 11
		Appendix 3H: Space Needs Matrix Table 1 - Communications 7.401 Dayroom to 7.419 Janitor's Closet	Removal of: 7.401 Dayroom to 7.419 Janitor's Closet
		Appendix 3H: Space Needs Matrix Table 2 - Millwork 7.416 Servery / Tray Dispensing	Removal of: 7.416 Servery / Tray Dispensing

No.	Scope Ladder Item	Current Drafting	Revised Drafting
2	Deletion of 50% Short-Term Holding (made only if the Tier 1 change has been made)	Schedule 3 Table 3.3 Short-Term Holding 1 (L.U.) 15 Cells) 15 (Design Cells) 15 (Total Beds)	Revised Drafting: Short-Term Holding 1 (L.U.) 8 (Cells) 8 (Design Cells) 8 (Total Beds)
		Appendix 3A: Functional Programme Table 1 3.300 Short-Term Holding (15 beds) 273.13 (Component Net) 382.38 (Total Component) 87.95 (Building Gross) 470.32 (Total)	Revised Drafting: 3.300 Short-Term Holding (8 beds) 201.59 (Component Net) 282.23 (Total Component) 64.91 (Building Gross) 347.14 (Total)
		Appendix 3A: Functional Programme Table 3.303 Sleeping Rooms 15 (units)	Revised Drafting: 3.303 Sleeping Rooms 8 (units)
3	Deletion of 100% of Short-Term Holding (made only if the Tier 1 and 2 changes have been made)	Schedule 3 Table 3.3 Short-Term Holding	Removal of: Short-Term Holding
		Schedule 3 Table following clause 8.1.10.3(2)(e) Short-Term Holding	Removal of: Short-Term Holding
		Schedule 3 Table 10.5(A) Short-Term Holding Non Secure Fitments	Removal of: Short-Term Holding Non Secure Fitments
		Appendix 3A: Functional Programme Table 1 3.300 Short-Term Holding (15 beds)	Removal of: Short-Term Holding
		Appendix 3B: Windows and Doors Table 1 - Window Schedule 3.302 Supervisor's Office to 3.309 Mechanical/Electrical Closet	Removal of: Short-Term Holding
		Appendix 3B: Windows and Doors Table 2 - Door Schedule 3.302 Supervisor's Office to 3.309 Mechanical/Electrical Closet	Removal of: Short-Term Holding
		Appendix 3G: FF&E Table 3 - FF&E Data 3.302 Supervisor's Office to 3.309 Mechanical/Electrical Closet	Removal of: Short-Term Holding
		Appendix 3H: Space Needs Matrix Table 1 – Communications 3.302 Supervisor's Office to 3.309	Removal of: Short-Term Holding

No.	Scope Ladder Item	Current Drafting	Revised Drafting
		Mechanical/Electrical Closet	
		Appendix 3H: Space Needs Matrix Table 2 - Millwork 3.302 Supervisor's Office to 3.309 Mechanical/Electrical Closet	Removal of: Short-Term Holding
		Appendix 3H: Space Needs Matrix Table 3 - Plumbing Fixtures 3.302 Supervisor's Office to 3.309 Mechanical/Electrical Closet	Removal of: Short-Term Holding
4	Deletion of Standard Workshop (made only if the Tier 1, 2 and 3 changes have been made)	Schedule 3 clause 5.1.1.6 A. the standard workshop spaces; and	Revised Drafting: the standard workshop space; and
		Appendix 3A: Functional Programme 6.000 Programme Services (7 th paragraph) The central programme area also includes a Large Multi-purpose Workshop and two Standard Workshop spaces for skills development.	Revised Drafting: The central programme area also includes a Large Multi-purpose Workshop and a Standard Workshop space for skills development.
		Appendix 3A: Functional Programme 6.000 Programme Services - Operational Description. The Central Programme Cluster will also contain a small multi-purpose room and three workshops spaces.	Revised Drafting: The Central Programme Cluster will also contain a small multi-purpose room and two workshops spaces.
		Appendix 3A: Functional Programme 6.000 Programme Services Table 7 6.101 Work Programme Security Office 3 (Units)	Revised Drafting: 6.101 Work Programme Security Office 2 (Units)
		Appendix 3A: Functional Programme 6.000 Programme Services Table 7 6.104 Standard Workshop 2 (Units)	Appendix 3A: Functional Programme 6.000 Programme Services Table 7 Revised Drafting 6.104 Standard Workshop 1 (Units)
		Appendix 3A: Functional Programme 6.000 Programme Services Table 7 6.105 Equipment Storage Room 3 (Units)	Revised Drafting: 6.105 Equipment Storage Room 2 (Units)

5 PROPOSAL REQUIREMENTS

5.1 PARTICIPATION AGREEMENT

As a condition of participating in this RFP each Proponent and each of its Equity Providers must sign and deliver to the Contact Person a Participation Agreement, substantially in the form attached as Appendix F or otherwise acceptable to the Province in its discretion. Proponents will not be permitted to participate in Collaborative Meetings or participate further in the Competitive Selection Process unless and until they have signed and delivered a Participation Agreement as required by this Section.

5.2 PROPOSAL FORM AND CONTENT

Proposals should be in the form and include the content described in Appendix B. Each Proponent may only submit one Technical Submission and, if invited to do so, one Financial Submission.

5.3 FINANCING PLAN

Proponents should include, in their Financial Submission, a Financing Plan as contemplated in Section 4.6.1 of Table 5 of Appendix B.

In its Financing Plan, each Proponent should advise the Province in writing:

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

5.4 INTEREST RATE BENCHMARKS

Interest rate benchmarks (the “**Benchmarks**”) are available at the Proponent’s option to adjust components of its Senior Credit Facility pricing (including reinvestment products associated with a Senior Credit Facility) between Financial Submission and Financial Close. Benchmarks are:

- (a) Senior Debt Base Rate Benchmark: established by reference to Government of Canada benchmark bonds.

This Benchmark is used to establish the Senior Debt base rate for the Proponent's Financial Submission and to establish the calculation for determining the relevant base rate at Financial Close.

- (b) Swapped Senior Debt Base Rate Benchmark: established by reference to CAD swap yields and CAD basis swap yields.

This Benchmark is used to establish the Senior Debt swapped base rate for the Proponent's Financial Submission and to establish the calculation for determining the relevant swapped base rate at Financial Close.

- (c) Reinvestment Base Rate Benchmark: established by reference to either of the approaches outlined in (a) and (b) above depending on the nature of the reinvestment product.

This Benchmark is used to establish the reinvestment product base rate for the Proponent's Financial Submission and to establish the calculation for determining the relevant reinvestment product base rate at Financial Close.

- (d) Senior Debt Credit Spread Benchmark: established by reference to a basket of comparable bonds agreed between the Province and the Proponent.

This Benchmark is used to measure the change in spread of a basket of bonds between Financial Submission and the Credit Spread Refresh Lock-in Date. The Proponent's relevant Credit Spreads will be adjusted by the same amount (either up or down).

Benchmarks (excluding the Reinvestment Base Rate Benchmark) may be applied to any Senior Credit Facility that is designated by a Proponent during the Advance Interest Rate Submission process as an Adjustment Credit Facility. Any Senior Credit Facility not so designated will not be adjusted following the Financial Submission.

The Reinvestment Base Rate Benchmark may be applied to any reinvestment product that is included in the Proponent's Financial Model and that is associated with any portion of the Senior Credit Facilities. Such reinvestment product must be designated by the Proponent during the Advance Interest Rate Submission process as an Adjustment Credit Facility. Any reinvestment product not so designated will not be adjusted following the Financial Submission.

5.5 ADVANCE INTEREST RATE SUBMISSIONS (AIRS)

There are three Advance Interest Rate Submissions (AIRS) to determine the method for calculating the Benchmarks and their values: the Initial AIRS, Interim AIRS and Final AIRS. Details and submission requirements relating to each for these AIRS are contained in Appendix K.

5.5.1 Senior Debt Base Rate Fluctuation Risk (including reinvestment products)

If a Proponent submits all of an Initial AIRS, an Interim AIRS and a Final AIRS with respect to base rates in accordance with the provisions of this RFP, and the Province has advised the Proponent that such AIRS are acceptable to the Province, then subject to the provision of this RFP the Province will assume the risk of any changes in base rates (both up and down) affecting the relevant Adjustment Credit Facilities only, in respect of the period commencing from and including the date the Province provides the information with respect to the Final AIRS (as contemplated in the section titled "Information to be Provided by the Province" in Appendix K) up to and including the date of Financial Close.

5.5.2 Senior Debt Credit Spread Fluctuation Risk

If a Proponent submits all of an Initial AIRS, an Interim AIRS and a Final AIRS with respect to credit spreads in accordance with the provisions of this RFP, and the Province has advised the Proponent that such AIRS are acceptable to the Province, then subject to the provision of this RFP the credit spread on the relevant Adjustment Credit Facilities only will be reset on the Credit Spread Refresh Lock-in Date to reflect the movement (if any) in the Senior Debt Credit Spread Benchmark since the date on which the Final AIRS acceptable to the Province was submitted.

The "**Credit Spread Refresh Lock-in Date**" will be the Business Day immediately prior to the date on which the base rates for the Senior Credit Facilities are set in accordance with the pre-agreed rate setting protocol, when the Preferred Proponent is either to:

- (a) confirm the credit spread applicable to each relevant Adjustment Credit Facilities (where there has been no change in the credit spread); or
- (b) change the credit spread applicable to each relevant Adjustment Credit Facilities (whether such change is upwards or downwards) by submitting to the Province:
 - (1) the revised credit spreads calculated using the Senior Debt Credit Spread Benchmark approved by the Province in accordance with this RFP, including all information that the Province requires to confirm the movement in the Senior Debt Credit Spread Benchmark and applicable revision to each Credit Spread;

- (2) a fully completed Appendix K-4;
- (3) a fully optimized Financial Model that has been revised only to reflect the then-current value for the Base Rate and revised Credit Spread on each relevant Adjustment Credit Facilities;
- (4) Pricing Forms revised only with respect to the then-current value for the Base Rate and Credit Spread on each Adjustment Credit Facilities; and
- (5) any other supporting information that the Province may reasonably request.

With effect from the Credit Spread Refresh Lock-in Date, but without prejudice to any other rights of the Province under this RFP, the revised Credit Spreads on the relevant Adjustment Credit Facilities and any re-optimization of the Financial Model and any revisions to its Financing Plan provided by the Preferred Proponent will apply without any further adjustment to credit spreads through to Financial Close.

5.5.3 Interest Rate Assumptions in the Financial Submission Financial Model.

If a Proponent submits all three of an Initial AIRS, an Interim AIRS and a Final AIRS with respect to base rates in accordance with the provisions of this RFP, and the Province has advised the Proponent that all three such AIRS are acceptable to the Province, then subject to the provision of this RFP the Proponent is to use the base rate agreed during the Final AIRS process for the relevant Adjustment Credit Facilities in its Financial Model submitted as part of its Financial Submission.

5.5.4 Dry Runs

If the Preferred Proponent is a Proponent that submitted an Initial AIRS, an Interim AIRS and a Final AIRS in accordance with the provisions of this RFP, and the Province has advised the Proponent that such AIRS were acceptable to the Province, then prior to Financial Close the Preferred Proponent will undertake several “dry runs” with the Province so that the parties are familiar with, and agree on, the technical process for determining the base rates and incorporating the results into the Financial Model to be included in Schedule 15 of the Project Agreement.

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) **Advance Interest Rate Submission:** If a Proponent intends to submit an Initial AIRS, Interim AIRS or Final AIRS, the Proponent should submit such AIRS to the Submission Location for Initial AIRS, Interim AIRS and Final AIRS by their respective Submission Time.
- (c) **Financial Submission:** If invited to do so pursuant to Section 7.2, Proponents must submit the financial portion of the Proposal to the Submission Location by the Submission Time for Financial Submissions. The Financial Submission should be made up of the following:
 - (1) a completed Proposal Declaration Form in the form attached as Appendix C;
 - (2) the cover letter (and all attachments) to the Financial Submission as described in the Financial Submission Section of Appendix B;
 - (3) one or more commitment letters, substantially in the form of Appendix G, which should include confirmation of the Credit Spread that will be applicable to such facility until Financial Close;
 - (4) the portion of the Proposal Requirements described in the Financial Submission Section of Appendix B;
 - (5) the completed Affordability Model as described in Appendix B;
 - (6) if and to the extent required in order to keep the Proposal from exceeding the Affordability Requirements, written descriptions of:

- i. proposed amendments to the scope of the Project, made in accordance with Section 4.4; and
 - ii. a description of the amendments to its Technical Submission if reasonably required as a direct result of such scope changes; and
- (7) an independent Financial Model audit, for the benefit of, and reliance of, the Province.

6.2 NUMBER OF COPIES

For each of its Technical Submission and Financial Submission, a Proponent should submit 3 bound hard copies numbered 1 through 3 with one marked as “Master” and two electronic copies (USB flash drive with PDF, dwg and Excel 2010 file formats as appropriate, no security) appropriately packaged and clearly marked “Request for Proposals for Okanagan Correctional Centre Project”, except the Financial Model, which should be submitted in electronic (USB flash drive) form only. For the Initial AIRS, Interim AIRS and Final AIRS, a Proponent should submit an electronic copy (PDF and Excel 2010 file formats as appropriate, no security).

6.2.1 Electronic Copy of Technical Submissions

To facilitate the Province’s evaluation, Proponents are to provide their electronic copies of their Technical Submissions in a number of separate files. As a minimum breakdown, and with reference to Appendix B, Proponents are to provide individual files for the following Submission Requirement sections:

- (a) Entire Technical Submission
- (b) Package 1 Transmittal Package
- (c) Package 2 Project Co Management
- (d) Package 3 Implementation Schedules and Plans
- (e) 3.1 Schedules
- (f) 3.2 Design and Construction
- (g) 3.2.1 General Approach and Protocols – Schedule 2
- (h) 3.2.2 Preliminary Design Submittals – Schedule 3 Part 3 – Design Principles
- (i) 3.2.3 Preliminary Design Submittals – Schedule 3 Part 4 – Architectural Design Principles



- (j) 3.2.4 Preliminary Design Submittals – Schedule 3 Part 5 – Engineering Design Principles
- (k) 3.2.5 Preliminary Design Submittals – Schedule 3 Part 9 – Infrastructure Services
- (l) 3.2.6 Preliminary Design Submittals – Schedule 3 Part 11 – Sitework
- (m) 3.2.7 Schedule 3 – Appendix 3G [Equipment and Furniture]
- (n) 3.3 Services
- (o) 3.4 Communications

In addition, Proponents are to provide individual files for each drawing or sketch logically organized in folders for each discipline with a reference to the specific Submission Requirement section.

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 Province 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 to permit consideration by the Province:

- (a) for Enquiries of a technical nature: prior to 14:00 Pacific Time on the day that is 10 Business Days before the Submission Time for Technical Submissions; and
- (b) for Enquiries of a financial nature: prior to 14:00 Pacific Time on the day that is 5 Business Days before the Submission Time for Financial Submissions.

The Province 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 Province;
- (c) the Province 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 Province decides that an Enquiry marked “Commercial in Confidence”, or the Province’s response to such an Enquiry, must be distributed to all Proponents, then the Province will permit the enquirer to withdraw the Enquiry rather than receive a response and if the Proponent does not withdraw the Enquiry, then the Province 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 Province may provide a response to such Enquiry to all Proponents; and
 - (2) if the Province 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 Province 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, for any purpose.

6.7 ELECTRONIC COMMUNICATION

Proponents should only communicate with the Contact Person by email. No other method of communication, including telephone or fax, is permitted.



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 Province 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 Province 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 Province 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 Province may, in its 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 Province is authorized to amend or clarify this RFP. The Province 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 Province 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 Province; 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 Province or any sub-licensee or assignee of the Province of any Intellectual Property Rights contained in a Proposal.

(b) Exceptions to Licence

The licence granted under Section 6.9 (a) does not extend to third party intellectual property rights (“**Third Party Intellectual Property Rights**”) to non-specialized third-party technology and software that are generally commercially available. By submitting a Proposal, each Proponent represents to the Province 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 Province 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 Province prevails.

6.11 AMENDMENTS TO PROPOSALS

A Proponent may:

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

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, or there is a material change in ownership or control of a member of the Proponent Team, or there is a change to the legal relationship among any or all of the Proponent and its Proponent Team members, then the Proponent must submit a written application to the Province for approval, including supporting information that may assist the Province in evaluating the change. The Province, in its discretion, may grant or refuse an application under this Section, and in exercising its discretion the Province will consider the objective of achieving a competitive procurement process that is not unfair to the other Proponents. For clarity:

- (a) the Province may refuse to permit a change to the membership of a Proponent Team if the change would, in the Province's judgement, result in a weaker team than was originally shortlisted; or
- (b) the Province 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 Proponent Team member, or changes to the legal relationship among the Proponent and/or Proponent 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 Province's approval may include such terms and conditions as the Province 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 (with the exception of permitted adjustments to interest rates and credit margins in accordance with the terms of this RFP), will remain fixed and irrevocable from the Submission Time for Financial Submissions until midnight at the end of the 120th day following the Submission Time for Financial Submissions (the "**Proposal Validity Period**"); and
- (b) after the expiry of the Proposal Validity Period, all prices and input costs (except senior debt margins) in its Proposal may not be adjusted unless the Proponent provides notice to the Province of any proposed adjustment and demonstrates to the satisfaction of the Province that the Proponent has used its best efforts to continue to maintain the prices and input costs firm and



valid, but that despite such best efforts, the specified adjustments to the prices and input costs are required solely as a direct result of one or more events that:

- (1) are external to the Proponent and the Proponent Team members;
- (2) could not have been prevented by, and are beyond the control of, the Proponent and any of its Proponent Team members; and
- (3) constitute a material adverse change to the conditions underlying the prices and input costs that are subject to the adjustment.

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

6.14 MATERIAL CHANGE AFTER SUBMISSION TIME FOR FINANCIAL SUBMISSIONS

A Proponent will give immediate notice to the Province 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.

6.15 ACCEPTABLE EQUIVALENTS

The Performance Specifications are intended to generally be performance-based, but include in some instances specifically required elements of Design and Construction, such as products, materials, equipment, and systems that the Province considers are important to meet the Province's objectives. However, the Province wishes to provide some flexibility for Proponents to propose equivalent elements that on an overall basis may, in accordance with the process below, be considered by the Province in its discretion to meet the Province's objectives.

A Proponent may submit an Enquiry marked "Commercial in Confidence" that identifies the section(s) in the Performance Specifications that contain the element for which the Proponent wishes to propose an equivalent, the proposed equivalent that it considers will be equal to or better than the specified element in meeting the Province's objectives, and supporting materials. The Province may, in its discretion, request additional supporting materials.

The Province may, in its discretion:

- (a) respond to indicate that the proposed equivalent is acceptable;
- (b) respond to indicate that the Province does not consider the proposed equivalent to be acceptable;



(c) not respond to the Enquiry; or

(d) provide any other response in accordance with Section 6.6.

The provisions of Section 6.6 relating to “Commercial in Confidence” Enquiries will apply, including with respect to withdrawal of an Enquiry, Enquiries by more than one Proponent on the same or similar topics, or the Province’s determination if there is a matter which should be brought to the attention of all Proponents.

If the Province responds to a “Commercial in Confidence” Enquiry, or responds to any Enquiry that is not “Commercial in Confidence”, regarding a proposed equivalent to indicate that the proposed equivalent is acceptable, a Proponent may make its Technical Submission on the basis of the response, and the use of the acceptable equivalent will not in and of itself be a Material Non-Compliance.

Unless the Province responds to indicate that a proposed equivalent is acceptable, a Proponent is at risk that the use of a proposed equivalent will be a Material Non-Compliance and that the Province may not invite the Proponent to provide a Financial Submission.

The Province will be under no obligation to provide the indication of acceptability of the proposed equivalent to the Proponent or to any other Proponent.

Despite any indication by the Province of the acceptability of an equivalent, Project Co remains responsible for fulfilling all of its obligations and responsibilities under the Project Agreement.

Following selection of the Preferred Proponent, the Project Agreement will, in accordance with Section 8.2, be amended to include all acceptable equivalent(s) used by that Preferred Proponent, or negotiated by the Province and the Preferred Proponent, whether or not proposed by any other Proponent.



7 EVALUATION

7.1 MANDATORY REQUIREMENTS

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

- (a) the Proponent and each of its Equity Providers must have signed and delivered to the Contact Person the Participation Agreement in accordance with Section 5.1;
- (b) the Technical Submission must be received at the Submission Location before the Submission Time for Technical Submissions and the Financial Submission must be received at the Submission Location before the Submission Time for Financial Submissions;
- (c) the Proposal Net Present Cost as at the Submission Time for Financial Submissions must not exceed the Affordability Ceiling;
- (d) the Proposal Total Capital Cost as at the Submission Time for Financial Submissions must not exceed the Capital Cost Ceiling; and
- (e) Proponents proposing reductions to the scope of the Performance Specifications must do so in accordance with Section 4.4.

Subject to Section 7.3, the Province reserves the right to evaluate any Proposal where the Scope Ladder has been exhausted and the Affordability Requirements have not been met, but will do so only in the event that the Proposals received from all the Proponents do not meet the Affordability Requirements as per Sections 7.1 (c) and (d) above.

7.2 MATERIAL COMPLIANCE

In addition to the other evaluation criteria in Appendix A, the Province will review each Technical Submission to determine whether, in the Province's sole discretion, such Technical Submission fails to meet, to a material extent, an important or essential requirement of the Final Draft Project Agreement (subject to acceptable equivalents under Section 6.15) (a "**Material Non-Compliance**"). Each Proponent, by submitting its Technical Submission, recognizes that the nature of the Competitive Selection Process and the process under the Project Agreement when awarded, are such that the Technical Submission is only indicative of the Proponent's interpretation at the Submission Time for Technical Submissions of how the Proponent proposes to meet the requirements of the Final Draft Project Agreement and that the Technical Submission will not relieve the successful Proponent from meeting the requirements of the Final Draft Project Agreement.



The Province 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 Province'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 Project Agreement. A Proponent receiving such list and invitation will not be required to revise or resubmit the Technical Submission and the Province will not review any resubmission; or
- (c) a letter advising the Proponent that it will not be invited to provide a Financial Submission.

The Province is not responsible for identifying all Material Non-Compliances, and irrespective of whether the Province 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 Province will evaluate Proposals in the manner set out in Appendix A. The Province will not evaluate a Proposal if it has been rejected, or if the applicable Proponent has been disqualified, in accordance with this RFP.

The Province may, in its 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 Province 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 Province in its discretion deems appropriate and in the interests of the Province 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 Province, 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 Province may, in its discretion, reject any Proposal:

- (a) which in the opinion of the Province is materially incomplete or irregular;
- (b) which contains omissions, exceptions or variations (including any modifications, changes or additions to the Final Draft Project Agreement, other than as provided for in Sections 4.4 or 8.2) not acceptable to, or material to, the Province;
- (c) which contains any false or misleading statement, claims or information; or
- (d) for which background investigations reveal any false statements, criminal affiliations or activities by a Proponent or Proponent Team member.

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

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

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



8 SELECTION OF PREFERRED PROPONENT AND AWARD

8.1 SELECTION AND AWARD

If the Province selects a Preferred Proponent, the Proponent with the highest ranked Proposal will be selected as the Preferred Proponent, and the Province will invite the Preferred Proponent to enter into final discussions to settle all terms of the Project Agreement, based on the Preferred Proponent's Proposal, including any clarifications that the Preferred Proponent may have provided during the evaluation of Proposals.

If for any reason the Province determines that it is unlikely to reach final agreement with the Preferred Proponent, then the Province may terminate the discussions with the Preferred Proponent and proceed in any manner that the Province 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 Province, such as from the Provincial Government, will be conditions precedent to the final execution or commencement of the Project Agreement.

8.2 FINAL DRAFT PROJECT AGREEMENT

It is the intention of the Province that:

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



- ii. modifications, changes or additions, if any, requested by a Proponent pursuant to Section 4.4 that are acceptable to the Province;
- (2) to those provisions or parts of the Final Draft Project Agreement that are indicated as being subject to completion or finalization, or which the Province determines in its discretion require completion or finalization, including provisions that require:
- i. modification or the insertion or addition of information relating to Project Co and its 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 Project Co's relationships with the members of the Proponent Team and lenders;
- (3) required by the Province to complete, based on the Proposal, any provision of the Final Draft Project Agreement, including changes, modifications and additions contemplated in or required under the terms of the Final Draft Project Agreement;
- (4) that are necessary to create or provide for a legally complete, enforceable and binding agreement;
- (5) that enhance clarity in legal drafting;
- (6) that reflect acceptable equivalents in accordance with Section 6.15; or
- (7) that may be required as a consequence of Changed Funding Arrangements.

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

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

8.3 PREFERRED PROPONENT SECURITY DEPOSIT

Subject to the terms of this RFP:

- (a) the Province will invite the Preferred Proponent to deliver the Preferred Proponent Security Deposit on or before the date and time specified by the Province, such date not to be earlier than 5 Business Days after notification of the appointment of the Preferred Proponent; and



- (b) the Preferred Proponent's eligibility to remain the Preferred Proponent is conditional upon the Preferred Proponent delivering the Preferred Proponent Security Deposit to the Province on or before the date and time specified by the Province.

8.4 RETURN OF SECURITY DEPOSIT

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

- (a) within 10 Business Days after receipt by the Province of notice of demand from the Preferred Proponent, if:
- (1) the Province exercises its right under Section 10.1 to terminate this RFP prior to entering into the Project Agreement for reasons unrelated to the Preferred Proponent or any member of the Preferred Proponent's Proponent Team; or
 - (2) the Province fails, within the Proposal Validity Period, to execute and deliver an agreement substantially in the form of the Final Draft Project Agreement finalized by the Province in accordance with Section 8.2, provided that such failure is not the result of:
 - i. the failure of the Preferred Proponent to satisfy any conditions set out in the Final Draft Project Agreement; or
 - ii. any extensions to the Proposal Validity Period arising from any agreement by the Province to negotiate changes to the Final Draft Project Agreement pursuant to Section 8.2; or
- (b) within 10 Business Days after Financial Close with such Preferred Proponent.

8.5 RETENTION OF SECURITY DEPOSIT

Notwithstanding any receipt by the Province of the notice described in Section 8.4, the Province may, in its discretion, draw on, retain and apply the proceeds of the Preferred Proponent Security Deposit for the Province'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 Province:



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

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 Province's satisfaction, acting reasonably, that the occurrence of such significant event would materially frustrate or render it impossible for the Preferred Proponent to perform its obligations under the Project Agreement for a continuous period of 180 days as if the Project Agreement was in force and effect.

8.6 COMMUNICATION REGARDING PROGRESS TO FINANCIAL CLOSE

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

8.7 CHANGED FUNDING ARRANGEMENTS

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



8.8 SPREAD DECREASE ON CREDIT SPREAD HOLD FACILITIES

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

8.9 PARTIAL COMPENSATION FOR PARTICIPATION IN THIS RFP

Upon execution of the Project Agreement, the Province will pay \$250,000 (inclusive of any taxes payable) to each unsuccessful Proponent that:

- (a) complied with the Mandatory Requirements;
- (b) received an invitation to submit a Financial Submission;
- (c) has not withdrawn from the Competitive Selection Process or been disqualified by the Province in accordance with the terms of this RFP; and
- (d) provides to the Province written acknowledgment of:
 - (1) the disclaimers, limitations and waivers of liability and claims contained in this RFP, including Section 10.12; and
 - (2) the grant of Intellectual Property Rights to the Province and waiver of moral rights pursuant to Section 6.9.

If the Province exercises its right under Section 10.1 to terminate the RFP process prior to entering into the Project Agreement with a Proponent, the Province will pay to each Proponent that satisfies the requirements (to the extent applicable) set out in Section 8.9 (a) – (d) above, the lesser of:

- (a) \$250,000 (inclusive of any taxes payable); and
- (b) the substantiated out-of-pocket costs reasonably incurred by the Proponent in preparing its Proposal,

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



In determining whether to make available the partial compensation described in this Section 8.9, the Province considered the potential value of obtaining the licence to the Province of rights to the Intellectual Property Rights and the waiver of moral rights pursuant to Section 6.9. Accordingly, the Province may, in its discretion, offer to pay up to \$250,000 (inclusive of any taxes payable) to a Proponent that is not otherwise entitled payment under this Section 8.9 on conditions established by the Province in its discretion. The conditions may include the Province 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 Province granting licence rights to the Province. Such offer and resulting arrangements will not be governed by this RFP.

8.10 DEBRIEFS

The Province will, following Financial Close, upon request from a Proponent within 40 Business Days of Financial Close, conduct a debriefing for that Proponent.



9 CONFLICT OF INTEREST AND RELATIONSHIP DISCLOSURE

9.1 RESERVATION OF RIGHTS TO DISQUALIFY

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

9.2 RELATIONSHIP DISCLOSURE

Each Proponent, including each member of the Proponent Team, should fully disclose all relationships they may have with the Province, any Restricted Party, or any other person providing advice or services to the Province 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) at any time 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 Province may require in its discretion in connection with the Province's consideration of the disclosed relationship and proposed measures.

9.3 USE OR INCLUSION OF RESTRICTED PARTIES

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

- (a) to advise or otherwise assist the Proponent respecting the Proponent's participation in the Competitive Selection Process; or



- (b) as a Proponent Team member or as an employee, advisor or consultant to the Proponent or a Proponent Team member.

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

9.4 CURRENT RESTRICTED PARTIES

At this RFP stage, and without limiting the definition of Restricted Parties, the Province has identified the following persons as Restricted Parties:

- (a) Boughton Law Corporation (COI Adjudicator);
- (b) Singleton Urquhart LLP (Fairness Advisor);
- (c) PricewaterhouseCoopers LLP (Business Advisor);
- (d) Borden Ladner Gervais LLP (Legal Advisor);
- (e) IBI Group and their sub-consultants, including:
 - (1) Acumen Engineering;
 - (2) Carter Goble Lee;
 - (3) Daniel Lyzun & Associates;
- (f) Focus Corporation;
- (g) Golder Associates Ltd.;
- (h) JCRA Financial LLC;
- (i) MCW Consultants Ltd;
- (j) Read Jones Christoffersen Consulting Engineers;
- (k) KAIZEN Foodservice Planning & Design Inc.;
- (l) Spiegel Skillen + Associates Ltd.; and
- (m) The Province and Partnerships BC, including their former and current employees who fall within the definition of Restricted Party.

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

9.5 CONFLICT OF INTEREST ADJUDICATOR

The Province has appointed a Conflict of Interest Adjudicator (the “**COI Adjudicator**”) to provide decisions on conflicts of interest or unfair advantage issues, including whether any Person is a Restricted Party. The Province 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 Province may make an advance decision or may refer the request for an advance decision to the COI Adjudicator. If the Province refers the request to the COI Adjudicator, the Province 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 PROVINCE MAY REQUEST ADVANCE DECISIONS

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

9.8 DECISIONS FINAL AND BINDING

The decision of the Province 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 Province. The Province 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 amended or supplemented.

The Province may provide any decision by the Province or the COI Adjudicator regarding conflicts of interest to all Proponents if the Province, 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 Province as eligible to do work for more than one Proponent, including a person who has unique or specialized information or skills such that the Province 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 Province in its discretion or permitted as a Shared Use Person, each Proponent will ensure that no member of its Proponent Team, or any Affiliated Person of any member of its Proponent Team, participates as a member of any other Proponent Team.

If a Proponent contravenes the foregoing, the Province reserves the right to disqualify the Proponent or may permit the Proponent to continue and impose such conditions as may be required by the Province. Each Proponent is responsible, and bears the onus, to ensure that the Proponent, its Proponent Team members and their respective Affiliated Persons do not contravene the foregoing.

A Proponent or a prospective Proponent Team member 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 Proponent Team member should submit to the Contact Person, not less than 10 Business Days prior to the Submission Time for Technical Submissions by email, the following information:
 - (1) names and contact information of the Proponent or prospective Proponent Team member 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 Province may require additional information or documentation to demonstrate to the satisfaction of the Province in its discretion that no such non-exclusivity exists or, if it does, that measures satisfactory to the Province 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.

9.10.1 Exclusivity – the Province May Request Advance Decisions

The Province may also independently make advance decisions, or may seek an advance decision from the COI Adjudicator, where the Province identifies a matter related to exclusivity. The Province will, if it



seeks an advance decision from the COI Adjudicator, provide the COI Adjudicator with relevant information in its possession. If the Province seeks an advance decision from the COI Adjudicator, the Province 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 Province may require that the Proponent make an application under Section 9.10.

9.10.2 Exclusivity – Decisions Final and Binding

The decision of the Province 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 Province. The Province 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 amended or supplemented.

The Province may provide any decision by the Province or the COI Adjudicator regarding matters related to exclusivity to all Proponents if the Province, 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 Province to select a Preferred Proponent or enter into a Project Agreement, and the Province 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 Province 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 Province and the Preferred Proponent execute and deliver the Project Agreement, and then only to the extent expressly set out in the Project Agreement.

10.3 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

All documents and other records in the custody of, or under the control of, the Province 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 Province 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 Province 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 8.9, 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 Province, 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 Province. 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.

The Province has engaged Partnerships BC. Partnerships BC has been, and continues to be, involved in other projects, and the Province may receive information in respect of other projects which may be relevant to the Project. Subject to the terms of the RFP, including limitations on “Commercial in Confidence” information under Section 2.2 and Section 6.6, the Province may, in its discretion, disclose information that is available from this Project to Partnerships BC and other projects and may obtain information from other projects.

10.6 GENERAL RESERVATION OF RIGHTS

The Province 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 Province’s evaluation of the Proposals in accordance with Appendix A, and in particular the Province is not obliged to select the Proposal with the lowest Proposal Net Present Cost;
- (c) reject or 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 (but subject to the Province’s right with respect to the Affordability Requirements as set out in Section 7.1), 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 8.9;



- (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 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 Province, with the knowledge and intention that the Province may rely on such representation and confirmation, that its Proposal has been prepared without collusion or fraud, and in fair competition with Proposals from other Proponents.

10.8 NO LOBBYING

Proponents, Proponent Team members, and 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 Province, 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 employee of the Province), 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 Province 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 8.9.

10.9 OWNERSHIP OF PROPOSALS

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

10.10 DISCLOSURE AND TRANSPARENCY

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

The Province expects to publicly disclose the following information during this stage of the Competitive Selection Process:

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

Following Financial Close, the Province expects to publicly disclose:

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

Each Proponent agrees that:

- (a) to ensure that all public information generated about the Project is fair and accurate and will not inadvertently or otherwise influence the RFP process, the disclosure of any public information generated in relation to the Project, including communications with the media and the public, must be coordinated with, and is subject to prior written approval of, the Province;



- (b) it will notify the Province 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.

10.11 FAIRNESS ADVISOR

The Province has appointed John Singleton, Q.C. (the “**Fairness Advisor**”) to monitor the Competitive Selection Process. The Fairness Advisor will provide a written report to the Province that the Province 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 Province 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.

10.12 LIMITATION OF DAMAGES

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

- (a) agrees not to bring any Claim against the Province or any of its employees, advisors or representatives for damages in excess of the amount equivalent to the reasonable costs incurred by the Proponent in preparing its Proposal for any matter in respect of this RFP or Competitive Selection Process, including:
 - (1) if the Province 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 Province exercises any rights under this RFP; and



- (b) waives any and all Claims against the Province or any of its employees, advisors or representatives for loss of anticipated profits or loss of opportunity if no agreement is made between the Province and the Proponent for any reason, including:
- (1) if the Province 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 Province exercises any rights under this RFP.

This Section does not limit the Province's obligation to make payment under Section 8.9, but in no event will the Province's liability exceed the amount calculated pursuant to Section 8.9.

11 INTERPRETATION

11.1 DEFINITIONS

In this RFP:

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

“Acceptable Credit Rating Agency” has the meaning set out in Section 4.6 of Table 5 of Appendix B.

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

“Adjustment Credit Facilities” means the Senior Financing Agreement and any reinvestment product associated with the unused portion of a Senior Financing Agreement proposed to be adopted by a Proponent. It excludes Junior Credit Facilities, partner loan, short term cash on deposit or any other investment product. The term “unused portion” of a Senior Financing Agreement specifically refers to a funding arrangement where bond proceeds are raised at financial close. The “unused portion” refers to those funds that are drawn, but not deployed.

“Advance Interest Rate Submission” and **“AIRS”** has the meaning set out in Section 5.5.

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

- (a) a corporation and
 - (1) a person by whom the corporation is controlled,
 - (2) each member of an affiliated group of persons by which the corporation is controlled, and
 - (3) a spouse or common-law partner of a person described in subparagraph (1) or (2);
- (b) two corporations, if
 - (1) each corporation is controlled by a person, and the person by whom one corporation is controlled is affiliated with the person by whom the other corporation is controlled,
 - (2) one corporation is controlled by a person, the other corporation is controlled by a group of persons, and each member of that group is affiliated with that person, or



- (3) each corporation is controlled by a group of persons, and each member of each group is affiliated with at least one member of the other group;
- (c) a corporation and a partnership, if the corporation is controlled by a particular group of persons each member of which is affiliated with at least one member of a majority-interest group of partners of the partnership, and each member of that majority-interest group is affiliated with at least one member of the particular group;
- (d) a partnership and a majority-interest partner of the partnership;
- (e) two partnerships, if
 - (1) the same person is a majority-interest partner of both partnerships,
 - (2) a majority-interest partner of one partnership is affiliated with each member of a majority-interest group of partners of the other partnership, or
 - (3) each member of a majority-interest group of partners of each partnership is affiliated with at least one member of a majority-interest group of partners of the other partnership;
- (f) a person and a trust, if the person
 - (1) is a majority-interest beneficiary of the trust, or
 - (2) would, if this subsection were read without reference to this paragraph, be affiliated with a majority-interest beneficiary of the trust; and
- (g) two trusts, if a contributor to one of the trusts is affiliated with a contributor to the other trust and
 - (1) a majority-interest beneficiary of one of the trusts is affiliated with a majority-interest beneficiary of the other trust,
 - (2) a majority-interest beneficiary of one of the trusts is affiliated with each member of a majority-interest group of beneficiaries of the other trust, or
 - (3) each member of a majority-interest group of beneficiaries of each of the trusts is affiliated with at least one member of a majority-interest group of beneficiaries of the other trust.

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

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



“Affordability Requirements” means the Affordability Ceiling and the Capital Cost Ceiling.

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

“Benchmarks” has the meaning set out in Section 5.3.

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

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

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

“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.

“Credit Rating” has the meaning set out in Section 4.6 of Table 5 of Appendix B.

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

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

“Credit Spread Refresh Lock-in Date” has the meaning set out in Section 5.5.2.

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

“Design-Builder” of a Proponent means an individual, corporation, joint venture, partnership or other legal entity who will have the direct responsibility to design and build the Project, as identified in the Respondent’s Response and as may be changed pursuant to this RFP.

“Design-Builder’s Design Firm” means the firm engaged by the Design-Builder to design the Project.



“Draft Early Works Agreement” refers to Appendix M.

“Early Works Agreement” has the meaning set out in Section 3.7.

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

“Equity Provider” of a Proponent means an individual, corporation, joint venture, partnership or other legal entity who will have an ownership or equity interest in the Project, as identified in the Proponent’s RFQ response and as may be changed pursuant to the RFQ or this RFP.

“Facility” means the Okanagan Correctional Centre.

“Fairness Advisor” has the meaning set out in Section 10.11.

“Final AIRS” has the meaning set out in Appendix K.

“Final AIRS Submission Time” means the date and time identified as such in the Summary of Key Information.

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

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

“Financial Model” has the meaning set out in Section 4.7 of Appendix B.

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

“Financing Plan” has the meaning set out in Section 4.6.1 of Appendix B.

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

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

“Guarantor” means an entity providing financial and/or performance support to a Proponent or Equity Provider by way of a guarantee or a commitment to provide equity or dedicated credit facilities to support the participation by the Proponent or Equity Provider in the Project.

“Indicative Design” refers to the document titled such posted in the Data Room.



“Initial AIRS” has the meaning set out in Appendix K.

“Initial AIRS Submission Time” means the date and time identified as such in the Summary of Key Information.

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

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

“Interim AIRS” has the meaning set out in Appendix K.

“Interim AIRS Submission Time” means the date and time identified as such in the Summary of Key Information.

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

“Junior Credit Facilities” means any credit facility provided to Project Co by an Affiliate of Project Co.

“Key Individuals” of a Proponent means the specific individuals, exclusive to the Proponent, filling the following roles (or equivalent) in the Proponent’s Proposal. Key Individuals may fill multiple roles provided they have the qualifications and experience for all the roles. A Key Individual role may only be filled by one individual:

- Project Co’s Lead;
- Project Co’s Corrections Advisor;
- Project Co’s Communications Lead;
- Design-Builder’s Project Lead;
- Design-Builder’s Design Lead;
- Design-Builder’s Construction Lead;
- Design-Builder’s Technology Lead;
- Design-Builder’s Commissioning Lead; and
- Service Provider Lead.

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



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

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

“Partnerships BC” means Partnerships British Columbia Inc.

“Performance Specifications” means the specifications for the design, construction and maintenance of the Facility as set out in the Project Agreement, including Schedule 3 [Design and Construction Specifications] and Schedule 4 [Services Protocols and Specifications].

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

“Preferred Proponent Security Deposit” means an irrevocable letter of credit in the amount of \$500,000 in the form set out in Appendix H or in such other form acceptable to the Province in its discretion.

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

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

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

“Project Co” means the entity that enters into the Project Agreement with the Province and leads the Project team through the term of the Project Agreement.

“Project Co’s Lead” means the individual responsible for leading Project Co to enter into the Project Agreement with the Province and through the term of the Project Agreement.

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

“Proponent Team” means a Proponent, its Design-Builder, its Design-Builder’s Design Firm, its Service Provider, its Equity Providers, and Key Individuals as may be changed pursuant to this RFP.

“Proponent Team Lead” means the entity responsible for leading the Proponent Team:

- throughout the Competitive Selection Process for the Project;
- entering into the Project Agreement; and
- throughout the implementation of the Project Agreement.

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



“Proposal Net Present Cost” means the net present value of the Service Payments that would be payable under the Project Agreement, plus the net present value of the Construction Period Payments, considered to be a notional senior loan repaid during the operating period, as calculated using the Affordability Model.

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

“Proposal Total Capital Cost” means the sum of the nominal total capital costs calculated using the Affordability Model.

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

“Province” means Her Majesty the Queen in right of the Province of British Columbia as represented by the Ministry of Technology, Innovation and Citizens’ Services and the Ministry of Justice.

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

“Reinvestment Base Rate Benchmark” has the meaning set out in Section 5.3.

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

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

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

“Restricted Party” means those persons (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.

“Scope Ladder” has the meaning set out in Section 4.4.

“Senior Credit Facility” means the senior credit facilities and any other credit facilities provided for in Senior Financing Agreements.

“Senior Debt Base Rate Benchmark” has the meaning set out in Section 5.3.

“Senior Debt Credit Spread Benchmark” has the meaning set out in Section 5.3.



“Senior Debt Credit Spread Refresh Facility” has the meaning set out in Section 5.3.

“Service Provider” means the individuals, corporations, other entities or the underlying legal entities that make up a legal structure and who have the direct responsibility to provide maintenance and life cycle services as set out in the Project Agreement.

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

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

“Submission Location for Initial AIRS, Interim AIRS and Final AIRS” means the submission location identified as such in the Summary of Key Information.

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

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

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

“Summary of Key Information” means the summary of key information included herein as amended by Addendum from time to time.

“Swapped Senior Debt Base Rate Benchmark” has the meaning set out in Section 5.3.

“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.

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 Province, including the exercise of “discretion” or words of like



effect, unless the context requires it, is at the sole, absolute and unfettered discretion of the Province;

- (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) the word “including” when used in this RFP is not to be read as limiting;
- (f) a reference to a “person” includes a reference to an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, limited liability company, association, unincorporated organization, union or government authority; 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

Provide as a separate document.



APPENDIX B PROPOSAL REQUIREMENTS

Provide as a 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: Partnerships BC
2320 - 1111 West Georgia Street
Vancouver, BC V6E 4M3

Attention: Catherine Silman

In consideration of the Province'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, to the extent applicable to such Proponent Team member and within the reasonable knowledge of such Proponent Team member, 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 Province, be cause for rejection of its Proposal;
- (d) its Proposal is made without collusion or fraud; and
- (e) the Province 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 Province.



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 Affordability Requirements 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 Project Agreement is in a form acceptable to the Proponent Team and the Senior Lenders (subject to the commitment letter or commitment letters submitted with the Financial Submission).

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, and within the reasonable knowledge of such Proponent Team member.

4. The Proponent Team consists of:

Name	Address	Proponent, Design-Builder, Design-Builder’s Design Firm, Service Provider, Equity Provider or 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 Province.



APPENDIX D RELATIONSHIP DISCLOSURE FORM

This form must be completed by the Proponent Team 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 Province;
 - (2) any listed Restricted Party;
 - (3) any current employees, shareholders, directors or officers, as applicable, of the Province or any listed Restricted Party;
 - (4) any former shareholders, directors or officers, as applicable, of the Province 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 Province or a listed Restricted Party, has been involved in the Competitive Selection Process or the design, planning or implementation of the Project.



Name of Proponent Team Member	Name of Party with Relationship (e.g., list Province, Restricted Party)	Details of the Nature of the Relationship with the listed Restricted Party/Person (e.g., Proponent Team member was an advisor to the Restricted Party from 2005-2006)
<i>e.g. Firm Name Ltd.</i>	<i>Partnerships BC</i>	<i>Firm Name Ltd. is working with Partnerships BC on Project X.</i>
<i>e.g. John Smith</i>	<i>Province</i>	<i>Employee from 19XX – 20XX</i>

(Each Proponent Team to submit one Relationship Disclosure Form. Add additional pages as required. Corporate disclosures only need to be provided once and not repeated for every individual of that company).

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 Province.

APPENDIX E PROPONENT COMMENTS FORM

(Collaborative Meetings – s. 2.3(b))

Okanagan Correctional Centre Project

Comment Number	Section/Schedule Reference to Initial Draft Project Agreement	Proposed Change (indicated by blacklining of original drafting)	Reason for Proposed Change	To be discussed at the meeting (Yes/No)
1.				



APPENDIX F PARTICIPATION AGREEMENT

[Insert Month, Day Year]

The Province
c/o Partnerships British Columbia Inc.
2320 – 1111 West Georgia St
Vancouver, BC V6E 4M3

Attention: Catherine Silman, Contact Person

Dear Sirs/Mesdames:

Re: Okanagan Correctional Centre Project– Participation Agreement in respect of the Request for Proposals issued by the Province on March 20, 2013, 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 Province, pursuant to which the Proponent agrees with the Province 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 and each of its Equity Providers 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 Province;
- (2) to be bound by the disclaimers, limitations and waivers of liability and Claims and any indemnities contained in the RFP, including Section 10.12 (Limitation of Damages) of the RFP. In no event will the liability of the Province exceed the amount calculated pursuant to Section 8.9 (Partial Compensation for Participation in the RFP) of the RFP;
- (3) that the Province's and the Proponent's obligations in respect of payments of partial compensation or other similar payment are as set out in Section 8.9 (Partial Compensation for Participation in the RFP) of the RFP; and
- (4) that the Province's and the Proponent's obligations in respect of the Preferred Proponent Security Deposit are as set out in Sections 8.3, 8.4 and 8.5 of the RFP.

(e) **Amendments.** The Proponent acknowledges and agrees that:

- (1) the Province 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 Province, 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 Province 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)

(Name of Equity Provider)

Authorized Signatory

Authorized Signatory

Name of Authorized Signatory
(please print)

Name of Authorized Signatory
(please print)



Name of Equity Provider

Authorized Signatory
(please print)

Add signature block for each Equity Provider



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 Province 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, Equity Provider, Key Individual, Project team members 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 Province 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 Province, 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 Province 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 Province, 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 Province 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 Province 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 Province 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 Province will be deemed to be a waiver of that right or remedy.

APPENDIX G COMMITMENT LETTER TEMPLATE

Financial Submission

The commitment letter submitted as part of the Financial Submission should be in substantially the following form, addressed to the Province, and sent from all Senior Lenders supporting the Proposal, either individually or (provided that all of them sign the letter) as a group. Separate letters from separate groups of Senior Lenders (e.g., senior, mezzanine, capital markets, and financial guarantors) may be provided, if appropriate.

To: The Province
c/o Partnerships British Columbia Inc.
2320 – 1111 West Georgia St
Vancouver, BC V6E 4M3

Re: Okanagan Correctional Centre Project (the “**Project**”)

[Insert Bank/other Financial Institution Name] [Insert Group letter]

The signatories of this letter provide(s) this letter in support of the Proposal (as defined in the RFP) submitted by [the Proponent’s name] (the “**Proponent**”) in response to the RFP issued by the Province on March 20, 2013, as amended, in relation to the Project and in consideration of the Province inviting the Proponent to submit such Proposal.

- (a) we confirm that we have undertaken the due diligence that we consider necessary on the Project to enable us to offer committed financing to the Proponent in an amount of not less than \$[Insert Value] in support of the Proponent’s Proposal, which the Proponent has confirmed to us complies with the requirements of the RFP. The provision of such financing will be subject only to the following:
- (1) the completion of a satisfactory audit of the Financial Close Financial Model;
 - (2) negotiation and finalization of funding documentation based on the attached debt term sheet; and
 - (3) negotiation and finalization of Principal Contracts based on the heads of terms included in the Proposal.



- (b) we have carried out and relied upon the due diligence referred to in paragraph 1 above with support from, and in cooperation with, **[[Insert Name]]** (our legal advisors), **[[Insert Name]]** (our technical advisors) and **[[Insert Name]]** (our insurance advisors) [and **[[Insert Name]]** (our model auditors)]. In particular:
- (1) due diligence on the Technical Submission proposed for the Project by the Proponent has been undertaken on our behalf and we are satisfied with the Technical Submission;
 - (2) due diligence on the insurance proposals contained in the Proposal and the Province's requirements in relation to insurances for the Project has been undertaken on our behalf and we can confirm that we are satisfied with the adequacy of the proposed insurance arrangements contained within the Proposal (assuming that such insurance arrangements are commercially available at the time of financial close);
 - (3) due diligence has been undertaken on the Financial Model included in the Proposal and we confirm that the results of the Financial Model (including the sensitivities) are satisfactory and capable of supporting the proposed financing described in the attached debt term sheet; and
 - (4) we confirm that we accept the terms and risk allocation of and have no further comments on the Final Draft Project Agreement, and that this agreement is acceptable without modification (except as contemplated therein) for purposes of financing the Project as contemplated in this letter.
- (c) we are satisfied that the attached debt term sheet sets out all significant commercial terms and conditions relating to the financing referred to in paragraph 1 above and the debt funding structure and, if any, all required terms relating to any material adverse change conditions to which the commitment referred to in paragraph 1 above is subject.
- (d) **[[If individual letters submitted]]** we confirm that we have received credit committee approval and, if any, other required internal approvals for the underwriting of up to **[[Insert Value]]**% of the **[[describe relevant facilities referred to in debt term sheet]]** on the terms contemplated by this letter and the attached debt term sheet.
- [[If group letters submitted]]** we confirm that we have received credit committee approval and, if any, other required internal approvals for the underwriting of the facilities referred to in the attached debt term sheet in the following percentages and on the terms contemplated by this letter and the attached debt term sheet:

[List bank/financial institutions individually & % participations of each of them in each facility].

[If individual or group letters submitted] we confirm that [our commitment] [the commitment of each signatory of this letter] described in this letter in the amount represented by the percentage(s) detailed above will not be affected by any subsequent withdrawal by, or removal of, any other senior lender from the Proponent's Financing Plan.

- (e) we confirm that we will be able to meet the Province's timetable to achieve Financial Close (i.e., execution and delivery of all funding agreements and satisfaction of all conditions precedent to initial drawdown) by 13 weeks after the announcement of the Proponent as the Preferred Proponent.

This letter does not constitute an offer of finance or a legally binding commitment of any kind to provide finance. This letter is intended for your exclusive use and may not be relied upon or used by any other person. This letter is provided on the condition that the contents will be treated as strictly private and confidential and will not be disclosed or quoted in whole or in part to any person other than the Province, other governmental authorities, and/or their advisors.

The provisions of this letter and attached debt term sheet have been approved for a period expiring not less than 120 days from the date of submission of the Financial Submission forming part of the Proposal on December 3, 2013 (the "**Submission Time for Financial Submissions**" under the RFP).



APPENDIX H 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 Province in its discretion and be callable at the bank's counters in Vancouver, British Columbia.]

TO: The Province

<>

(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 five hundred thousand dollars (CDN \$500,000) 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 \$500,000 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 [90 days after the Submission Time for Financial Submissions].

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 I CONSTRUCTION INSURANCE UNDERWRITING QUESTIONNAIRE

Posted in the Data Room.



APPENDIX J INITIAL DRAFT PROJECT AGREEMENT

Posted in the Data Room.



APPENDIX K ADVANCE INTEREST RATE SUBMISSION

A. General Approach to Pricing the Benchmarks

	Advance Interest Rate Submissions (excluding Initial)	Preferred Proponent Stage
<p>Senior Debt Base Rate Benchmark</p> <p>(not swapped, based on Government of Canada benchmark bonds)</p>	<p>Bid-market rates for Government of Canada benchmark bonds to be provided by the Province.</p> <p>Interpolation (if any) to be calculated by the Proponent using a methodology agreed during the Initial AIRS process.</p> <p>The calculated Senior Debt Base Rate Benchmark, including the calculation methodology, will be subject to the Province's approval.</p>	<p>At <u>Financial Close</u>:</p> <p>Senior Debt Base Rate Benchmark to be provided by the Preferred Proponent in accordance with a pre-agreed rate setting protocol.</p> <p>Proponent to source its own bid-market data. Interpolation methodology to match that agreed during the AIRS process.</p> <p>The Senior Debt Base Rate Benchmark will be subject to the Province's approval.</p>
<p>Swapped Senior Debt Base Rate Benchmark</p> <p>(swapped, based on a forward swap curve)</p>	<p>Mid-market CAD swap and mid-market CAD basis swap data will be provided by the Province.</p> <p>Proponent will use the information provided by the Province to calculate the appropriate Swapped Senior Debt Base Rate Benchmark using a methodology agreed during the Initial AIRS process.</p> <p>Proponent will provide the terms of the swap structure per the template provided in Appendix K-3 unless an alternative structure is proposed by the Proponent and agreed by the Province. Proponent will assume that the terms provided including, but not limited to, the notional schedule and the fixed rate assume that Financial Close happened on the same day that the day the rates were provided by the Province under Appendix K-1.</p> <p>The calculated Swapped Senior Debt Base Rate Benchmark, including the calculation methodology, will be</p>	<p>At <u>Financial Close</u>:</p> <p>Swapped Senior Debt Base Rate Benchmark to be provided by the Preferred Proponent in accordance with a pre-agreed rate setting protocol.</p> <p>Proponent to source its own mid-market data. Calculation methodology to match that agreed during the AIRS process.</p> <p>The Swapped Senior Debt Base Rate Benchmark will be subject to the Province's approval.</p>

	Advance Interest Rate Submissions (excluding Initial)	Preferred Proponent Stage
	subject to the Province's approval.	
Reinvestment Base Rate Benchmark	An approach similar to the Senior Debt Base Rate Benchmark or the Swapped Senior Debt Base Rate Benchmark depending on the nature of the relevant reinvestment product.	At <u>Financial Close</u> : An approach similar to the Senior Debt Base Rate Benchmark or the Swapped Senior Debt Base Rate Benchmark depending on the nature of the relevant reinvestment product.
Senior Debt Credit Spread Benchmark	Proponent to provide the mid-market rates of a basket of bonds agreed during the Initial AIRS process. Proponent will calculate the Senior Debt Credit Spread Benchmark using a methodology agreed during the Initial AIRS process. Mid-market rates and calculated mid-market credit spreads will be subject to approval by the Province.	On the <u>Credit Spread Refresh Lock-in Date</u> : Proponent to provide a fully completed Appendix K-4. Proponent to provide the mid-market rates of a basket of bonds agreed during the AIRS process. Proponent to calculate the Senior Debt Credit Spread using the same methodology agreed during the AIRS process. Mid-market and calculated mid-market credit spreads will be subject to approval by the Province.

The Senior Debt Base Rate Benchmark will be calculated at the bid-market rate, excluding any execution spread, credit spread, liquidity spread or any other form of margin, spread or fee. The Swapped Senior Debt Base Rate Benchmark and the Reinvestment Base Rate Benchmark will all be calculated at the mid-market rate excluding any execution spread, credit spread, liquidity spread or any other form of margin, spread or fee. The Service Payments submitted as part of the Proponent's Financial Submission should include any execution and/or swap credit spread/charge required to execute the relevant benchmark and, for the avoidance of doubt, such execution and/or swap credit spread/charge will not be subject to any adjustments after the Financial Submission.

B. Initial AIRS

1. Information to be Provided by the Province

The Province will, one week prior to the Initial AIRS Submission Time, provide Proponents with an update to the information shown in Appendix K-1, based on market rates as at 07:00 Pacific Time on that day.



2. Information to be Provided by the Proponent

In its Initial AIRS the Proponent is to provide:

- a) A statement of which of its Senior Credit Facilities it elects to designate as an Adjustment Credit Facility. If the Proponent does not elect to designate any Senior Credit Facility as an Adjustment Credit Facility then a statement to that effect.

If no Senior Credit Facilities are designated as an Adjustment Credit Facility then, except as required by this section a), the Proponent is not required to submit any further information in respect of the AIRS process.

Any Senior Credit Facility designated as an Adjustment Credit Facility may be adjusted, but only in accordance with this RFP, between Financial Submission and Financial Close. Any Senior Credit Facility not designated as an Adjustment Credit Facility may not be adjusted following the Financial Submission.

- b) A statement of which of the Benchmarks the Proponent elects to apply to each of the designated Adjustment Credit Facilities.
- c) If a Proponent elects to apply the Senior Debt Base Rate Benchmark:
 - i. Confirmation that the Government of Canada benchmark bonds identified by the Province in Appendix K-1 are suitable for the anticipated debt structure contemplated by the Proponent. When selecting the Government of Canada benchmark bonds, Proponents should consider Canadian bond market pricing convention which is to price amortizing bonds using an underlying benchmark bond with a term to maturity that approximates the average life date, not the maturity date.
 - ii. If the Government of Canada benchmark bonds identified by the Province in Appendix K-1 are not suitable for the anticipated debt structure contemplated by the Proponent, then alternate security or securities for consideration by the Province.

In such instances, the Proponent is to provide sufficient information to allow the Province to confirm that the Government of Canada benchmark bonds identified by the Province in Appendix K-1 are not suitable for the Proponent's anticipated debt structure. If other alternate security or securities are requested, the information provided must demonstrate

why they are suitable and possess similar characteristics in terms of information access, rating, duration, liquidity and amortization as the Government of Canada benchmark bonds.

Alternate security or securities may be accepted or rejected by the Province in its absolute discretion.

- iii. A detailed explanation, including a worked example, of how and in what circumstances the Proponent will calculate an interpolated rate from the approved securities.

d) If a Proponent elects to apply the Swapped Senior Debt Base Rate Benchmark:

- i. A completed indicative swap term sheet substantially in the form shown in Appendix K-3, except that for the purpose of the Initial AIRS, terms and conditions marked on the indicative term sheet with an asterisk (*) need not be submitted.
- ii. A detailed explanation, including a worked example indicating the periodic payments and reset rates expected as calculated by the Proponent, of how the Swapped Senior Debt Base Rate Benchmark will be calculated from the information provided to the Proponent by the Province.

e) If a Proponent elects to apply the Reinvestment Base Rate Benchmark:

- i. A description of the reinvestment products to which the Benchmark will apply and the association between those reinvestment products and the Senior Credit Facilities.
- ii. Confirmation as to whether the Reinvestment Base Rate Benchmark is to be based on a swapped rate product.
- iii. If the Reinvestment Base Rate Benchmark is not to be based on a swapped rate product then the same information requested in section c) in relation to the Reinvestment Rate Benchmark.
- iv. If the Reinvestment Base Rate Benchmark is to be based on a swapped rate product then the same information requested in section d) in relation to each Reinvestment Base Rate Benchmark.

- f) If a Proponent elects to apply the Senior Debt Credit Spread Benchmark:
- i. A proposed Senior Debt Credit Spread Benchmark, such Senior Debt Credit Spread Benchmark being a security (i.e., an index) or weighted “basket” of securities that the Proponent believes possesses similar credit characteristics to the relevant Adjustment Credit Facility in terms of rating, duration, size and currency and for which observable rates are verifiable by the Province. Complete and submit Section 2, area labeled “i” columns B through G inclusive in Appendix K-4;
 - ii. Rationale for the suitability of the Senior Debt Credit Spread Benchmark including consideration for relevance, liquidity and diversification within the “basket”;
 - iii. Information and documentation to support, and to enable a third party to verify, the proposed Senior Debt Credit Spread Benchmark pricing including:
 - ◆ details of how the Senior Debt Credit Spread Benchmark will be priced and software that will be applied; and
 - ◆ details of the pricing conventions inherent in the pricing; and
 - iv. A proposed formula describing how each Credit Spread will move upwards and downwards with the movement in the Senior Debt Credit Spread Benchmark.

3. Process following Initial AIRS

Within a reasonable period determined by the Province after the Initial AIRS Submission Time, the Province will advise the relevant Proponent whether, in the Province’s discretion, the information contained within the Initial AIRS is acceptable.

If the Province advises a Proponent, with particulars, that any Initial AIRS is not acceptable, the Proponent is to submit a revised Initial AIRS to the Province that addresses the Province’s concerns within 5 Business Days (or other such reasonable period determined by the Province in its discretion) after receiving such notice.

The Province may, in its discretion, request a meeting with the Proponent to discuss its Initial AIRS.

This process will be repeated (at the discretion of the Province) until an Initial AIRS is proposed that is acceptable to the Province, in the Province’s discretion. A Proponent that has submitted an Initial AIRS that is acceptable to the Province will be invited to submit an Interim AIRS.



A Proponent may make a supplementary submission after the Initial AIRS (on the same basis as the Initial AIRS) and before the Interim AIRS. This opportunity is provided to Proponents, but it is at the Province's discretion to accept the supplementary submission. If there is insufficient time for the Province and the Proponent to agree on the revised Benchmarks, the Proponent will have to use the Benchmarks approved at the Initial AIRS.

C. Interim AIRS

1. Information to be Provided by the Province

The Province will, one week prior to the Interim AIRS Submission Time, provide Proponents with an update to the information shown in Appendix K-1 based on market rates as at 7:00 Pacific Time on that day.

2. Information to be Provided by the Proponent

In its Interim AIRS the Proponent is to provide:

- a) If a Proponent elected in its Initial AIRS to apply the Senior Debt Base Rate Benchmark:
 - i. Acceptance of the information provided one week prior to the Interim AIRS Submission Time by the Province to the Proponent.
 - ii. The calculation used by the Proponent to determine the Senior Debt Base Rate Benchmark from the information provided by the Province.
 - iii. Confirmation that the Senior Debt Base Rate Benchmark is calculated using the rates provided by the Province and excludes all margins, spreads and fees.

- b) If a Proponent elected in its Initial AIRS to apply the Swapped Senior Debt Base Rate Benchmark:
 - i. Acceptance of the information provided one week prior to the Interim AIRS Submission Time by the Province to the Proponent.
 - ii. A completed indicative swap term sheet substantially in the form shown in Appendix K-3.
 - iii. The Swapped Senior Debt Base Rate Benchmark determined by the Proponent using the information provided by the Province.

- iv. The calculation used by the Proponent to determine the Swapped Senior Debt Base Rate Benchmark.
 - v. Confirmation that the Swapped Senior Debt Base Rate Benchmark is calculated using the rates provided by the Province and excludes all margins, spreads and fees (with the exception of any swap spread/charge implied within the mid-market CAD swap curve). Any execution and/or swap credit spread/charge required to execute the Swapped Senior Debt Base Rate Benchmark should be included in the Proponent's Service Payments submitted as part of its Financial Submission and will not be subject to any adjustments after the Financial Submission.
- c) If a Proponent elected in its Initial AIRS to apply the Reinvestment Base Rate Benchmark:
- i. Acceptance of the information provided one week prior to the Interim AIRS Submission Time by the Province to the Proponent.
 - ii. If relevant, a completed indicative swap term sheet substantially in the form shown in Appendix K-3. If an indicative swap term sheet is not relevant to the Reinvestment Base Rate Benchmark then a confirmation as such.
 - iii. The Reinvestment Rate Benchmark determined by the Proponent using the information provided by the Province.
 - iv. The calculation used by the Proponent to determine the Reinvestment Base Rate Benchmark from the information provided by the Province.
 - v. Confirmation that the Reinvestment Base Rate Benchmark is calculated using the rates provided by the Province and excludes all margins, spreads and fees (with the exception of any swap spread implied within the mid-market CAD swap curve, if relevant).
- d) If a Proponent elected in its Initial AIRS to apply the Senior Debt Credit Spread Benchmark:
- i. The Senior Debt Credit Spread Benchmark determined by the Proponent as at 07:00 Pacific Time the day before the Interim AIRS Submission Time. Complete and submit Section 2, area labeled "iii", columns H through M inclusive in Appendix K-4;

- ii. Information and documentation to support, and to enable a third party to verify, the proposed Senior Debt Credit Spread Benchmark price including:
 - ◆ details of how the Senior Debt Credit Spread Benchmark was priced and the software that was applied;
 - ◆ copies of the price quotes (using a Bloomberg screen shot or similar); and
 - ◆ details of the pricing conventions inherent in the pricing.
- iii. Confirmation that the Senior Debt Credit Spread Benchmark is a mid-market spread that is calculated from the difference in the relevant mid-market rates and excludes all margins, profits and fees.

3. Process following Interim AIRS

Within a reasonable period determined by the Province after the Interim AIRS Submission Time, the Province will advise the relevant Proponent whether, in the Province's discretion, the information contained within the Interim AIRS is acceptable.

If the Province advises a Proponent, with particulars, that any Interim AIRS is not acceptable, the Proponent is to submit a revised Interim AIRS to the Province that addresses the Province's concerns within 5 Business Days (or other such reasonable period determined by the Province in its discretion) after receiving such notice.

The Province may, in its discretion, request a meeting with the Proponent to discuss its Interim AIRS.

This process will be repeated (at the discretion of the Province) until an Interim AIRS is proposed that is acceptable to the Province, in the Province's discretion. A Proponent that has submitted an Interim AIRS that is acceptable to the Province will be invited to submit a Final AIRS.

D. Final AIRS

1. Information to be Provided by the Province

The Province will, one week prior to the Final AIRS Submission Time, provide Proponents with an update to the information shown in Appendix K-1 based on market rates as at 7:00 Pacific Time on that day.

2. Information to be Provided by the Proponent

In its Final AIRS the Proponent is to provide:



- a) If a Proponent elected in its Initial AIRS to apply the Senior Debt Base Rate Benchmark:
- i. Acceptance of the information provided one week prior to the Final AIRS Submission Time by the Province to the Proponent.
 - ii. The calculation used by the Proponent to determine the Senior Debt Base Rate Benchmark from the information provided by the Province.
 - iii. Confirmation that the Senior Debt Base Rate Benchmark is calculated using the rates provided by the Province and excludes all margins, spreads and fees.
- b) If a Proponent elected in its Initial AIRS to apply the Swapped Senior Debt Base Rate Benchmark:
- i. Acceptance of the information provided one week prior to the Final AIRS Submission Time by the Province to the Proponent.
 - ii. A completed indicative swap term sheet substantially in the form shown in Appendix K-3.
 - iii. The Swapped Senior Debt Base Rate Benchmark determined by the Proponent using the information provided by the Province.
 - iv. The calculation used by the Proponent to determine the Swapped Senior Debt Base Rate Benchmark.
 - v. Confirmation that the Swapped Senior Debt Base Rate Benchmark is calculated using the rates provided by the Province and excludes all margins, spreads and fees (with the exception of any swap spread implied within the mid-market CAD swap curve).
 - vi. With the exception of any swap credit spread/charge implied within the mid-market CAD swap curve, any execution and/or credit spread/charge required to execute the Swapped Senior Debt Base Rate Benchmark should be included in the Proponent's Service Payments submitted as part of its Financial Submission and will not be subject to any adjustments after the Financial Submission.
- c) If a Proponent elected in its Initial AIRS to apply the Reinvestment Base Rate Benchmark:

- i. Acceptance of the information provided one week prior to the Final AIRS Submission Time by the Province to the Proponent.
 - ii. If relevant, a completed indicative swap term sheet substantially in the form shown in Appendix K-3. If an indicative swap term sheet is not relevant to the Reinvestment Base Rate Benchmark then a confirmation as such.
 - iii. The Reinvestment Rate Benchmark determined by the Proponent using the information provided by the Province.
 - iv. The calculation used by the Proponent to determine the Reinvestment Base Rate Benchmark from the information provided by the Province.
 - v. Confirmation that the Reinvestment Base Rate Benchmark is a mid-market rate and excludes all margins, spreads and fees (with the exception of any swap spread implied within the mid-market CAD swap curve, if relevant).
- d) If a Proponent elected in its Initial AIRS to apply the Senior Debt Credit Spread Benchmark:
- i. The Senior Debt Credit Spread Benchmark determined by the Proponent as at 07:00 Pacific Time the day before the Final AIRS Submission Time. Update and submit Section 2, area labeled “iii” columns H through M inclusive in Appendix K-4;
 - ii. Information and documentation to support, and to enable a third party to verify the proposed Senior Debt Credit Spread Benchmark including:
 - ◆ details of how the Senior Debt Credit Spread Benchmark was priced and the software that was applied;
 - ◆ copies of the price quotes (using a Bloomberg screen shot or similar); and
 - ◆ details of the pricing conventions inherent in the pricing.
 - iii. Confirmation that the Senior Debt Credit Spread Benchmark is a mid-market spread that is calculated from the difference in the relevant mid-market rates and excludes all margins, profits and fees (with the exception, if relevant, of any swap spread implied within the mid-market CAD swap curve).

3. Process following Final AIRS

Within a reasonable period determined by the Province after the Final AIRS Submission Time, the Province will advise the relevant Proponent whether, in the Province's discretion, the information contained within the Final AIRS is acceptable.

If the Province advises a Proponent, with particulars, that any Final AIRS is not acceptable, the Proponent is to submit a revised Final AIRS to the Province that addresses the Province's concerns within 5 Business Days (or other such reasonable period determined by the Province in its discretion) after receiving such notice.

The Province may, in its discretion, request a meeting with the Proponent to discuss its Final AIRS.

This process will be repeated (at the discretion of the Province) until a Final AIRS is proposed that is acceptable to the Province, in the Province's discretion.

APPENDIX K-1

See the attached JCRA rate sheet PDF.

* if any Government of Canada benchmark bond switches to an alternative Government of Canada benchmark bond prior to Financial Close, the pricing of any Adjustment Credit Facilities based on the affected Government of Canada benchmark bond will also switch to the applicable alternative Government of Canada benchmark bond.

APPENDIX K-2

Not used.

APPENDIX K-3

Swap Term Sheet

Provided as a separate worksheet.

APPENDIX K-4

Senior Debt Credit Spread Benchmark

Provided as a separate worksheet.



APPENDIX L PROPONENT TEAM MEMBER LIST

Proponent Team Name: _____

Team Member Name (Company or Individual)	Address	Team Member Role (Proponent, Design-Builder, Design-Builder's Design Firm, Service Provider, Equity Provider, and/or Guarantor)



APPENDIX M DRAFT EARLY WORKS AGREEMENT

Provided as a separate document.

