



Interior Health

REQUEST FOR PROPOSALS
for
KGH CLINICAL SUPPORT BUILDING
DESIGN-BUILD PROJECT

**TECHNICAL SUBMISSION CLOSING
TIME**

November 2, 2010

At 2:00 p.m. (local time in Vancouver, BC)

**FINANCIAL SUBMISSION CLOSING
TIME**

November 25, 2010

At 2:00 p.m. (local time in Vancouver, BC)

DELIVERY ADDRESS

**2320 – 1111 West Georgia Street
Vancouver, BC V6E 4M3**

CONTACT PERSON

Catherine Silman

EMAIL ADDRESS

Catherine.silman@partnershipsbc.ca

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SUMMARY OF KEY INFORMATION

RFP TITLE	The title of this RFP is: KGH Clinical Support Building Design-Build Project Proponents should use this title on all correspondence.
CONTACT PERSON	The Contact Person for this RFP is: Catherine Silman Email: catherine.silman@partnershipsbcc.ca Please direct all Enquiries, in writing, to the above named Contact Person. No telephone or fax enquiries please.
ENQUIRIES	Proponents are encouraged to submit Enquiries at an early date to permit consideration by the Authority. The Authority may, in its discretion, decide not to respond to any Enquiry received after 3:00 p.m. (local time) on the day that is: (a) 5 days before the Technical Submission Closing Time in respect of the Technical Submission; and (b) 5 days before the Financial Submission Closing Time in respect of the Financial Submission (including amended Technical Submission).
TECHNICAL SUBMISSION CLOSING TIME	November 2, 2010 At 2:00 p.m. (local time in Vancouver, BC)
FINANCIAL SUBMISSION CLOSING TIME	November 25, 2010 At 2:00 p.m. (local time in Vancouver, BC)
DELIVERY ADDRESS	The Delivery Address is: 2320 – 1111 West Georgia Street Vancouver, BC V6E 4M3
DELIVERY HOURS	Deliveries will be accepted at the Delivery Address on weekdays (excluding Statutory Holidays) from 8:30 a.m. to 4:00 p.m. (local time in Victoria).

1. INTRODUCTION

1.1 Purpose of this RFP

The purpose of this RFP is to invite eligible Proponents to prepare and submit competitive Proposals to design and build the building referred to as the Clinical Support Building (the “**Project**”, the “**Facility**”, the “**CSB**”, or the “**Clinical Support Building**”) under a design-build agreement (the “**Design-Build Agreement**”).

1.2 Eligibility to Participate in this RFP

Through a request for qualifications (“**RFQ**”) issued April 29, 2010 by the Authority, the following teams are qualified to participate in this RFP:

- (a) Acciona Stuart Olson Dominion Joint Venture;
- (b) Graham Design Build Services, a JV; and
- (c) PCL Constructors Westcoast Inc.

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.

1.3 Scope

The Authority is proposing to undertake the design and construction of the Clinical Support Building located on the east side of Pandosy Street across from the main Kelowna General Hospital Campus. The CSB will be a three-storey structure, approximately 7,850 m², including 1,850 m² of exterior parkade on level 1, designed to house the laboratory and clinical support departments currently located in the existing Pandosy Building. As part of the construction of the CSB, there will be an enclosed bridge link connecting the CSB to the Centennial Building, currently under construction.

The Authority has undertaken an indicative design (the “**Indicative Design**”) to assist the Proponent in understanding the full scope of this RFP.

This RFP is for complete design and construction services as outlined in this RFP and as per the Design Build Agreement.

2. RFP PROCUREMENT PROCESS

2.1 Estimated Timeline

The following is the Authority’s estimated timeline for the Project:

Activity	Timeline
RFP issued to Proponents	August 9, 2010
Data Room made available to Proponents who have signed and delivered the Participation Agreement	August 10, 2010
Proponents to provide the Authority written comments on the Initial Draft Design-Build Agreement for discussion at the Collaborative Meeting(s)	Week of August 30, 2010
First Collaborative Meeting between Proponents and Authority	Week of September 6, 2010
Second Collaborative Meeting between Proponents and Authority (if required)	Week of September 20, 2010
Final Draft Design-Build Agreement issued	Week of October 4, 2010
Last Date for Enquiries (Technical Submission)	5 days before Technical Submission Closing Time
Technical Submission Closing Time	2:00 pm on November 2, 2010
Last Date for Enquiries (Financial Submission)	5 days before Financial Submission Closing Time
Invitation to make a Financial Submission	November 24, 2010
Financial Submission Closing Time	2:00 pm on November 25, 2010
Selection of Preferred Proponent	December 2, 2010
Contract Award	Between December 2, 2010 and December 16, 2010
Contract Execution	No later than December 16, 2010
Design and Construction Commences	December 2010
Substantial Completion	April 27, 2012

This estimated timeline is subject to change at the sole discretion of the Authority.

2.2 Collaborative Meetings

Prior to the Technical Submission Closing Time, the Authority will make available certain of its personnel, consultants and advisors (the “**Authority Representatives**”) to participate in collaborative meetings (“**Collaborative Meetings**”) with each of the Proponents. The Authority 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, and in particular:

- (1) to permit the Proponent Representatives to provide the Authority Representatives with comments and feedback on major issues such as affordability or provisions of the Initial Draft Design-Build Agreement; and
 - (2) to permit the Proponent Representatives to discuss with the Authority Representatives potential solutions and approaches that the Proponent may be considering for various aspects of its Proposal;
- (b) at least five Business Days in advance of each Collaborative Meeting each Proponent should provide the Authority with a proposed meeting agenda, a list of prioritized issues it would like to discuss and any materials relevant to such issues, and the Authority may provide Proponents with comments on the agenda and a list of any prioritized issues the Authority would like to discuss;
 - (c) the Authority will determine which Authority 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 Authority and to fulfil the objectives of the Collaborative Meeting provided that the Authority may, in its discretion, limit the number of participants at any one meeting;
 - (e) to facilitate free and open discussion at the Collaborative Meetings, Proponents should note that any comments provided by or on behalf of the Authority 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 Authority during the Collaborative Meetings to anything said or provided by Proponents, will not in any way bind the Authority and will not be deemed or considered to be an indication of a preference by the Authority 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 Authority provide that information to the Proponent in written form and, if such information relates to a clarification, explanation or change to a provision of this RFP or the Design-Build Agreement, request an Addendum to this RFP clarifying and amending the provision in question;
 - (g) by participating in the Collaborative Meetings a Proponent confirms its agreement with these procedures and that the meetings are an integral part of the procurement process as described in this RFP and are in the interests of all parties; and

- (h) the Authority anticipates holding up to two Collaborative Meetings with each Proponent prior to the Closing Date. Following the release of the RFP, the Authority will consult with each Proponent to confirm specific dates for Collaborative Meetings. If the Authority considers it desirable or necessary to schedule additional or fewer Collaborative Meetings, the Authority may, in its discretion, amend the anticipated schedule.

2.3 Comments on the Design-Build Agreement

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

- (a) the Authority will invite Proponents, as part of the Collaborative Meeting process, to discuss possible clarifications or amendments to the Initial Draft Design-Build Agreement, including with respect to commercial, legal, design and construction matters;
- (b) at least five Business Days in advance of the Collaborative Meeting at which the Proponent wishes to discuss the Initial Draft Design-Build Agreement, each Proponent should provide the Authority with a prioritized list of requested changes, if any, to the Initial Draft Design-Build Agreement using the Proponent Comments Form attached as 0, together with the agenda and issues list described in Section 2.2(b); and
- (c) the Authority will consider all comments and requested clarifications or amendments received from the Proponents in the Collaborative Meetings and will amend the Initial Draft Design-Build Agreement as the Authority may determine at its discretion.

Prior to the Technical Submission Closing Time, the Authority intends to issue by Addendum one or more revised drafts of the Design-Build Agreement, including one that will be identified as the “Final Draft Design-Build Agreement” (the “**Final Draft Design-Build Agreement**”). The Final Draft Design-Build 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 Design-Build Agreement except for modifications, changes or additions to the Statement of Requirements as provided for in Section 4.3, or modifications, changes or additions provided for in Section 8.23.

2.4 Data Room

The Authority has established a web site to be used as an electronic data room (the “**Data Room**”) in which it has placed documents in the possession of the Authority that the Authority has identified as relevant to the Project and to the Project site, and that may be useful to Proponents. The Authority 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 Authority may advise with respect to a specific document. The Authority will grant Proponents access to the Data Room and may 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 Authority 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.

3. KEY PROJECT ISSUES

3.1 Municipal Approvals

In accordance with the Design-Build Agreement, the Design-Builder will be responsible for obtaining all permits and approvals required for the design and construction of the Facility, and to ensure that its design for the Facility complies with the applicable zoning and related City requirements. The CSB site is subject to a City covenant that states no building shall be constructed on the site until the development plans for the building are submitted to the City following public consultation. (Information with regard to the City covenant is available in the Data Room). As described in the Final Draft Design-Build Agreement, the Design-Builder will work cooperatively with the Authority to assist with the removal of this covenant. A community consultation is expected to occur on the evening of December 9, 2010 for which the Design-Builder will be required to have prepared detailed exterior design drawings. It is expected that the covenant will be removed by the City by mid-February 2011. Delay in removal of the covenant will be treated as Force Majeure under the Design-Build Agreement.

The Authority is in the process of working with the City to secure approval for the bridge link over Pandosy Street. This approval-in-principle will be in place prior to Contract Execution and subject to public consultations. Final approval for the bridge link will be granted concurrently with the issuance of the Building Permit.

3.2 Bridge Link

The Project requires that a bridge link be constructed by the Design-Builder between the CSB and the Centennial Building on the West side of Pandosy Street. Elements of this work will require access to the Centennial Building which is currently being constructed by the Infusion Health KVH General Partnership. The Authority is in the process of making arrangements with the Infusion Health KVH General Partnership for this work to take place.

With regard to the bridge link and access to the Infusion Health KVH General Partnership site Proponents should assume that:

- (a) work will be conducted in phases. Access will be granted to the successful Design-Build team for the construction of the bridge supports between the dates of March 15, 2011 and April 30, 2011. Access for placement of the Bridge structure will be granted between dates October 31, 2011 and November 30, 2011;
- (b) actual physical connection to the Centennial Building cannot commence prior to the Centennial Building service commencement date which is tentatively set for February 13, 2012;
- (c) the Centennial Building contractor will be Prime Contractor;

- (d) the successful Design-Builder will be required to work cooperatively with the Centennial Building contractor and minimize and disruptions outside of their site;
- (e) drawings are provided within the Data Room which indicate acceptable locations for the bridge support and location of services, landscaping and road ways;
- (f) drawings are provided within the Data Room which indicate the construction of the Centennial Building and the provisions that have been made to the Centennial Building to accept the enclosed bridge link;
- (g) the bridge link will comply with the Statement of Requirements; and
- (h) the Authority will be responsible for seeking City approval-in-principle. The Design-Builder will seek final approval concurrently with the issuance of the building permit.

Delay in making arrangements for access will be treated as Force Majeure under the Design-Build Agreement. Further detail is provided in the Final Draft Design-Build Agreement.

3.3 Preload

The Project site has been preloaded based on recommendations in the Levelton Geotechnical Report contained within the Data Room. The Authority has a contract in place for the removal of the preload material and will pay for the removal services. The Design-Builder will, on behalf of the Authority, manage the preload removal contract so that the Design-Builder meets its obligations in the Design-Build Agreement.

More information can be found in Section 11 of the Draft Design-Build Agreement.

3.4 Parking

(a) Temporary Parking and Lay-Down Space during Construction

Construction workers will be required to park off the KGH site during construction so Proponents should provide temporary parking or alternate transportation solutions for construction workers.

The Authority owns the property located at 2180 Ethel Street and would make a portion of this space available to the successful Proponent for the duration of the CSB construction period at no cost. The Authority has some space commitments in regard to this property and cannot commit to providing the entire property to the successful Proponent.

The Authority currently leases the property located at 2056 Pandosy Street and would sub-lease this space to the successful Proponent for the duration of the CSB construction period for a gross lease amount of \$4,700 per month which includes all expenses such as utilities, taxes and janitorial services. The Design-Builder would be required to comply with all requirements of the head lease and the Authority's standard form of sublease.

(b) Permanent Parking Solution (Post-Construction)

As described in the Statement of Requirements, the Design-Builder will be required to provide vehicle and motorcycle parking stalls to meet expected parking demands for the new Facility.

3.5 Functional Program and Indicative Design

The Design-Builder will be required to design and construct the Facility to accommodate the spaces, activities, functions, design features and adjacencies described in the Draft Design-Build Agreement, including the Functional Program included in the Statement of Requirements.

The Authority and its consultants have prepared a Functional Program for the Clinical Support Building. The Functional Program describes workload, staffing requirements and other factors which must be addressed in order that the Facility can successfully serve the needs of the Authority today and in the future. In addition to the Functional Program, the Authority has provided a schedule of Facility Space Requirements which augments the Functional Program, adding additional spaces as deemed necessary to reflect the layout defined in the Indicative Design for the CSB. The Facility Space Requirements summarize the types of rooms or spaces, the minimum number and size of rooms or spaces, and some contents of some rooms which the Authority has identified as being necessary for the CSB to accommodate the program requirements.

The Indicative Design reflects program areas and significant design features as required by the Facility Space Requirements and Functional Program. Clinical functionality has been reviewed with Facility users who have provided input on the general laboratory layout, adjacencies, and both staff and specimen flows. Each office space has been drawn with a furniture layout test fit. Lean design principles have been applied to most of the laboratory departments and an equipment test fit has been completed. The Design-Builder is to consider the Lean design work that has been completed to-date, a copy of which has been included in the Data Room, and to ensure Lean principles are applied to their design solutions. The Indicative Design should not be relied on by Proponents, and does not relieve the Design-Builder of responsibility for design of the Facility.

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

3.6 Equipment

The Design-Builder will complete the Facility to accommodate equipment, including all required electrical and plumbing connections, structural support, seismic restraints and space for efficient access, all to the tolerances and specifications as may be specified and required by the manufacturers or suppliers of the equipment. The categories of equipment include:

- (a) **Category 1:** Authority Supplied and Design-Builder Installed;
- (b) **Category 2:** Authority Supplied and Authority Installed;
- (c) **Category 3:** Design-Builder Supplied and Design-Builder Installed;
- (d) **Category 4:** Authority Supplied and Vendor Installed; and

(e) **Category 5: Authority Relocated.**

An equipment list is provided as Appendix 4A of the Design-Build Agreement. The Design-Builder is required to coordinate equipment installation with the building construction schedule while allowing delivery/installation as close to Substantial Completion as possible. All equipment that is Design-Builder Installed is expected to be completed prior to Substantial Completion unless otherwise noted in the equipment list.

3.7 LEED® / Energy

The Design-Builder will be required to obtain LEED® Gold Certification for the Facility. The Facility has been registered with the Canada Green Building Council under the LEED® Canada-NC 1.0 rating system. Registration under LEED® NC 1.0, allows for the use of certain credit targets or thresholds under LEED® NC 2009 or LEED® NC 1.0 as per equivalencies allowed by the Canada Green Building Council.

The Design-Builder will be required to achieve the following LEED® credits/points:

- (a) Energy and Atmosphere Credit 1 – Optimize Energy Performance: 45% Reduction in Design Energy Cost Relative to MNECB (6 points);
- (b) Energy and Atmosphere Credit 3 – Best Practice Commissioning; and
- (c) Energy and Atmosphere Credit 5 – Measurement and Verification

3.8 Wood First

The Project is subject to the Wood First Act (British Columbia). The Design-Builder will be required to use wood in the specific locations identified in the Statement of Requirements of the Design-Build Agreement. This does not preclude Proponents from using more wood than allowed for in the Statement of Requirements, but Proponents will not be evaluated, as defined in this RFP, on wood use other than where it is required in the Statement of Requirements.

3.9 Pneumatic Tube System – Cash Allowance

The Swisslog pneumatic tube system as described in the Statement of Requirements will be treated as a cash allowance as described in Section 44 of the Final Draft Design-Build Agreement. The value of the cash allowance is \$240,000.

This cash allowance includes all costs incurred by Swisslog for materials and labour to tie into the Centennial Building pneumatic tube infrastructure and install: 3 tubes from the Centennial Building going into the Clinical Support Building to five stations; three on Floor 3 and one on each of the other floors of the CSB, based on the layout as presented in the Indicative Design posted in the Data Room. The scope of Swisslog's work is outlined in the "Swisslog Pneumatic Tubes Statement of Work" in the Data Room.

The Design-Builder is responsible for any costs associated with the installation of the complete system as described above that is not included as a Swisslog requirement in the "Swisslog Pneumatic Tube

Statement of Work". The location and performance requirements of the tube stations will be determined through the successful Proponent's design process.

The value of the cash allowance is included in Appendix B Form A1 and will form part of the costs described in Appendix B.

The value of the cash allowance is included in the Affordability Ceiling calculation.

4. AFFORDABILITY

4.1 Affordability Ceiling

The Authority has identified a mandatory Affordability Ceiling of \$37.225 million (the "**Affordability Ceiling**") for the Nominal Cost of the Project. Project approvals have been based on the Affordability Ceiling.

In determining the Affordability Ceiling, the Authority and its advisors developed a shadow financial model based on the requirements of the Draft Design-Build Agreement, including the Statement of Requirements, the Indicative Design, costing information and market-based financial and other assumptions, including all Project capital and development costs (which do not include interest) included in the Breakdown of Contract Price.

4.2 Nominal Cost Calculation

Each Proponent should calculate the Nominal Cost of its Proposal using the Form A1 - Breakdown of Contract Price provided by the Authority. The completed Breakdown of Contract Price and the Nominal Cost calculation should be submitted with the Proponent's Proposal. This Nominal Cost will be compared to the Affordability Ceiling for evaluation purposes as described in Appendix A of this RFP.

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

4.3 Changes to Statement of Requirements to Ensure Affordability (Scope Ladder)

If not all of the elements of the Statement of Requirements of the Draft Design-Build Agreement are achievable within the Affordability Ceiling, a Proponent may propose to amend the scope of the Project as set out in the Statement of Requirements in order to ensure that the Nominal Cost of its Proposal is equal to or below the Affordability Ceiling. Proponents proposing changes to the Statement of Requirements should limit their proposed changes to items identified by the Authority in the scope ladder, and changes should only be made in the order set out in the scope ladder.

The Authority encourages confidential discussion of scope ladder items during the Collaborative Meeting process. The Authority intends to issue by Addendum a final list of scope ladder items.

For the purposes of discussion, the following is a preliminary list of scope ladder items to be used in the following order:

Ranking	Scope Ladder item	Comments
1	Reduce soft landscaping quality (including fence).	Soft landscaping only.
2	Shell in passenger elevator.	All required infrastructure for the elevator would be provided except for the elevator car.
3	Authority supplies fume hoods and grossing stations.	These would be relocated from the current lab or provided as Authority Supplied Design-Builder Installed equipment.
4	Authority supplies lab case work.	
5	Reduce mechanical and electrical systems.	Systems have been specified to supply capacity for future expansion.
6	Deletion of grid bay at the south end of the Facility.	Space would be removed from Levels 2 and 3. Parking on the ground level would remain.

5. PROPOSAL REQUIREMENTS

5.1 Participation Agreement

As a condition of participating in this RFP, each Proponent must sign and deliver to the Contact Person a participation agreement (“**Participation Agreement**”), substantially in the form attached as Appendix F or otherwise acceptable to the Authority in its discretion. Proponents should sign and deliver the Participation Agreement within two Business Days after this RFP is issued, and each Proponent that signs and delivers the Participation Agreement will be provided access to the Data Room (including the Draft Design-Build Agreement).

Proponents will not be provided with access to the Data Room (including the Initial Draft Design-Build Agreement), be invited to participate in Collaborative Meetings, or participate further in the Competitive Selection Process unless and until they have signed and delivered a Participation Agreement as required by this Section.

5.2 Proposal Form and Content

Proposals should be in the form and include the content described in Appendix B of this RFP.

6. SUBMISSION INSTRUCTIONS

6.1 Closing Time and Delivery Address

With respect to the delivery of Proposals:

- (a) Technical Submission: Proponents must submit to the Delivery Address by the Technical Submission Closing Time the technical portion of the Proposal (the “**Technical Submission**”), which should be made up of the following:
 - (1) the cover letter (and all attachments) to the Technical Submission as described in the Technical Submission section of Appendix B; and

- (2) the portion of the Proposal Requirements described in the Technical Submission section of Appendix B.
- (b) Financial Submission: If invited to do so, Proponents must submit to the Delivery Address by the Financial Submission Closing Time the financial portion of the Proposal (the “**Financial Submission**”), which 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) if applicable, a written agreement in accordance with Section 7.1(b); and
 - (4) the portion of the Proposal Requirements described in the Financial Submission section of Appendix B.

6.2 Number of Copies

For each of its Submissions, a Proponent should submit 11 hard copies (10 bound copies numbered 1 through 10; plus one unbound copy marked as “Master”) and one electronic copy (CD or USB flash drive, with a label on each describing its contents), appropriately packaged and clearly marked “Request for Proposals for KGH Clinical Support Building Design-Build Project”.

6.3 No Fax or Email Submission

Proposals submitted by fax or email will not be accepted.

6.4 Language of Proposals

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

6.5 Receipt of Complete RFP

Proponents are responsible to ensure that they have received the complete RFP and all Addenda. A submitted Proposal will be deemed to have been prepared on the basis of the entire RFP and Addenda issued prior to the Technical Submission Closing Time. The Authority accepts no responsibility for any Proponent lacking any portion of this RFP.

6.6 Enquiries

All enquiries regarding any aspect of this RFP should be directed to the Contact Person by email (each, an “**Enquiry**”), 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 Authority;

- (c) the Authority 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 the Enquiry is commercially confidential to it;
- (e) if the Authority decides that an Enquiry marked “Commercial in Confidence”, or the Authority’s response to such an Enquiry, must be distributed to all Proponents, then the Authority will permit the enquirer to withdraw the Enquiry rather than receive a response and if the Proponent does not withdraw the Enquiry, then the Authority 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 Authority may provide a response to such Enquiry to all Proponents; and
 - (2) if the Authority 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 Authority may, in its discretion, distribute the Enquiry, response or information with respect to such matter to all Proponents.

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

6.7 Electronic Communication

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

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

- (a) the Authority 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 Authority 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 Authority 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 Authority may, in its absolute discretion through the Contact Person, amend this RFP at any time by issuing a written Addendum. Written Addenda are the only means of amending or clarifying this RFP, and no other form of communication whether written or oral, including written responses to Enquiries as provided by Section 6.6, will be included in, or in any way amend, this RFP. Only the Contact Person is authorized to amend or clarify this RFP by issuing an Addendum. No other employee or agent of the Authority is authorized to amend or clarify this RFP. The Authority 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 Authority a royalty-free license 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 Authority; 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 Authority or any sub-licensee or assignee of the Authority of any Intellectual Property Rights contained in a Proposal.

(b) Exceptions to Licence

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

6.10 Inconsistency between Paper and Electronic Form

If there is any inconsistency between the paper form of a document issued by or on behalf of the Authority to Proponents and the digital, electronic or other computer readable form, the paper form of the document will prevail.

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 Delivery Address prior to the Technical Submission Closing Time; and
- (b) amend any aspect of its Financial Submission by delivering written notice, or written amendments, to the Delivery Address prior to the Financial Submission Closing Time.

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

6.12 Changes to Proponent Teams

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

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

6.13 Validity of Proposals

By submitting a Proposal, each Proponent agrees that its Proposal, including all prices and input costs, will remain fixed and irrevocable from the Financial Submission Closing Time until midnight at the end of the 90th day following the Financial Submission Closing Time (the "**Proposal Validity Period**").

A Proponent may indicate in its Proposal a Proposal Validity Period which exceeds 90 days.

6.14 Material Change after Financial Submission Closing Time

A Proponent will give immediate notice to the Authority of any material change that occurs to a Proponent after the Financial Submission Closing Time, including a change to its membership or a change to financial capability.

6.15 Mandatory Requirements

The Authority has determined that the following are the Mandatory Requirements, and that failing to meet such Mandatory Requirements will result in the Authority rejecting the Proposal:

the Proponent must have signed and delivered to the Contact Person the Participation Agreement in accordance with Section 5.1;

- (a) the Technical Submission must be received at the Delivery Address no later than the Technical Submission Closing Time, and if invited to submit such, the Financial Submission must be received at the Delivery Address no later than the Financial Submission Closing Time; and
- (b) the Nominal Cost of the Proposal as at the Financial Submission Closing Time must not exceed the Affordability Ceiling.
- (c) Subject to section 7.1, the Authority reserves the right to evaluate any Proposal where Affordability Ceiling requirements have not been met, but will do so only in the event that the Proposals received from all the Proponents do not meet the Affordability Ceiling Requirements.

7. EVALUATION

7.1 Proposal Review and Evaluation

The Authority will review each Technical Submission to determine whether, in the Authority's sole discretion, such Technical Submission fails to meet to a material extent, an important or essential requirement of the Final Draft Design-Build Agreement (a "Material Non-Compliance"). The Proponents, by submitting their Technical Submission, each recognize that the nature of the Competitive Selection Process and the process under the Design-Build Agreement when awarded, are such that the Technical Submission is only indicative of the Proponent's interpretation at the Technical Closing Time of how the Proponent proposes to meet the requirements of the Final Draft Design-Build Agreement and that the Technical Submission will not relieve the successful Design-Builder from meeting the requirements of the Design-Build Agreement.

The Authority will provide a response to each Technical Submission with one of the following responses, in its sole discretion:

- (a) An invitation to provide a Financial Submission;

- (b) A list of items that, in the Authority's sole discretion, appear to be Material Non-Compliances together with an invitation to provide a Financial Submission on the condition that the Proponent agrees in writing prior to the Financial Submission Closing Time that, if selected, the Proponent will address all Material Non-Compliances, whether listed or not, such that the Proponent will meet all of the requirements of the Final Draft Design-Build Agreement. A Proponent receiving such list and invitation will not be required to revise or resubmit the Technical Submission and the Authority will not review any resubmission; or
- (c) A letter advising the Proponent that it will not be invited to provide a Financial Submission.

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

7.2 Evaluation of Proposals

The Authority will evaluate Proposals in the matter set out in Appendix A.

The Authority 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 Authority 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 Authority in its discretion deems appropriate and in the interests of the Authority 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 presentation 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 Authority, 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, tax payer information and other checks;
- (f) Not proceed to review and evaluate or discontinue the evaluation of any Proposals, or part thereof, including any Technical Submission or Financial Submission, and disqualify the Proponent from this RFP; and
- (g) Seek clarification or 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 Authority may in its discretion, decline to review, evaluate or rank, or may reject outright any Proposal which in the opinion of the Authority is materially incomplete or irregular, which contains omissions, exceptions or variations not acceptable to or material to the Authority, which contains a false or misleading statement, claim or information, or for which background investigations reveal any false statements, criminal affiliations or activities by a Proponent or Proponent Team Member.

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

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

Proponents will not submit any clarifications, information or documentation in respect of the Technical Submission after the Technical Submission Closing Time and in respect of the Financial Submission after the Financial Submission Closing Time, without the prior written approval of the Authority or at the invitation or request of the Authority.

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

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

8. SELECTION OF PREFERRED PROPONENT AND AWARD

8.1 Selection and Award

If the Authority selects a Preferred Proponent, the Authority will invite the Preferred Proponent to enter into final discussions to settle all terms of the Design-Build Agreement based on the Preferred Proponent's Proposal, including any clarifications that the Preferred Proponent may have provided during the evaluation of Proposals.

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

8.2 No Partial Compensation for Participation in this RFP

The Authority will not provide any compensation to Proponents for participating in this RFP Competitive Selection Process.

8.3 Final Draft Design-Build Agreement

It is the intention of the Authority that:

- (a) any issues with respect to the Design-Build Agreement will be discussed during the Collaborative Meetings and settled prior to issuance of the Final Draft Design-Build Agreement; and
- (b) once issued, the Final Draft Design-Build Agreement will not be further substantively modified and will be executed by the Preferred Proponent without further substantive amendment, except for changes, modifications and additions:

- (1) relating to the determination by the Authority, in its discretion, of which:
 - (A) parts, if any, of the Proposal are to be incorporated by reference or otherwise, into the Design-Build Agreement or otherwise pursuant to express provisions of the Design-Build Agreement; or
 - (B) modifications, changes or additions, if any, requested by a Proponent pursuant to Section 4.3 are acceptable to the Authority;
- (2) to those provisions or parts of the Final Draft Design-Build Agreement which are indicated as being subject to completion or finalization, or which the Authority determines in its discretion require completion or finalization, including provisions which require:
 - (A) modification or the insertion or addition of information relating to the Proponent's formation (e.g., corporate, partnership or trust structure); and
 - (B) modification or the insertion or addition of information in order to reflect accurately the nature of the Proponent's relationships with its principal subcontractors (including each of the Project Contractors);
- (3) required by the Authority to complete, based on the Proposal, any provision of the Final Draft Design-Build Agreement, including changes, modifications and additions contemplated in or required under the terms of the Final Draft Design-Build Agreement;
- (4) that are necessary to create or provide for a duly authorized and legally complete and binding agreement; or
- (5) that enhance clarity in legal drafting.

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

8.4 Preferred Proponent Security Deposit

Subject to the terms of this RFP:

- (a) the Authority will invite the Preferred Proponent to deliver the Preferred Proponent Security Deposit on or before the date and time specified by the Authority, 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 Authority on or before the date and time specified by the Authority.

8.5 Return of Security Deposit

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

- (a) within 10 days after receipt by the Authority of notice of demand from the Preferred Proponent, if:
 - (1) the Authority exercises its right under Section 10.1 to terminate this RFP prior to entering into the Design-Build Agreement for reasons unrelated to the Preferred Proponent or any member of the Preferred Proponent's Proponent Team; or
 - (2) the Authority fails, within the Proposal Validity Period, to execute and deliver an agreement substantially in the form of the Final Draft Design-Build Agreement finalized by the Authority in accordance with Section 8.3, provided that such failure is not the result of:
 - (A) the failure of the Preferred Proponent to satisfy any conditions set out in the Final Draft Design-Build Agreement; or
 - (B) any extensions to the Proposal Validity Period arising from any agreement by the Authority to negotiate changes to the Final Draft Design-Build Agreement pursuant to Section 8.3; or
- (b) within 10 days after Contract Execution with such Preferred Proponent.

8.6 Retention of Security Deposit

Notwithstanding any receipt by the Authority of the notice described in Section 8.5, the Authority may, in its discretion, draw on, retain and apply the proceeds of the Preferred Proponent Security Deposit for the Authority'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 Authority:
 - (1) the Preferred Proponent fails to execute and deliver an agreement substantially in the form of the Final Draft Design-Build Agreement finalized by the Authority in accordance with Section 8.3;

unless:

- (2) 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

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

8.7 Debriefs

The Authority will, following Contract Award, upon request from a Proponent, conduct a debriefing for that Proponent. In a debriefing the Authority may discuss the relative strengths and weaknesses of that Proponent's Proposal, but the Authority will not disclose or discuss any confidential information of another Proponent.

9. CONFLICT OF INTEREST AND RELATIONSHIP DISCLOSURE

9.1 Reservation of Rights

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

9.2 Relationship Disclosure

Each Proponent, including each member of the Proponent Team, should fully disclose all relationships they may have with the Authority, any Restricted Party, or any other Person providing advice or services to the Authority with respect to the Project or any other matter that gives rise, or might give rise, to an unfair advantage:

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

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

A Proponent may submit the Relationship Disclosure Form in advance of its Proposal if the Proponent wishes to provide the Authority with the opportunity to consider the relationships in advance of the Proposal. The Authority may either consider the relationships in advance or may consider the relationships at the time the Proposal is submitted.

9.3 Use or Inclusion of Restricted Parties

The Authority may, in its discretion, disqualify a Proponent, or may permit a Proponent to continue and impose such conditions as the Authority may consider to be in the public interest or otherwise required by the Authority, 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 Authority has identified the following persons, firms or organizations as Restricted Parties:

- (a) Boughton Law Corporation (COI Adjudicator);
- (b) Miller Thomson LLP (Fairness Advisor);
- (c) Ernst & Young Advisory Inc. (Business Advisor);
- (d) Spiegel Skillen & Associates Limited;
- (e) Fasken Martineau Dumoulin LLP (Legal Advisor);
- (f) Cannon Design and sub-consultants including;
 - Bush Bohlman and Partners;
 - Hirschfield Williams Timmins Ltd;
 - H.H. Angus & Associates Ltd.; and
 - CTQ Consultants Ltd.
- (g) Levelton Consulting Ltd.;
- (h) Infusion Health KVH General Partnership;
- (i) Black & McDonald Limited; and
- (j) the Authority 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 Authority 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 Authority 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 in accordance with this Section through the following process:

- (a) to request an advance decision on whether a person is a Restricted Party, a Proponent or prospective team member or advisor of that Proponent should submit to the Contact Person, not less than ten (10) days prior to the Technical Submission Closing Time by email, the following information:
 - (1) names and contact information of the Proponent and the person or firm for which the advance opinion is requested;
 - (2) a description of the relationship that raises the possibility or perception of a conflict of interest or unfair advantage;
 - (3) 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
 - (4) copies of any relevant documentation.

The Authority may make an advance decision or may refer the request for an advance decision to the COI Adjudicator. If the Authority refers the request to the COI Adjudicator, the Authority may make its own response 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 Authority May Request Advance Decisions

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

decision from the COI Adjudicator, the Authority 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 through the Contact Person.

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 Authority may require that the Proponent make an application under Section 9.6.

9.8 Decisions Final and Binding

The decision of the Authority 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 Authority. The Authority or the COI Adjudicator, as applicable, has discretion to establish the relevant processes from time to time, including any circumstances in which a decision may be reconsidered.

The Authority may provide any decision by the Authority or the COI Adjudicator regarding conflicts of interest to all Proponents if the Authority, 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 Authority as eligible to do work for more than one Proponent, including a person who has unique or specialized information or skills such that the Authority 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 Authority in its discretion or permitted as a Shared Use Person, a firm or individual may only participate as a member of one Proponent Team.

9.11 External Legal Counsel

Proponents should not retain Fasken Martineau DuMoulin LLP to advise or assist them in any matter relating to this RFP. By submitting a Proposal, the Proponent expressly consents to Fasken Martineau continuing to represent the Authority for all matters in relation to this RFP and the Project, including any such matter that is adverse to the Proponent, despite any information of the Proponent and any solicitor-client relationship that the Proponent may have had, or may have, with Fasken Martineau in relation to matters other than this RFP and the Project. This section is not intended to waive any of the Proponent's rights of confidentiality or solicitor-client privilege. The Authority reserves the right at any time to waive any provision of this section.

10. RFP TERMS AND CONDITIONS

10.1 No Obligation to Proceed

This RFP does not commit the Authority to select a Preferred Proponent or enter into a Design-Build Agreement and the Authority 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 Authority 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 Authority and the Preferred Proponent execute and deliver the Design-Build Agreement, and then only to the extent expressly set out in the Design-Build Agreement.

10.3 Freedom of Information and Protection of Privacy Act

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

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 as part of the Proposal for the purposes of this RFP and the Competitive Selection Process.

10.4 Cost of Preparing the Proposal

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 Authority, 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 Authority.

10.6 Reservation of Rights

The Authority reserves the right, in its discretion, to:

- (a) amend the scope of the Project, modify, cancel or suspend the Competitive Selection Process at any time for any reason;
- (b) accept or reject any Proposal based on the Authority's evaluation of the Proposals in accordance with Appendix B, and in particular the Authority is not obliged to select the Proposal with the lowest Nominal Cost;
- (c) waive a defect or irregularity in a Proposal and accept that Proposal;
- (d) reject, disqualify or not accept any or all Proposals without any obligation, compensation or reimbursement to any Proponent or any of its team members;
- (e) re-advertise for new Proposals, call for tenders, or enter into negotiations for this Project or for work of a similar nature;
- (f) make any changes to the terms of the business opportunity described in this RFP;
- (g) negotiate any aspects of a Preferred Proponent's Proposal; and
- (h) extend, from time to time, any date, time period or deadline provided in this RFP, upon written notice to all Proponents.

10.7 No Collusion

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

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

10.8 No Lobbying

Proponents, Proponent Team members and Key Individuals, and their respective directors, officers, employees, consultants, agents, advisors and representatives will not engage in any form of political or other lobbying whatsoever in relation to the Project, this RFP, or the Competitive Selection Process, including for the purpose of influencing the outcome of the Competitive Selection Process. Further, no such person (other than as expressly contemplated by this RFP) will attempt to communicate in relation to the Project, this RFP, or the Competitive Selection Process, directly or indirectly, with any representative of the Authority, 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 Ministry of Health Services), Partnerships BC, any Restricted Parties, or any director, officer, employee,

agent, advisor, consultant or representative of any of the foregoing, as applicable, for any purpose whatsoever, including for purposes of:

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

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

10.9 Partnerships BC Projects

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

10.10 Ownership of Proposal

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

10.11 Disclosure and Transparency

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

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

- the RFP;
- the number of Proponents; and
- the name of Proponents.

Following Contract Execution, the Authority expects to disclose:

- the Fairness Advisor's report;
- a Project Report; and
- the final Design-Build Agreement.

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

10.12 Fairness Advisor

The Authority has appointed Jane Shackell of Miller Thomson LLP (the "**Fairness Advisor**") to monitor the Competitive Selection Process. The Fairness Advisor will provide a written report to the Authority that the Authority will make public.

The Fairness Advisor will be:

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

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

10.13 Limitation of Damages

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

- (a) agrees not to bring any Claim against the Authority or any of its employees, advisors or representatives for damages in excess of an 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 Authority accepts a non-compliant proposal or otherwise breaches (including breach of material terms) 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 Authority exercises any rights under this RFP; and
- (b) waives any and all Claims against the Authority or any of its employees, advisors or representatives for loss of anticipated profits or loss of opportunity if no agreement is made between the Authority and the Proponent for any reason, including:
 - (1) if the Authority accepts a non-compliant proposal or otherwise breaches (including breach of material terms) 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 Authority exercises any rights under this RFP.

11. INTERPRETATION

11.1 Definitions

In this RFP:

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

Addendum means an addendum to this RFP issued by the Contact Person as described in Section 6.8;

Affordability Ceiling has the meaning set out in Section 4.1;

Authority means Interior Health Authority;

Authority Representatives has the meaning set out in Section 2.1;

Breakdown of Contract Price means the form in which Proponents are to provide the Authority costing of the Project and the calculation of the Nominal Cost of the Project as set out in Section 4 and Appendix B;

Business Day means a day other than a Saturday, Sunday or statutory holiday in British Columbia;

City means the City of Kelowna;

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;

COI Adjudicator means the person described in Section 9.5;

Collaborative Meeting 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;

Contact Person means the person identified as such on the cover page of this RFP, or their delegate;

Contract Award means the time when all commercial terms of the Design Build Agreement have been agreed upon;

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

Clinical Support Building has the meaning set out in Section 1.1;

CSB has the meaning set out in Section 1.1;

Data Room has the meaning set out in Section 2.4;

Delivery Address means the delivery address identified as such on the cover page of this RFP;

Design-Build Agreement has the meaning set out in Section 1.1;

Design-Builder means the Proponent who will enter into the Design-Build Agreement with the Authority;

Draft Design-Build Agreement means the Initial Draft Project Agreement until replaced by the Final Draft Project Agreement;

Enquiry has the meaning set out in Section 6.6;

Facility has the meaning set out in Section 1.1;

Fairness Advisor has the meaning set out in Section 10.12;

Final Draft Design-Build Agreement has the meaning set out in Section 2.3;

Financial Submission has the meaning set out in Section 6.1(b);

Financial Submission Closing Time means the time indicated as such on the cover page of this RFP;

FOIPPA has the meaning set out in Section 10.3;

Functional Program means Appendix 3A [Functional Program] of Schedule 1 [Statement of Requirements] as set out in the Design-Build Agreement;

GST/HST at any given time means the tax imposed at that time pursuant to Section IX of the *Excise Tax Act* (Canada);

Indicative Design has the meaning set out in Schedule 1 [Statement of Requirements] as set out in the Design-Build Agreement;

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

Intellectual Property Rights has the meaning set out in Section 6.9;

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

- Project Lead
- Construction Lead for the Design-Builder;
- Design Lead for the Design-Builder;
- Structural engineer;
- Mechanical engineer;
- Electrical engineer;
- Geotechnical engineer;
- Civil engineer;
- LEED® coordinator; and
- Building envelope specialist.

KGH means Kelowna General Hospital;

Mandatory Requirements means the Proposal requirements described in Section 6.15;

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

Nominal Cost of a Proposal means the nominal sum of the values in the Breakdown of Contract Price;

Partnerships BC means Partnerships British Columbia Inc.;

Participation Agreement has the meaning set out in Section 5.1;

Preferred Proponent means the Proponent selected pursuant to this RFP to enter into negotiations with the Authority for a Design-Build Agreement;

Preferred Proponent Security Deposit means an irrevocable letter of credit in the amount of \$200,000 in the form set out in Appendix H, or in such other form acceptable to the Authority in its discretion

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

Proponent means one of the Design-Builders identified in Section 1.2;

Proponent Team means a Proponent and its Key Individuals;

Proposal means a proposal submitted in response to this RFP;

Proposal Requirements means the requirements described in Appendix B;

Proposal Validity Period has the meaning set out in Section 6.13;

Relationship Disclosure Form means a form substantially as set out in Appendix D or as otherwise acceptable to the Authority;

Restricted Party means those persons or firms (including their former and current employees) who had, or currently have, participation or involvement in the Competitive Selection Process or the design, planning or implementation of the Project, and who may provide a material unfair advantage or confidential information to any Proponent that is not, or would not reasonably be expected to be, available to other Proponents;

RFP means this request for proposals;

RFQ has the meaning set out in Section 1.2;

Shared Use Person has the meaning set out in Section 9.9;

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

Technical Submission has the meaning set out in Section 6.1(a);

Technical Submission Closing Time means the time indicated as such on the cover page of this RFP;

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;

Transmittal Package has the meaning set out in Appendix B.

11.2 Interpretation

In this RFP:

- (a) the use of headings is for convenience only and headings are not to be used in the interpretation of this Agreement;
- (b) a reference to a Section or Appendix, unless otherwise indicated, is a reference to a Section of or Appendix to this RFP;
- (c) words imputing any gender include all genders, as the context requires, and words in the singular include the plural and vice versa;

- (d) the word “including” when used in this RFP is not to be read as limiting; and
- (e) each Appendix attached to this RFP is an integral part of this RFP as if set out at length in the body of this RFP.

APPENDIX A

EVALUATION OF PROPOSALS

A – TECHNICAL SUBMISSION

Subject to the terms of this RFP, the Technical Submission evaluation will consider whether the Technical Submission contains any Material Non-Compliances.

B – FINANCIAL SUBMISSION

Each Proponent should indicate that it believes the Affordability Ceiling has not been exceeded in its Financial Submission and also indicate what, if any, scope ladder items were used to allow the Nominal Cost of the Proposal to be below the Affordability Ceiling

Proposals will be examined to determine whether the requirements of this RFP in respect of the Affordability Ceiling have been satisfied.

Subject to the terms of this RFP, the Financial Submission evaluation will consider whether the Financial Submission substantially satisfies the requirements of this RFP, including the requirements set out in Appendix B and the Final Draft Design-Build Agreement.

C – RANKING PROCESS

Subject to the terms of this RFP, each Proposal, including the Technical Submission and the Financial Submission, that substantially satisfies the requirements of this RFP and the Final Draft Design-Build Agreement, will be ranked according to the following process.

1. Each Proposal will be examined to determine whether the requirements of this RFP have been satisfied.
2. Each Proposal determined as meeting the requirements referenced in paragraph 1 above will be examined to identify the extent to which, if at all, scope ladder items, as described in Section 4.3 of this RFP, have been used to achieve the Affordability Ceiling requirements. The Proposals will then be ranked in accordance with the Proponent's use of scope ladder items. The Proponent who uses the least scope ladder items will be ranked the highest and the Proponent who uses the most scope ladder items will be ranked the lowest.
3. If two or more Proposals are ranked equally under paragraph 2, the Proposal which offers the lowest Nominal Cost will receive the highest ranking and be designated the highest-ranked Proposal.

APPENDIX B

PROPOSAL REQUIREMENTS

Posted in the Data Room.

APPENDIX C

PROPOSAL DECLARATION FORM

- 1. This Proposal Declaration should be executed by the Proponent, (including each entity that comprises the Proponent if the Proponent is not a separate entity) on behalf of the Proponent and each member of the Proponent Team.***
- 2. Capitalized terms are defined in Section 11.1 of the RFP.***

[RFP Proponent's Letterhead]

To: **Interior Health Authority, c/o 300 – 707 Fort Street, Victoria, BC V8W**

Attention: **Catherine Silman**

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

1. Proposal

- (a) this Proposal Declaration Form has been duly authorized and validly executed;
- (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 Authority, be cause for rejection of its Proposal;
- (d) its Proposal is made without collusion or fraud;
- (e) the Authority 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 consents to the conduct of all or any of those investigations by the Authority.

2. Acknowledgements with Respect to the RFP

- (a) the Proponent 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 Ceiling as defined in the RFP;
- (c) the Proponent 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 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, in accordance with the instructions and format outlined in the Relationship Disclosure Form; and
- (f) the Final Draft Design-Build Agreement is in a form acceptable to the Proponent Team.

3. Proponent Team consists of:

Name	Address	Key Individual

PROPONENT REPRESENTATIVE

Name Name of Employer

Address E-mail Address

Name of Authorized Signatory Telephone

Signature Fax Number

APPENDIX D

RELATIONSHIP DISCLOSURE FORM

**This form should be completed by each Proponent Team member
(including firms and individuals)**

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

1. The Proponent has reviewed the list of Restricted Parties.
2. The following is a full disclosure of all relationships that the Proponent has with:
 - (a) any Restricted Party or their current or former employees, shareholders, directors or officers; or
 - (b) employees (both current or former) of the Authority, or individuals of firms who have been involved in the Competitive Selection Process or the design, planning or implementation of the Project;

that could constitute a conflict of interest or unfair advantage.

Name of Restricted Party/Person	Details of the Nature of the Proponent's relationship with the listed Restricted Party/Person <i>(e.g. Proponent was an advisor to the Restricted Party from 2005-2006)</i>

NAME OF PROPONENT TEAM MEMBER:

Name of Firm: _____

Address: _____

E-mail Address: _____

Telephone: _____

Name of Authorized Signatory: _____

Signature: _____

APPENDIX E

PROPONENT COMMENTS FORM

**(Collaborative Meetings – s. 2.3(b))
KGH Clinical Support Building Design-Build Project**

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

APPENDIX F

PARTICIPATION AGREEMENT

August 9, 2010

Interior Health Authority
#220 – 1815 Kirschner Road
Kelowna, BC V1Y 4N7

Attention: Catherine Silman, Contact Person

Dear Sirs/Mesdames:

Re: **KGH Clinical Support Building Design-Build Project – Participation Agreement in respect of the Request for Proposals issued by Interior Health Authority (the “Authority”) on August 9, 2010, 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 Authority. In consideration of the Proponent’s participation in the Competitive Selection Process and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Proponent, the Proponent agrees with the Authority as follows:

1. **Defined Terms.** Capitalized terms not otherwise defined in this Participation Agreement have the meanings given to them in the RFP.
2. **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 all of the Proponent Team members will comply with the terms of this Participation Agreement and the terms of the RFP.
3. **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.
4. **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:
 - (a) 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 Authority;

- (b) to be bound by the disclaimers, limitations and waivers of liability and Claims and any indemnities contained in the RFP, including Section 10.13 (Limitation of Damages) of the RFP; and
- (c) that the Authority's and the Proponent's obligations in respect of the Preferred Proponent Security Deposit are as set out in Section 8.3, 8.4 and 8.5 of the RFP.

5. Amendments. The Proponent acknowledges and agrees that:

- (a) the Authority may in its sole discretion amend the RFP at any time; and
- (b) 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.

6. General.

- (a) *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.
- (b) *Survival following cancellation of the RFP.* Notwithstanding anything else in this Participation Agreement, if the Authority, 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, Sections 3 and 4(b) of this Participation Agreement.
- (c) *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.
- (d) *Enurement.* This Participation Agreement enures to the benefit of the Authority and binds the Proponent and its successors.
- (e) *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.
- (f) *Headings.* The use of headings is for convenience only and headings are not to be used in the interpretation of this Participation Agreement.

- (g) *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.
- (h) *Including.* The word “including” when used in this Participation Agreement is not to be read as limiting.

Yours truly,

(Name of Proponent)

Authorized Signatory

SCHEDULE 1

CONFIDENTIALITY CONDITIONS

1. **Definitions.** In these confidentiality conditions:

- (a) **“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;
- (b) **“Disclosing Party”** means the Authority or any of its Representatives;
- (c) **“Permitted Purposes”** means evaluating the Project, preparing a Proposal, and any other use permitted by the RFP or this Participation Agreement;
- (d) **“Receiving Party”** means the Recipient or any of its Representatives;
- (e) **“Recipient”** means a Proponent or any other interested party who completes a Receipt Confirmation Form; and

- (f) **“Representative”** means a director, officer, employee, agent, accountant, lawyer, consultant, financial adviser, subcontractor, Key Individual, 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 Recipient, the Authority or Partnerships BC in connection with the Project.
2. **Confidentiality.** The Recipient will keep all Confidential Information strictly confidential and will not without the prior written consent of the Authority, 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 Recipient will make all reasonable, necessary, and appropriate efforts to safeguard the Confidential Information from disclosure to any other person, firm, corporation, or other entity 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.
3. **Ownership of Confidential Information.** The Authority 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 Recipient will keep all Confidential Information that the Recipient 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 Authority, 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, firm, corporation or other entity for any purpose whatsoever.
4. **Limited Disclosure.** The Recipient 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 Recipient will notify Partnerships BC, on request, of the identity of each Representative to whom any Confidential Information has been delivered or disclosed.
5. **Destruction on Demand.** On written request, the Recipient 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 Recipient 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.
6. **Acknowledgment of Irreparable Harm.** The Recipient acknowledges and agrees that the Confidential Information is proprietary and confidential and that the Authority or Partnerships BC may be irreparably harmed if any provision of this Schedule 1 were not performed by the

Recipient or any party to whom the Recipient provides Confidential Information in accordance with its terms, and that any such harm could not be compensated reasonably or adequately in damages. The Recipient further acknowledges and agrees that the Authority will be entitled to injunctive and other equitable relief to prevent or restrain breaches of any provision of this Schedule 1 by the Recipient 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 Authority may be entitled at law or in equity.

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

APPENDIX G

BONDING UNDERTAKING

Date: _____, 20 ____

No. _____

TO: Interior Health Authority

**Re: Request for Proposals
Clinical Support Building Design-Build Project**

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

Our client wishes to submit a Proposal for the captioned Project, which we understand will require a Performance Bond in the approximate amount of XXX MILLION DOLLARS (\$XX,000,000.00) and a Labour and Materials Payment Bond in the approximate amount of XXX MILLION DOLLARS (\$XX,000,000.00). Based on the information available at this time, and subject to our assessment of the Clinical Support Building Design-Build Project, and our client's work program at the time of submission of its Response, we do not anticipate a problem in supporting the captioned Project and supplying the requisite bonds if asked to do so. However, the execution of any bonds will be subject to an assessment of the final contract terms, conditions, financing and bond forms by our client and us.

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

(Name of Surety)

_____ (Seal)

Attorney-In-Fact

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 a Canadian chartered bank acceptable to the Authority in its discretion and be callable at the bank's counters in Vancouver, British Columbia.]

TO: **Interior Health Authority**

<>

(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 Two Hundred Thousand Canadian Dollars (CDN \$200,000) effective immediately.

This bank shall immediately pay to you under this Letter of Credit any amount or amounts claimed, not exceeding in the aggregate the sum of CDN \$200,000 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 shall 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 shall remain in full force and effect and, unless renewed, will expire at the close of business on April 11, 2011.

Notice of non-renewal will be provided to the Beneficiary in writing by registered mail by not later than 30 days before the expiry date.

Authorized Signatory

Authorized Signatory

APPENDIX I

CONSTRUCTION INSURANCE UNDERWRITING QUESTIONNAIRE

**CONSTRUCTION INSURANCE
 UNDERWRITING QUESTIONNAIRE**

- ✓ Complete this questionnaire for any/all construction being performed on your property.
- ✓ Only fill in areas applicable to your construction project.

SUBMIT THE COMPLETED QUESTIONNAIRE TO:

Risk Management Branch, PO Box 9405 Stn Prov Govt, Victoria BC V8W
 9V1 OR FAX to (250) 953-3050

CONSTRUCTION PROJECT TYPE: New Construction Addition Renovation Envelope Repair Roofing

Owner:	Interior Health Authority
Mailing Address:	Interior Health Authority #220 – 1815 Kirschner Road Kelowna, BC V1Y 4N7
Project Location Address:	2268 Pandosy Street, Kelowna BC
Legal Description:	Lot A, District Lot 14, ODYD, Plan KAP87113
Project Description (name):	KVH Clinical Support Building Design-Build Project

NAME AND ADDRESS OF THE FOLLOWING:

Project Manager:	_____
General Contractor:	_____
Architect:	_____
Architectural & Engineering Consultants:	_____
Mortgagee:	1 st _____
<i>(include address)</i>	2 ⁿ _____ d

BUDGET SUMMARY:	Provide copy of provisional construction budget summary.	Attached	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Estimated Project Cost:	\$ _____	Hard Costs:	\$ _____	e.g. all materials, labour, estimate for inflation, consulting fees (including architect, engineer, etc.), etc.
		Soft Costs:	\$ _____	e.g. property taxes, building permits, insurance premiums, construction loan fees, additional interest expenses, leasing and marketing expenses, sustained as a consequence of insured physical damage.

Project Duration:	Proposed Starting Date: _____ <small style="text-align: center;">dd-mmm-yyyy</small>	Estimated Completion Date: _____ <small style="text-align: center;">dd-mmm-yyyy</small>
--------------------------	--	---

CONSTRUCTION INFORMATION:	No. of Buildings: _____	No. of Units: _____	No. of Storeys: _____
	Distance between Buildings (if applicable): _____ <i>feet</i>	Wall Construction: _____	Roof Construction: _____

RENOVATION PROJECTS:	Year Structure Built: _____	Roofing Work: Yes <input type="checkbox"/> No <input type="checkbox"/>	
Will the existing building(s) be in the care and custody of the contractor?		Yes <input type="checkbox"/> No <input type="checkbox"/>	
If yes to Roofing Work Describe: _____		Estimate of Roofing Work \$ _____	

FIRE PROTECTION:	No. of operating Fire Hydrants: _____	Distance to Fire Hydrants: _____ <i>feet</i>
	Distance to Fire Hall: _____ <i>Miles</i>	
If <u>NEW CONSTRUCTION</u>, confirm hydrants will be pressurized prior to framing: Yes <input type="checkbox"/> No <input type="checkbox"/>		

SURROUNDING EXPOSURES:								
Buildings:	North	_____ <i>feet</i>	South	_____ <i>feet</i>	East	_____ <i>feet</i>	West	_____ <i>feet</i>
Roads:	North	_____ <i>feet</i>	South	_____ <i>feet</i>	East	_____ <i>feet</i>	West	_____ <i>feet</i>

DESCRIBE SITE SECURITY DETAILS:
--

INTENDED OCCUPANCY OF COMPLETED PROJECT?	If partial occupancy prior to completion, what portion? _____
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TRANSIT LIMIT OF EXPOSURE: \$ _____	Materials being transported outside of Canada or the USA? Yes <input type="checkbox"/> No <input type="checkbox"/>
	Maximum value of material stored away from the construction site? \$ _____

TYPE OF AREA:	Business: <input type="checkbox"/> Downtown: <input type="checkbox"/> Industrial: <input type="checkbox"/> Residential: <input type="checkbox"/> Rural: <input type="checkbox"/> Other: <input type="checkbox"/>
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SUB-CONTRACTORS:	With respect to the 4 largest sub-contractors please provide the following:	
	Description of Work: _____	Estimated Price Including Materials:
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____

	\$
--	----

BLASTING (if any):	Estimated Price: \$ _____	Pre-Blast Survey: Yes <input type="checkbox"/> No <input type="checkbox"/>	
		Seismographic Readings: Yes <input type="checkbox"/> No <input type="checkbox"/>	

EXCAVATION (if any):	Performed By: _____	Estimated Price: \$ _____
Excavated Material Types: _____	Water table above bottom of excavation? Yes <input type="checkbox"/> No <input type="checkbox"/>	
If yes, how will it be controlled?		

ASBESTOS REMOVAL:	Yes <input type="checkbox"/> No <input type="checkbox"/>	Duration: _____ weeks	Estimated Value: \$ _____
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SHORING (if applicable):	Underpinning: Yes <input type="checkbox"/> No <input type="checkbox"/>	Estimated Price: \$ _____
Performed By: _____		

PILE DRIVING (if applicable):	Estimated Price: \$ _____	Pre-Inspection for existing damage: Yes <input type="checkbox"/> No <input type="checkbox"/>	
		Seismographic Readings: Yes <input type="checkbox"/> No <input type="checkbox"/>	
Performed By: _____			

DEMOLITION (if applicable):	Estimated Price: \$ _____	Method of Demolition: _____
Performed By: _____		
Type of Structure: _____	Height: _____ feet	Storeys which equals? _____ feet

WELDING (if applicable):	Fire Precautions: _____
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ERECTION OF STRUCTURE:	Estimated Price: \$ _____	Height: _____ feet	Storeys which equals? _____ feet
Performed By: _____			

PRECAUTIONS TAKEN:	To Prevent Injury to Public: _____
	Underground: _____ feet Overhead Lines: _____ feet

IS PROJECT:	Attached to any existing structure? Yes <input type="checkbox"/> No <input type="checkbox"/>
	Within any existing complex, plant, etc.? Yes <input type="checkbox"/> No <input type="checkbox"/>

WHAT "OFF-SITE" WORKS INVOLVED?	Describe any works involving transmission lines, pipelines, access roads, railways, dams, bridges, tunnels, etc.

RELOCATION (if applicable):	Details of relocation of existing services (e.g. roads, railways, utilities, _____)
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APPENDIX J

DRAFT DESIGN-BUILD AGREEMENT

Posted in the Data Room.