



Request for Proposals

Surrey Biofuel Processing Facility Project

RFP # 5587

February 27, 2014

SUMMARY OF KEY INFORMATION

RFP TITLE	The title of this RFP is: RFP – Surrey Biofuel Processing Facility Project Proponents should use this title on all correspondence.
CONTACT PERSON	The Contact Person for this RFP is Dawn Hart Email: Dawn.Hart@partnershipsbc.ca Please direct all Enquiries, in writing, to the above named Contact Person. No telephone or fax enquiries.
ENQUIRIES	Proponents are encouraged to submit Enquiries at an early date and: <ul style="list-style-type: none"> ▪ for Enquiries of a technical nature: prior to 16:00 Pacific Time on the day that is 10 Business Days before the Submission Time for Technical Submissions ▪ for Enquiries of a financial nature: prior to 16:00 Pacific Time on the day that is 5 Business Days before the Submission Time for Financial Submissions to permit consideration by the City; the City may, in its discretion, decide not to respond to any Enquiry.
SUBMISSION TIME FOR ALTERNATIVE BIOGAS PRODUCT SALES PROPOSALS	March 24, 2014 at 11:00 Pacific Time
SUBMISSION TIME FOR INTERIM FINANCIAL REVIEW SUBMISSIONS	April 28, 2014 at 11:00 Pacific Time
SUBMISSION TIME FOR TECHNICAL SUBMISSIONS / INITIAL AIRS SUBMISSION TIME	June 16, 2014 at 11:00 Pacific Time
INTERIM AIRS SUBMISSION TIME	July 7, 2014 at 11:00 Pacific Time
FINAL AIRS SUBMISSION TIME	August 4, 2014 at 11:00 Pacific Time
SUBMISSION TIME FOR FINANCIAL SUBMISSIONS	August 18, 2014 at 11:00 Pacific Time
SUBMISSION LOCATION	The Submission Location is: Partnerships BC 2320 – 1111 West Georgia Street Vancouver, B.C. V6E 4M3

	Attention: Dawn Hart
SUBMISSION LOCATION FOR INITIAL AIRS, INTERIM AIRS AND FINAL AIRS	The Submission Location for Initial AIRS, Interim AIRS and Final AIRS is via email to the Contact Person: Dawn.Hart@partnershipsbcc.ca

TABLE OF CONTENTS

SUMMARY OF KEY INFORMATION.....	I
1 INTRODUCTION.....	1
1.1 Purpose of this RFP.....	1
1.2 Eligibility to Participate in this RFP.....	1
2 RFP PROCUREMENT PROCESS	2
2.1 Estimated Timeline	2
2.2 Collaborative Meetings	2
2.3 Business-to-Business Networking Session	4
2.4 Comments on the Project Agreement.....	4
2.5 Data Room and Reference Information.....	6
2.6 Interim Financial Review Submission.....	6
3 KEY PROJECT ELEMENTS	8
3.1 Project Site.....	8
3.2 Approvals and Permitting.....	9
3.3 Process Technology	10
3.4 Facility Capacity.....	10
3.5 Design and Construction	11
3.6 Services	12
3.7 City Organic Waste Composition.....	13
3.8 Biomethane Production, Value and Sales	13
3.9 Option for a Corporate Finance Solution	14
3.10 Construction Milestone Payment.....	15
3.11 Payment and Performance	15
4 AFFORDABILITY	18
4.1 Affordability Threshold	18
4.2 Affordability and Evaluation Model	18
5 PROPOSAL REQUIREMENTS	20
5.1 Proposal Form and Content.....	20
5.2 Interest Rate Benchmarks	20
5.3 Advance Interest Rate Submissions.....	21

6	SUBMISSION INSTRUCTIONS	22
6.1	Proposal Submission Times and Submission Location.....	22
6.2	Number of Copies.....	22
6.3	No Fax or Email Submission	23
6.4	Language of Proposals.....	23
6.5	Receipt of Complete RFP	23
6.6	Enquiries	23
6.7	Electronic Communication	24
6.8	Addenda.....	24
6.9	Intellectual Property Rights.....	25
6.10	Definitive Record.....	25
6.11	Amendments to or Withdrawals of Proposals.....	25
6.12	Changes to Proponent Teams.....	26
6.13	Changes to Process Technology.....	26
6.14	Validity of Proposals	27
6.15	Material Change After Submission Time for Financial Submissions.....	27
6.16	Acceptable Equivalent.....	28
7	EVALUATION.....	30
7.1	Mandatory Requirements	30
7.2	Evaluation Committee.....	30
7.3	Evaluation of Proposals	30
8	SELECTION OF PREFERRED PROPONENT AND AWARD.....	34
8.1	Selection and Award.....	34
8.2	Final Draft Project Agreement	34
8.3	Preferred Proponent Security Deposit.....	35
8.4	Return of Security Deposit.....	35
8.5	Retention of Security Deposit	36
8.6	Communication Regarding Progress to Financial Close.....	37
8.7	Changed Funding Arrangements.....	37
8.8	Partial Compensation for Participation in this RFP.....	37
8.9	Debriefs.....	38
9	CONFLICT OF INTEREST AND RELATIONSHIP DISCLOSURE.....	39
9.1	Reservation of Rights to Disqualify.....	39

9.2	Relationship Disclosure	39
9.3	Use or Inclusion of Restricted Parties.....	39
9.4	Restricted Parties.....	40
9.5	Conflict of Interest Adjudicator.....	42
9.6	Request for Advance Decision	42
9.7	The City May Request Advance Decisions	43
9.8	Decisions Final and Binding	43
9.9	Shared Use	44
9.10	Exclusivity	44
10	RFP TERMS AND CONDITIONS	46
10.1	No Obligation to Proceed.....	46
10.2	No Contract.....	46
10.3	Freedom of Information and Protection of Privacy Act	46
10.4	Cost of Preparing the Proposal.....	46
10.5	Confidentiality of Information	46
10.6	Reservation of Rights.....	47
10.7	No Collusion.....	48
10.8	No Lobbying.....	48
10.9	Ownership of Proposals.....	48
10.10	Disclosure and Transparency	49
10.11	Fairness Advisor	49
10.12	Legal Advisor	50
10.13	Limitation of Damages	50
11	INTERPRETATION.....	52
11.1	Definitions	52
11.2	Interpretation.....	60
APPENDIX A EVALUATION OF PROPOSALS		
APPENDIX B PROPOSAL REQUIREMENTS		
APPENDIX C PROPOSAL DECLARATION FORM		
APPENDIX D RELATIONSHIP DISCLOSURE FORM		
APPENDIX E PROPONENT COMMENTS FORM		

APPENDIX F NOT USED

APPENDIX G COMMITMENT LETTER TEMPLATE

APPENDIX H PREFERRED PROPONENT SECURITY DEPOSIT

APPENDIX I CONSTRUCTION INSURANCE UNDERWRITING QUESTIONNAIRE

APPENDIX J INITIAL DRAFT PROJECT AGREEMENT

APPENDIX K ADVANCE INTEREST RATE SUBMISSION

APPENDIX L INTERIM FINANCIAL COSTS SUMMARY FORM

APPENDIX M ENQUIRY REQUEST FORM

APPENDIX N CORPORATE FUNDER COMMITMENT LETTER TEMPLATE

APPENDIX O ALTERNATIVE BIOGAS PRODUCT SALES PROPOSAL PROCESS

1 INTRODUCTION

1.1 PURPOSE OF THIS RFP

The purpose of this request for proposals (“**Request for Proposals**” or “**RFP**”) is to invite eligible Proponents to prepare and submit Proposals to design, build and partially finance a new Facility for the processing of organic waste and the production of Biomethane, and to operate and maintain the Facility for 25-years under a long-term project agreement (the “**Project Agreement**”).

1.2 ELIGIBILITY TO PARTICIPATE IN THIS RFP

Through a request for qualifications (“**RFQ**”) issued May 16, 2013 by the City of Surrey (the “**City**”), the following consortia (each, a “**Proponent**”) are qualified to participate in this RFP:

- Iris Solutions;
- Plenary Harvest Surrey; and
- Urbaser S.A..

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

2 RFP PROCUREMENT PROCESS

2.1 ESTIMATED TIMELINE

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

Activity	Timeline
Issue RFP and Initial Draft Project Agreement to Proponents	February 27, 2014
Business-to-Business Networking Session	March 11, 2014
First Collaborative Meeting	week commencing March 10, 2014
Submission Time for Alternative Biogas Product Sales Proposals	March 31, 2014
Second Collaborative Meeting	week commencing April 7, 2014
Submission Time for Interim Financial Review Submissions	May 5, 2014
Third Collaborative Meeting	week commencing May 12, 2014
Issue Final Draft Project Agreement	June 2, 2014
Submission Time for Technical Submissions	June 23, 2014
Initial AIRS Submission Time	June 23, 2014
Interim AIRS Submission Time	July 14, 2014
Invitation to Submit Financial Submission	August 4, 2014
Final AIRS Submission Time	August 11, 2014
Submission Time for Financial Submissions	August 25, 2014
Selection of Preferred Proponent	September 22, 2014
Finalization of the Project Agreement	October – November 2014
Financial Close	December 2014
Construction Commences	December 2014
Service Commencement	Late 2016 – Early 2017

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

2.2 COLLABORATIVE MEETINGS

The City will make available certain of its personnel, consultants and advisors (the “**City Representatives**”) to participate in collaborative meetings (the “**Collaborative Meetings**”) with the Proponents. The City expects the Collaborative Meetings to take place as follows:

- (a) the purpose of the Collaborative Meetings is to provide a process that will assist the Proponents to develop optimal solutions for the Project while minimizing the risk that a Proponent's solution is

unresponsive to the City's requirements, this RFP or is above the Affordability Threshold, and in particular:

- (1) to permit the Proponent's representatives to provide the City Representatives with comments and feedback on material issues such as affordability or provisions of the Initial Draft Project Agreement; and
 - (2) to permit a Proponent to discuss with the City potential solutions and approaches that the Proponent may be considering for various aspects of its Proposal.
- (b) at least 5 Business Days in advance of each Collaborative Meeting (10 Business Days in the case of any Collaborative Meeting with respect to insurance matters), each Proponent should provide the City with a proposed meeting agenda, a list of prioritized issues it would like to discuss, and any materials relevant to such issues. The City may provide Proponents with comments on the agenda and a list of any prioritized issues the City would like to discuss;
- (c) the City will determine which City Representatives will be present at any Collaborative Meeting;
- (d) except as may be expressly stated otherwise in this RFP, including Section 10.3, the City will retain all information received from a Proponent during a Collaborative Meeting(s) as strictly confidential, and will not disclose such information to the other Proponents or any third party. The City may disclose such information to its consultants and advisors who are assisting or advising the City with respect to the Project;
- (e) 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 City and to fulfill the objectives of the Collaborative Meeting provided that the City may, in its discretion, limit the number of participants at any one meeting. Participation in Collaborative Meetings is in person only, unless otherwise permitted at the discretion of the City;
- (f) to facilitate free and open discussion at the Collaborative Meetings, Proponents should note that any comments provided by or on behalf of the City 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 City during the Collaborative Meetings to anything said or provided by Proponents, will not in any way bind the City and will not be deemed or considered to be an indication of a preference by the City even if adopted by the Proponent;
- (g) if, for the purposes of the preparation of its Proposal, a Proponent wishes to be able to rely on any information or clarification given by a City Representative at a Collaborative Meeting, or

arising out of a Collaborative Meeting, that is not included in this RFP (which includes the Initial Draft Project Agreement and the Final Draft Project Agreement), then:

- (1) the Proponent may submit an Enquiry requesting the issuance of an Addendum to amend this RFP so as to include such information; and
 - (2) as provided by Section 6.8, no written or oral communication by a City Representative as part of the Collaborative Meetings will amend this RFP (including the Initial Draft Project Agreement and the Final Draft Project Agreement) or may be relied upon by a Proponent unless included in this RFP by way of written Addendum.
- (h) by participating in the Collaborative Meetings a Proponent confirms its agreement with these procedures and acknowledges that the meetings are an integral part of the Competitive Selection Process as described in this RFP and are in the interests of all parties;
- (i) the City anticipates holding three or more Collaborative Meetings with each Proponent. Following the release of the RFP, the City will consult with each Proponent to confirm specific dates for Collaborative Meetings. If the City considers it desirable or necessary to schedule additional or fewer Collaborative Meetings, the City may, in its discretion, amend the anticipated schedule;
- (j) Proponents may request that the City schedule additional Collaborative Meetings on specific topics by providing the request in writing to the Contact Person with proposed dates and details of the topic or topics to be discussed; and
- (k) it is expected that Collaborative Meetings will be held in either Surrey or Vancouver, B.C.

2.3 BUSINESS-TO-BUSINESS NETWORKING SESSION

The City intends to coordinate a session with Proponent Teams and local contractors, suppliers and businesses (“**Business-to-Business Networking Session**”) to provide an opportunity for:

- (a) local contractors, suppliers, businesses and potential employees who might be interested in working with, or providing products and services to, the Preferred Proponent to meet the Proponent Teams; and
- (b) Proponent Teams to enhance their knowledge, understanding and awareness of local goods, labour pool and services and to build relationships with local contractors, suppliers and businesses.

2.4 COMMENTS ON THE PROJECT AGREEMENT

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

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

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

Please note the City intends to amend the Initial Draft Project Agreement to clarify:

- 1. that the City will be obligated to deliver all of its curbside City Organic Waste that it collects as “source separated organics” to the Facility, and that it will do so on the same days that the City Organic Waste is collected from homeowners;**
- 2. that the specification for Biogas recovery of 85 normal cubic meters per tonne of Waste processed is a specification applicable to the design and manner of operation of the Process Equipment, and is not to be interpreted as setting the Annual Target Biogas Amount as referred to in Schedule 8 of the Initial Draft Project Agreement;**
- 3. that, without limiting other requirements of the Draft Project Agreement, it is not a requirement that 100% of the Waste delivered to the Facility must be processed through the digester portion of the Facility, and some portion of the Waste may be treated in some other manner, such as composting; and**

4. that the City will retain ownership of all environmental benefits resulting from the operation of the Facility and will have the right to sell or trade such environmental benefits as the City, in its sole discretion, determines.

2.5 DATA ROOM AND REFERENCE INFORMATION

The City has established a website to be used as an electronic data room (the “**Data Room**”) in which it has placed documents and information in the possession of the City (collectively, “**Reference Information**”) that the City has identified as relevant to the Project and to the Site, and that may be useful to Proponents. None of the Reference Information is included as part of this RFP, except as expressly set out in this RFP. The City does not make any representation as to the relevance, accuracy or completeness of any of the Reference Information except as may be expressly set out in this RFP with respect to a specific document, and each Proponent has the full responsibility to form its own judgment as to the use of any Reference Information. The City will grant Proponents access to the Data Room and will require Proponents to execute an agreement to keep information contained in the Data Room confidential.

The Reference Information may be supplemented or updated from time to time. Although the City 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 Reference Information used by the Proponents is the most current, updated information.

2.6 INTERIM FINANCIAL REVIEW SUBMISSION

It is in the interests of the City and all Proponents to identify at an early stage of the Competitive Selection Process whether the Project, as defined in this RFP, is affordable within the limits set out in Section 4.

Accordingly, as part of the Collaborative Meetings, Proponents and the City will conduct an interim financial review as follows:

- (a) the purpose of the interim financial review is to give early warning of any difficulty in staying within the Affordability Threshold, and to permit the City and the Proponents to consider and implement steps so that the Competitive Selection Process can proceed with confidence that Proposals will be within the Affordability Threshold;
- (b) prior to the Submission Time for Interim Financial Review Submissions, each Proponent should submit to the City (an “**Interim Financial Review Submission**”):
 - (1) a breakdown of preliminary capital and operating cost assumptions (nominal) by reference to the cost categories specified in and by completing Appendix L;

- (2) its financing structure;
 - (3) its best estimate of the anticipated Proposal Net Present Cost to the City using the Affordability Model as described in Section 4.2 based upon its expected funding terms; and
 - (4) a summary of the proposed Financing Plan containing the high-level aspects of information as contemplated in Section 6.5.1 of Appendix B.
- (c) while not prescribing the exact form of the Interim Financial Review Submission, the City is expecting it to be no more than 10 pages in length and to include cost and input assumptions in sufficient detail to allow the City to understand the Proponent's cost base (with at least all major cost headings included) and financing structure;
- (d) the City will retain each of the Interim Financial Review Submissions as strictly confidential, and will invite each Proponent, as part of a Collaborative Meeting, to discuss any aspect of its submission, including any recommendations for amendment of the Project requirements if a Proponent determines that the Project as described will exceed the Affordability Threshold; and
- (e) unless expressly referred to or included by reference in its Proposal, a Proponent's Interim Financial Review Submission will not be considered part of its Proposal and the City will not consider or evaluate it as to adequacy, quality, content or otherwise.

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

3 KEY PROJECT ELEMENTS

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

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

3.1 PROJECT SITE

The lands on which the Facility will be located are the “**Site**”. The City has identified a City-owned 6.6-acre parcel of land at 9752 192nd Street, within the Port Kells Industrial Park in Surrey, British Columbia, as the Site. Other than as described in the next paragraph, the City will not consider proposals to use a site other than the Site.

The City also owns an adjacent 3.3-acre parcel of land at 9810 192nd Street, which is currently separated from the 6.6-acre parcel by a private right-of-way leading to a regional waste transfer facility. The City will consider proposals to expand the Site to approximately 10 acres by including both parcels. However, the City’s preference is for the Facility to be located on the City’s 6.6-acre parcel.

Regarding the 3.3-acre parcel, the original sand and gravel was removed from much of the site. Uncontrolled fill placement subsequently occurred, resulting in overlying fill materials that are highly variable between locations and with depth. The fill includes organic soil and wood waste. Overall, large variations in the fill material should be anticipated over short distances and it should be assumed that the majority of the fill is loose. Proponents are responsible for all costs associated with utilizing the additional 3.3-acre parcel (such as environmental remediation and site services, as required).

Additional information on the site is provided in the Data Room as Reference Information, including the following:

- Detailed Site Investigation (2002)
- Certificate of Compliance (2002)
- Geotechnical Assessment (2004)

- Wood Waste Report (2011)

3.2 APPROVALS AND PERMITTING

The City has obtained the following rezoning and environmental certificates:

(a) Site Rezoning

The City has completed a property rezoning of both the 6.6 acre and 3.3 acre parcels from Light Industrial to Comprehensive Development, which is required to accommodate the Facility.

(b) Environmental Assessment

A Certificate of Compliance was granted for both the 6.6 acre and 3.3 acre parcels by the B.C. Ministry of Environment in 2002 when the Surrey transfer station was under development. No additional regional, provincial or federal environmental assessments are required for the Project. Previous impact studies carried out for the Project in support of the property rezoning process are provided in the Data Room as Reference Information. These studies include the following:

- Environmental Assessment
- Noise Impact Study
- Odour Impact Study
- Traffic Impact Study
- Tree Retention Report

The City has initiated preliminary discussions both internally and with Metro Vancouver with respect to City and regional requirements for the Project. In accordance with the Project Agreement, Project Co will be responsible for obtaining all permits and approvals required for the design, construction, operation and maintenance of the Facility, including the following:

- (a) development permit from the City;
- (b) building permit from the City;
- (c) utility connections and other matters from the City;
- (d) regional operating permits from Metro Vancouver including an air quality permit (for air emissions) and a water quality permit (for waste water discharge to the Metro Vancouver sanitary sewer);
and
- (e) if Proponents are proposing onsite composting of the residual waste for redistribution and/or sale, pursuant to BC Organic Matter Recycling Regulations (Part 5, Division 2, Section 24 and 25

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/18_2002#part5_division2),

Proponents are required to submit to the appropriate Provincial representative plans and specifications prepared by a qualified professional for approval (outlining the Process Equipment, odor mitigation, staff training, etc.), and obtain any required permits, prior to commencing operation.

In addition, following from the property rezoning process, the City's Land Development Engineering Department identified specific requirements upon which future development permit and/or building permit approvals may be conditional. These are summarized in the document Land Development Requirements, provided as Reference Information in the Data Room.

The City intends to coordinate in confidence meetings between Proponents and the City and Metro Vancouver upon request by Proponents. The purpose of these meetings is to provide Proponents with an opportunity to pose questions in relation to municipal and regional permitting requirements relevant to the Project generally, and to obtain feedback on their proposed facility design and process technology specifically.

All requests for Proponent meetings with the City and/or Metro Vancouver must be made in writing by email to the Contact Person. These meetings will be held prior to the Submission Time for Technical Submissions to allow Proponents to obtain information they may require for the preparation of Proposals. Proponents are not permitted to schedule meetings directly with the City and/or Metro Vancouver. All Proponent meetings with the City's Planning and Development Department and Metro Vancouver will include at all times a City Representative. Each of these meeting will be treated as Collaborative Meetings, allowing Proponents to maintain confidentiality with respect to its information.

3.3 PROCESS TECHNOLOGY

The City requires that the new Facility be based on and utilize the Proponent's Process Technology as described in the Proponent's RFQ Response, or as amended and approved by the City in accordance with the RFQ, or as may be changed in accordance with Section 6.13 of this RFP.

3.4 FACILITY CAPACITY

A Proponent may propose a Facility having a capacity at Service Commencement that is sufficient to process the City's Entitlement Volume that Project Co is obligated to take at the end of the Term, as set out in the Project Agreement, including Schedule 3.

Alternatively, a Proponent may propose a phased construction plan for the Facility in which the planned capacity is expanded one or more times during the Term according to an approved plan which would be included in the Proponent's Proposal and in the Project Agreement, so as to meet, at a minimum, the

growth in the City's Entitlement Volume over the Term. Proponents assume all risks associated with implementing a phased construction approach.

If a Proponent elects to phase the construction of the Facility during the Term, it should include the following in its Proposal:

- (a) a plan and a commitment to construct the additional capacity;
- (b) an explanation of how the Proponent will ensure there are sufficient capital funds to construct the additional capacity as planned and assurances that these funds will be available; and
- (c) an explanation of how any incremental operational costs associated with the planned incremental increase in Facility capacity will be managed given that payments from the City will be fixed at Financial Close.

in accordance with Appendix B of this RFP.

During the Operating Period, Project Co may wish to add unplanned capacity to the Facility in response to favourable market conditions for ICI Waste. If Project Co elects to do so, it must submit a proposal to the City in accordance with the Project Agreement and will be required to meet the same requirements to which it was subject during the initial design review phase with no service interruptions. Even if the City approves Project Co's proposal to increase Facility capacity over and above the City's Entitlement Volume that Project Co is obligated to process during the final year of the Term, the City will not assume any liability for Project Co's investment in respect of this excess capacity in the event of Termination.

3.5 DESIGN AND CONSTRUCTION

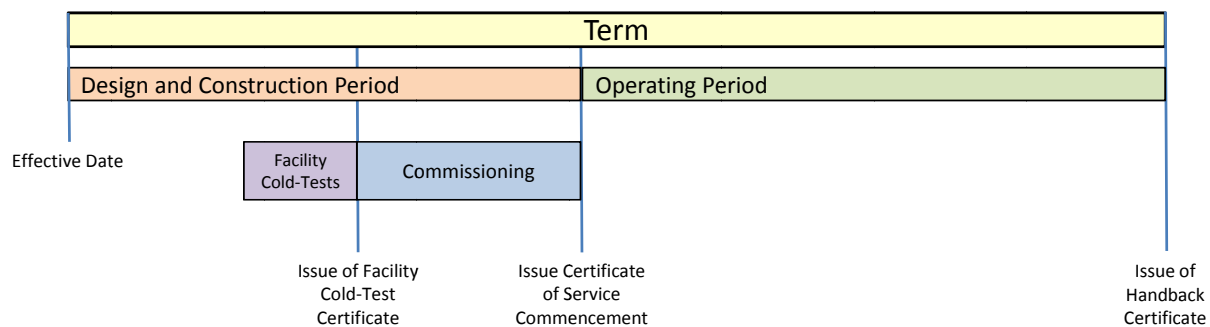
Project Co will be responsible for all aspects of design and construction of the Facility in accordance with the Project Agreement. At a high-level, Project Co will be responsible for:

- (a) obtaining all permits and approvals necessary for the design and construction of the Facility, excluding the approvals that are already in place or will be obtained by the City as expressly set out in the Project Agreement;
- (b) design and construction of utilities and other Site services, including off-Site works as required for the Facility;
- (c) fulfilling all design and construction obligations in accordance with the Project Agreement;
- (d) all aspects of the Process Technology for the Facility, including all design and construction;
- (e) fulfilling all requirements for Facility Cold-Testing of the equipment and processes prior to introducing Waste to the Facility; and

- (f) Commissioning the Facility, including biological systems testing, to achieve Service Commencement.

The sequencing of key periods and milestones for the Project is summarized in Figure 1 below.

Figure 1: Key Project Periods and Milestones



3.6 SERVICES

Project Co will be responsible for the operation and maintenance of the Facility over the Term, including:

- (a) Facility Operations Services (see Appendix 4B of the Initial Draft Project Agreement); and
- (b) Facility Maintenance Services (see Appendix 4C of the Initial Draft Project Agreement).

Key Project Co responsibilities include:

- (a) accepting and processing all City Organic Waste, including managing any seasonal variability in composition and/or volumes;
- (b) recovering Biogas and producing Biomethane for delivery to the Fortis BC pipeline infrastructure installed adjacent to the Facility;
- (c) ensuring that odour levels are within acceptable parameters as set out in the Project Agreement;
- (d) managing all feedstock residuals and process by-products in a sustainable manner, including minimizing the volume of materials disposed of in landfill and maximizing their potential for either economic or useful application in accordance with the Project Agreement; and
- (e) facilitating and hosting public tours of the Facility.

3.7 CITY ORGANIC WASTE COMPOSITION

The City conducted a series of monthly composition audits of its curbside residential organic waste along with quarterly moisture content analysis, which commenced in November 2012 and concluded in October 2013. Monthly composition reports, as well as a final report will be made available in the Data Room as Reference Information during the RFP stage.

3.8 BIOMETHANE PRODUCTION, VALUE AND SALES

Proponents are required to provide in their Proposals an Annual Target Biomethane Amount representing the annual amount of Biomethane, in Giga Joules, that they commit to producing in the Facility during each year of the Term from all Waste processed. Annual Biomethane production, as measured by Fortis BC's infrastructure, equal to the Annual Target Biomethane Amounts included in a Proponent's Proposal will become an obligation of Project Co under the Project Agreement.

In accordance with the Project Agreement, including Schedule 8, if Project Co produces more than the Annual Target Biomethane Amount in any one year, Project Co will receive a share of the value of the excess amount of Biomethane produced. If Project Co produces less than the Annual Target Biomethane Amount in any one year, Project Co will be required to compensate the City for the full value of the shortfall.

The City will take the responsibility to sell or use 100 per cent the Biomethane produced at the Facility. The Biomethane will need to meet the specifications as required by Fortis BC for acceptance into the Fortis pipeline grid, so as to give the City the option of selling the Biomethane to Fortis. Project Co will be responsible for ensuring that the Biomethane produced at the Facility meets the quality specifications set out in the Project Agreement.

The City has determined the City's Biomethane Value Assumption to reflect the expected average gross value, on a per unit basis, of Biomethane sales to all purchasers, including the City, Fortis BC and/or other third parties as the case may be. The City's Biomethane Value Assumption should be applied to each Proponents Annual Target Biomethane Amounts and reflected in each Proponent's Affordability Model.

The City will consider alternative proposals from Proponents in which Project Co assumes responsibility for both the production and sale of a Biogas Product (an "**Alternative Biogas Product Sales Proposal**"). If, in the City's sole discretion, a Proponent's Alternative Biogas Product Sales Proposal is in the best interest of the City, including the extent to which it may offer a value greater than the City's Biomethane Value Assumption, and if the City accepts that Proponent's Alternative Biogas Product Sales Proposal,

then that Proponent will substitute its Alternative Biogas Product Value for the City's Biomethane Value Assumption in its Affordability Model.

Proponents may, in accordance with the process set out in Appendix O of this RFP, notify the City of any proposed Alternative Biogas Product Sales Proposal(s) on or before the Submission Time for Alternative Biogas Product Sales Proposal and, without limiting any other provision of this RFP, the Alternative Biogas Product Sales Proposal Process set out in Appendix O shall apply.

3.9 OPTION FOR A CORPORATE FINANCE SOLUTION

A Proponent may propose either project or corporate financing.

For a Proponent's Proposal to constitute a project finance solution ("**Project Finance Solution**"), 60 per cent or more of total Project capital costs should be financed by third party participating lenders acting at arm's-length from Proponent Team members. Where this threshold is not met, the Proponent will be deemed to have submitted a corporate finance solution ("**Corporate Finance Solution**") and should meet the requirements for a Corporate Finance Solution set out in this RFP.

If a Proponent submits a Corporate Finance Solution, the Proponent should provide the information requested in Appendix B of this RFP, including:

- (a) details of the Corporate Funder's financial information which demonstrates the Corporate Funder's financial capacity to provide funding, in accordance with the requirements set out in Section 6.4.1 of Appendix B;
- (b) a commitment letter from the Corporate Funder substantially in the form provided in Appendix N;
- (c) details of the Corporate Finance Solution as they relate to the Proponent's financing plan in accordance with the requirements set out in Section 6.5.1(d) of Appendix B; and
- (d) details of the Proponent's contemplated security package in accordance with the requirements set out in Section 6.5.4 of Appendix B.

Interest rate benchmarking will be made available to Proponents at their election. Benchmarking for a Corporate Finance Solution will follow the Senior Debt Base Rate Benchmark and/or Swapped Senior Debt Base Rate Benchmark process set out in Section 5.2 of this RFP. Proponents that do not meet the requirements of a Project Finance Solution will not be eligible to use the Reinvestment Base Rate Benchmark.

The City will advise the Proponent on the changes required to the Project Agreement for a corporate finance solution.

3.10 CONSTRUCTION MILESTONE PAYMENT

The City anticipates receiving a portion of funding for the Project from PPP Canada in the amount of 25 per cent of Eligible Costs, up to a maximum amount of \$16.9 million in the form of a repayable contribution of funds through the P3 Canada Fund in accordance with a financial agreement to be entered into between the City and PPP Canada prior to Financial Close. As a financial contributor to the City in respect of the Project, PPP Canada will provide support and guidance to the City from time to time.

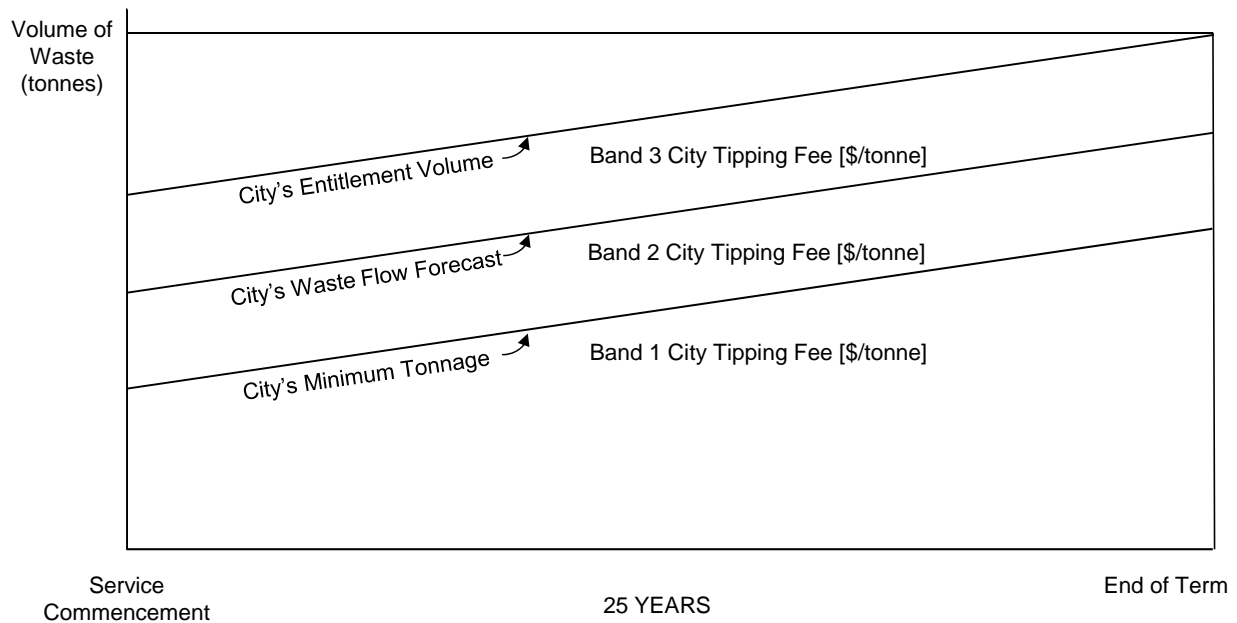
Upon Project Co receiving a Certificate of Service Commencement, the City will make a lump sum payment to Project Co equal to PPP Canada's funding contribution, in accordance with the Project Agreement, including Schedule 8. Project Co will be responsible for obtaining all other financing required to complete the scope of work and fulfill its obligations under the Project Agreement.

3.11 PAYMENT AND PERFORMANCE

Upon the commencement of Commissioning of the Facility the City will make Commissioning Payments reflecting a reduced City Tipping Fee at 80% of the proposed Band 1 City Tipping Fee for any City Organic Waste delivered. Proponents are to indicate in their Proposals the tonnages of City Organic Waste to be delivered to the Facility by the City each month during the Commissioning period.

Upon Service Commencement, the City will commence paying the Service Payments. Service Payments to Project Co will be a function of three City Tipping Fees, each applicable to defined thresholds of City Organic Waste tonnages delivered to the Facility during the Operating Period, as illustrated conceptually in Figure 2 below and set out in Appendix 8A of the Project Agreement.

Figure 2: City Tipping Fee Band Concept



Proponents are to propose a unit fee per tonne of City Organic Waste corresponding to each of Band 1 (City's Minimum Tonnage), Band 2 (City's Waste Flow Forecast) and Band 3 (City's Entitlement Volume) tonnages delivered to the Facility during each full Contract Year where:

- The Band 1 tipping fee will apply to all waste accepted by Project Co in a Contract Year up to and including the Minimum Tonnage (guaranteed by the City whether delivered or not);
- The Band 2 tipping fee will apply to all waste accepted by Project Co in a Contract Year in excess of the Minimum Tonnage up to and including the City's Waste Flow Forecast; and
- The Band 3 tipping fee will apply to all waste accepted by Project Co in a Contract Year in excess of the City's Waste Flow Forecast up to and including the City's Entitlement Volume.

In calculating their proposed City Tipping Fee rates, Proponents are encouraged to assume that they will utilize some of the Facility's capacity, if not required for processing City Organic Waste, to process ICI Waste. Proponents are also encouraged to reflect in their Financial Models the annual revenue expected to be generated from processing ICI Waste (Annual ICI Revenue Target) and/or any assumed annual revenue from the sale of process by-products, including post-digestion materials (Annual Digestate Revenue Target) to help reduce the City Tipping Fees proposed. These third party revenue assumptions, if applicable, should be included in each Proponent's Proposal.

The City will pay Project Co a Monthly Service Payment, calculated in advance, based on one twelfth of the City Tipping Fees associated with the annual tonnage of City Organic Waste expected to be delivered

to the Facility during the upcoming Contract Year. At the end of each Contract Year, the City and Project Co will reconcile the estimated tonnage of City Organic Waste with the actual tonnage delivered, recalculate the Annual Service Payment payable, make any required adjustments, and calculate an Annual Reconciliation Payment that may be to the credit of either Project Co or the City.

If Project Co receives revenue from third parties which exceeds the sum of the Annual ICI Revenue Target and the Annual Digestate Revenue Target for a given Contract Year (the Third Party Revenue Threshold), the City will be entitled to a share of the gross revenue over and above the threshold, in accordance with the Project Agreement, including Schedule 8. If Project Co receives less than the Third Party Revenue Threshold in one year, it is entitled to carry forward the value of that shortfall to future years, thus reducing the portion of revenues over and above the Third Party Revenue Threshold subject to sharing with the City in one or more future years. Any third party revenue share, to which the City is entitled in any Contract Year, will be an adjustment within the Annual Reconciliation Payment.

The Project Agreement also includes a performance regime in which Service Failures, which are not rectified in accordance with the Project Agreement, may lead to Service Failure Deductions being applied to Monthly Service Payments.

4 AFFORDABILITY

A key objective of the Competitive Selection Process is to encourage Proposals that satisfy the Final Draft Project Agreement without exceeding the Project's Affordability Threshold.

4.1 AFFORDABILITY THRESHOLD

The affordability threshold (the "**Affordability Threshold**") for the Project is \$♦, which is an identified limit to the net present value of a Proposal (the "**Proposal Net Present Cost**"), calculated as follows:

- (a) the net present value of the Monthly Base Payments during the Term, based on the Proponent's Proposal, assuming the City delivers the Band 2 tonnages of City Organic Waste as listed in Appendix 8A of the Final Draft Project Agreement;
plus
- (b) the net present value of the Commissioning Payments based on the Proponent's plan for receiving City Organic Waste during the Commissioning period;
less
- (c) the net present value of a Proponent's committed Biomethane production during the Term, calculated based on the City's Biomethane Value Assumption and the Proponent's Annual Target Biomethane Amounts as set out in the Proponent's Proposal.

The Project has been approved by the City on the assumption that the Project can be achieved without exceeding the Affordability Threshold.

4.2 AFFORDABILITY AND EVALUATION MODEL

The City has developed a combined affordability and evaluation model (the "**Affordability and Evaluation Model**") for the Proponents to use to calculate their Proposal Net Present Cost in relation to the Affordability Threshold and their Weighted Proposal Net Present Cost and Adjusted Weighted Proposal Net Present Cost, for use in the evaluation and ranking of Proposals described in Appendix A of this RFP.

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

The Affordability and Evaluation Model is available in the Data Room, and includes instructions on how it should be populated and run. The Affordability and Evaluation Model should be completed by linking to the appropriate outputs from the Proponent's Financial Model. The City reserves the right to recalculate

or make such adjustments to the Affordability and Evaluation Model as may be required by the City in its analysis.

Pursuant to Section 6.6 of this RFP a Proponent may request information on any aspect of the Affordability and Evaluation Model so as to permit the Proponent to fully understand the Affordability and Evaluation Model makeup and operation. If a Proponent discovers any error in the Affordability and Evaluation Model the Proponent should immediately notify the Contract Person. In no event will a Proponent be entitled to make a Claim on the basis of the operation or application of the Affordability and Evaluation Model.

5 PROPOSAL REQUIREMENTS

5.1 PROPOSAL FORM AND CONTENT

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

5.2 INTEREST RATE BENCHMARKS

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

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

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

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

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

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

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

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

The Reinvestment Base Rate Benchmark may be applied to any reinvestment product that is included in the Proponent’s Financial Model and that is associated with any portion of the Senior Credit Facilities. Such reinvestment product must be designated by the Proponent during the Advance Interest Rate

Submission process as an Adjustment Credit Facility. Any reinvestment product not so designated will not be adjusted following the Financial Submission.

5.3 ADVANCE INTEREST RATE SUBMISSIONS

There are three advance interest rate submissions (“**Advance Interest Rate Submission**” or “**AIRS**”) to determine the method for calculating the Benchmarks and their values: Initial AIRS, Interim AIRS and Final AIRS. Details and submission requirements relating to each of these AIRS are contained in Appendix K.

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

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

5.3.2 Interest Rate Assumptions in the Financial Submission Financial Model

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

5.3.3 Dry Runs

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

6 SUBMISSION INSTRUCTIONS

6.1 PROPOSAL SUBMISSION TIMES AND SUBMISSION LOCATION

With respect to the delivery of Proposals:

- (a) **Technical Submission:** Proponents must submit the technical portion of the Proposal to the Submission Location by the Submission Time for Technical Submissions. The Technical Submission should be made up of the Proposal Requirements described in Section 2 (Submission Requirements for Technical Submission) of Appendix B.
- (b) **Advance Interest Rate Submission:** If a Proponent intends to submit an Advance Interest Rate Submission, the Proponent must submit the Advance Interest Rate Submission in accordance with the provisions of this RFP, including Appendix B.
- (c) **Financial Submission:** Proponents must submit the financial portion of the Proposal to the Submission Location by the Submission Time for Financial Submissions. The Financial Submission should be made up of the following:
 - (1) a completed Proposal Declaration Form in the form attached as Appendix C;
 - (2) one or more commitment letters, substantially in the form of Appendix G (or Appendix N where a Corporate Finance Solution is proposed), which should include confirmation of the Credit Spread that will be applicable to such facility until Financial Close;
 - (3) the Proposal Requirements described in Section 4 (Submission Requirements for Financial Submission) of Appendix B;
 - (4) the completed Pricing Forms as described in Appendix B; and
 - (5) an independent Financial Model audit, for the benefit of, and reliance by, the City.

6.2 NUMBER OF COPIES

For its Technical Submission, a Proponent should submit eight (8) hard copies (seven bound copies numbered 1 through 7; plus one unbound copy marked as "Master") and one electronic copy (CD or USB flash drive in PDF format, with a label describing its contents) appropriately packaged and clearly marked "Request for Proposals for Surrey Biofuel Processing Facility Project."

For its Financial Submission, a Proponent should submit five (5) hard copies (four bound copies numbered 1 through 4; plus one unbound copy marked as "Master") and one electronic copy (CD or USB flash drive in PDF format, with a label describing its contents) appropriately packaged and clearly marked

“Request for Proposals for Surrey Biofuel Processing Facility Project,” except the Financial Model which should be submitted in Microsoft Excel 2003 or 2007 (CD or USB flash drive only).

6.3 NO FAX OR EMAIL SUBMISSION

Proposals submitted by fax or email will not be accepted, except for the Initial, Interim and Final AIRS-related submission items which can be submitted by email.

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

6.6 ENQUIRIES

Proponents are encouraged to submit enquiries (“**Enquiries**”) using the Enquiry Request Form (Appendix M) at an early date to permit consideration by the City:

- for Enquiries of a technical nature: prior to 16:00 Pacific Time on the day that is 10 Business Days before the Submission Time for Technical Submissions; and
- for Enquiries of a financial nature: prior to 16:00 Pacific Time on the day that is 5 Business Days before the Submission Time for Financial Submissions.

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

- (a) any responses will be in writing;
- (b) Enquiries to, and responses from, the Contact Person will be recorded;
- (c) a Proponent may request that an Enquiry and the response to an Enquiry be kept confidential by clearly marking the Enquiry “Commercial-in-Confidence” if the Proponent considers the Enquiry to be commercially sensitive; and if the City decides that an Enquiry or the response or both should be distributed to all Proponent, then, subject to Section 6.6(d), the City will permit the enquirer to withdraw the Enquiry rather than receive a response;
- (d) any Enquiry and the response may, in the City’s discretion, be distributed to all Proponents, if the City in its discretion considers the matter to be a matter of substance or a matter that should be

brought to the attention of all Proponents for purposes of fairness in, or maintaining the integrity of, the Competitive Selection Process. The City may keep either or both the Enquiry and response confidential if in the judgment of the City it is fair or appropriate to do so; and

- (e) the City may, in its discretion, decline to respond to an Enquiry.

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 only communicate with the Contact Person by email. Other methods of communication, including telephone or fax, are discouraged.

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

6.9 INTELLECTUAL PROPERTY RIGHTS

(a) Grant of License

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

- (1) granted to the City 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 City; and
- (2) waived or obtained a waiver of all moral rights contained in the Proposal in favour of the City.

Subject to the terms of the Project Agreement entered into between the City and the Preferred Proponent, Proponents will not be responsible or liable for any use by the City or any sub-licensee or assignee of the City of any Intellectual Property Rights contained in a Proposal.

(b) Exceptions to License

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 City that it owns or has, and will continue to own or have at the Submission Time for Technical Submissions, all necessary rights to all Third Party Intellectual Property Rights contained in its Proposal or otherwise disclosed by the Proponent to the City 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 DEFINITIVE RECORD

If there is any inconsistency between the paper form of a document and the digital, electronic or other computer readable form, the electronic conformed version of the document in the custody and control of the City prevails.

6.11 AMENDMENTS TO OR WITHDRAWALS OF PROPOSALS

A Proponent may:

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

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

Submitted Proposals may be withdrawn in writing, provided such written withdrawal is received by the City at the Submission Location prior to, but not after, the Submission Time for Financial Submissions. Oral or emailed or faxed amendments or withdrawals will not be considered or accepted.

6.12 CHANGES TO PROPONENT TEAMS

If for any reason a Proponent wishes or requires to add, remove or otherwise change a member of its Proponent Team after it was shortlisted under the RFQ, or there is a material change in ownership or control of a member of the Proponent Team, or there is a change to the legal relationship among any or all of the Proponent and its Proponent Team members, then the Proponent must submit a written application to the City for approval, including supporting information that may assist the City in evaluating the change. The City, in its discretion, may grant or refuse an application under this Section, and in exercising its discretion the City will consider the objective of achieving a Competitive Selection Process that is not unfair to the other Proponents. For clarity:

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

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

6.13 CHANGES TO PROCESS TECHNOLOGY

If for any reason a Proponent wishes or requires to change the Process Technology that the Proponent included in its Response to the RFQ, or there is a material change in rights or ability to obtain the rights to any proprietary elements of such Process Technology, then the Proponent must submit a written

application to the City for approval, including supporting information that may assist the City in evaluating the change. The City, in its discretion, may grant or refuse an application under this Section, and in exercising its discretion the City will consider the objective of achieving a Competitive Selection Process that is not unfair to the other Proponents. For clarity the City may refuse to permit a change to the Process Technology that the Proponent included in its Response to the RFQ if the change would, in the City's judgment, result in a Process Technology that is weaker than the Process Technology originally shortlisted.

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

6.14 VALIDITY OF PROPOSALS

By submitting a Proposal, each Proponent agrees that:

- (a) its Proposal, including all prices and input costs (with the exception of permitted adjustments to interest rates and credit margins in accordance with the terms of this RFP), will remain fixed and irrevocable from the Submission Time for Financial Submissions until midnight at the end of the 90th Business Day following the Submission Time for Financial Submissions (the "**Proposal Validity Period**"); and
- (b) after the expiry of the Proposal Validity Period, all prices and input costs (except senior debt margins) in its Proposal may not be adjusted unless the Proponent provides notice in writing to the City of any proposed adjustment and demonstrates to the satisfaction of the City that the Proponent has used its best efforts to continue to maintain the prices and input costs firm and valid, but that despite such best efforts, the specified adjustments to the prices and input costs are required solely as a direct result of one or more events that:
 - (1) are external to the Proponent and the Proponent Team members;
 - (2) could not have been prevented by, and are beyond the control of, the Proponent and any of its Proponent Team members; and
 - (3) constitute a material adverse change to the conditions underlying the prices and input costs that are subject to the adjustment.

A Proponent may indicate in its Proposal a Proposal Validity Period that exceeds 90 Business Days.

6.15 MATERIAL CHANGE AFTER SUBMISSION TIME FOR FINANCIAL SUBMISSIONS

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

6.16 ACCEPTABLE EQUIVALENTS

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

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

The City may, in its discretion:

- (a) respond to indicate that the proposed equivalent is acceptable;
- (b) respond to indicate that the City does not consider the proposed equivalent to be acceptable;
- (c) not respond to the Enquiry; or
- (d) provide any other response in accordance with Section 6.6.

The provisions of Section 6.6 relating to "Commercial in Confidence" Enquiries will apply, including with respect to withdrawal of an Enquiry, or the City's determination if there is a matter which should be brought to the attention of all Proponents.

If the City responds to a "Commercial in Confidence" Enquiry, or responds to any Enquiry that is not "Commercial in Confidence", regarding a proposed equivalent to indicate that the proposed equivalent is acceptable, a Proponent may make its Technical Submission on the basis of the response, and the use of the acceptable equivalent will not in and of itself be a failure to meet the requirements set out in Appendix A.

Unless the City responds to indicate that a proposed equivalent is acceptable, a Proponent is at risk that the use of a proposed equivalent will not substantially meet the requirements set out in Appendix A and that the City may not invite the Proponent to provide a Financial Submission.

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

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

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

7 EVALUATION

7.1 MANDATORY REQUIREMENTS

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

- (a) the Technical Submission must be received at the Submission Location before the Submission Time for Technical Submissions; and
- (b) if invited to submit such, the Financial Submission must be received at the Submission Location before the Submission Time for Financial Submissions.

7.2 EVALUATION COMMITTEE

The evaluation of Proposals will be carried out by a committee of one or more persons appointed by the City (the “**Evaluation Committee**”) with assistance from other persons as the Evaluation Committee may decide it requires, including technical, financial, legal and other advisors or employees of the City or Partnerships BC.

7.3 EVALUATION OF PROPOSALS

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

The Evaluation Committee may, in its sole discretion, take any one or more of the following steps, at any time and from time to time, in connection with the review and evaluation, including ranking, of any aspect of a Proposal, including if the Evaluation Committee 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 the Evaluation Committee that the Proposal meets any requirements of this RFP at any time, or for any other reason the Evaluation Committee in its discretion deems appropriate and in the interests of the City and this RFP, or either of them:

- (a) waive any such defect, ambiguity, alteration, qualification, omission, inaccuracy, misstatement or failure to satisfy, and any resulting ineligibility on the part of the Proponent, or any member of the Proponent Team;
- (b) independently consider, investigate, research, analyze, request or verify any information or documentation whether or not contained in any Proposal;

- (c) request interviews or presentations with any, all or none of the Proponents to clarify any questions or considerations based on the information included in Proposals during the evaluation process, with such interviews or presentations conducted in the discretion of the Evaluation Committee, 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 references and other persons in the evaluation of Proposals;
- (e) conduct any other reference checks (including sources internal to the City);
- (f) conduct credit, criminal record, litigation, bankruptcy, taxpayer information and other checks;
- (g) not proceed to review and evaluate, or discontinue the evaluation of any Proposals, including any Technical Submission or Financial Submission, and disqualify the Proponent from this RFP; and
- (h) seek clarification or invite more complete, supplementary, replacement or additional information or documentation from any Proponent or in connection with any Proposal, including with any Technical Submission or Financial Submission or any part of their component packages.

Without limiting the foregoing or Appendix A, the Evaluation Committee may, in its discretion (and without further consultation with the Proponent), reject any Proposal which in the opinion of the Evaluation Committee is:

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

To enable the Evaluation Committee to take any one or more of the above-listed steps, the Evaluation Committee may enter into separate and confidential communications of any kind whatsoever, with any person, including any Proponent. The Evaluation Committee 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, analyzes, checks, and verifications.

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

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

The Evaluation Committee 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.

As part of the evaluation of a Technical Submission, the Evaluation Committee may identify that the Evaluation Committee is not satisfied that the Technical Submission meets one or more requirements of the Final Draft Project Agreement. The Evaluation Committee may, but is not required to, reject that Proposal in accordance with the terms of this RFP. If the Evaluation Committee does not exercise its discretion to reject the Proposal, the Evaluation Committee may provide to the Proponent a list of the items that the Evaluation Committee is not satisfied meet the requirements of the Final Draft Project Agreement. The Proponent will, if selected as Preferred Proponent, be required to comply with the requirements of the Final Draft Project Agreement, including by rectifying any non-compliances (material or otherwise) in its Proposal. By submitting its Financial Submission, a Proponent that has received such a list will be deemed to have agreed to comply with the requirements of the Final Draft Project Agreement, including by rectifying any non-compliances (material or otherwise) in its Proposal.

The Evaluation Committee is not responsible for identifying all areas in which a Technical Submission does not meet the requirements of the Final Draft Project Agreement. Irrespective of whether the City has identified or has failed to identify any such areas (including whether the Evaluation Committee has provided a list or not), a Proponent is not relieved in any way from meeting the requirements of this RFP,

and if selected as Preferred Proponent will not be relieved from meeting all requirements of the Final Draft Project Agreement, including by rectifying any non-compliances (material or otherwise) in its Proposal.

The City will, subject to the provisions of this RFP, invite each Proponent that has delivered a Technical Submission that has not been rejected to submit a Financial Submission.

8 SELECTION OF PREFERRED PROPONENT AND AWARD

8.1 SELECTION AND AWARD

If the City selects a Preferred Proponent in accordance with Appendix A, the City will invite the Preferred Proponent to enter into final discussions to settle all terms of the Project Agreement, based on the Preferred Proponent's Proposal, including any clarifications that the Preferred Proponent may have provided during the evaluation of Proposals.

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

- (a) terminating the Competitive Selection 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 City, such as from City Council, will be conditions precedent to the final execution or commencement of the Project Agreement.

8.2 FINAL DRAFT PROJECT AGREEMENT

The City anticipates that:

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

- i. modification or the insertion or addition of information relating to the Proponent's formation (e.g., corporate, partnership or trust structure) and funding structure; and
 - ii. modification or the insertion or addition of information in order to reflect accurately the nature of the Proponent's relationships with its principal subcontractors (including each of the project contractors);
- (3) required by the City to complete, based on the Proposal, any provision of the Final Draft Project Agreement, including changes, modifications and additions contemplated in or required under the terms of the Final Draft Project Agreement;
 - (4) that are necessary to create or provide for a legally complete, enforceable and binding agreement;
 - (5) that enhance clarity in legal drafting;
 - (6) that reflect acceptable equivalents in accordance with Section 6.16; or
 - (7) that may be required as a consequence of Changed Funding Arrangements.

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

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

8.3 PREFERRED PROPONENT SECURITY DEPOSIT

Subject to the terms of this RFP:

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

8.4 RETURN OF SECURITY DEPOSIT

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

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

8.5 RETENTION OF SECURITY DEPOSIT

Notwithstanding any receipt by the City of the notice described in Section 8.4, the City may, in its discretion, draw on, retain and apply the proceeds of the Preferred Proponent Security Deposit for the City'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 City:
 - (1) the Preferred Proponent fails to execute and deliver an agreement substantially in the form of the Final Draft Project Agreement finalized by the City in accordance with Section 8.2; or
 - (2) Financial Close fails to occur within 20 Business Days (or such longer period as the parties may agree) of receipt of such notice from the City,

unless:

- (3) any such failure was the result of a significant event which could not have been reasonably prevented by, or was beyond the reasonable control of, the Preferred Proponent; and

- (4) the Preferred Proponent demonstrates to the City's satisfaction, acting reasonably, that the occurrence of such significant event would materially frustrate or render it impossible for the Preferred Proponent to perform its obligations under the Project Agreement for a continuous period of 125 Business Days as if the Project Agreement was in force and effect.

8.6 COMMUNICATION REGARDING PROGRESS TO FINANCIAL CLOSE

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

8.7 CHANGED FUNDING ARRANGEMENTS

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

8.8 PARTIAL COMPENSATION FOR PARTICIPATION IN THIS RFP

Upon execution of the Project Agreement, the City will pay \$200,000 (inclusive of any taxes payable) to each unsuccessful Proponent that:

- (a) complied with the Mandatory Requirements;
- (b) received an invitation to submit a Financial Submission;
- (c) submitted a Proposal with a Proposal Net Present Cost that does not exceed the Affordability Threshold;
- (d) has not withdrawn from the Competitive Selection Process or been disqualified by the City in accordance with the terms of this RFP; and
- (e) provides to the City written acknowledgment of:
 - (1) the disclaimers, limitations and waivers of liability and claims contained in this RFP, including Section 10.13; and

- (2) the grant of Intellectual Property Rights to the City and waiver of moral rights pursuant to Section 6.9.

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

- (f) \$200,000 (inclusive of any taxes payable); and
- (g) the substantiated out-of-pocket costs reasonably incurred by the Proponent in preparing its Proposal,

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

In determining whether to make available the partial compensation described in this Section 8.8, the City considered the potential value of obtaining the license to the City of rights to the Intellectual Property Rights and the waiver of moral rights pursuant to Section 6.9. Accordingly, the City may in its discretion offer to pay up to \$200,000 (inclusive of any taxes payable) to a Proponent that is not otherwise entitled to payment under this Section 8.8 on conditions established by the City in its discretion. The conditions may include the City reviewing the Intellectual Property Rights (such as for a Proposal that was returned) and being satisfied with the value of such rights and the Proponent entering into an agreement with the City granting license rights to the City. Such arrangements will not be governed by this RFP.

8.9 DEBRIEFS

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

9 CONFLICT OF INTEREST AND RELATIONSHIP DISCLOSURE

9.1 RESERVATION OF RIGHTS TO DISQUALIFY

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

9.2 RELATIONSHIP DISCLOSURE

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

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

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

9.3 USE OR INCLUSION OF RESTRICTED PARTIES

The City may, in its discretion, disqualify a Proponent, or may permit a Proponent to continue and impose such conditions as the City may consider to be in the public interest or otherwise required by the City, 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 in relation to the Project from any Restricted Party, or includes any Restricted Party in the Proponent Team.

9.4 RESTRICTED PARTIES

9.4.1 Current Restricted Parties

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

- (a) HDR Corporation (Technical Advisor);
- (b) Singleton Urquhart (Fairness Advisor);
- (c) PricewaterhouseCoopers LLP (Financial Advisor);
- (d) Trent Berry, Reshape Infrastructure Strategies Ltd (Gas Marketing Advisor)
- (e) Dentons Canada LLP (Legal Advisor); and
- (f) The City, Partnerships BC and PPP Canada, 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.

9.4.2 Consultant with Prior Project Involvement

- (a) Ernst & Young

Ernst & Young was retained by the City to provide financial consulting services relating to the Project between August 2011 and May 2012. During that period Ernst & Young worked with the City and Partnerships BC to assist in the development of the business case for the Project and to assist in the discussions with PPP Canada to secure PPP Canada funding for the Project. Ernst & Young's services to the City with respect to the Project included development of financial models, assistance in the development of the value for money analysis and assisting in drafting certain aspects of the business case.

Subsequent to Ernst & Young's retainer to the City on the Project the City retained PricewaterhouseCoopers as the Financial Advisor to the City for the Project. PricewaterhouseCoopers remains the City's Financial Advisor to the Project and Ernst & Young has provided no further services to the City with respect to the Project.

Ernst & Young has requested that the City consent to Ernst & Young being permitted to assist a Proponent or Proponent team member with respect to the Project on the basis that protocols will be implemented to maintain fairness for all interested parties with respect to the Project's Competitive Selection Process.

The Relationship Review Committee has reviewed the application by Ernst & Young and consents to Ernst & Young's participation as advisor to a Proponent or Proponent team member on the condition that Ernst & Young represent that it will implement the following:

- No member of Ernst & Young that provided services to the City with respect to the Project will provide services to a Proponent, other than Tim Philpotts, as discussed below;
- Ernst & Young will implement a confidentiality screen within its office such that:
 - All information, in written or electronic form, related to Ernst & Young's services to the City with respect to the Project will be separate and secure and not available to the members of an Ernst & Young team providing services to a Proponent or Proponent team member; and
 - No person who provided services to the City with respect to the Project will disclose any such information to a member of an Ernst & Young team member providing services to a Proponent or Proponent Team member.
- Tim Philpotts held a senior position with Ernst & Young towards the end of Ernst & Young's retainer to the City, but his actual involvement was limited. Tim Philpotts will provide written confirmation, available to any interested party, confirming that he has no actual knowledge with respect to the Project other than is available in the public domain.

On the basis of the above Ernst & Young is available as an advisor to a Proponent or Proponent team member.

(b) Golder Associates Ltd.

Golder Associates ("**Golder**") was retained by the City to provide technical advisory services relating to the Project between August 2011 and May 2012. During that period Golder conducted a project feasibility study and worked with the City and Partnerships BC to assist in the development of the business case for the Project. Golder also assisted in discussions to secure funding for the Project. Golder's services to the City with respect to the Project also included development of an initial indicative design for use with the business case and assisting in drafting certain aspects of the business case.

Subsequent to Golder's retainer to the City on the Project the City retained HDR Corporation as 'Owner's Engineer' to the City for the Project. HDR Corporation remains the City's Owner Engineer on the Project and Golder has provided no further services to the City with respect to the Project.

Golder has requested that the City consent to Golder being permitted to assist a Proponent or member of its Proponent Team with respect to the Project on the basis that protocols will be implemented to maintain fairness for all interested parties with respect to the Project's Competitive Selection Process.

The Relationship Review Committee has reviewed the application by Golder and consents to Golder's participation as advisor to a Proponent or a member of its Proponent Team on the condition that Golder represents that it will implement the following:

- No Golder employee, representative or consultant that provided any services to the City with respect to the Project will provide services to a Proponent;
- Golder will implement a confidentiality screen within all of its applicable offices such that:
 - All information, in written or electronic form, related to Golder's services to the City with respect to the Project will be separate and secure and not available to the members of a Golder team providing services to a Proponent or a member of its Proponent Team; and
 - No person who provided services to the City with respect to the Project will disclose any Project information to a member of a Golder team providing services to a Proponent or a member of its Proponent Team.

On the basis of the above Golder Associates is available as an advisor to a Proponent or a member of its Proponent Team.

9.5 CONFLICT OF INTEREST ADJUDICATOR

The City has appointed a Conflict of Interest Adjudicator (the "**COI Adjudicator**") to provide decisions on conflicts of interest, unfair advantage or exclusivity issues, including whether any person is a Restricted Party. The City may, at its discretion, refer matters to the COI Adjudicator.

9.6 REQUEST FOR ADVANCE DECISION

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

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

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

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

9.7 THE CITY MAY REQUEST ADVANCE DECISIONS

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

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

9.8 DECISIONS FINAL AND BINDING

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

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

9.9 SHARED USE

A shared use person (a “**Shared Use Person**”) is a person identified by the City as eligible to do work for more than one Proponent, including a person who has unique or specialized information or skills such that the City 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 City in its discretion or permitted as a Shared Use Person, each Proponent will ensure that no member of its Proponent Team, or any Affiliated Person of any member of its Proponent Team, participates as a member of any other Proponent Team.

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

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

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

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

9.10.1 Exclusivity – the City May Request Advance Decisions

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

The onus is on the Proponent to clear any matter related to exclusivity or to establish any conditions for continued participation, and the City may require that the Proponent make an application under Section 9.6.

9.10.2 Exclusivity – Decisions Final and Binding

The decision of the City 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 City. The City or the COI Adjudicator, as applicable, has discretion to establish the relevant processes from time to time, including any circumstance in which a decision may be amended or supplemented.

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

10 RFP TERMS AND CONDITIONS

10.1 NO OBLIGATION TO PROCEED

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

10.3 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

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

By submitting a Proposal, the Proponent represents and warrants to the City 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 City and the use, distribution and disclosure of such information as part of the Proposal for the purposes of, or in connection with, this RFP and the Competitive Selection Process.

10.4 COST OF PREPARING THE PROPOSAL

Subject to Section 8.8, 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 City, 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 City. Except as expressly stated in this RFP, and subject to

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

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

10.6 RESERVATION OF RIGHTS

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

- (a) amend the scope of the Project and/or modify, cancel or suspend the Competitive Selection Process at any time for any reason;
- (b) accept or reject any Proposal based on the City's evaluation of the Proposals in accordance with Appendix A, and in particular the City is not obliged to select the Proposal with the lowest Proposal Net Present Cost;
- (c) disqualify a Proposal that fails to meet the Mandatory Requirements;
- (d) waive a defect, irregularity, non-conformity or non-compliance in or with respect to a Proposal or failure to comply with the requirements of this RFP except for Mandatory Requirements, and accept that Proposal even if such a defect, irregularity, non-conformity or non-compliance or failure to comply with the requirements of this RFP would otherwise render the Proposal null and void;
- (e) reject, disqualify or not accept any or all Proposals without any obligation, compensation or reimbursement to any Proponent or any of its team members subject to any payment required pursuant to Section 8.8;
- (f) re-advertise for new Proposals to this or a modified RFP, call for quotes, proposals or tenders, or enter into negotiations for this Project or for work of a similar nature;
- (g) make any changes to the terms of the business opportunity described in this RFP;
- (h) negotiate any aspects of a Preferred Proponent's Proposal; and
- (i) amend, from time to time, any date, time period or deadline provided in this RFP, upon written notice to all Proponents.

10.7 NO COLLUSION

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

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

10.8 NO LOBBYING

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

In the event of any lobbying or communication in contravention of this Section, the City in its discretion may at any time, but will not be required to, reject any and all Proposals submitted by that Proponent without further consideration and the Proponent will not be eligible for, or receive, the partial compensation as set out in Section 8.8.

10.9 OWNERSHIP OF PROPOSALS

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

10.10 DISCLOSURE AND TRANSPARENCY

The City is committed to an open and transparent Competitive Selection Process. To assist the City in meeting its commitment, Proponents will cooperate and extend all reasonable accommodation to this endeavour.

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

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

Following Financial Close, the City expects to publicly disclose:

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

Each Proponent agrees that:

- (a) to ensure that all public information generated about the Project is fair and accurate and will not inadvertently or otherwise influence the RFP process, the disclosure of any public information generated in relation to the Project, including communications with the media and the public, must be coordinated with, and is subject to prior written approval of, the City;
- (b) it will notify the City of any and all requests for information or interviews received from the media; and
- (c) it will ensure that all of the Proponent Team members and others associated with the Proponent comply with the requirements of this RFP.

10.11 FAIRNESS ADVISOR

The City has appointed John Singleton, QC (the "**Fairness Advisor**") to monitor the Competitive Selection Process. The Fairness Advisor will provide a written report to the City that the City will make public.

The Fairness Advisor will be:

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

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

10.12 LEGAL ADVISOR

Dentons Canada LLP is a Restricted Party. By submitting a Proposal, the Proponent expressly consents to Dentons Canada LLP continuing to represent the City for all matters in relation to this RFP and the Project, including any 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 Dentons Canada LLP 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 City reserves the right at any time to waive any provision of this Section.

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 City or any of its employees, advisors or representatives (including the Fairness Advisor and the COI Adjudicator) for damages in excess of the amount equivalent to the reasonable costs incurred by the Proponent in preparing its Proposal for any matter in respect of this RFP or Competitive Selection Process, including:
 - (1) if the City accepts a non-compliant proposal or otherwise breaches, or fundamentally breaches, the terms of this RFP or the Competitive Selection Process; or
 - (2) if the Project or Competitive Selection Process is modified, suspended or cancelled for any reason (including modification of the scope of the Project or modification of this RFP or both) or the City exercises any rights under this RFP; and
- (b) waives any and all Claims against the City or any of its employees, advisors or representatives for loss of anticipated profits or loss of opportunity if no agreement is made between the City and the Proponent for any reason, including:
 - (1) if the City accepts a non-compliant proposal or otherwise breaches or fundamentally breaches the terms of this RFP or the Competitive Selection Process; or

- (2) if the Project or Competitive Selection Process is modified, suspended or cancelled for any reason (including modification of the scope of the Project or modification of this RFP or both) or the City exercises any rights under this RFP.

This Section does not limit the City's obligation to make payment under Section 8.8, but in no event will the City's liability exceed the amount calculated pursuant to Section 8.8.

11 INTERPRETATION

11.1 DEFINITIONS

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

In this RFP:

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

“Adjusted Weighted Proposal Net Present Cost” has the meaning set out in Section 3 of Appendix A.

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

“Advance Interest Rate Submission” or **“AIRS”** has the meaning set out in Section 5.2.

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

(a) a corporation and:

- (1) a person by whom the corporation is controlled;
- (2) each member of an affiliated group of persons by which the corporation is controlled;
and
- (3) a spouse or common-law partner of a person described in subparagraph (1) or (2).

(b) two corporations, if:

- (1) each corporation is controlled by a person, and the person by whom one corporation is controlled is affiliated with the person by whom the other corporation is controlled;
- (2) one corporation is controlled by a person, the other corporation is controlled by a group of persons, and each member of that group is affiliated with that person; or
- (3) each corporation is controlled by a group of persons, and each member of each group is affiliated with at least one member of the other group.

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

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

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

“Alternative Biogas Product Sales Proposal” has the meaning set out in Section 3.8.

“Alternative Biogas Product Sales Proposal Process” means the process set out in Appendix O of the RFP.

“Alternative Biogas Product Value” has the meaning set out in Appendix O.

“Base Case Scenario” has the meaning set out in Section 6.6.1 of Table 2 of Appendix B.

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

“Benchmarks” has the meaning set out in Section 5.2.

“Biogas” means the raw gaseous by-product of the anaerobic digestion process consisting of approximately 50 to 60% methane and the remainder moisture, carbon dioxide and trace gases.

“Biogas Product” means a commercial product resulting from further processing of the Biogas produced at the Facility, including Biomethane or electricity.

“Biomethane” means the Biogas Product resulting from the refinement of Biogas including the removal of excess water, CO₂ and other gases from the Biogas produced at the Facility such that the product meets the same quality standards of pipeline quality natural gas.

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

“Business-to-Business Networking Session” has the meaning set out in Section 2.3.

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

“City” has the meaning set out in Section 1.2.

“City’s Biomethane Value Assumption” means the deemed value \$11.50 per GJ for Biomethane delivered to the Fortis BC pipeline infrastructure.

“City’s Waste Flow Forecast” means the volume in tonnes of City Organic Waste associated with Band 2 of Appendix 8A of Schedule 8 of the Project Agreement, and depicted in Figure 2 of Section 3.11.

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

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

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

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

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

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

“Corporate Finance Solution” has the meaning set out in Section 3.9.

“Corporate Funder” means the entity providing the debt financing described in the Financial Submission for any Proposal which does not meet the requirements of a Project Finance Solution.

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

“Data Room” has the meaning set out in Section 2.5.

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

“Eligible Costs” has the meaning as defined in Appendix B Form A6.

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

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

“Evaluation Committee” has the meaning set out in Section 7.2.

“Facility Operations Director” means the individual who has lead responsibility for operating period activities of the Project, as identified in the Proponent’s Proposal, and as may have been changed pursuant to the RFQ or as may be changed pursuant to this RFP.

“Facility Operator” of a Proponent means an individual, corporation, joint venture, partnership or other legal entity who will have direct responsibilities in relation to marketing and sales, coordinating with City waste collection services, coordinating with collection/hauling companies for ICI wastes, facility operations including but not limited to waste pre-treatment, digestion, Biogas production and recovery, Biomethane production, by-product management, odour and emissions controls, and facility maintenance and life cycle services during the operating term of the Project Agreement, as identified in the Proponent’s Proposal and as may be changed pursuant to this RFP.

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

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

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

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

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

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

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

“Financing Plan” has the meaning set out in Section 4.4.1 of Appendix B.

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

“Golder” has the meaning set out in Section 9.4.2(b).

“Guarantor” means an entity providing financial and/or performance support to the Design-Builder, Systems Designer, Facility Operator, or Equity Provider by way of a guarantee or a commitment to provide equity or dedicated credit facilities to support the participation by the Design-Builder, Service Provider or Equity Provider in the Competitive Selection Process and the Project as described in the Proponent’s Proposal and as may have been changed pursuant to the RFQ or as may be changed pursuant to this RFP.

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

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

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

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

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

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

“Interim Financial Review Submission” has the meaning set out in Section 2.6(b).

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

“Key Individuals” of a Proponent means the specific individuals, exclusive to the Proponent, filling the following roles (or equivalent) in the Proponent’s Proposal and as may have been changed pursuant to the RFQ or as may be changed pursuant to this RFP. A Key Individual role may only be filled by one individual:

- Project Co’s Lead;
- Systems Design Director;
- Facility Operations Director;
- Project Co’s Design and Construction Representative; and
- Quality Manager.

Key Individuals may fill multiple roles provided they have the qualifications and experience for all the roles.

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

“Maximum Tonnage Scenario” has the meaning set out in Section 6.6.1 of Table 2 of Appendix B.

“Minimum Tonnage Scenario” has the meaning set out in Section 6.6.1 of Table 2 of Appendix B.

“Participation Agreement” means the Participation Agreement executed by the Proponent as a condition of being confirmed as a Proponent to participate in this RFP.

“Partnerships BC” means Partnerships British Columbia Inc.

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

“Preferred Proponent” means the Proponent selected pursuant by the City pursuant to this RFP to finalize the Project Agreement.

“Preferred Proponent Security Deposit” means an irrevocable letter of credit in the amount of \$700,000 in the form set out in Appendix H or in such other form acceptable to the City in its discretion.

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

“Project” means the design, construction, financing, commissioning, operation, maintenance and other specified services of and for the Facility and all other works ancillary to the Facility.

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

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

“Project Co’s Lead” means the individual responsible for leading Project Co to enter into the Project Agreement with the City and through the term of the Project Agreement, as may have been changed pursuant to the RFQ or as may be changed pursuant to this RFP.

“Project Finance Solution” has the meaning set out in Section 3.9.

“Proponent” has the meaning set out in Section 1.2 and includes its Proponent Team members, as each may have been changed pursuant to the RFQ or as may be changed pursuant to this RFP.

“Proponent Team” means a Proponent Team Lead, its Design-Builder, its Systems Designer, its Facility Operator, its Equity Providers, its Guarantors and its Key Individuals, as may have been changed pursuant to the RFQ or as may be changed pursuant to this RFP.

“Proponent Team Lead” means the entity responsible for leading the Proponent Team, as may have been changed pursuant to the RFQ or as may be changed pursuant to this RFP:

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

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

“Proposal Net Present Cost” has the meaning set out in Section 4.1.

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

“Proposal Validity Period” has the meaning set out in Section 6.14(a).

“Reference Information” has the meaning set out in Section 2.5.

“Reinvestment Base Rate Benchmark” has the meaning set out in Section 5.2.

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

“Request for Proposals” or **“RFP”** has the meaning set out in Section 1.1.

“Respondent” has the meaning given to it in the RFQ.

“Restricted Party” means those persons (including their former and current employees) who have a conflict of interest or 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.

“RFQ” has the meaning set out in Section 1.2.

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

“Senior Debt Base Rate Benchmark” has the meaning set out in Section 5.2.

“Senior Lender” means the entity providing the debt financing described in the Financial Submission for any Proposal which meets the requirements of a project financing solution set out in Section 3.9.

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

“Site” has the meaning set out in Section 3.1.

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

“Submission Time for Alternative Biogas Product Sales Proposals” means the date and time identified as such in the Summary of Key Information.

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

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

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

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

“Swapped Senior Debt Base Rate Benchmark” has the meaning set out in Appendix K.

“Systems Design Director” means the individual who has lead responsibility for the design of all anaerobic digestion and related pre- and post-processing technology systems for the Project, as identified in the Proponent’s Proposal and as may have been changed pursuant to the RFQ or as may be changed pursuant to this RFP.

“Systems Designer” means the individual, corporation, joint venture, partnership or other legal entity who will have the direct responsibility to design all of the anaerobic digestion and related pre- and post-processing technology systems for the Project, including implementing the Process Technology, as identified in the Proponent’s Proposal and as may have been changed pursuant to the RFQ or as may be changed pursuant to this RFP.

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

“Third Party Intellectual Property Rights” means all Intellectual Property Rights of any person which is not a member of, or a person affiliated with a member of, the Proponent Team.

“Third Party Revenue Threshold” has the meaning set out in Section 3.11.

“Weighted Proposal Net Present Cost” has the meaning set out in Section 2 (b) of Appendix A of this RFP.

11.2 INTERPRETATION

In this RFP:

- (a) any action, decision, determination, consent, approval or any other thing to be performed, made or exercised by or on behalf of the City, including the exercise of “discretion” or words of like effect, unless the context requires it, is at the sole, absolute and unfettered discretion of the City;
- (b) the use of headings is for convenience only and headings are not to be used in the interpretation of this RFP;
- (c) a reference to a Section or Appendix, unless otherwise indicated, is a reference to a Section of, or Appendix to, this RFP;
- (d) words imputing any gender include all genders, as the context requires, and words in the singular include the plural and vice versa;
- (e) the word “including” when used in this RFP is not to be read as limiting;
- (f) all dollar values are Canadian dollars unless otherwise indicated;

- (g) a reference to a “person” includes a reference to an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, limited liability company, association, unincorporated organization, union or government authority; and
- (h) 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.