

Request for Proposals
to
Design-Build-Finance-Maintain

TRILLIUM LINE EXTENSION PROJECT

The City of Ottawa

RFP No. 09717-94065-P01

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REQUEST FOR PROPOSALS

1 INTRODUCTION

1.1 General

- (1) This Request for Proposals (“RFP”) is issued by the City of Ottawa (the “City” or “Sponsor”) to certain Prequalified Parties.
- (2) In this RFP, Prequalified Parties that submit documents in response to this RFP are referred to as “Proponents” and their submissions, as may be revised by RFP Sections 5.3, if applicable, are referred to as “Proposals”. The entity that is selected by the Sponsor to enter into the Project Agreement is referred to as the “Preferred Proponent”. For the purposes of convenience, in this RFP the expression “Proponents” also includes Prequalified Parties prior to the submission of their Proposals.
- (3) Except as provided in RFP Section 1.1(3)(a), the procurement process to select a Preferred Proponent shall commence with the issuance of this RFP and shall terminate on Financial Close or on the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable) whichever is first (the “RFP Process”). Only Proponents that submit a Proposal in accordance with this RFP will acquire any rights under the RFP. Except as provided in RFP Sections 3.8.2 and 3.8.3 and except for the Sponsor’s obligation to pay a Design and Bid Fee, as applicable, all rights and obligations arising out of the RFP (the bidding contract or “Contract A”) terminate either on the cancellation of this RFP Process by the Sponsor, if such cancellation occurs, or,
 - (a) for the Preferred Proponent, or for the First Negotiations Proponent or Second Negotiations Proponent (if identified by Sponsor), on Financial Close (providing Commercial Close is reached prior to the expiration of the Proposal Validity Period, or extended Proposal Validity Period, if applicable); and
 - (b) for the Proponents that are not the Preferred Proponent, on the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable) or Financial Close, whichever occurs first.
- (4) The Sponsor will manage the RFP Process and shall be the single point of contact for Proponents. During the RFP Process, Proponents shall contact the Sponsor only through the Contact Person as set out in RFP Section 3.2.1.
- (5) The Project to which this RFP applies has been approved by the Ottawa City Council to proceed as an alternative financing and procurement project. As a result, the Project shall follow five fundamental principles for the procurement of public infrastructure, which include:
 - (a) the public interest is paramount;
 - (b) best value for the investment of public money must be demonstrated;
 - (c) appropriate public control and ownership must be maintained;
 - (d) accountability must be maintained; and
 - (e) fair, transparent and efficient processes must be used.

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- (6) A brief description of the project that is the subject of this RFP (the "Project") is set out in the RFP Data Sheet included at Schedule 1 to this RFP. A detailed description of the Project is contained in the documentation in the Data Room.
- (7) The intent of this RFP Process is to select a Preferred Proponent that delivers the best value for the Project, and the best value for the investment of public money. In that regard, the RFP includes Capital Cost Affordability Criteria and Maintenance Period Affordability Criteria which are set out in Part 2 of Schedule 3 to this RFP. Proposals that are evaluated to be Unaffordable Proposals under the criteria set out in Part 2 of Schedule 3 to this RFP will be assessed a score of zero (0) in the Total Submission Price component of the Financial Evaluation.
- (8) [Intentionally Deleted]
- (9) The Sponsor will select one of the Prequalified Parties to deliver all elements of the Project. Each Proponent may submit only one Proposal.
- (10) With respect to the requirement to Supply the DMU Vehicles, through a concurrent Request for Vehicle Supply Offer ("RFVSO") Process, the Sponsor will pre-select up to two Designated Vehicle Suppliers, whose DMU Vehicles will be eligible for inclusion in Proposals in this RFP Process. In the event that a Designated Vehicle Supplier is included in the Proposal of the party that is chosen by the City to be the Project Co, that Designated Vehicle Supplier will become the vehicle supplier ("Vehicle Supplier") and will enter into a commercially confidential revenue vehicle supply contract ("Revenue Vehicle Supply Contract") with the construction contractor, a member of the Project Co that is responsible for delivery of the Project elements ("Construction Contractor"), and will be responsible for the supply and delivery of Vehicles to the Construction Contractor under the terms of the Revenue Vehicle Supply Contract.
- (11) Each Designated Vehicle Supplier will enter into a vehicle procurement agreement ("Vehicle Procurement Agreement") with the City. The Vehicle Procurement Agreement will require Designated Vehicle Suppliers to:
- i. make a specified form of Revenue Vehicle Supply Contract available to each of the Prequalified Parties;
 - ii. if put forward as part of a Proposal of the Project Co, enter into a Revenue Vehicle Supply Contract with the Construction Contractor on the Commercial Close date of the Project;
 - iii. make no other agreements or arrangements with any Prequalified Party with respect to vehicle supply and/or maintenance for the Project apart from those specified in the Vehicle Procurement Agreement;
 - iv. attend Commercially Confidential and/or Proponents Meetings with the Sponsor to discuss the terms of the Revenue Vehicle Supply Contract;
 - v. attend Commercial Confidential and/or Proponents Meetings with the Prequalified Parties during this RFP Process; and
 - vi. provide a Letter of Credit to the City in the amount of **[\$[REDACTED]]** as security for the execution of the Revenue Vehicle Supply Contract.
- (12) The Revenue Vehicle Supply Contract is prepared on a "back to back" basis with the Project Agreement, meaning that the Vehicle Provider is obliged to the Construction Contractor to the same extent as the Construction Contractor is obliged to Project Co with respect to the obligations under the Project Agreement, and the Construction Contractor is obliged to the

Vehicle Provider to the same extent as Project Co is obliged to Construction Contractor with respect to the obligations under the Project Agreement, in each case as such obligations relate to the Vehicle Supplier Activities. Accordingly, in the event that Construction Contractor may avail itself of the benefit of an entitlement under the Project Agreement that is related to the Vehicle Supplier Activities and other rights or obligations under the Revenue Vehicle Supply Contract, the Vehicle Provider shall be entitled to such benefit or right, but only at such time and subject to such conditions or requirements that such benefit or right is available to and received by the Construction Contractor and Project Co.

- (13) The form and content of the Revenue Vehicle Supply Contract shall be open to comment from Proponents during the bid open period, via the process identified in Appendix C to Schedule 1 to this RFP, but the finalized version of the Revenue Vehicle Supply Contract that is also to be completed and returned by Proponents will be distributed in accordance with the Timetable.
- (14) All payments and all contractual arrangements under the Revenue Vehicle Supply Contract shall be between the Construction Contractor and the Vehicle Supplier.
- (15) Proponents will also be required to deliver and include Vehicle Maintenance Services as part of their Proposals. The Proponents will not, however, identify the Vehicle Maintenance Provider as part of their Proposal. Given the unique nature of this aspect of the Project, Appendix B to Schedule 1 contains the Special Rules for Vehicle Maintenance Services. Proponents will be able to communicate with Designated Vehicle Suppliers only as set out in Appendix C to Schedule 1, the Special Rules for Exchanges with Designated Vehicle Suppliers.
- (16) Limited portions are being managed by the use of cash allowances. This includes cash allowances for self-performed Utilities work.
- (17) The Preferred Proponent, subject to the requirements and conditions of the RFP Documents, would enter into the Project Agreement with the party named as the signing party in the RFP Data Sheet (the "Signing Party"). Only the party listed as the Signing Party to the Project Agreement in the RFP Data Sheet will be a party to the Project Agreement.
- (18) The RFP Process shall be conducted in accordance with the City's Purchasing By-law.

1.2 Prequalified Parties and Proponent Representatives

- (1) Subject to RFP Section 3.6, only those parties that were prequalified through the Project's Request for Qualifications ("RFQ") process that preceded this RFP are eligible to participate in the RFP Process. The prequalified parties are listed in the RFP Data Sheet ("Prequalified Parties"). The prequalification documents submitted by each of the Prequalified Parties in the RFQ process that preceded and was with respect to this RFP Process are referred to as a Prequalified Party's "Prequalification Submission".
- (2) All correspondence from the Sponsor to a Proponent will be sent to the person identified, in the Proponent's Prequalification Submission, to receive information and notices on behalf of the Proponent (the "Proponent Representative"). Each Proponent is solely responsible to ensure that all contact information of the Proponent Representative is accurate and updated at all times during the RFP Process. Proponents may update or revise their Proponent Representatives' information by notifying the Contact Person, in writing.

1.3 Overview of the Stages of Project Procurement and Implementation

- (1) The Sponsor will carry out the procurement and implementation of the Project in accordance with the following stages:

(a) Stage 1 – Prequalification Stage

The prequalification stage (“Prequalification Stage”) preceded the RFP Process and identified the Prequalified Parties. The Prequalification Stage is a stand-alone independent stage and is complete once the Prequalified Parties are identified by the Sponsor (whether identified initially as Prequalified Parties or added subsequently in accordance with the RFQ documents) and have received notification by the Sponsor that they are prequalified for the RFP Process.

(b) Stage 2 – RFP Procurement Process

The RFP procurement process is the competitive procurement process described in detail in this RFP.

(c) Stage 3 – Execution and Implementation of the Project Agreement

Once the Signing Party and the Preferred Proponent have executed the Project Agreement, the terms and conditions of the Project Agreement shall determine how the Project is to proceed.

1.4 Fairness Commissioner

- (1) The Sponsor has retained the Fairness Commissioner named in the RFP Data Sheet to monitor the RFP Process.

2 THE RFP DOCUMENTS AND THE DATA ROOM

2.1 RFP Documents

- (1) The RFP Documents (the “RFP Documents”) are:

- (a) this RFP;
- (b) Schedule 1 – RFP Data Sheet;
 - Appendix A – Timetable;
 - Appendix B – Special Rules – Vehicle Maintenance Services;
 - Appendix C – Special Rules – Exchanges with Designated Vehicle Suppliers;
- (c) Schedule 2 – Design Consultation Process;
- (d) Schedule 3 – Submission Requirements and Evaluation Criteria consisting of:
 - Part 1 – Technical Submission Requirements;
 - Part 2 – Financial Submission Requirements;
 - Part 3 – Proposal Format and Evaluation;
- (e) Schedule 4 – Proposal Submission Form;
- (f) Schedule 5 – Participant Conflict Screening List;
- (g) Schedule 6 – Proponent Team Member Declaration;

- (h) Schedule 7 – Certificate of Officer;
 - (i) Schedule 8 – Price Form;
 - (j) Schedule 9A – Standby Letter of Credit;
 - (k) Schedule 9B – Surety’s Consent;
 - (l) Schedule 10 – Form of Project Agreement (including all related Schedules appendices and attachments) as listed in the RFP Data Sheet;
 - (m) Schedule 11 – Proposal Submission Checklist;
 - (n) Schedule 12 – Early Works Agreement; and
 - (o) Addenda to the RFP Documents, if any.
- (2) Subject to RFP Section 2.2(1), the RFP Documents shall be read as a whole. The Schedules and Addenda, if any, constitute an integral part of this RFP and are incorporated by reference. For greater clarity, Background Information documents are not RFP Documents.

2.2 Conflicts or Inconsistencies in Documents

- (1) For the purpose of the RFP Process, if there are any conflicts or inconsistencies among the terms and conditions of the documents comprising RFP Documents the following shall apply:
- (a) in respect of matters of interpretation related to the RFP Process and all competitive procurement process matters, this RFP shall prevail over the Schedules to this RFP during the RFP Process;
 - (b) in respect of all matters of interpretation of the Project and the Project Agreement during the RFP Process, the Project Agreement shall prevail over this RFP and all other Schedules to this RFP; and
 - (c) for the purpose of resolving conflicts or inconsistencies among the documents that constitute the Project Agreement, the provisions of the Project Agreement dealing with conflicts or inconsistencies shall govern.
- (2) Despite RFP Section 2.2(1), if the Proponent believes that there is any term or condition in any RFP Document that is ambiguous, or that conflicts or is inconsistent with any other term or condition in the RFP Documents, the Proponent shall notify the Sponsor of that ambiguity, conflict or inconsistency via an RFI in accordance with RFP Section 3.2.2 and, for greater clarity, by the deadline set out in the RFP Data Sheet for the submission of RFIs.
- (3) If there is a conflict or inconsistency between:
- (a) the Sponsor’s electronic version of an RFP Document as contained in the Data Room; and
 - (b) any other version of the same RFP Document (whether in electronic or hard copy),
- the Sponsor’s electronic version in PDF format as contained in the Data Room shall govern.

- (4) If there is any conflict or inconsistency between documents, including RFP Documents, contained in the Data Room and documents that are downloaded by the Proponent, the documents contained in the Data Room shall govern.
- (5) If there is any conflict or inconsistency between two versions of the same RFP Document contained in the Data Room, the RFP Document of the later date or version number shall prevail over the same RFP Document of an earlier date or version number. Unless otherwise indicated, for the purposes of this RFP Section 2.2(5), the date of each RFP Document shall be determined by the date and time when that document was placed in the Data Room by the Sponsor.

2.3 Distribution of Documents to Proponents

- (1) Except as provided in RFP Section 2.3(2), the Sponsor will circulate this RFP and all other RFP Documents, including Addenda, by placing them in the Data Room and notifying the Proponent Representatives by e-mail that RFP Documents or Addenda, as applicable, have been added to the Data Room. Notification to Proponents by the Sponsor that documents have been added to the Data Room is a courtesy only and Proponents are solely responsible to ensure that they review all documents in the Data Room in accordance with RFP Section 2.4(3) and, in particular, have reviewed all documents in the Data Room immediately prior to submitting Proposals.
- (2) The Sponsor may, at its discretion, circulate some RFP Documents in paper copy. If the Sponsor circulates any RFP Documents in paper copy, Proponents will be notified of a paper copy circulation by way of a notice in the Data Room.

2.4 Data Room

- (1) The Sponsor has established an electronic data room (the "Data Room") at a secure website address for:
 - (a) the distribution of RFP Documents and Addenda (including "black-lined" RFP Documents revised by Addenda);
 - (b) the provision of various types of background information for the Proponents' review ("Background Information");
 - (c) the receipt of RFIs from Proponents and the posting of responses to RFIs; and
 - (d) the receipt of any other type of information or comment that the Sponsor, at its discretion, requests from the Proponents.
- (2) The Data Room will be accessible on approximately the date set out in the Timetable. The Sponsor may add, delete or amend documents in the Data Room at any time.
- (3) Each Proponent is solely responsible to ensure that it:
 - (a) contacts the Contact Person at the coordinates set out in the RFP Data Sheet to arrange access to the Data Room and receipt of a Data Room password;
 - (b) has the appropriate software which allows the Proponent to access and download RFP Documents and Background Information from the Data Room; and
 - (c) checks the Data Room frequently for the addition, deletion or amendment of RFP Documents, Background Information and the posting of responses to RFIs and, at all times during the RFP Process keeps itself informed of and takes into account the most current RFP Documents, Background Information and responses to RFIs.

2.5 Proponent Investigations

- (1) Each Proponent and each of its Proponent Team Members is solely responsible, at its own cost and expense, to carry out its own independent research and due diligence and to perform any other investigations, including seeking independent advice, considered necessary by the Proponent to satisfy itself as to all existing conditions affecting the Project or the Project Agreement. The Proponents' and Proponent Team Members' obligations set out in this RFP Section 2.5 apply irrespective of any Background Information in the Data Room or information contained in the RFP Documents or in responses to Clarification Requests/RfIs. The Proponents' and Proponent Team Members' obligation to carry out independent research, investigations, due diligence or to seek independent advice or, if applicable, their ability to rely on information provided by the Sponsor is more particularly set out in the Project Agreement. If, as a result of any independent research, investigations, due diligence, or independent advice, a Proponent believes that there is any insufficiency in the Lands for the purpose of performing the Works, the Proponent shall immediately, and at its own cost and expense, notify the Sponsor and provide all details the Sponsor may request in considering the issue.
- (2) Except as explicitly provided in the Project Agreement, the Sponsor does not represent or warrant the accuracy or completeness of any information set out in the RFP Documents or made available to Proponents or Proponent Team Members in the Data Room as Background Information or of any other background or reference information or documents prepared by the City or by third parties and which may be made available to Proponents or Proponent Team Members by or through the Sponsor. Proponents and Proponent Team Members shall make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information as any use of or reliance by Proponents or Proponent Team Members on any and all such information shall be at the Proponents' and Proponent Team Members' sole risk and without recourse against the Sponsor.

3 THE RFP PROCESS

3.1 RFP Process Timetable

- (1) The deadlines for the submission of each of the Parts of the Proposal and the general timetable for the RFP Process (the "Timetable") are set out in the RFP Data Sheet.
- (2) The Sponsor may amend the Timetable in its sole discretion:
 - (a) at any time prior to the Submission Deadline for events that are to occur prior to or on the Submission Deadline, including the Submission Deadline itself; and
 - (b) at any time in the RFP Process for events that are to occur after the Submission Deadline.

3.2 Questions, Requests for Information and RFP Documents Comments

3.2.1 Contact Person

- (1) Except as set out in RFP Section 3.4, Proponents shall submit all questions and other communications regarding the RFP Documents, the RFP Process and their Proposals to the contact person named in the RFP Data Sheet (the "Contact Person") by e-mail at the coordinates listed in the RFP Data Sheet and the questions shall be submitted in accordance with RFP Section 3.2.2 and shall be submitted in the form provided in the Data Room.

3.2.2 RFI Submission Process

- (1) In addition to the requirement set out in RFP Section 3.2.1, the following rules shall apply to Proponents when submitting questions or requests for information (“RFIs”) to the Sponsor during the RFP Process:
 - (a) Proponents are permitted to submit RFIs categorized as follows:
 - (i) RFIs that are of general application and that would apply to other Proponents (“General RFIs”); and
 - (ii) RFIs that the Proponent considers to be commercially sensitive or confidential to that particular Proponent (“Commercially Confidential RFIs”);
 - (b) if the Sponsor disagrees with the Proponent’s categorization of an RFI as a Commercially Confidential RFI, the Sponsor will give the Proponent an opportunity to either categorize the RFI as a General RFI or to withdraw the RFI;
 - (c) if the Sponsor determines, in its sole discretion, that a Commercially Confidential RFI, even if it is withdrawn by a Proponent, is of general application or would provide a significant clarification of the RFP Documents or RFP Process to Proponents, the Sponsor may issue a clarification to Proponents that deals with the same subject matter as the withdrawn Commercially Confidential RFI without including any commercially sensitive or confidential information;
 - (d) if the Sponsor agrees with the Proponent’s categorization of a Commercially Confidential RFI, then the Sponsor will provide a response to that RFI to only the Proponent that submitted the RFI; and
 - (e) the Sponsor may, in its sole discretion:
 - (i) answer similar questions from various Proponents only once;
 - (ii) edit the language of the questions for the purpose of clarity, and anonymity;
 - (iii) decline to answer questions from Proponents;
 - (iv) respond to questions submitted after the deadline for submission of questions if the Sponsor believes that such responses would be of assistance to the Proponents generally; and
 - (v) decline to answer submitted questions if they are ambiguous or incomprehensible.
- (2) Responses to RFIs prepared and circulated by the Sponsor are not RFP Documents and do not amend the RFP Documents. If, in the Sponsor’s sole discretion, responses to RFIs require an amendment to the RFP Documents, such amendment will be prepared and circulated by Addendum in accordance with RFP Section 3.7. Only a response to an RFI that has been incorporated into or issued as an Addendum will modify or amend the RFP Documents and, otherwise, RFIs will have no force or effect whatsoever and shall not be relied upon by any Proponent.
- (3) Proponents shall submit RFIs in accordance with the deadlines set out in the Timetable.

- (4) Proponents shall submit all RFIs to the Contact Person electronically by completing the RFI Form posted in the Data Room.
- (5) Proponents shall e-mail the completed RFI Form, as an attachment in the original Microsoft Word format, along with any supporting documents, to the Contact Person e-mail address.
- (6) RFIs and any supporting documentation are to be named using the following file naming convention:
 - (a) General RFIs: YYYYMMDD_ProponentName_RFI_RFI Description
 - (b) Commercially Confidential RFIs: YYYYMMDD_ProponentName_CCRFI_RFI Description
 - (c) Supporting Documents: YYYYMMDD_ProponentName_File Name
- (7) The Sponsor may request clarification of an RFI submission, at any time, by submitting a Request for Clarification form to the initiating Proponent by posting a Request for Clarification Form to the Proponent specific Data Room folder. Proponents shall provide clarification by completing the Request for Clarification form and sending, as an attachment in the original Microsoft Word format, along with any supporting documents, to the Contact Person email address.
- (8) Any modifications to the RFI Form or Request for Clarification Forms, other than filling in the required fields, may result in a failure of the RFI submission. Failure to provide the information in the RFI Form or Request for Clarification Form may also result in a failure of the RFI submission.
- (9) Proponents will receive a response that indicates whether the submission of the RFI or response to clarification form was accepted or whether certain information required in the RFI form is missing and must be completed prior to acceptance.
- (10) The Sponsor shall post responses to General RFIs to the Data Room in a location accessible to all Proponents. Responses to Commercially Confidential RFIs will be posted to the initiating Proponent's specific Data Room location
- (11) The Sponsor will respond to RFIs in written responses circulated to Proponents in accordance with the schedule set out in the Timetable. The Sponsor may, in its sole discretion, distribute responses to RFIs of a minor or administrative nature to only the Proponent who submitted the minor or administrative RFI.
- (12) It is the Proponent's obligation to seek clarification from the Sponsor of any matter it considers to be unclear in accordance with RFP Sections 2.2 and 3.2.2 and, for greater clarity, by the deadline set out in the Timetable for the submission of RFIs. The Sponsor is not responsible in any way whatsoever for any misunderstanding by the Proponent or any of its Proponent Team Members of the RFP Documents, Background Information, responses to RFIs, any documents placed in the Data Room, or any other type of information provided by or communication made by the Sponsor.

3.2.3 RFP Documents Comments

- (1) The Sponsor may, in its sole discretion, request Proponents to submit comments on the RFP Documents and, in particular, comments on the Project Agreement. In the event that such a Request for Comment is made by the Sponsor, the Request for Comment Form will be posted in the Data Room. Proponents are to submit their responding comments for the RFP in accordance with the schedule set out in the Timetable. The Sponsor is not obliged to, nor is it required to, change the RFP Documents as a result of Proponents' comments. To the extent that the Sponsor determines, in its discretion, that acceptance of a comment requires a change to the RFP

Documents, the Sponsor shall implement that change by Addendum no later than the date set out in the Timetable.

3.3 Communications Restrictions

3.3.1 Communications with Municipalities, Other Government Authorities and Utilities

- (1) Subject to the restrictions in RFP Section 3.3.2 and any special rules set out in the RFP Data Sheet, Proponents, Proponent Team Members and all of their respective Advisors, employees, and representatives are not permitted to communicate directly with any Governmental Authority, property owner, or utility company with respect to the Project. Under no circumstances will any special rules set out in the RFP Data Sheet in accordance with this RFP Section 3.3.1(1) override the provisions of RFP Section 3.3.2.
- (2) The Sponsor is not, in any way whatsoever, responsible for any representations, statements, assurances, commitments or agreements which Proponents, Proponent Team Members or their respective Advisors receive or believe they may have received from a Governmental Authority, property owner, or utility company. Proponents, Proponent Team Members and their respective Advisors rely on any such representations, assurances, commitments or agreements at its sole risk without recourse against the Sponsor.

3.3.2 Prohibited Contacts and Lobbying Prohibition

- (1) Proponents and Proponent Team Members and all of their respective Advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of the RFP Process.
- (2) Without limiting the generality of RFP Section 3.3.2(1), neither Proponents nor Proponent Team Members nor any of their respective Advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following persons or organizations on matters related to the RFP Process, the RFP Documents, or the Proposals, except as expressly allowed in the RFP Documents:
 - (a) any member of the Evaluation Committee;
 - (b) any Advisor to the Sponsor or the Evaluation Committee, except the Fairness Commissioner;
 - (c) any employee or representative of:
 - (i) the Sponsor, other than the contact person;
 - (ii) any ministry, agency or entity listed in the RFP Data Sheet; or
 - (iii) the Premier of Ontario's office or the Ontario Cabinet office;
 - (d) any member of City Council (including the Mayor) or his or her staff or representatives;
 - (e) any Member of the Provincial Parliament (including the Premier) or his or her staff or representatives;
 - (f) any other Proponent or Representative thereof;
 - (g) **[REDACTED]**;

- (h) [REDACTED];
 - (i) any affiliates, directors, officers or consultants of any entity listed in RFP Section 3.3.2.
- (3) If a Proponent or a Proponent Team Member or any of their respective Advisors, employees or representatives, in the opinion of the Sponsor, contravenes RFP Sections 3.3.2(1) or 3.3.2(2), the Sponsor may, in its sole discretion,
- (a) take any action in accordance with RFP Sections 7.1.2, or 10.1; or
 - (b) impose conditions on the Proponent's or Proponent Team Member's continued participation in the RFP Process that the Sponsor considers, in its sole discretion, to be appropriate.

For clarity, the Sponsor is not obliged to take the actions set out in RFP Sections 3.3.2(3)(a) or 3.3.2(3)(b).

3.3.3 Media Releases, Public Disclosures and Public Announcements

- (1) A Proponent shall not, and shall ensure that its Advisors, employees, representatives and Proponent Team Members, and their respective Advisors, employees and representatives do not, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) that relates to the RFP Process, the RFP Documents or the Project or any matters related thereto, without the prior written consent of the Sponsor.
- (2) Neither the Proponents, or Proponent Team Members or any of their respective Advisors, employees or representatives shall make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent or Proposal or to publicly promote or advertise their own qualifications, interest in or participation in the RFP Process without the Sponsor's prior written consent, which consent may be withheld in the Sponsor's sole discretion. Notwithstanding this RFP Section 3.3.3(2), Proponents, Proponent Team Members and their respective Advisors, employees and representatives are permitted to state publicly that they are participating in the RFP Process.
- (3) For the purpose of greater clarity, RFP Section 3.3.3(2) does not prohibit disclosures necessary to permit the Proponent to discuss the Project with prospective subcontractors but such disclosure is permitted only to the extent necessary to solicit those subcontractors' participation in the Project.

3.3.4 Restrictions on Communications between Proponents – No Collusion

- (1) Proponents, Proponent Team Members or any of their respective Advisors, employees or representatives shall not discuss or communicate, directly or indirectly, with any other Proponent, Proponent Team Member or any of their respective Advisors, employees or representatives any information whatsoever regarding the preparation of its own Proposal or the Proposal of the other Proponent. Proponents shall prepare and submit Proposals independently and without any connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Proponent.

3.4 Meetings with Proponents and Designated Vehicle Suppliers

3.4.1 Commercially Confidential Proponent Meetings

- (1) The Sponsor may, in its sole discretion, convene commercially confidential meetings with individual Proponents (“Commercially Confidential Meetings”). These Commercially Confidential Meetings may be any of the following:
 - (a) bilateral meetings between the Sponsor (and their representatives and Advisors) and individual Proponents (and their representatives and Advisors), to discuss the Project Agreement and the Proponent’s suggested amendments to the Project Agreement; and
 - (b) bilateral meetings between the Sponsor (and their representatives and Advisors) and individual Proponents (and their representatives and Advisors) to discuss,
 - (i) Project design issues (including Proponents’ proposed designs); or
 - (ii) other matters that may arise during the RFP Process.
 - (c) Trilateral meetings between the Sponsor (and their representatives and Advisors), individual Proponents (and their representatives and Advisors), and Designated Vehicle Suppliers to discuss the Revenue Vehicle Supply Contract.
- (2) Whether the Sponsor intends to hold Commercially Confidential Meetings and the location of those meetings is set out in the RFP Data Sheet. The special rules related to the Commercially Confidential Meetings contemplated at Section 3.4.1(1)(c) are stipulated in Appendix C to Schedule 1 to this RFP. The approximate date and time of Commercially Confidential Meetings is set out in the Timetable. While attendance at Commercially Confidential Meetings is not mandatory, Proponents are strongly encouraged to attend. A Proponent’s failure to attend a Commercially Confidential Meeting is at the Proponent’s sole risk and responsibility.
- (3) If the Sponsor holds Commercially Confidential Meetings, the Fairness Commissioner may be present during some or all of those meetings.
- (4) No statement, consent, waiver, acceptance, approval or anything else said or done in any of these Commercially Confidential Meetings by the Sponsor or any of their respective Advisors, employees or representatives shall amend or waive any provision of the RFP Documents, or be binding on the Sponsor or be relied upon in any way by Proponents, Proponent Team Members or their Advisors except when and only to the extent expressly confirmed in an Addendum to the RFP Documents issued in accordance with RFP Section 3.7.
- (5) The Proponent, its Proponent Team Members and their respective Advisors and representatives and any of their attendees at Commercially Confidential Meetings acknowledge and agree that:
 - (a) any statement made at a Commercially Confidential Meeting by the Sponsor or any of its Advisors or representatives is not and shall not be deemed or considered to be an indication of a preference by the Sponsor or a rejection by the Sponsor of anything said or done by the Proponent, Proponent Team Member or any of their respective Advisors or representatives;
 - (b) any statement made at a Commercially Confidential Meeting by the Sponsor or any of its Advisors or representatives shall not and will not be relied upon in any way by the Proponent, Proponent Team Member or any of their respective Advisors or representatives for any purpose, including any purpose in connection with the RFP, the Project Agreement, the Project or otherwise, except and only to the extent expressly

confirmed by Addendum in accordance with RFP Section 3.7 provided that the Sponsor shall not be under any obligation to confirm any information by Addendum;

- (c) any statements made at a Commercially Confidential Meeting by a Designated Vehicle Supplier shall not be deemed to be a statement by the Sponsor and such statement shall not be relied on by the Proponent, Proponent Team Member, or any of their respective Advisors amending the RFP, the Project Agreement, the Project, or any of the Vehicle Supply Contracts, except as specified in an Addendum or amendment to the Vehicle Supply Contract;
- (d) the Sponsor may share process-related information, including clarifying information, with all Proponents if the need arises; and
- (e) the Proponent, its Proponent Team Members and their respective Advisors and representatives:
 - (i) shall participate in the Commercially Confidential Meetings in accordance with the guidelines, procedures and processes set out in the RFP;
 - (ii) waive any and all rights to contest and/or protest the RFP and the processes and guidelines set out herein, including the Commercially Confidential Meetings, based on the fact that such Commercially Confidential Meetings occurred or on the basis that information may have been received during a Commercially Confidential Meeting by another Proponent, another Proponent's Proponent Team Member, or their respective Advisors or representatives that was not received by the Proponent, its own Proponent Team Member(s) or any of their respective Advisors or representatives; and
 - (iii) agree that the Proponent, its Proponent Team Members and their respective Advisors and representatives must treat information received at a Commercially Confidential Meeting as Confidential Information.

3.5 Visiting the Lands

3.5.1 Scheduled Visits

- (1) If, in the RFP Data Sheet, the Sponsor has established scheduled dates and rules for visits to see the Lands ("Scheduled Visits") for all Proponents, Proponent Team Members and their respective representatives and Advisors, the dates and times of the Scheduled Visits will be set out in the Timetable. For clarity, Scheduled Visits are in addition to any Proponent visits scheduled in accordance with RFP Section 3.5.2.
- (2) The provisions of RFP Sections 3.5.2(2), 3.5.2(3) and 3.5.2(4) will, in each case to the extent applicable, apply to Scheduled Visits.
- (3) Any statement made by the Sponsor or any of their respective Advisors or representatives during any Scheduled Visit or any additional visit to the Lands, if any, shall not and will not be relied upon in any way by the Proponent, Proponent Team Member or any of their respective Advisors or representatives for any purpose, including any purpose in connection with the RFP, the Project Agreement, the Project or otherwise, except and only to the extent expressly confirmed by Addendum in accordance with RFP Section 3.7 provided that the Sponsor shall be under no obligation to confirm any information by Addendum.

3.5.2 Additional Visits to the Lands

- (1) Except for Scheduled Visits, or except by prior written arranged Additional Visit as contemplated in Sections 3.5.2(2) to 3.5.2(5), Proponents are not permitted to access,
 - (a) any part of the Existing Trillium Line; or
 - (b) any other part of the Lands,in each case which are not accessible by the general public.
- (2) A Proponent that wishes to arrange a visit to access any part of the Existing Trillium Line or the Lands which are not accessible to the general public other than a Scheduled Visit (an "Additional Visit") shall submit a request to the Contact Person at least two weeks prior (or such other time as is set out in the RFP Data Sheet) to the Proponent's proposed date and time for an Additional Visit. The request for an Additional Visit shall set out the:
 - (a) proposed date and time, and alternate date and time, of the proposed Additional Visit;
 - (b) purpose of the Additional Visit;
 - (c) areas of the Existing Trillium Line or the Lands which are not accessible by the general public for which access is requested; and
 - (d) names, titles, organization, and contact information of the Proponent's representatives who will be attending the Additional Visit.
- (3) If the Proponent has received approval for and written confirmation of an Additional Visit from the Contact Person, unless otherwise set out in the Contact Person's confirmation, the following shall apply to the Additional Visit:
 - (a) all Proponent and Proponent Team Member representatives shall strictly obey all instructions from the Sponsor's representatives during the visit and shall comply with all site-specific security, safety or other types of requirements;
 - (b) all Proponent and Proponent Team Member representatives shall, at all times, make reasonable efforts to avoid disturbing or infringing upon the privacy of any persons occupying, residing or working in close proximity to any part of the Lands which are not accessible by the general public, as applicable;
 - (c) the Proponent and Proponent Team Member representatives shall visit only those specific areas of the Lands which are not accessible by the general public, as applicable, to which the Proponent has been granted access in the Contact Person's confirmation;
 - (d) the Proponent and Proponent Team Member representatives shall not take photographs without the prior written consent of the Contact Person. If photographs are permitted by the Contact Person, they may be taken by the Proponent and Proponent Team Member representatives only in the specific areas of the Lands which are not accessible by the general public, for which consent to photograph has been given; and
 - (e) the Proponent shall comply with any supplementary rules set out in the RFP Data Sheet for Additional Visits.
- (4) Each Proponent acknowledges that because portions of the Lands which are not accessible by the general public, or portions thereof, may be in use, unforeseen circumstances can arise and

the Sponsor may, in its sole discretion, cancel or reschedule any Additional Visit, change the areas of access of any Additional Visit or otherwise change any Additional Visit on short notice or no notice to the Proponent and Proponent Team Members or their representatives.

- (5) The Sponsor may, in its sole discretion and through the Contact Person, require that a Sponsor representative be present to monitor the Proponent's activities during an Additional Visit. The Contact Person will confirm whether a Sponsor representative will be present at the Additional Visit at the time the Additional Visit is approved and scheduled. The period(s) during which Additional Visits will be permitted is set out in the Timetable.

3.5.3 Ownership of the Lands

- (1) The Proponent acknowledges and agrees that, as of the date of the issuance of this RFP, the Sponsor owns or has access to some, but not all, of the Lands that will ultimately be owned by it or to which it will ultimately have access for the Project. The Sponsor's acquisition of and access to all of the Lands will not be completed until after Financial Close. The Sponsor will only be able to provide the Proponents with access to those portions of the Lands that have been acquired by the Sponsor or to which the Sponsor has access.

3.6 Changes to Identified Proponent Parties

- (1) Except as contemplated in RFP Sections 3.6(2) to 3.6(10), a Proponent shall not change its shareholders (unless the Proponent is a company whose equity securities are listed on a recognized stock exchange), Proponent Team Members, proposed subcontractors, those individuals identified in the Proponent's Prequalification Submission as Key Individuals, or other parties identified in the Proponent's Prequalification Submission (the "Identified Proponent Parties") without the prior written consent of the Sponsor. Identified Proponent Parties for each Prequalified Proponent are listed in the RFP Data Sheet.
- (2) Proponents are permitted to request a change in their Identified Proponent Parties in accordance with the process identified in RFP Sections 3.6(3) to 3.6(10).
- (3) No later than the deadline set out in the Timetable, a Proponent may request a change in its Identified Proponent Parties, including any proposed withdrawal from, addition to, or substitution of the Identified Proponent Parties (each, a "Proposed Change in Identified Proponent Party") by delivering a request notice to the Contact Person, requesting the Sponsor's consent to such Proposed Change in Identified Proponent Party.
- (4) If an Identified Proponent Party withdraws from the RFP Process in a manner that does not make it possible for the Proponent to obtain the Sponsor's prior consent, the Proponent shall notify the Sponsor of the withdrawal as soon as the Proponent becomes aware of the withdrawal and shall deliver a request notice to the Contact Person, requesting the Sponsor's consent to a Proposed Change in Identified Proponent Party, either by substituting, or by proceeding without any substitute of the withdrawn Identified Proponent Party, such request notice to be delivered no later than six weeks after the occurrence of the date of withdrawal or 21 days before the Submission Deadline, whichever is earlier.
- (5) A request notice delivered under either RFP Section 3.6(3) or RFP Section 3.6(4), as applicable, shall:
 - (a) clearly identify the Proposed Change in Identified Proponent Party (including, as applicable, a statement of the Proponent's intention to continue in the absence of a withdrawn Identified Proponent Party, or any proposed additional or substitute Identified Proponent Party);

- (b) attach and provide sufficient documentation to demonstrate to the satisfaction of the Sponsor, in its sole discretion, that the Proposed Change in Identified Proponent Party will not materially adversely affect the Proponent's ability to submit a complete and compliant Proposal or impair the Proponent's or the Identified Proponent Party's ability to perform their respective obligations under the Project Agreement; and
 - (c) attach and provide sufficient documentation to demonstrate to the satisfaction of the Sponsor in its sole discretion, that the reconstituted Proponent Team (whether through addition, substitution or continuation without replacement of a withdrawal of one or more of the Identified Proponent Parties, as applicable) would have met or exceeded any applicable criteria applied during the RFQ process.
- (6) In reviewing a request made in accordance with RFP Section 3.6(5) the Sponsor may, in its sole discretion and at any time, instruct the Proponent to deliver further documentation or additional information as may be reasonably requested by the Sponsor to assess any Proposed Change in Identified Proponent Party. When a request for further documentation or additional information is made by the Sponsor, the Proponent shall deliver such information and documentation as soon as possible and in any event no later than the deadlines set out in RFP Section 3.6(3) or RFP Section 3.6(4), as applicable. The Sponsor is under no obligation to consider any further documentation or additional information delivered after the applicable deadline.
- (7) With respect to any request for a Proposed Change in Identified Proponent Party, the Sponsor may, in its sole discretion, do any one or more of the following, as applicable:
- (a) consent to or reject the Proposed Change in Identified Proponent Party;
 - (b) impose such other terms and conditions as the Sponsor may require in connection with any consent to a Proposed Change in Identified Proponent Party; and/or
 - (c) following a rejection of a Proposed Change in Identified Proponent Party (where such Proposed Change in Identified Proponent Party involves a substitution of an Identified Proponent Party), permit the Proponent to deliver a further request notice for a Proposed Change in Identified Proponent Party identifying an alternate substitute for review by the Sponsor, subject to the same deadlines, terms and conditions and standard of review as set out in this RFP Section 3.6.
- (8) The Sponsor may, in its sole discretion, disqualify a Proponent and terminate a Proponent's continued involvement in the RFP Process or allow a Proponent to continue under such terms and conditions as the Sponsor may require, in its sole discretion, in the event of any of the following:
- (a) an actual change in any Identified Proponent Party is made at any time during the RFP Process by the Proponent without obtaining prior consent of the Sponsor (including any withdrawal of an Identified Proponent Party described in RFP Section 3.6(4));
 - (b) a Proposed Change in Identified Proponent Party is made after the deadlines set out in RFP Section 3.6(3) or RFP Section 3.6(4), as applicable; or
 - (c) a change in circumstances with respect to a Proponent after the Submission Deadline that may materially adversely affect an Identified Proponent Party in a way which could impair the Proponent's or the Identified Proponent Party's ability to perform their respective obligations under the Project Agreement.
- (9) If, at any time prior to Commercial Close, and notwithstanding any other provision in this RFP, there is a Change in Control of a Proponent or of one of its Proponent Team Members (the

“Acquiree”) by one of the other Proponents or one of the other Proponent’s Proponent Team Members (the “Acquirer”):

- (a) the Acquiree shall be immediately disqualified from further participation in this RFP Process. In the event that a Proponent Team Member is the Acquiree, the affected Proponent may request a change of the Acquiree and the Sponsor shall consider such request, in its sole discretion, in accordance with this RFP Section 3.6. In the event that such request to change the Proponent Team Member is rejected by the Sponsor, the Sponsor shall disqualify the Proponent from continuing in the RFP Process; and
 - (b) the Sponsor may, in its sole discretion, allow the Acquirer to continue in the RFP Process, however, the Sponsor’s consent to continue may be subject to such terms and conditions as the Sponsor may require.
- (10) If, after identification of the Preferred Proponent pursuant to RFP Section 9.1, the Sponsor determines, acting reasonably, that it is in the best interests of the Sponsor that any individual proposed as a Key Individual in the Preferred Proponent’s Proposal be substituted, the Sponsor shall notify the Preferred Proponent (including a detailed explanation of the reasons for such determination), and, within 10 days following receipt by the Preferred Proponent of such notice, the Preferred Proponent shall provide the Sponsor with relevant information on the proposed substitution and shall consult with the Sponsor before finalizing the appointment of such substitution. The proposed substitution must have equal or better qualifications than the qualifications of the Key Individual that they are replacing.

3.7 Addenda/Changes to the RFP Documents

- (1) The Sponsor may, in its sole discretion, amend or supplement the RFP Documents at any time in the RFP process, including prior to the date for doing so identified in the Timetable in the Data Sheet. The Sponsor shall issue changes to the RFP Documents by Addenda only. No other statement, whether oral or written, made by the Sponsor or the Sponsor’s Advisors, employees or representatives, including, for clarity, the Contact Person, or any other person, shall amend the RFP Documents. The approximate final date that the Sponsor will issue an Addendum in respect of the Project Agreement is set out in the Timetable. The Sponsor may issue other Addenda at any time.
- (2) The Proponent is solely responsible to ensure that it has received all Addenda issued by the Sponsor. Proponents may, in writing, seek confirmation of the number of Addenda issued under this RFP from the Contact Person.
- (3) The Sponsor shall issue Addenda by placing them in the identified folder in the Data Room.
- (4) Any reference to any one or all of the RFP Documents in the RFP Documents includes any amendments to the RFP Documents made in accordance with this RFP Section 3.7.

3.8 Freedom of Information, Confidentiality and Copyright Matters

3.8.1 Freedom of Information and Protection of Privacy Act

- (1) Proponents are advised that the Sponsor may be required to disclose the RFP Documents and a part or parts of any Proposal pursuant to the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended from time to time (“FIPPA”).
- (2) Proponents are also advised that FIPPA and MFIPPA provide protection for confidential and proprietary business information. Proponents are strongly advised to consult their own legal

Advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in their Proposals.

- (3) Subject to the provisions of FIPPA and MFIPPA, the Sponsor will use reasonable commercial efforts to safeguard the confidentiality of any information identified by the Proponent as confidential but shall not be liable in any way whatsoever to any Proponent or Proponent Team Member if such information is disclosed based on an order or decision of the Information and Privacy Commissioner of Ontario or otherwise as required under Applicable Law.

3.8.2 Confidentiality Agreements

- (1) No later than five days after a request by the Sponsor, the Proponent shall cause each of its employees, representatives and Advisors and its Proponent Team Members and each of their employees, representatives and Advisors who are in receipt of Confidential Information, to execute and deliver to the Sponsor a confidentiality agreement in a form prescribed by, and with terms and conditions determined by the Sponsor, in its sole discretion.

3.8.3 Confidential Information

- (1) For the purpose of this RFP Process, "Confidential Information" means all material, data, information or any item in any form, whether oral or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise provided by the Sponsor or the Designated Vehicle Suppliers in connection with the RFP Process, the RFP Documents or the Project, whether supplied, obtained from or provided before or after the RFP Process, and which, for certainty, includes the Revenue Vehicle Supply Contract.
- (2) The Proponent agrees that all Confidential Information:
 - (a) shall remain the sole property of the Sponsor or Designated Vehicle Supplier, as applicable, and the Proponent shall treat it as confidential;
 - (b) shall not be used by the Proponent for any purpose other than developing and submitting a Proposal in response to this RFP Process or the performance of any subsequent agreement relating to the Project with the Signing Party;
 - (c) shall not be disclosed by the Proponent to any person who is not involved in the Proponent's preparation of its Proposal or the performance of any subsequent agreement relating to the Project with the Signing Party, without prior written consent of the Sponsor;
 - (d) shall not be used in any way detrimental to the Sponsor; and
 - (e) if requested by the Sponsor, shall be returned by the Proponents to the Sponsor no later than ten days after that request.
- (3) Each Proponent shall be responsible for any breach of the provisions of this RFP Section 3.8.3 by any person to whom it discloses the Confidential Information including, but not limited to, the Proponent's employees, representatives and Advisors and the Proponent Team Members and their employees, representatives and Advisors. Each Proponent shall indemnify each of the Sponsor and each of its related entities and respective directors, officers, consultants, employees, agents and representatives and save each of them fully harmless from and against any and all loss, cost, damage, expense, fine, suit, claim, penalty, demand, action, obligation and liability of any kind or nature (including, without limitation, professional fees on a full indemnity basis) suffered or incurred by any of them arising as a result of or in connection with any breach of any of the provisions of this RFP Section 3.8.3 by the Proponent or by any person to whom the Proponent has disclosed the Confidential Information. Each Proponent agrees that the Sponsor

acts as trustee for each of its related entities and each of its respective directors, officers, consultants, employees, agents and representatives with respect to all rights contemplated hereunder arising in favour of a related entity or any of its respective directors, officers, consultants, employees, agents or representatives and that the Sponsor has agreed to accept such trust and hold and enforce such rights on behalf of each related entity and each of its respective directors, officers, consultants, employees, agents and representatives.

- (4) Each Proponent acknowledges and agrees that a breach of the provisions of this RFP Section 3.8.3 would cause the Sponsor, the Designated Vehicle Suppliers and their related entities, to suffer loss that could not be adequately compensated by damages, and that the Sponsor, the Designated Vehicle Suppliers and any of their related entities may, in addition to any other remedy or relief, enforce any of the provisions of this RFP Section 3.8.3 upon application to a court of competent jurisdiction without proof of actual damage to the Sponsor, the Designated Vehicle Suppliers or any of their related entities.
- (5) Notwithstanding anything else to the contrary in this RFP, the provisions of this RFP Section 3.8.3 shall survive any cancellation of this RFP Process and the conclusion of the RFP Process and, for greater clarity, shall be legally binding on all Prequalified Parties, whether or not they submit a Proposal.
- (6) The confidentiality obligations of the Proponent shall not apply to any information which falls within the following exceptions:
 - (a) information that is lawfully in the public domain at the time of first disclosure to the Proponent, or which, after disclosure to the Proponent, becomes part of the public domain other than by a breach of the Proponent's confidentiality obligations or by any act or fault of the Proponent;
 - (b) information which was in the Proponent's possession prior to its disclosure to the Proponent by the Sponsor, and provided that it was not acquired by the Proponent under an obligation of confidence; or
 - (c) information which was lawfully obtained by the Proponent from a third party without restriction of disclosure, provided such third party was at the time of disclosure under no obligation of secrecy with respect to such information.

3.8.4 Copyright and Use of Information in Proposals

- (1) The Sponsor's rights, as set out in this RFP Section 3.8.4, to the Proposal and all Proposal Information submitted by the Proponent during the RFP Process shall be granted to the Sponsor as follows:
 - (a) if a Design and Bid Fee is offered in accordance with RFP Section 10.3.2:
 - (i) for unsuccessful Proponents, upon payment of the Design and Bid Fee; and
 - (ii) for the Preferred Proponent, upon Commercial Close; or
 - (b) if RFP Section 3.8.4(1)(a) does not apply, upon submission of the Proposal.
- (2) Proponents shall not use or incorporate into their Proposals any concepts, products or processes which are subject to copyright, patents, trademarks or other intellectual property rights of third parties unless Proponents have, or will procure through licensing without cost to the Sponsor, the right to use and employ such concepts, products and processes in and for the Project.

- (3) All requirements, designs, documents, plans and information supplied by the Sponsor to the Proponents in connection with this RFP are and shall remain the property of the Sponsor. Upon request of the Sponsor, all such designs, documents, plans and information (and any copies thereof in any format or medium created by or on behalf of the Proponent) must be returned to the Sponsor.
- (4) The Proponent shall grant to each of, the Sponsor a non-exclusive, perpetual, irrevocable, world-wide, fully paid and royalty free licence (fully assignable without the consent of the Proponent and with the right to sub-licence without the consent of the Proponent) to use the Proposal Information (the "Proposal Information Licence"). Without limiting the foregoing, the Proposal Information Licence shall include the right to modify the Proposal Information, and, where applicable, to use it, or any modified form of it, anywhere in the world. Under no circumstances shall the Proponent, except Project Co (as defined in the Project Agreement) in relation to this Project, be liable to the Sponsor or to any other person or entity for any damages, losses, costs, expenses, claims or actions whatsoever arising directly or indirectly from the use of the Proposal Information pursuant to the Proposal Information Licence.
- (5) For the purpose of this RFP Section 3.8.4, "Proposal Information" includes:
 - (a) all information contained in a Proposal or which is disclosed by or through a Proponent to the Sponsor during the evaluation of Proposals or during the process of executing any Project Agreement; and
 - (b) any and all ideas, concepts, products, alternatives, processes, recommendations and suggestions developed by or through a Proponent and revealed to or discovered by the Sponsor, including any and all those which may be connected in any way to the preparation, submission, review or negotiation of any Proposal or the Project Agreement.
- (6) Proponents shall ensure that all intellectual property rights associated with any and all of the Proposal Information (including copyright and moral rights but excluding patent rights) provide for and give the Sponsor the rights set out in this RFP Section 3.8.4. It is expressly understood and agreed that any actual or purported restriction in the future on the ability of the Sponsor to use any of the Proposal Information, or anything else obtained by or through Proponents, shall be absolutely null and void and unenforceable as against the Sponsor and each of its respective Advisors, and that the provisions of this RFP Section 3.8.4 shall take precedence and govern.

3.9 Conflict of Interest and Ineligible Persons

3.9.1 Conflict of Interest

- (1) Proponents and Proponent Team Members and each of their Advisors, shall disclose, in their Proposal Submission Form and the Proponent Team Member Declaration (in respect of Proponent Team Members), all perceived, potential and actual Conflicts of Interest. For clarity, Proponents have an ongoing obligation to comply with obligations set out in this RFP Section 3.9.1.
- (2) If a Proponent, a Proponent Team Member or any of their respective Advisors, prior to or following the Submission Deadline, discovers any perceived, potential or actual Conflict of Interest, the Proponent shall promptly disclose the perceived, potential or actual Conflict of Interest to the Sponsor in a written statement to the Contact Person.
- (3) At the request of the Sponsor, the Proponent shall provide the Sponsor with the Proponent's proposed means to mitigate and minimize to the greatest extent practicable any perceived, potential or actual Conflict of Interest. The Proponent shall submit any additional information to the Sponsor that the Sponsor considers necessary to properly assess the perceived, potential or

actual Conflict of Interest (“Mitigating Measures”). A request for waiver shall be submitted by the Proponent on or before the date for submitting RFIs stipulated in the Timetable and shall include details of the Conflict of Interest and sufficient details of the Proponents proposed Mitigation Measures such as to allow the Sponsor to determine whether they are acceptable.

- (4) The Sponsor may, in its sole discretion, exclude any Proponent, Proponent Team Member, Proponent Advisor or Key Individual on the grounds of Conflict of Interest, on the grounds that a Proponent, Proponent Team Member or Proponent Advisor failed to disclose a Conflict of Interest in accordance with the obligations of this RFP or on the grounds that the Proponent, Proponent Team Member or Proponent Advisor failed to mitigate a Conflict of Interest.
- (5) Without limiting the generality of RFP Sections 3.9.1(4) or 3.9.1(6), the Sponsor may, in its sole discretion, require the Proponent, Proponent Team Member or a Proponent’s Advisor to substitute a new person or entity for the person or entity giving rise to the Conflict of Interest.
- (6) The Sponsor may, in its sole discretion, waive any and all perceived, potential or actual Conflict of Interest of Proponents or Proponent Team Members, or any of their respective Key Individuals or Advisors. A waiver may be upon such terms and conditions as the Sponsor, in its sole discretion, requires to satisfy itself that the Conflict of Interest has been appropriately managed, mitigated and minimized, including requiring the Proponent to put into place such policies, procedures, measures and other safeguards as may be required by and be acceptable to the Sponsor, in its sole discretion, to manage, mitigate and minimize the impact of such Conflict of Interest.
- (7) For the purposes of this RFP Process “Conflict of Interest” includes any situation or circumstance where a Proponent, any Proponent Team Member, any Proponent Advisor, Key Individual or any of the employees of a Proponent, Proponent Team Member, or Proponent Advisor (including for such employees in their personal capacities):
 - (a) has commitments, relationships or financial interests or involvement in any litigation or proceeding that:
 - (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the independent judgment by any personnel of the Sponsor or its Advisors; or
 - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of a Proponent’s obligations under the Project Agreement if that Proponent was determined to be the Preferred Proponent under the RFP Process;
 - (b) has contractual or other obligations to the Sponsor that could or could be seen to have been compromised or otherwise impaired as a result of its participation in the RFP Process or the Project; or
 - (c) has knowledge of confidential information (other than Confidential Information) that,
 - (i) has been made available to the Proponent, any Proponent Team Member or any Proponent Advisor by the Sponsor, MTO, NCC, RTG or Designated Vehicle Suppliers;
 - (ii) relates to or includes any documents or information provided to proponents during the Stage 2 DBFM Trillium Line procurement process;
 - (iii) is of strategic and/or material relevance to the RFP Process or to the Project; and

- (iv) is not available to other Proponents and that could or could be seen to give the Proponent an unfair competitive advantage.
- (8) The final determination of whether a perceived, potential or actual Conflict of Interest exists shall be made by the Sponsor in its sole discretion.

3.9.2 Ineligible Persons

- (1) As a result of their involvement in the Project, the persons named as “Ineligible Persons” in the RFP Data Sheet, together with any persons who currently work, or formerly worked, on behalf of either of the Sponsor and in the course of such work had knowledge of confidential information of strategic and/or material relevance to the RFP Process or to the Project that is not available to other Proponents and that could or could be seen to give the Proponent an unfair advantage (collectively, “Ineligible Persons”), their employees, and any of their subcontractors, Advisors, consultants or representatives engaged in respect of this Project. Subject to RFP Sections 3.9.2(3) and 3.9.2(4) any person controlled by, that controls or that is under common control with the Ineligible Persons (each an “Ineligible Person’s Affiliate”) or any subcontractor or consultant to an Ineligible Person are not eligible to participate as a Proponent Team Member, Key Individual, Proponent, Advisor to the Proponent, Financial Services Provider or Advisor to a Financial Services Provider.
- (2) The Sponsor may amend the Ineligible Persons list in the RFP Data Sheet from time to time during the RFP Process.
- (3) An Ineligible Person’s Affiliate, former employee, subcontractor or consultant may be eligible to participate as a Proponent Team Member, Key Individual, Advisor to the Proponent, Financial Services Provider or Advisor to a Financial Services Provider only after it has obtained a written consent from the Sponsor permitting it to participate as a Proponent Team Member, Key Individual, Advisor to the Proponent, Financial Services Provider or Advisor to a Financial Services Provider. To obtain consent for an Ineligible Person’s Affiliate, subcontractor or consultant to participate as a Proponent Team Member, Key Individual, Advisor to the Proponent, Financial Services Provider or Advisor to a Financial Services Provider, the Proponent must submit a request for consent by e-mail to the Contact Person by no later than the deadline for Proponents to submit RFIs as set out in the Timetable that includes the following information:
- (a) the full legal name of the Ineligible Person’s Affiliate, former employee, subcontractor or consultant that the Proponent wishes to include on its team or as a Proponent Team Member, Key Individual, Advisor to the Proponent, Financial Services Provider or Advisor to a Financial Services Provider;
 - (b) information regarding the relationship between Ineligible Person’s Affiliate, former employee, subcontractor or consultant and the Ineligible Person listed in the RFP Data Sheet; and
 - (c) a description of the policies and procedures that will be put in place to manage, mitigate or minimize the impact of any perceived, potential or actual Conflict of Interest with respect to the Ineligible Person’s Affiliate, former employee, subcontractor or consultant.
- (4) Upon the Contact Person’s receipt of a Proponent’s properly completed request for consent in accordance with RFP Section 3.9.2(3), the Sponsor shall, in its sole discretion, make a determination as to whether they consider there to be a real, perceived or potential or actual Conflict of Interest and whether the impact of such real, perceived or potential Conflict of Interest can be appropriately managed, mitigated or minimized. The Proponent shall be notified of the Sponsor’s decision by means of a consent letter or other correspondence setting out the nature of the consent and the management, mitigation or minimization measures required as a condition of

consent. If the Ineligible Person's Affiliate, former employee, subcontractor or consultant is considered to have a Conflict of Interest, the impact of which cannot be properly managed, mitigated or minimized, the Sponsor may add such person or entity to the Ineligible Persons list by Addendum.

- (5) The Proponent, on behalf of the Proponent Team Members and the Proponent Advisors shall, no later than the date set out in the Timetable,
 - (a) disclose all information in respect of the Project which the Proponent, the Proponent Team Member, Key Individuals or their respective Advisors have generated or have available to them as a result of work carried out by the Proponent, Proponent Team Members or their Proponent Advisors, for the Sponsor in respect of, or in anticipation of, the Project or any component of the Project; and
 - (b) provide a director's or officer's certificate confirming that the requirements of RFP Section 3.9.2(5)(a) have been complied with by the Proponent and, as applicable, the Proponent Team Members and their respective advisors.

For clarity, the Sponsor may, in its sole discretion, circulate the information provided pursuant to RFP Section 3.9.2(5)(a) to other Proponents. If, after the date set out in the Timetable, any Proponent or Proponent Team Member becomes aware of relevant information of the type set out in RFP Section 3.9.2(5)(a) that has not been made available to all Proponents, that Proponent shall disclose such information promptly to the Contact Person.

3.9.3 Conflict of Interest Screening List

- (1) Proponents shall deliver, in Part A of the Proposal, and by the deadline set out in the Timetable, the list of Identified Proponent Parties and other significant individuals having involvement in the preparation and/or oversight of the preparation of the Proposal in the form prescribed by Schedule 5 to this RFP, which list shall be used by the Sponsor along with the information provided in the forms contemplated in Schedules 4 and 6 to this RFP in its assessment of the presence of an actual, potential or perceived Conflict of Interest involving any Proponent, Identified Proponent Party or any employee or advisor of the Sponsor in respect of the Project.

3.10 Proponent Costs

- (1) The Proponent and the Proponent Team Members shall bear all costs and expenses incurred by them relating to any aspect of their participation in this RFP Process, including all costs and expenses related to the Proponent's involvement in:
 - (a) the preparation, presentation and submission of their Proposals;
 - (b) attendance at any Proponents Meeting, Commercially Confidential Meeting or any other meeting with the Sponsor;
 - (c) due diligence and information gathering processes;
 - (d) Scheduled Visits or Additional Visits;
 - (e) preparation of responses to questions or requests for information from the Sponsor;
 - (f) preparation of the Proponent's own RFIs during the clarification process; and
 - (g) negotiations.

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- (2) Except as explicitly provided in RFP Sections 10.3.2 and 10.4(3), if applicable, the Sponsor is not liable to pay any costs or expenses of any Proponent or to reimburse or compensate a Proponent under any circumstances, regardless of the outcome of the RFP Process.

3.11 Insurance and Workers Compensation

3.11.1 Insurance Required during the RFP Process

- (1) During the RFP Process, the Proponent is required to obtain, and to cause all Proponent Team Members and other persons listed in this RFP Section 3.11.1(1) to obtain, and at all times keep and maintain in force the insurance as set out in RFP Sections 3.11.1(1)(a) and 3.11.1(1)(b), whenever the Proponent, a Proponent Team Member, or any of their respective directors, officers, employees, consultants, Advisors, agents or representatives are present at the Lands or at any facilities or premises of the Sponsor for any purpose whatsoever:
- (a) commercial/comprehensive general liability insurance, having an inclusive limit of not less than **[\$REDACTED]** for each occurrence or accident and covering all sums which the Proponent, a Proponent Team Member or any other persons listed above may become legally obligated to pay for damages as a result of bodily injury (including death at any time resulting there from) sustained by any person or persons or because of damage to, destruction of, or loss of use of property caused by an occurrence or accident arising out of any operations or activities carried out in connection with this RFP or RFP Process. The policy or policies shall include as insureds or additional insureds the Sponsor and its directors, officers, employees, legislators, members, officials, consultants and agents, and an endorsement specifying that the policy shall be primary and without right of contribution from any insurance otherwise maintained by the Sponsor; and
 - (b) motor vehicle liability insurance, in the amount of **[\$REDACTED]** per accident, for vehicles used by Proponents or Proponent Team Members (or their respective directors, officers, employees, consultants, Advisors and agents) while on or at the Lands or on or at any facilities or premises of the Sponsor.
- (2) As a condition of allowing access to the Lands or to the facilities or premises of the Sponsor, the Sponsor may, in its sole discretion, require Proponents to provide evidence acceptable to the Sponsor that the insurance required by RFP Sections 3.11.1(1)(a) and 3.11.1(1)(b) is in place.
- (3) If a Proponent proposes to perform any investigations at the Lands, the risk related to which may not be fully insured under the policies set out in RFP Sections 3.11.1(1)(a) and 3.11.1(1)(b), the Sponsor may, in its sole discretion, require the Proponent, at its own cost and expense, to obtain insurance additional to that specified in RFP Sections 3.11.1(1)(a) and 3.11.1(1)(b).
- (4) All insurance policies required to be obtained by Proponents shall provide that the insurance shall not be cancelled, or adversely materially reduced, restricted, modified or changed without the insurer giving at least thirty days' prior written notice to the Sponsor.

3.11.2 Workplace Safety during the RFP Process

- (1) As a condition of allowing access to the Lands or any facilities or premises of the Sponsor each of the Sponsor may, in its sole discretion, require Proponents to provide evidence acceptable to the Sponsor that the Proponent and its Proponent Team Members are registered with the Workplace Safety Insurance Board of Ontario, if such registration is required under Applicable Law, or, if such registration is not required under Applicable Law, to provide evidence acceptable to it that the Proponent and its Proponent Team Members have employer's liability insurance in amounts and on terms and conditions acceptable to it.

3.11.3 City of Ottawa Construction Insurance Program

- (1) The City of Ottawa may determine that certain construction insurance to be provided during the Works phase under the Project Agreement will be obtained under the City of Ottawa Construction Insurance Program (“COCIP”). If a Project has been designated by the City of Ottawa to proceed under COCIP, a “User Guide” will be posted as Background Information. The User Guide includes the form of confidentiality agreement that must be entered into between a Proponent and the COCIP Broker of Record and the forms of applications to be completed by a Proponent and submitted to the COCIP Broker of Record for the Works phase construction insurance.

3.12 Property Request Submissions

3.12.1 Applicability of Property Request Submission Rules

- (1) RFP Section 3.12.2 applies only if, in accordance with the RFP Data Sheet, the Proponents are permitted to submit requests relating to additional properties (each a “Property Request Submission”).

3.12.2 Property Request Submission Rules

- (1) The Proponents shall submit their Property Request Submissions to the Contact Person in accordance with the instructions set out in this RFP Section 3.12.2 no later than the deadline for Property Request Submissions set out in the Timetable, and as set out in the RFP Data Sheet.

3.12.3 Prohibitions on Property Agreements

- (1) Proponents are not permitted to contact any property owner with respect to any property in connection with this Project, and are not permitted to enter into any property agreement (for example, purchase, option or lease) for Lands, or for any property adjacent or in the proximity to the properties listed on the Lands Table prior to Financial Close.

4 PROPOSAL FORM AND CONTENT REQUIREMENTS AND SURETY CONSENT

4.1 Format and Content of the Proposal

- (1) Proponents shall submit Proposals in three parts as follows:
 - (a) Part A – General Submission
 - (b) Part B – Technical Submission
 - (c) Part C – Financial Submission
- (2) Proponents shall submit each of Parts A, B and C of their Proposals in accordance with the format, requirements and instructions set out in the Schedules to this RFP.

4.2 Surety’s Consent

- (1) Each Proponent must submit a surety’s consent as set out in Schedule 9B (a “Surety’s Consent”) in order to secure the issuance of a performance bond and a labour and material payment bond for the Project as required by the Project Agreement. Proponents are advised that, in submitting the Surety’s Consent, the Proponent may submit either,

- (a) a Surety's Consent duly completed by a Surety substantially in the same form and content as set out in RFP Schedule 9B, including the form of performance bond and labour and material payment bond attached; or
 - (b) a Surety's Consent duly completed by a Surety substantially in the form set out in RFP Schedule 9B including attached forms of a performance bond and a labour and material payment bond which, having regard to the intended purpose of the Project Agreement, the Proponent can demonstrate will result in value for money to the Sponsor.
- (2) If the Proponent submits a Surety's Consent pursuant to RFP Section 4.2(1)(b) the Sponsor may, in its sole discretion, accept or reject the form of Surety's Consent including the proposed form of performance and labour and material payment bonds attached to the Surety's Consent submitted by the Proponent (the "Bonding Submission").
- (3) If the Sponsor rejects a Proponent's Bonding Submission the Sponsor may, in its sole discretion, either reject the Proponent's Proposal in its entirety or advise the Proponent as to any changes that the Sponsor may require to the Bonding Submission and negotiate the form of Surety's Consent (a "Revised Bonding Submission") to meet those requirements, including the resubmission of:
 - (a) the proposed form of performance and labour and material payment bonds attached to the Surety's Consent;
 - (b) any ancillary amendments to the Project Agreement that may be required; and
 - (c) any change that may be required in the Proponent's Total Submission Price contained in the Proponent's Proposal resulting from the changes to the Bonding Submission, provided that such change does not result in the Proposal becoming an Unaffordable Proposal.
- (4) If the Sponsor and the Proponent agree to a Revised Bonding Submission, the Sponsor may require the Proponent to submit the agreed form of Revised Bonding Submission to the Sponsor prior to Preferred Proponent notification. The Sponsor shall retain the right to accept, at any stage of the negotiations, the Proponent's initial form of Surety's Consent, including the proposed form of performance and labour and material payment bonds, submitted in the Proponent's Proposal.
- (5) In negotiating the Revised Bonding Submission, the parties shall act reasonably in good faith and if, notwithstanding such good faith efforts, the Proponent and the Sponsor fail to arrive at an agreed form of Revised Bonding Submission and the Sponsor do not elect to accept the Proponent's initial form of Surety's Consent, including the proposed form of performance and labour and material payment bonds submitted in the Proponent's Proposal, then the Sponsor may reject the Proponent's Proposal.

5 SUBMISSION, WITHDRAWAL, MODIFICATION OF THE PROPOSAL AND LENDER REQUIREMENTS

5.1 Submission of Proposal

- (1) Each Proponent shall submit each of the Parts of its Proposal in accordance with the deadlines established in the Timetable ("Applicable Deadline") for submitting that Part of the Proposal. For the purposes of the RFP Process, the determination of whether the submission has been made before an Applicable Deadline shall be based on the time and date stamp the Proponent must ensure it receives from the Sponsor at the address for submission set out in the RFP Data Sheet. Any Part of a Proposal received after an Applicable Deadline, in each case as documented by the time and date stamp, shall be returned unopened to the sender.

- (2) Proponents shall submit each Part of their Proposals by sending them by pre-paid courier or hand delivery to the Sponsor at the address set out in the RFP Data Sheet. It is the sole responsibility of the Proponent to ensure that each Part of a Proposal is received by the Sponsor prior to the Applicable Deadline and to ensure it receives a date and time stamp receipt from the Sponsor confirming the timely delivery of the Part of the Proposal. The Sponsor will not accept any Part of a Proposal delivered by electronic mail.
- (3) Proponents shall provide such number and type of hard and electronic copies of their Proposals as specified in Part 3 of Schedule 3 to this RFP.
- (4) If there is any difference whatsoever between the electronic copy of a Proposal and the original hard copy of the Proposal, the original hard copy of the Proposal shall govern.

5.2 Withdrawal of Proposals

- (1) A Proponent may withdraw its Proposal only by giving written notice before the Submission Deadline to the Contact Person. The Sponsor will return, unopened, a Proposal that has been withdrawn in accordance with this RFP Section 5.2.

5.3 Amendment of Proposal

- (1) Proponents may amend any Part of their Proposals after submission but only if the withdrawn and amended Part of the Proposal is resubmitted before the Applicable Deadline for that Part, in accordance with the following:
 - (a) the Proponent shall withdraw its original Part of the Proposal by notifying the Contact Person in writing before the Applicable Deadline; and
 - (b) the Proponent shall submit a revised replacement Part of the Proposal in accordance with the RFP Documents and before the Applicable Deadline in accordance with the requirements of RFP Section 5.1.

5.4 Proposal Irrevocability

- (1) Except as provided in RFP Sections 5.6(1) and 5.6(3) and the Proponent's right to withdraw a Part of the Proposal before an Applicable Deadline, the Proposals shall be irrevocable and shall remain in effect and open for acceptance for 180 days after the Submission Deadline (the "Proposal Validity Period") or until Financial Close, whichever occurs first.

5.5 Credit Spreads and Funders Commitment Letter

- (1) After the Submission Deadline, the Indicative Credit Spread Benchmark(s) (if applicable) and, subject to RFP Section (4)(e)5.5(4)(b)(i)(E), the election pursuant to RFP Section 5.5(2) shall not change.
- (2) On the Submission Deadline, each Proponent shall identify in writing to the Sponsor by way of an election:
 - (a) which form(s) of lending facility and/or debt financing instruments and investment instrument(s), if any, in respect of which it shall participate in the First Credit Spread Lock-in Date (the "**Credit Spread Election Facilities**"); and
 - (b) which form(s) of lending facility and/or debt financing instruments and investment instrument(s), if any, in respect of which it shall hold, subject to RFP Section 5.5(6),

Credit Spread(s) for from the Submission Deadline to Financial Close (the “**Held Pricing Facilities**”),

and such information shall be reflected in the Financial Model.

- (3) In respect of the Credit Spread Election Facilities, a Proponent shall, no later than 10 Business Days prior to the Submission Deadline and using the process set out in Section 3.2.2 of the RFP, provide to the Sponsor for their review and acceptance, in its sole discretion, a formula in writing describing how its Credit Spread(s) shall move upwards or downwards consistent with the movement in the Indicative Credit Spread Benchmark(s) and the Sponsor shall confirm in writing to such Proponent whether the Sponsor will accept such formula for the purposes of this RFP Section 5.5. The Sponsor shall confirm whether or not they accept the formula submitted by the Proponent no later than seven Business Days prior to the Submission Deadline. Any formula that is accepted by the Sponsor may be used by the Proponent and the Proponent’s Lenders to explain (i) why the movement, if any, in the Indicative Credit Spread Benchmark(s) is or is not sufficient to require a change to the Credit Spread(s), and (ii) how the change, or lack thereof, to the Credit Spread(s) is consistent with the movement, if any, of the Indicative Credit Spread Benchmark(s). Where the formula is not accepted, the provisions of this RFP Section 5.5 **Error! Reference source not found.** shall apply as if any such formula had not been provided to the Sponsor by the Proponent.
- (4) Each Proponent that has provided notification pursuant to RFP Section 5.5(2)(a) shall, prior to the identification of the Preferred Proponent under RFP Section 8.1 and no later than 12:00:00 pm on the first credit spread lock-in date established by the Sponsor in accordance with this RFP (the “**First Credit Spread Lock-in Date**”), confirm or change in respect of the Credit Spread Election Facilities, the Credit Spread(s) set out in Part C – Financial Submission of its Proposal in accordance with the following process:
- (a) the Sponsor shall provide at least seven days prior written notice to the Proponents of the Sponsor’s establishment of the First Credit Spread Lock-in Date and provided the Sponsor may revoke its notice and issue a replacement notice in its sole discretion;
 - (b) the Proponent shall, no later than the First Credit Spread Lock-in Date, advise the Sponsor of its decision to either confirm or change its Credit Spread(s) in accordance with the following:
 - (i) if there has been upward or downward movement in the Indicative Credit Spread Benchmark(s) sufficient to require a change to its Credit Spread(s) on or before the First Credit Spread Lock-in Date, the Proponent shall change its Credit Spread(s) by submitting to the Sponsor:
 - (A) an updated Financial Model that has been,
 - (I) revised only to reflect the Proponent’s changes to its Credit Spread(s); and
 - (II) re-optimized in accordance with the procedure outlined in RFP Schedule 3, Part 2, B Section 6.0.
- For greater clarity, no changes shall be made to the Financial Model other than to change the Credit Spread(s) and any resulting changes from the re-optimization of the Financial Model to reflect the revised Credit Spread(s);
- (B) an amended Price Form revised only to reflect the Proponent’s changes to its Credit Spread(s);

- (C) a written explanation and, where applicable, calculations from the Proponent demonstrating:
- (I) why the upward or downward movement in the Indicative Credit Spread Benchmark(s) from the Submission Deadline to the First Credit Spread Lock-in Date is sufficient to require a change to the Credit Spread(s); and
 - (II) that the change to the Credit Spread(s) is consistent with the movement of the Indicative Credit Spread Benchmark(s) of the Proponent from the Submission Deadline to the First Credit Spread Lock-in Date.

For greater clarity, the written explanation shall be supported by facts, justifications and analysis of relevant factors such as new issue spreads, credit default swap spreads, and/or other publicly verifiable spread indices as applicable. The Sponsor may reject the submission if the calculation related to the movement in the Indicative Credit Spread Benchmarks does not reflect, in the Sponsor's sole discretion, accurate market pricing levels for the relevant instruments included in the Indicative Credit Spread Benchmarks;

- (D) a written explanation and, where applicable, calculations prepared and executed by the Proponent's Lenders demonstrating:
- (I) why the upward or downward movement in the Indicative Credit Spread Benchmark(s) from the Submission Deadline to the First Credit Spread Lock-in Date is sufficient to require a change to the Credit Spread(s); and
 - (II) that the change to the Credit Spread(s) is consistent with the movement of the Indicative Credit Spread Benchmark(s) of the Proponent from the Submission Deadline to the First Credit Spread Lock-in Date.

For greater clarity, the written explanation shall be supported by facts, justifications and analysis of relevant factors such as new issue spreads, credit default swap spreads, and/or other publicly verifiable spread indices as applicable. The Sponsor may reject the submission if the calculation related to the movement in the Indicative Credit Spread Benchmarks does not reflect, in the Sponsor's sole discretion, accurate market pricing levels for the relevant instruments included in the Indicative Credit Spread Benchmarks; and

- (E) written confirmation that the Proponent has not changed any variables in the Financial Model or made any revisions to Part C – Financial Submission of its Proposal, except for the Credit Spread(s) and any resulting changes from the re-optimization of the Financial Model to reflect the revised Credit Spread(s);
- (ii) if there has not been upward or downward movement in the Indicative Credit Spread Benchmark(s) sufficient to require a change to its Credit Spread(s), on or before the First Credit Spread Lock-in Date, the Proponent shall not change its Credit Spread(s) and shall submit to the Sponsor:
- (A) a written explanation and, where applicable, calculations from the Proponent demonstrating:

- (I) why the movement, if any, in the Indicative Credit Spread Benchmark(s) from the Submission Deadline to the First Credit Spread Lock-in Date is not sufficient to require a change to the Credit Spread(s); and
- (II) that maintaining the Credit Spread(s) as submitted on the Submission Deadline is consistent with the movement, if any, in the Indicative Credit Spread Benchmark(s) of the Proponent from the Submission Deadline to the First Credit Spread Lock-in Date.

For greater clarity, the written explanation shall be supported by facts, justifications and analysis of relevant factors such as new issue spreads, credit default swap spreads, and/or other publicly verifiable spread indices as applicable. The Sponsor may reject the submission if the calculation related to the movement in the Indicative Credit Spread Benchmarks does not reflect, in the Sponsor's sole discretion, accurate market pricing levels for the relevant instruments included in the Indicative Credit Spread Benchmarks; and

- (B) a written explanation and, where applicable, calculations prepared and executed by the Proponent's Lenders demonstrating:
 - (I) why the movement, if any, in the Indicative Credit Spread Benchmark(s) from the Submission Deadline to the First Credit Spread Lock-in Date is not sufficient to require a change to the Credit Spread(s); and
 - (II) that maintaining the Credit Spread(s) as submitted on the Submission Deadline is consistent with the movement, if any, in the Indicative Credit Spread Benchmark(s) of the Proponent from the Submission Deadline to the First Credit Spread Lock-in Date.

For greater clarity, the written explanation shall be supported by facts, justifications and analysis of relevant factors such as new issue spreads, credit default swap spreads, and/or other publicly verifiable spread indices, as applicable. The Sponsor may reject the submission if the calculation related to the movement in the Indicative Credit Spread Benchmarks does not reflect, in the Sponsor's sole discretion, accurate market pricing levels for the relevant instruments included in the Indicative Credit Spread Benchmarks;

- (iii) as of the First Credit Spread Lock-in Date, but subject to RFP Sections 5.5(5) and 5.6(2), the revised or unchanged Credit Spread(s), as applicable, and, if applicable, any re-optimization of its Financial Model and any revisions to Part C – Financial Submission of its Proposal shall apply until the expiry of the Proposal Validity Period; and
- (c) if a Proponent fails to confirm or submit a change to the Credit Spread(s) in accordance with RFP Section 5.5(4) on or before the First Credit Spread Lock-in Date, the Sponsor may:
 - (i) deem that the Proponent has amended its Credit Spread(s) to be consistent with the movement of the Indicative Credit Spread Benchmark(s) of the Proponent from the Submission Deadline to the First Credit Spread Lock-in Date and require the Proponent to submit the information set out in RFP Section

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- 5.5(4)(b)(i), failing which the Sponsor may deem the Proposal materially non-compliant; and/or
- (ii) deem that the Proponent has made no changes to its Credit Spread(s) subsequent to the Submission Deadline and require the Proponent to submit the information set out in RFP Section 5.5(4)(b)(ii), failing which the Sponsor may deem the Proposal materially non-compliant; and/or
 - (iii) deem the Proposal materially non-compliant;
- (d) if, in the sole discretion of the Sponsor, the Proponent's amendment or confirmation of the Credit Spread(s) under RFP Section 5.5(4) is not consistent with the Indicative Credit Spread Benchmark(s), the Sponsor may:
- (i) require the Proponent to re-submit pursuant to RFP Section 5.5(4)(b); and/or
 - (ii) consider this inconsistency in the evaluation and scoring of the Proponent's Proposal; and/or
 - (iii) decline to select the Proponent as the Preferred Proponent;
- (e) on the First Credit Spread Lock-in Date, each Proponent that has confirmed or changed its Credit Spread(s) in respect of the Credit Spread Election Facilities in accordance with RFP Section 5.5(4) shall identify in writing to the Sponsor by way of an election that, if selected as the Preferred Proponent:
- (i) which, if any, Credit Spread Election Facilities it shall participate in respect of the Final Credit Spread Lock-in Date (the "Final Credit Spread Election Facilities"); and
 - (ii) which, if any, Credit Spread Election Facilities it shall hold Credit Spread(s) for from the First Credit Spread Lock-in Date to Financial Close.
- (5) If the Preferred Proponent has provided notification pursuant to RFP Section 5.5(4)(e)(i), the Preferred Proponent shall, prior to Commercial Close and no later than the date established by the Sponsor as the final credit spread lock-in date in accordance with this RFP (the "Final Credit Spread Lock-in Date"), further confirm or change, in respect of the Final Credit Spread Election Facilities, the Credit Spread(s) in Part C – Financial Submission of its Proposal and as submitted pursuant to RFP Section 5.5(4) in accordance with the following process:
- (a) the Sponsor shall provide at least one Business Day prior written notice to the Preferred Proponent of the Sponsor's establishment of the Final Credit Spread Lock-in Date and provided the Sponsor may revoke their notice and issue a replacement notice in its sole discretion;
 - (b) the Preferred Proponent shall, no later than the Final Credit Spread Lock-in Date, advise the Sponsor of its decision to either confirm or change its Credit Spread(s) in accordance with the following:
 - (i) if there has been upward or downward movement in the Indicative Credit Spread Benchmark(s) sufficient to require a change to its Credit Spread(s) on or before the Final Credit Spread Lock-in Date, the Preferred Proponent shall change its Credit Spread(s) by submitting to the Sponsor:
 - (A) an updated Financial Model that has been,

- (I) revised only to reflect the Preferred Proponent's changes to its Credit Spread(s); and
- (II) re-optimized to reflect the revised Total Submission Price resulting from the change to the Proponent's Credit Spread(s).

For greater clarity, no changes shall be made to the Financial Model other than to change the Credit Spread(s) and any resulting changes from the re-optimization of the Financial Model to reflect the revised Credit Spread(s);

- (B) an amended Price Form revised only to reflect the Preferred Proponent's changes to its Credit Spread(s);
- (C) a written explanation and, where applicable, calculations from the Preferred Proponent demonstrating:
 - (I) why the upward or downward movement in the Indicative Credit Spread Benchmark(s) from the First Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date is sufficient to require a change to the Credit Spread(s); and
 - (II) that the change to the Credit Spread(s) is consistent with the movement of the Indicative Credit Spread Benchmark(s) of the Preferred Proponent from the First Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date.

For greater clarity, the written explanation shall be supported by facts, justifications and analysis of relevant factors such as new issue spreads, credit default swap spreads, and/or other publicly verifiable spread indices, as applicable. The Sponsor may reject the submission if the calculation related to the movement in the Indicative Credit Spread Benchmarks does not reflect, in the Sponsor's sole discretion, accurate market pricing levels for the relevant instruments included in the Indicative Credit Spread Benchmarks;

- (D) a written explanation and, where applicable, calculations prepared and executed by the Preferred Proponent's Lenders demonstrating:
 - (I) why the upward or downward movement in the Indicative Credit Spread Benchmark(s) from the First Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date is sufficient to require a change to the Credit Spread(s); and
 - (II) that the change to the Credit Spread(s) is consistent with the movement of the Indicative Credit Spread Benchmark(s) of the Preferred Proponent from the First Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date.

For greater clarity, the written explanation shall be supported by facts, justifications and analysis of relevant factors such as new issue spreads, credit default swap spreads, and/or other publicly verifiable spread indices, as applicable; and

- (E) written confirmation that the Preferred Proponent has not changed any variables in the Financial Model or made any revisions to Part C –

Financial Submission of its Proposal, except for the Credit Spread(s) and any resulting changes from the re-optimization of the Financial Model to reflect the revised Credit Spread(s);

- (ii) if there has not been upward or downward movement in the Indicative Credit Spread Benchmark(s) sufficient to require a change to its Credit Spread(s), on or before the Final Credit Spread Lock-in Date, the Preferred Proponent shall not change its Credit Spread(s) and shall submit to the Sponsor:
 - (A) a written explanation and, where applicable, calculations from the Preferred Proponent demonstrating:
 - (I) why the movement, if any, in the Indicative Credit Spread Benchmark(s) from the First Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date is not sufficient to require a change to the Credit Spread(s); and
 - (II) that maintaining the Credit Spread(s) as submitted on the First Credit Spread Lock-in Date is consistent with the movement, if any, in the Indicative Credit Spread Benchmark(s) of the Preferred Proponent from the First Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date.

For greater clarity, the written explanation shall be supported by facts, justifications and analysis of relevant factors such as new issue spreads, credit default swap spreads, and/or other publicly verifiable spread indices, as applicable. The Sponsor may reject the submission if the calculation related to the movement in the Indicative Credit Spread Benchmarks does not reflect, in the Sponsor's sole discretion, accurate market pricing levels for the relevant instruments included in the Indicative Credit Spread Benchmarks; and

- (B) a written explanation and, where applicable, calculations prepared and executed by the Preferred Proponent's Lenders demonstrating:
 - (I) why the movement, if any, in the Indicative Credit Spread Benchmark(s) from the First Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date is not sufficient to require a change to the Credit Spread(s); and
 - (II) that maintaining the Credit Spread(s) as submitted on the First Credit Spread Lock-in Date is consistent with the movement, if any, in the Indicative Credit Spread Benchmark(s) of the Preferred Proponent from the First Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date.

For greater clarity, the written explanation shall be supported by facts, justifications and analysis of relevant factors such as new issue spreads, credit default swap spreads, and/or other publicly verifiable spread indices, as applicable. The Sponsor may reject the submission if the calculation related to the movement in the Indicative Credit Spread Benchmarks does not reflect, in the Sponsor's sole discretion, accurate market pricing levels for the relevant instruments included in the Indicative Credit Spread Benchmarks; and

- (iii) as of the Final Credit Spread Lock-in Date, but subject to RFP Section 5.6(2), the revised or unchanged Credit Spread(s), as applicable, and, if applicable, any re-optimization of its Financial Model and any revisions to Part C – Financial Submission of its Proposal provided by the Preferred Proponent shall apply until Financial Close; and
 - (c) if the Preferred Proponent fails to confirm or submit a change to the Credit Spread(s) in accordance with RFP Section 5.5(5) on or before the Final Credit Spread Lock-in Date, the Sponsor may:
 - (i) deem that the Preferred Proponent has amended its Credit Spread(s):
 - (A) consistent with the movement of the Indicative Credit Spread Benchmark(s) of the Preferred Proponent from the First Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date; and/or
 - (B) in the case of bonds, to reflect the Clearing Spread set out in RFP Section 5.5(8),

and require the Proponent to submit the information set out in RFP Section 5.5(5)(b)(i) and/or RFP Section 5.5(8); and/or
 - (ii) deem that the Preferred Proponent has made no changes to its Credit Spread(s) subsequent to the First Credit Spread Lock-in Date and require the Preferred Proponent to submit the explanations set out in RFP Section 5.5(5)(b)(ii).
- (6) Each Proponent that has provided notification under RFP Section 5.5(2)(b) or RFP Section 5.5(2)(a) that it intends to provide, respectively, Held Pricing Facilities or Credit Spread Election Facilities may, on the First Credit Spread Lock-in Date only, as applicable (i) reduce the Credit Spread(s) set out in the Proponent's Financial Submissions relating to the Held Pricing Facilities (or any of them), or (ii) redesignate the Credit Spread Election Facilities (or any of them) as Held Pricing Facilities conditional upon the redesignation resulting in a reduction of the Credit Spread(s) applicable thereto from those set out in the Proponent's Financial Submissions, and, in each case, shall submit to the Sponsor on the First Credit Spread Lock-in Date:
 - (a) the decreased Credit Spread(s) for each of the affected Held Pricing Facilities or Credit Spread Election Facilities and an unconditional confirmation that the decreased Credit Spread(s) will remain in effect for the balance of the Proposal Validity Period with respect to the affected Held Pricing Facilities or Credit Spread Election Facilities;
 - (b) an updated Financial Model that has been,
 - (i) revised only to reflect the Proponent's decreases to its Credit Spread(s); and
 - (ii) optimized in accordance with the procedure outlined in Part 2 of Schedule 3 to this RFP.

For greater clarity, no changes shall be made to the Financial Model other than to decrease the Credit Spread(s) and any resulting changes from the re-optimization of the Financial Model to reflect the decreased Credit Spread(s);
 - (c) an amended Price Form revised only to reflect the Proponent's decrease(s) to its Credit Spread(s); and

- (d) written confirmation that the Proponent has not changed any variables in the Financial Model or made any revisions to the Financial Submission except for the decrease(s) to the Credit Spread(s) and any resulting changes from the re-optimization of the Financial Model to reflect the decreased Credit Spread(s).
- (7) The Sponsor will evaluate the reasonableness of the Credit Spread(s) for the Credit Spread Election Facilities submitted by the Proponent and as priced as of the Submission Deadline. If the Sponsor, acting in its sole discretion, does not find such Credit Spread(s) to be reasonable, the Sponsor may,
- (a) either at the First Credit Spread Lock-in Date or at the Final Credit Spread Lock-in Date, as the case may be, deem that the Proponent has amended such Credit Spread(s) to be consistent with the movement of the Indicative Credit Spread Benchmark(s) of the Proponent from the Submission Deadline to the First Credit Spread Lock-In Date and/or from the First Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date; provided that if the Sponsor exercises its rights under this RFP Section 5.5(7), any deemed amendments to the Credit Spread(s) shall be equal to the change in the Indicative Credit Spread Benchmark(s) over the applicable period of time; or
- (b) no later than the identification of Preferred Proponent, deem the Proposal materially non-compliant.
- (8) The Preferred Proponent and Lenders (including but not limited to underwriters, mandated lead arrangers and arrangers) acknowledge and agree that if, on the Final Credit Spread Lock-In Date:
- (a) the Clearing Spread for the bonds payable by the Preferred Proponent is less than the Credit Spread derived using Indicative Credit Spread Benchmark(s), the full benefit of such lower Clearing Spread will be passed through to the Sponsors. This Clearing Spread will be reflected in the reduction of the Cost of the Financing payable by the Sponsors as set out in the Financial Model submitted by the Preferred Proponent prior to Financial Close using the optimization process described in Section 6.0 of Part B of Part 2 of Schedule 3 to this RFP; or
- (b) the Clearing Spread for the bonds payable by the Preferred Proponent is higher than the Credit Spread derived using the Indicative Credit Spread Benchmark(s), then the Lenders will be required to provide to the Sponsors an explanation for such variance between the Clearing Spread and the Credit Spread derived using the Indicative Credit Spread Benchmark(s) described herein in this RFP Section 5.5(5), supported by facts, justifications and analysis of relevant factors. Only if such explanation is accepted by the Sponsors, acting in its sole discretion, then such higher Credit Spread will be reflected in the Cost of the Financing payable by the Sponsors as set out in the Financial Model submitted by the Preferred Proponent prior to Financial Close using the optimization process described in Section 6.0 of Part B of Part 2 of Schedule 3 to this RFP. If such explanation is not accepted by the Sponsors, acting in its sole discretion, the Sponsors may exercise its rights set out in RFP Section 5.5(10) without limiting any other rights under this RFP. If, pursuant to RFP Section 5.5(7), the Sponsor has concluded, based on similarly rated transactions or similarly rated comparables, that the Credit Spreads are unreasonable, then the Sponsor shall reject any explanation or justification provided by the Lender or Preferred Proponent for the upward deviance between the Credit Spread derived using the Indicative Credit Spread Benchmark process and the Clearing Spread in connection with the Final Credit Spread Lock-in Date; and
- (c) to provide complete transparency, between the time of selection of the Preferred Proponent and targeted Financial Close, the Preferred Proponent and the Lenders will provide periodic updates to the satisfaction of the Sponsors in respect of (i) the expected

Clearing Spread for the bonds using the Indicative Credit Spread Benchmark(s) process pursuant to this RFP and (ii) any variances between the expected Clearing Spread for the bonds and the Credit Spread derived using the Indicative Credit Spread Benchmark(s) process pursuant to this RFP.

- (9) In a written notice given to the Preferred Proponent the Sponsor shall prescribe the date (provided the Sponsor may give a further notice of a revised date in its sole discretion) on which the Preferred Proponent shall submit to the Sponsor a letter, the form and substance of which shall be satisfactory to the Sponsor on the letterhead of its Funders and executed by the Funders (the “**Funders Commitment Letter**”) addressed to the Preferred Proponent confirming:
- (a) the Funders funding commitment to provide the financing described in the Financial Submission and including, for clarity, a confirmation that the funding commitment does not contain material adverse change, market flex, or any other similar conditions which explicitly or implicitly makes the funding commitment by the Funders conditional on the absence of a material adverse change in the market, or if such conditions were originally applicable that the Funders have now waived such conditions; and
 - (b) that the Funders accept the Project Agreement without any material change.

Prior to the issuance of the Funders Commitment Letter or five Business Days prior to the due date of the Funders Commitment Letter as prescribed by the Sponsor pursuant to this RFP Section 5.5(1), the Preferred Proponent shall submit a draft thereof (the “**Draft Funders Commitment Letter**”) to the Sponsor for review and comment by the Sponsor.

- (10) If (i) in respect of the Final Credit Spread Election Facilities, the amendment or confirmation of the Credit Spread(s) under RFP Section 5.5(5) are not consistent with the Indicative Credit Spread Benchmark(s) of the Preferred Proponent, in the sole discretion of the Sponsor, or (ii) in respect of the Final Credit Spread Election Facilities, the written explanations justifying the amendment or confirmation of the Credit Spread(s) under RFP Section 5.5(5) are not, in the sole discretion of the Sponsor, acceptable to the Sponsor, or (iii) any other of the requirements respecting the amendment or confirmation of the Credit Spread(s) under RFP Section 5.5(5) have not, in the sole discretion of the Sponsor, been satisfied or complied with, or (iv) the Preferred Proponent's Lenders have not provided a Lenders Commitment Letter which, in the Sponsor's sole discretion, satisfies the requirements of RFP Section 5.5(9), then:
- (a) the Sponsor shall, no later than seven Business Days after the Final Credit Spread Lock-In Date or the date of receipt by the Sponsor of the Lenders Commitment Letter, give written notice to the Preferred Proponent setting out the manner in which any of the foregoing requirements of RFP Sections 5.5(5), 5.5(8), 5.5(9) have not been satisfied or complied with (the “**Rectification Notice**”). The Preferred Proponent shall have seven Business Days following the date of the Rectification Notice to rectify the failure to satisfy the requirements as set out in the Rectification Notice (for greater certainty, including the resubmission of an updated Financial Model that provides for revised Credit Spread(s) that are consistent with the changes to the Indicative Credit Spread Benchmark(s) of the Preferred Proponent or the resubmission of the Lenders Commitment Letter) by submitting to the Sponsor a response to the Rectification Notice (the “**Rectification Notice Response**”).
 - (b) If the Sponsor, in its sole discretion: (A) is not satisfied with the Rectification Notice Response or with the Lenders Commitment Letter; and/or (B) determines that the Total Submission Price of the Preferred Proponent's Financial Submission as revised by RFP Section 5.5(5) exceeds the budget for the Project; and/or (C) determines that the Total Submission Price of the Preferred Proponent's Financial Submissions as revised by RFP Section 5.5(5) changes the overall rank of the Preferred Proponent relative to the other

Proponents, the Sponsor may, in its sole discretion and without limitation to any other right under this RFP:

- (i) request the Second Negotiations Proponent (as referred to in RFP Section 8.1(1)(b) to confirm or change its Credit Spread(s) in accordance with RFP Section 5.5(5), and at the same time request the Preferred Proponent to again confirm or change its Credit Spread(s) in accordance with RFP Section 5.5(5), and based on the results thereof, re-run the evaluation process to determine which of the Preferred Proponent or the Second Negotiations Proponent is then the highest ranked Proponent. If the Second Negotiations Proponent is then the highest ranked Proponent then the Second Negotiations Proponent shall then become the Preferred Proponent in place of the first selected Preferred Proponent for all purposes of this RFP;
- (ii) commence negotiations with the Second Negotiations Proponent in accordance with RFP Section 8 including requesting the Second Negotiations Proponent to confirm or change its Credit Spread(s) in accordance with RFP Section 5.5(5). If the Second Negotiations Proponent is then the highest ranked Proponent then the Second Negotiations Proponent shall then become the Preferred Proponent in place of the first selected Preferred Proponent for all purposes of this RFP;
- (iii) direct the Preferred Proponent to terminate its relationship with its Lenders, and the Sponsor shall conduct, in conjunction with the Preferred Proponent, a competition amongst prospective lenders to become Lenders to the Preferred Proponent following which the Preferred Proponent shall resubmit Part C – Financial Submission of its Proposal to incorporate the financial terms and conditions of the Lenders that are successful in the competition. Based thereon, the Sponsor may, in its sole discretion, continue with the Preferred Proponent in accordance with the provisions of this RFP;
- (iv) commence separate and distinct but contemporaneous negotiations with the Second Negotiations Proponent and the Preferred Proponent. If the Second Negotiations Proponent is then the highest ranked Proponent then the Second Negotiations Proponent shall then become the Preferred Proponent in place of the first selected Preferred Proponent for all purposes of this RFP; or
- (v) request the Second Negotiations Proponent and the Preferred Proponent to resubmit their respective Proposals for evaluation under and in accordance with this RFP, and for such purpose shall establish a new Submission Deadline.

The Sponsor may, in its sole discretion and for greater clarity, elect to change which of the RFP Section 5.5(10)(b) processes to employ at any time during the application of RFP Section 5.5(10)(b). In the event that the Sponsor has determined to proceed under any of RFP Sections 5.5(10)(b)(i), 5.5(10)(b)(ii), or 5.5(10)(b)(iv), then the provisions of RFP Sections 8.1(2), 8.1(3) and 8.1(5) shall apply to such processes. Without limitation to the foregoing, and in its sole discretion, the Sponsor may, if it is not satisfied with the Rectification Notice Response or the Lenders Commitment Letter, at any time notify the Preferred Proponent in a written notice (the “**Termination Notice**”) that the Preferred Proponent is disqualified and is no longer entitled to participate in the RFP Process. In such latter circumstance, the Sponsor may consider the performance of the Preferred Proponent and the Proponent Team Members of the Preferred Proponent and the fact of the giving of the Termination Notice to the Preferred Proponent in any future requests for qualifications issued by the Sponsor.

- (c) The Sponsor may, in its sole discretion, exercise any of its rights under RFP Sections 5.5(10)(b)(i) to 5.5(10)(b)(v) in the event that the Sponsor determines, in its sole discretion, that the Lenders have made any change to the Draft Lenders Commitment Letter in the Lenders Commitment Letter.
 - (d) In the sole discretion of the Sponsor, the Letter of Credit provided by the Preferred Proponent in accordance with RFP Section 9.1(2) may be returned to the Preferred Proponent within three days following delivery by the Sponsor of the Termination Notice and/or such Preferred Proponent may be paid the amount, if any, of the Design and Bid Fee under RFP Sections 10.3.2. The return of the Letter of Credit and/or the payment of the Design and Bid Fee to such Preferred Proponent shall represent full and final satisfaction of any obligation or liability of the Sponsor and the Government of Ontario to the Preferred Proponent and the Proponent Team Members of the Preferred Proponent in connection with this RFP, and the Sponsor's decision to return the Letter of Credit and/or pay the Design and Bid Fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to the Sponsor, from such Preferred Proponent and the Proponent Team Members of the Preferred Proponent to that effect.
- (11) The Sponsor reserves the right to request and/or approve a change in the financing plan or debt strategy of the Preferred Proponent (for example, fixed or variable rate, the use of synthetics, bank debt or capital market debt) following identification of the Preferred Proponent under RFP Section 8.1 and prior to Financial Close.

5.6 Extension of Proposal Validity Period

- (1) If the Sponsor wishes to extend the Proposal Validity Period, the Sponsor shall submit a request to extend to those Proponents whose Proposals, in the Sponsor's sole discretion, are still under consideration in the RFP Process. For the purpose of greater clarity, the Sponsor may issue a request to extend the Proposal Validity Period after the Negotiations Proponents or the Preferred Proponent have already been identified. A Proponent may, in its discretion, refuse to extend the Proposal Validity Period in accordance with the following:
- (a) notwithstanding a Proponent's refusal to extend the Proposal Validity Period, that Proponent's Proposal shall continue to be valid in accordance with the original Proposal Validity Period; and
 - (b) if the Sponsor determines that it will be unable to determine the Preferred Proponent or reach Commercial Close prior to the expiration of the original Proposal Validity Period, the Sponsor may discontinue the evaluation or consideration of a Proponent or may discontinue negotiations with a Negotiations Proponent or finalization of a Project Agreement with a Preferred Proponent if that Proponent has refused the Sponsor's request to extend the Proposal Validity Period and may continue the RFP Process with only those Proponents that have agreed to an extension of the Proposal Validity Period.
- (2) In respect of the Preferred Proponent, the Sponsor shall be considered to have accepted the Preferred Proponent's Proposal, including its Financial Submission prior to the expiration of the Proposal Validity Period if the Signing Party and the Preferred Proponent reach Commercial Close prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable). For greater clarity, the Preferred Proponent shall maintain its prices as set out in its Price Form (as submitted on the Submission Deadline or, if applicable, as amended pursuant to RFP Section 8.1) from Commercial Close until Financial Close.
- (3) Notwithstanding RFP Section 5.6(1), if, during the course of negotiations between a Negotiations Proponent and the Sponsor, the Negotiations Proponent resubmits prices to the Sponsor or agrees to revised terms and conditions of the Project Agreement or the Negotiations Proponent's

Proposal prior to the expiration of the Proposal Validity Period, that Negotiations Proponent is deemed to have agreed to an extension of the Proposal Validity Period for the Negotiations Proponent's amended Proposal for a period of 95 days after the date of the Proponent's submission to the Sponsor of the revised prices or revised terms and conditions, as applicable. For clarity, notwithstanding the submission by a Negotiations Proponent or Preferred Proponent of an amended Proposal in accordance with this RFP Section 5.6(3), the Proponent's original Proposal as continues to exist in accordance with the original Proposal Validity Period.

- (4) Notwithstanding RFP Section 5.6(1), RFP Section 5.6(2) or RFP Section 5.6(3), the adjustments on Financial Close that are set out in Part 2 of Schedule 3 to this RFP shall remain applicable.

5.7 Lender Requirements

- (1) At any time in the RFP Process, Proponents shall not enter into exclusivity arrangements with any Lenders, including prospective Lenders. The Proponent or the Proponent's financial advisor will be required to confirm in its letter to be delivered under Part 2 of Schedule 3 of this RFP that the Lenders have not entered into any exclusivity arrangement with the Proponent with respect to the Project. Notwithstanding any other provision of this RFP, but subject to the following proviso, the Lenders may act in the capacity of Lenders for more than one Proponent under this RFP Process provided the Lenders have agreed with each Proponent:
- (a) to establish industry standard confidentiality and conflict of interest screens to ensure that each Proponent is represented by a discrete team of Lender personnel;
 - (b) to prohibit any communication regarding this RFP Process between members of different teams of Lender personnel;
 - (c) to physically separate all documentation under the control of each team of Lender personnel;
 - (d) to keep all computer based information and data discrete and control access to prohibit persons other than on a team of Lender personnel to have access to that Proponent team's information; and
 - (e) that any breaches of such confidentiality requirements are appropriately sanctioned including possible dismissal.
- (2) Lenders participating in a Proposal ("**Participating Lenders**") shall not be Affiliates of any of the Proponent Team Members participating in that Proposal ("**Participating Proponent Team Members**") (other than any other Participating Lender or a financial advisor wholly owned by a Participating Lender) and shall act at all times at arm's length to every other Participating Proponent Team Member (other than any other Participating Lender or a financial advisor wholly owned by a Participating Lender).

6 EVALUATION, CLARIFICATION AND VERIFICATION OF PROPOSALS

6.1 Evaluation Committee and Advisors

- (1) The Sponsor will establish an evaluation committee (the "Evaluation Committee") for the purpose of evaluating Proposals in accordance with the RFP Documents. The Sponsor, in its sole discretion, will determine the size, structure and composition of the Evaluation Committee and any sub-committees of the Evaluation Committee. The Evaluation Committee may be assisted by and receive advice from any of the Sponsor's Advisors, and any other employees or representatives of the Sponsor in any manner determined necessary or desirable by the Sponsor.

- (2) If a member of the Evaluation Committee or, if applicable, an evaluation sub-committee becomes unable to continue serving on the Evaluation Committee or evaluation sub-committee before the completion of a step in the evaluation process, the evaluation comments and scores of that individual, in respect of the uncompleted steps in the evaluation process only, shall be ignored. For clarity, if an Evaluation Committee or sub-committee member becomes unable to continue serving on the Evaluation Committee or a sub-committee after the full completion of a step in the evaluation process, the results of the completed steps of the evaluation process are unaffected and remain valid. Whether or not an Evaluation Committee or sub-committee member, in these circumstances, is replaced is in the sole discretion of the Sponsor.

6.2 Sponsor's Clarification and Verification of Proposals

- (1) The Sponsor may:
- (a) require the Proponent to clarify or verify the contents of its Proposal or any statement made by the Proponent;
 - (b) require the Proponent to submit supplementary documentation clarifying or verifying any matters contained in its Proposal;
 - (c) seek a Proponent's acknowledgement of the Sponsor's interpretation of the Proposal or any part of the Proposal; and
 - (d) correct any arithmetic error, or complete any arithmetic function in a Financial Submission where the Sponsor deems it appropriate, and where in doing so in the Sponsor's sole and absolute discretion, it would not affect the integrity of the RFP Process.
- (2) The Sponsor is not obliged to seek clarification or verification of any aspect of a Proposal or any statement by a Proponent, including an ambiguity in a Proposal or in a statement made by a Proponent.
- (3) Any written information received by the Sponsor from a Proponent pursuant to a request for clarification or verification from the Sponsor as part of the RFP Process may, in the Sponsor's sole discretion, be considered as an integral part of the applicable Proposal.

6.3 Determination of Compliance

- (1) For purposes of this RFP, a Proposal is "non-compliant" and does not "comply" or achieve "compliance" with the requirements of the RFP Documents if that Proposal contains a "Material Deviation". A Material Deviation is any failure in a Proposal to conform with any requirement of the RFP Documents that, in the sole discretion of the Sponsor:
- (a) impedes, in any material way, the ability of the Sponsor to evaluate the Proposal;
 - (b) constitutes an attempt by the Proponent to revise the Sponsor's or the Proponent's rights or obligations under the RFP Documents or affects the Sponsor's ability to enforce the Proponent's obligations pursuant to the RFP Documents in a way not permitted by this RFP; or
 - (c) constitutes an attempt by the Proponent to revise the Sponsor's or the Proponent's rights or obligations under the Project Agreement.

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- (2) A requirement in either this RFP or in the Schedules to this RFP that a Proponent “must” or “shall” do anything is not intended to supersede the concepts of “comply”, “compliance” or “Material Deviation” or any other portion of this RFP Section 6.3.
 - (3) Each Proponent acknowledges and agrees that the Sponsor’s evaluation of compliance with the RFP Documents is not an evaluation of absolute compliance and that the Sponsor may waive,
 - (a) any deviation that is not a Material Deviation at any time; and
 - (b) any Material Deviation in accordance with RFP Section 10.2(3).
 - (4) The Sponsor may identify a Material Deviation in a Proposal at any time during the RFP Process (after the Submission Deadline) and, for clarity, at any step during the evaluation process set out in RFP Section 6.5.
 - (5) Subject to RFP Section 6.3(3)(b), if the Sponsor determines that a Proposal is non-compliant in accordance with this RFP Section 6.3, the Sponsor may, in its sole discretion and without liability, cost or penalty, declare that the Proposal shall not be given any further consideration and take such action as permitted under RFP Section 7.1.2. If a declaration by the Sponsor that a Proposal is non-compliant occurs after the scoring of that Proposal has commenced, any scores given to that Proposal shall be declared null and void.

6.4 Non-Compliance Distinguished from Poor Quality

- (1) A Proposal that contains a poor quality response and/or a failure to conform to a requirement of the RFP Documents shall not be deemed to be non-compliant and such poor quality response and/or failure to conform shall not be deemed to be a Material Deviation unless, and only unless, such poor quality response and/or failure to conform to the requirement of the RFP Documents, in the sole discretion of the Sponsor, meets the definition of a Material Deviation as set out in RFP Section 6.3(1).
- (2) A design compliance/conformance or technical compliance/conformance review is only a tool to assist in the evaluation and scoring of Technical Submissions. Notwithstanding the similarity of terminology, the determination of whether a Proposal, in its entirety, is compliant or non-compliant with the requirements of the RFP Documents is not the same as the concept of “design compliance”, “design conformance and/or non-conformance”, “technical compliance”, or “technical conformance and/or non-conformance” or any other assessment of quality made during the evaluation and scoring of a Proposal.
- (3) The quality of a Proposal, an assessment of which is made during the evaluation and scoring of that Proposal and which is separate and distinct from the assessment of the compliance of a Proposal, may be subject to one or more minimum scoring thresholds in accordance with Part 3 of Schedule 3 to this RFP.
- (4) A Proposal that does not contain any Material Deviations shall not be automatically presumed to pass any applicable minimum scoring threshold as set out in Part 3 of Schedule 3 to this RFP. Any assessment of “design compliance”, “design conformance and/or non-conformance”, “technical compliance”, or “technical conformance and/or non-conformance” or any other assessment of quality of a Proposal shall not result in any presumed score for that Proposal.
- (5) The submission of a compliant Proposal that contains a poor quality response and/or any failure by a Proponent to conform with any requirement of the RFP Documents which is not a Material Deviation does not derogate from the obligations of the Preferred Proponent pursuant to RFP Section 9.2, or of Project Co under the Project Agreement to bring all aspects of a Proponent’s

proposed design, construction or financing into conformance with the requirements of the Project Agreement, pursuant to its terms.

6.5 Steps in the Evaluation Process

- (1) The Sponsor will conduct the evaluation process in accordance with the steps below in the manner contemplated in Part 3 of Schedule 3 to this RFP. The Sponsor retains the right to conduct all or part of the evaluations identified in Step 2 and Step 3 concurrently provided that separate evaluation teams for each Step will be composed of different members of the Evaluation Committee.

6.5.1 Step 1 – Substantial Completeness of Proposals

- (1) In Step 1 of the evaluation process, the Sponsor shall review the Proposals to:
 - (a) determine whether they are substantially complete as determined in the discretion of the Sponsor and its Representatives. The “substantial completeness” review will assess whether the required information and forms have been substantially provided in the Proposal. A Proponent’s failure to provide a substantially complete Proposal may result in the Proposal not being evaluated. Reference is made to Appendix “A” of the City’s Purchasing By-law;
 - (b) ensure that there have been no changes to the Proponent or Proponent Team Members from their Prequalification Submissions, except for changes that have been approved by the Sponsor in accordance with RFP Section 3.6; and
 - (c) assess the Conflict of Interest and Confidential Information sections of the Proposal Submission Form (Schedule 4 to this RFP).

6.5.2 Step 2 – Review and Scoring of the Technical Submissions

- (1) In Step 2 of the evaluation process, the Sponsor will open each Technical Submission and review the contents of the Technical Submission to assess whether it is in compliance with the terms and conditions of the RFP Documents.
- (2) If the Sponsor identifies a Material Deviation in a Technical Submission, then, subject to RFP Section 6.3(3)(b), the Sponsor may determine that the Proposal is non-compliant in accordance with RFP Section 6.3 and take such action as described in RFP Section 6.3(5).
- (3) Technical Submissions will then be evaluated and scored in accordance with Parts 1 and 3 of Schedule 3 to this RFP.
- (4) If a Proponent fails to achieve any of the minimum scores as set out in the applicable provisions of Part B – Proposal Evaluation of Part 3 of Schedule 3 to this RFP, then, as part of Step 2 of the evaluation process and pursuant to and in accordance with such provisions, the Sponsor may, in its sole discretion, determine whether that Proponent’s Proposal will continue to be considered in the RFP Process.
- (5) In the event that a Proponent’s Technical Submission fails to achieve any of the minimum scores as set out in the applicable provisions of Part B – Proposal Evaluation of Part 3 of Schedule 3 to this RFP and the Sponsor does not exercise its discretionary rights as set out in RFP Section 6.5.2(4), the Proponent’s Proposal will not continue in the evaluation process.

6.5.3 Step 3 – Review and Scoring of the Financial Submissions

- (1) In Step 3 of the evaluation process, the Sponsor will open each Financial Submission and review the contents of the Financial Submission to assess whether it is in compliance with the terms and conditions of the RFP Documents. The evaluation teams engaged in the Step 2 evaluations will be different than those engaged for the Step 3 evaluations. The evaluation will be conducted in the manner contemplated in Part 3 of Schedule 3 to this RFP.
- (2) If the Sponsor identifies a Material Deviation in a Financial Submission then, subject to RFP Section 6.3(3)(b), the Sponsor may determine that the Proposal to which the Financial Submission relates is non-compliant in accordance with RFP Section 6.3 and take such action as described in RFP Section 6.3(5).
- (3) The Sponsor shall review each Proposal to determine whether they constitute an Unaffordable Proposal based on the criteria defined in Part 2 of Schedule 3 to this RFP (“Affordability Determination”). Unaffordable Proposals will receive a score of zero (0) on the Price Proposal component of the evaluation of the Financial Submissions. In the event that:
 - (a) all Proposals are determined to be Unaffordable Proposals (the “**Affordability Event**”), or
 - (b) the Preferred Proponent fails to achieve Financial Close or Commercial Close, or
 - (c) only one of the Proposals has a Total Submission Price submitted in the Financial Submission that is an Affordable Proposal and, in such case, in order to establish the Second Negotiations Proponent,then the Sponsor may, in its sole discretion, and notwithstanding the Affordability Determination, nevertheless decide not to award a score of zero (0) to the Total Submission Price element of the Financial Evaluation and instead proceed to complete the financial evaluation of all Proposals as contemplated in this Section 6.5.3 and to rank them in accordance with Section 6.5.4.
- (4) Subject to 6.5.3(3), Financial Submissions will be evaluated and scored based on the Proponent’s Total Submission Price and Quality of Proposed Financing Plan in accordance with Parts 2 and 3 of Schedule 3 to this RFP.
- (5) If a Proponent fails to achieve any of the minimum scores or fails to have in place the approval(s) required for its Proposal to have committed financing as set out in the applicable provisions of Part B – Proposal Evaluation of Part 3 of Schedule 3 to this RFP, then, as part of Step 3 of the evaluation process and pursuant to and in accordance with such provisions, the Sponsor may, in its sole discretion, determine whether that Proponent’s Proposal will continue to be considered in the RFP Process.
- (6) In the event that a Proponent’s Financial Submission fails to achieve any of the minimum scores as set out in the applicable provisions of Part B (Proposal Evaluation) of Part 3 of Schedule 3 to this RFP and the Sponsor does not exercise its discretionary rights to continue to consider that Proponent’s Proposal as set out in RFP Sections 6.5.3(5) or 10, the Proponent’s Proposal will not continue to Step 4 of the evaluation process.

6.5.4 Step 4 – Establishing Ranking

- (1) In Step 4, the Evaluation Committee shall evaluate and rank only those Proposals that have met all requirements in Steps 1 through 3 of the evaluation process. The Evaluation Committee shall establish a “Final Proposal Score” for each Proposal. The Final Proposal Score will be calculated using the following formula:

Final Proposal Score = Technical Submission Score (max. 500 points) + Financial Submission Score (max. 500 points)

The Technical Submission Score and Financial Proposal Score shall be based on the weightings and scorings detailed in Steps 2 and 3 above.

- (2) The Evaluation Committee will then rank the Proposals based on their Final Proposal Score.
- (3) In the event of a tie in the Final Proposal Score between two Proponents, the Sponsor may, in its sole discretion, give the higher ranking to the Proponent proposing the lower Total NPV Payments as defined in the Price Form.

7 GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS

7.1 Sponsor's Discretion in Determining Compliance, Scoring and Ranking

- (1) In addition to the evaluation rights which have been specifically granted to the Sponsor in the RFP Documents, and without limiting the general rights of the Sponsor stipulated in RFP Section 10.1, the Sponsor shall, in its sole discretion, determine:
 - (a) the membership of the Evaluation Committee and any sub-committees of the Evaluation Committee;
 - (b) whether a Proposal is compliant with the RFP Documents, including, but not limited to, its Conflict of Interest obligations;
 - (c) whether a failure to comply constitutes a Material Deviation;
 - (d) whether Key Individuals who were not named in a Prequalification Submission are acceptable to the Sponsor;
 - (e) the Technical Submission Score, Financial Submission Score, or the Final Proposal Score;
 - (f) the rankings of the Proposals; and
 - (g) whether a Proposal or a Proponent,
 - (i) will be disqualified;
 - (ii) will receive a score of zero (0) in the Total Submission Price element of the evaluation of the Financial Submission; or
 - (iii) will cease to be considered in the evaluation process.
- (2) The Sponsor's discretion in determining compliance, scores, ranking and disqualification of the Proponents and their Proposals is not limited or restricted in any way by the fact that a prequalification process preceded this RFP Process.
- (3) The Sponsor has the right, at any time and in its sole discretion, to consider in the evaluation of the Proposals or in the exercise of any of the Sponsor's rights under this RFP:
 - (a) any instances of poor performance by a Proponent or a Proponent Team Member that the Sponsor has experienced; and/or

- (b) any publicly available information about a Proponent or a Proponent Team Member that is, in the Sponsors sole discretion, credible information.
- (4) Pursuant to the page limit restrictions applicable to any portion of a Proposal as described in this RFP, the Sponsor shall, without discretion, neither review nor score any pages of a Proposal that exceed the maximum number of pages specified for the applicable portion of the Proposal.

7.1.2 Disqualification

- (1) The Sponsor may, in its sole discretion, disqualify a Proponent, a Proponent Team Member or a Proposal or reverse its decision to make an award (even if the award has already been made to a Preferred Proponent under this RFP) at any time prior to Commercial Close with respect to the Preferred Proponent and at any time prior to Financial Close with respect to the remaining Proponents, if,
 - (a) the Proposal is determined to be non-compliant pursuant to RFP Section 6.3;
 - (b) the Proponent fails to cooperate in any attempt by the Sponsor to verify any information provided by the Proponent in its Proposal or interview;
 - (c) the Proponent contravenes RFP Sections 3.3.2 or 3.3.3, or the Special Rules at Appendices B and C of Schedule 1 to this RFP;
 - (d) the Proponent fails to comply with the requirements of RFP Section 3.9.2(5);
 - (e) the Proponent fails to comply with Applicable Law;
 - (f) the Proponent, any Proponent Team Member, their identified subcontractors, or any of their directors, officers, employees or Affiliates have engaged in a Prohibited Act;
 - (g) the Proponent, any Proponent Team Member, their identified subcontractors, or any of their directors, officers, employees or Affiliates are a Restricted Person;
 - (h) the Proposal, including any officer’s certificate or any form attached to the Proposal, contains false or misleading information or a misrepresentation;
 - (i) the Proponent or any Proponent Team Member fails to disclose any information (including in any officer’s certificate or any other form attached to the Proposal in connection with this RFP) that would materially adversely affect the Sponsor’s evaluation of the Proposal;
 - (j) the Proposal, in the opinion of the Sponsor, reveals a material Conflict of Interest as described in RFP Section 3.9 and the Proponent,
 - (i) has not received a waiver from the Sponsor in accordance with RFP Section 3.9.1(6) or has not received a consent in accordance with RFP Section 3.9.2(4), as applicable; or
 - (ii) fails to substitute the person or entity giving rise to the Conflict of Interest in accordance with RFP Section 3.9.1(5);
 - (k) in the 36 months prior to the Submission Deadline, the Sponsor became aware that the Proponent or any Proponent Team Member failed to disclose an actual Conflict of Interest in any past or current procurement issued by either Sponsor, unless the Proponent has demonstrated to the satisfaction of the Sponsor that the Proponent has

implemented measures to prevent future false or omitted disclosure of actual Conflicts of Interest;

- (l) in the opinion of the Sponsor, acting reasonably, the Proponent or a Proponent Team Member or any of their respective Advisors, employees or representatives directly or indirectly colluded with one or more other Proponents or its Proponent Team Members or any of their respective Advisors, employees or representatives in the preparation or submission of a Proponent's Proposal or otherwise contravened RFP Section 3.3.4;
- (m) the Proponent has committed a material breach of any existing agreement between the Proponent and a Sponsor;
- (n) the Proponent or any Proponent Team Member has been convicted of an offence in connection with, or any services rendered to the Sponsor;
- (o) there are any convictions related to inappropriate bidding practices or unethical behaviour by a Proponent or a Proponent Team Member or any of their Affiliates in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction; or
- (p) the Proponent, or any Proponent Team Member, has an economic or other interest or relationship that:
 - (i) is, or could reasonably be perceived to be, contrary to the objectives of the Project; or
 - (ii) could potentially compromise the Sponsor's reputation or integrity, or the Sponsor's procurement process, so as to affect public confidence in that process,

whether or not such interest creates a Conflict of Interest.

8 COMPETITION, NEGOTIATIONS AND THE IDENTIFICATION OF A PREFERRED PROPONENT

8.1 Evaluation Results and the Identification of a Preferred Proponent or Negotiations Proponents

- (1) Based on the Final Proposal Scores, the Sponsor may, in its sole discretion, at any time prior to the expiration of the Proposal Validity Period:
 - (a) identify the highest ranked Proponent as the Preferred Proponent and either negotiate with such Proponent or accept such Proponent's Proposal as submitted;
 - (b) identify the two highest ranking Proponents as the first negotiations proponent (the "First Negotiations Proponent") (highest ranked) and the second negotiations proponent (the "Second Negotiations Proponent") (second highest ranked) (collectively, the "Negotiations Proponents") and enter into negotiations with the First Negotiations Proponent and, failing successful negotiations, enter into negotiations with the Second Negotiations Proponent and identify the Proponent with whom the Sponsor concludes successful negotiations as the Preferred Proponent; or
 - (c) enter into separate and distinct but contemporaneous negotiations with the First Negotiations Proponent and Second Negotiations Proponent and identify a Preferred Proponent as a result of those negotiations.

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- (2) The Sponsor may use the negotiations process identified in Section 8.1(1) to negotiate any aspect of a Negotiations Proponent's Proposal or the Project Agreement, or both, including, for greater clarity, any amendments to the Project Agreement that are reasonably required to:
- (a) accommodate a Negotiations Proponents' financing arrangements;
 - (b) revise the scope or any aspect of the Project in the event that one or more of the Proposals has a Total Submission Price submitted in the Financial Submission which is not an Affordable Proposal;
 - (c) address such other matters as may be specified in the RFP Data Sheet; and/or
 - (d) satisfy the Sponsor with respect to the current status of a Negotiations Proponents' health and safety certifications, provided in accordance with Part 1 of Schedule 3 to this RFP.
- (3) In order to facilitate the discussions with Negotiations Proponents relating to a potential de-scoping or any other aspect of the Project under Section 8.1(2)(b), the following steps will be undertaken by the Negotiations Proponent, at the request of the Sponsor:
- (a) the Negotiations Proponent will appoint a five-person (maximum) negotiations team that will be mandated by the Negotiations Proponent to negotiate and agree to revisions to the scope or any other aspect of the Project with the Sponsor, and that will attend a meeting with the Sponsor ("De-Scoping Meeting") within 3 business days of receipt by the Negotiations Proponent of a meeting request from the Sponsor ("De-Scoping Notice");
 - (b) for a period of 20 business days (or such longer period as the Sponsor may determine in its sole discretion is required) following the receipt of the De-Scoping Notice, the five-person (maximum) negotiations team appointed by the Negotiations Proponent will attend each and all subsequent De-Scoping Meetings scheduled by the Sponsor and remain mandated by the Negotiations Proponent to negotiate and agree to any revisions to the scope or any other aspect of the Project;
 - (c) at least 24 hours prior to each De-Scoping Meeting, the Negotiations Proponent will supply to the Sponsor an Agenda outlining the elements of the scope or any other aspect of the Project that it proposes to revise in order to make its Proposal an Affordability Proposal (the "De-Scoping Elements").
- At any time during the discussions with Negotiations Proponents under Section 8.1(2)(b), but no earlier than 20 business days following the issuance of the De-Scoping Notice, the Sponsor may, at its discretion, discontinue negotiations with the Negotiations Proponent and, as applicable, commence negotiations under Section 8.1(2)(b) with the next-ranked Negotiations Proponent.
- (4) Except as provided in RFP Section 5.6(3), notwithstanding any negotiations between the Sponsor and a Negotiations Proponent, the Proposals of all Proponents shall remain valid and irrevocable until the expiration of the Proposal Validity Period or until Financial Close, in accordance with RFP Section 5.4(1).
- (5) During any negotiations period contemplated in Section 8.1(3), and notwithstanding any negotiations between the Sponsor and a Negotiations Proponent contemplated in Section 8.1(2), the Sponsor and the Negotiations Proponent will undertake discussions to determine any revisions to the Project Agreement contemplated in Section 9.2.(1)(b). If, in accordance with RFP Sections 8.1(1)(b) or 8.1(1)(c) the Proponent and the Sponsor negotiate revisions to the Project Agreement, the Sponsor and the Preferred Proponent shall develop a revised Project Agreement

and, for the purposes of RFP Section 9, the revised Project Agreement shall be the "Project Agreement".

- (6) The Sponsor may, in its sole discretion and for greater clarity, elect to change the selection of which of the RFP Section 8.1(1) negotiations processes to employ at any time during the application of RFP Section 8.

9 PREFERRED PROPONENT

9.1 Identification of the Preferred Proponent and the Letter of Credit

- (1) Subject to RFP Sections 10.1 and 10.2, the Sponsor intends to identify a Preferred Proponent in accordance with RFP Section 8.1(1).
- (2) No later than five Business Days after a Proponent's receipt of a notice from the Contact Person that the Proponent is the Preferred Proponent, the Preferred Proponent shall provide an irrevocable standby letter of credit (the "Letter of Credit") in the amount specified in the RFP Data Sheet and in the form attached as Schedule 9A to this RFP to secure the Preferred Proponent's obligations in accordance with RFP Section 9.1(5). Prior to Commercial Close, the Letter of Credit shall be attached as Schedule 9A – Standby Letter(s) of Credit to this RFP and shall secure Project Co's (as defined in the Project Agreement) obligations in accordance with Section 2.3(c) of the Project Agreement. The Preferred Proponent may, with the prior written consent of the Sponsor, which consent may be withheld in the sole discretion of the Sponsor, provide multiple irrevocable standby letters of credit from Proponent Team Members as approved and confirmed by the Sponsor (each a "Letter of Credit Provider") totalling the amount specified in the RFP Data Sheet and in the form attached as Schedule 9A to this RFP,
 - (a) to secure the Preferred Proponent's obligations in accordance with RFP Section 9.1(5); and
 - (b) upon Commercial Close, to secure Project Co's (as defined in the Project Agreement) obligations in accordance with Section 2.3(c) of the Project Agreement upon attachment of the multiple, irrevocable standby letters of credit from Letter of Credit Providers as Schedule 9A – Standby Letter(s) of Credit to this RFP.
- (3) If the Preferred Proponent does not provide the Letter(s) of Credit to the Sponsor as required by this RFP Section 9.1 the Sponsor may, in its sole discretion, by written notice to the Preferred Proponent, cease all discussions with the Preferred Proponent, terminate any obligations of the Sponsor to the Preferred Proponent under any agreement or understanding relating to the Project and, for greater certainty, the Preferred Proponent will not be entitled to or receive any payment or compensation of any kind relating to the Project.
- (4) Subject to the Sponsor's right to retain and apply the Letter(s) of Credit as liquidated damages as provided in this RFP or in the Project Agreement, the Letter(s) of Credit shall be returned to the Preferred Proponent as follows:
 - (a) if the Sponsor gives notice to the Preferred Proponent that they are cancelling or discontinuing the RFP Process, no later than 10 days after receipt by the Sponsor of a written demand for the Letter(s) of Credit by the Preferred Proponent; or
 - (b) if Commercial Close has been achieved, the return of the Letter(s) of Credit will be governed in accordance with the terms of the Project Agreement.
- (5) The Sponsor shall be entitled to draw on the Letter(s) of Credit and retain and apply the proceeds thereof as liquidated damages if,

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- (a) there is a breach of the Preferred Proponent obligations set out in RFP Section 9.2 by the Preferred Proponent;
 - (b) Commercial Close has not occurred (for reasons other than the failure of the Signing Party to execute the Project Agreement in accordance with its terms),
 - (i) on or before the Commercial Close Target Date; or
 - (ii) if the Commercial Close Target Date has passed and the Sponsor has given its consent, on or before the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable);
 - (c) the Preferred Proponent has notified the Sponsor in writing that it wishes to cease all discussions with the Sponsor relating to the Project; or
 - (d) if Commercial Close has been achieved, the entitlement to draw on the Letter(s) of Credit will be governed in accordance with the terms of the Project Agreement.
- (6) The Sponsor shall not be required to give any prior written notice to the Preferred Proponent of its intention to draw on the Letter(s) of Credit. If the Preferred Proponent notifies the Contact Person in writing that the Preferred Proponent disputes the Sponsor's right to draw on the Letter(s) of Credit and to retain the proceeds as liquidated damages, then the Sponsor shall nonetheless be entitled to draw on the Letter(s) of Credit, but will remain liable to repay all or a portion of the amount drawn, together with interest charges at the rate prescribed on that amount, until such dispute has been finally resolved and the Preferred Proponent deemed not to be at fault for meeting the obligations for which the Sponsor has drawn on the Letter(s) of Credit. If a Letter of Credit has an expiry date within the time periods the Letter(s) of Credit are required to be maintained hereunder and the Preferred Proponent fails to renew or extend such Letter of Credit at least 30 days prior to its expiry date, the Sponsor may, at any time without notice to the Preferred Proponent, draw on the Letter(s) of Credit and hold the proceeds thereof in the same manner and for the same purposes as the Letter(s) of Credit.
- (7) If the Preferred Proponent delivers multiple Letters of Credit from multiple Letter of Credit Providers in accordance with RFP Section 9.1(2), the Preferred Proponent acknowledges and agrees that:
- (a) the Sponsor may draw upon any Letter of Credit provided by any Letter of Credit Provider in any specified ratable amount;
 - (b) the Sponsor may draw on any Letter of Credit provided by any Letter of Credit Provider in a disproportionate amount to such Letter of Credit Provider's contribution to security;
 - (c) the Sponsor may draw upon any Letter of Credit provided by any Letter of Credit Provider even in the event that such Letter of Credit Provider is no longer a Proponent Team Member; and
 - (d) the provision of multiple letters of credit shall not in any way prejudice or adversely affect the rights of the Sponsor to draw on any Letter of Credit in accordance with this RFP, including in the event that the Sponsor is entitled to draw on the Letter(s) of Credit in accordance with RFP Section 9.1(5) and such circumstance is not the result of any act or omission of the Letter of Credit Provider whose Letter of Credit is drawn upon.

9.2 Preferred Proponent Obligations

- (1) The Preferred Proponent shall,

- (a) achieve Commercial Close,
 - (i) prior to the Commercial Close Target Date; or
 - (ii) if the Commercial Close Target Date has passed, unless the Sponsor has given its consent, prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable),

based on the Project Agreement in substantially the same form and content as finalized prior to the Submission Deadline or on the Project Agreement as revised and agreed to by the Proponent and the Sponsor;

- (b) execute the Project Agreement, subject only to revision in respect of the following:
 - (i) minor changes, additions and modifications necessary to create a legally complete and binding agreement;
 - (ii) changes, additions and modifications to those provisions which require,
 - (A) the insertion or addition of information relating to the Preferred Proponent's corporate and funding structure which are not inconsistent with the principles set out in the Project Agreement;
 - (B) the insertion or addition of information or the modification of provisions of the Project Agreement required in order to reflect accurately the nature of the Preferred Proponent's relationships with its principal subcontractors; or
 - (C) the revision of provisions in the Project Agreement to more accurately reflect the result of negotiations in accordance with RFP Section 8.1;
 - (iii) changes, additions and modifications required in order to complete (based on the Proposal) any provision of the Project Agreement (where contemplated in or required under the terms of the RFP Documents) or to complete any Schedules to the Project Agreement; and
 - (iv) changes, additions and modifications to those parts of the Project Agreement which are indicated in the Project Agreement as being subject to completion or finalization,

provided, that, in each case the changes, additions or modifications identified in RFP Section 9.2(1)(b) are consistent with the principles set out in the Project Agreement and otherwise acceptable to the Sponsor, acting reasonably; and

- (c) maintain its prices in accordance with the terms and conditions of this RFP, subject only to revisions to the price explicitly agreed to by the Sponsor.
- (2) The Preferred Proponent shall not later than five days after receipt of notice from the Sponsor that it is the Preferred Proponent, deliver to the Contact Person a timetable setting out its schedule for achieving the following Financial Close milestone dates:
 - (a) commencement and completion of financing documentation;
 - (b) receipt of final ratings from rating agencies (if applicable); and

- (c) final pricing of the financing,

for review and approval by the Sponsor, acting reasonably (the "Financing Timetable"). The Sponsor may elect, in its sole discretion, to extend one or more of the dates identified in the Financing Timetable.

- (3) The Preferred Proponent shall provide access and shall promptly make available to the Sponsor and its Advisors, agents and representatives such documentation, financial and technical information as may be reasonably requested by the Sponsor from time to time in connection with the Sponsor's due diligence investigations including, without limitation, copies of any written representation, statements, assurances, commitments or agreements which the Preferred Proponent, any Preferred Proponent Team Member or any of their respective Advisors have received from any municipality, governmental authority or utility relating to the Project. The Preferred Proponent shall provide to the Sponsor, in a timely fashion, final draft versions of all documents required to be delivered by the Preferred Proponent in accordance with the Project Agreement, together with such other documentation as the Sponsor may reasonably request from time to time.
- (4) No later than seven (7) Business Days after a Proponent's receipt of a notice from the Contact Person that the Proponent is the Preferred Proponent, to the extent the Early Works Agreement (as defined below) formed part of such Proponent's Technical Submission, the Preferred Proponent shall cause the Construction Contractor (as defined in the Project Agreement) to execute and deliver to the Sponsor an agreement (the "Early Works Agreement") in the form attached as Schedule 12 to this RFP.

9.3 Sponsor Authorization and Approvals

- (1) The Preferred Proponent acknowledges and agrees that the entering into of the Project Agreement by the Signing Party is conditional on and subject to the Signing Party obtaining any necessary authorizations and approvals required in connection with the Project, including, for certainty, the approval of any relevant Governmental Authority.

10 GENERAL LEGAL MATTERS AND RIGHT TO ACCEPT OR REJECT

10.1 General Rights of the Sponsor

- (1) The Sponsor may, in its sole discretion:
- (a) reject any or all of the Proposals;
 - (b) reject the Key Individuals proposed in a Proposal and, if not satisfactorily substituted, reject the Proposal;
 - (c) reject the financing plan contained in a Proposal and thereby reject the Proposal;
 - (d) request a replacement financing plan if the financing plan contained in the Proposal is, in the opinion of the Sponsor, uncompetitive or incomplete, or both;
 - (e) accept any Proposal;
 - (f) if only one Proposal is received, elect to accept or reject it or enter into negotiations with the Proponent;
 - (g) elect to discontinue the RFP Process at any time before the end of the RFP Process, including after the identification of a Preferred Proponent but before Commercial Close;

- (h) alter the Timetable, the RFP Process or any other aspect of this RFP, which, for greater certainty, includes the right to schedule Financial Close on a day after Commercial Close; and
 - (i) cancel this RFP Process and subsequently advertise or call for new submissions for the same or different subject matter of these RFP Documents with the same or different participants.
- (2) Each Proponent Team Member of any Proponent is required to provide a certificate of an officer from such Proponent Team Member in the form attached as Schedule 7 – Certificate of Officer to this RFP. Without limitation to any other rights of the Sponsor hereunder, in order to ensure the integrity, openness and transparency of the RFP Process, the Sponsor may, in its sole discretion, require at any time, including any time after a Proponent has submitted its Proposal, that any Proponent Team Member of any Proponent provide or resubmit a certificate of an officer from such Proponent Team Member in the form attached as Schedule 7 – Certificate of Officer to this RFP.
- (3) Without limitation to any other rights of the Sponsor hereunder, in order to ensure the integrity, openness and transparency of the RFP Process, the Sponsor may, in its sole discretion:
- (a) impose at any time on all Proponents and any Proponent Team Members additional conditions, requirements or measures with respect to bidding practices or ethical behaviour of the Proponents and Proponent Team Members; and
 - (b) require that any or all Proponents and/or any Proponent Team Member at any time during the RFP Process provide the Sponsor with copies of its internal policies, processes and controls establishing ethical standards for its bidding practices and evidence of compliance by the Proponent and all Proponent Team Members with such policies, processes and controls.
- (4) If a financial institution put forward as a Proponent Team Member and acting in a financial advisory capacity is not an Affiliate of any of the Proponent Team Members of the Proponent (“Exempt Financial Institution”), then RFP Sections 10.1(2) and 10.1(3) shall not apply to any such Exempt Financial Institution.
- (5) Further to RFP Sections 10.1(2) and 10.1(3), and in the event that any Proponent and/or Proponent Team Member:
- (a) fails to comply with any requirement prescribed by the Sponsor pursuant to RFP Sections 10.1(2) or 10.1(3); or
 - (b) complies with Sponsor’s requirement as prescribed in accordance with RFP Sections 10.1(2) or 10.1(3), but the Sponsor determines that any Proponent and/or Proponent Team Member has or may have engaged in inappropriate bidding practices or unethical behaviour,

the Sponsor shall have the right, at any time and in its sole discretion to reject and not consider a Proposal from a Proponent, to require the Proponent to remove and/or replace any Proponent Team Member pursuant to RFP Section 3.6, or to otherwise elect not to proceed further in the procurement process with such Proponent.

10.2 Special Circumstances

- (1) If the Sponsor determines that all of the Proposals submitted are non-compliant in accordance with RFP Section 6.3, the Sponsor may, in its sole discretion:

- (a) take any action in accordance with RFP Section 10.1;
 - (b) carry out a process whereby all Proponents are directed to correct the Material Deviations in their Proposals for re-submission, without a change in their Total Submission Prices (as set out in the Price Form) or their Works Schedule; or
 - (c) enter into negotiations with any one of the Proponents to attempt to finalize an agreement.
- (2) If the Sponsor receives,
- (a) one Proposal and that Proposal is compliant; or
 - (b) more than one Proposal, but only one compliant Proposal,
- the Sponsor may, in its sole discretion:
- (a) take any action in accordance with RFP Section 10.1(1); or
 - (b) cancel this RFP and subsequently enter into negotiations with the Proponent that submitted a compliant Proposal.
- (3) The Sponsor may, in its sole discretion, waive a Material Deviation in a Proposal and, therefore, waive a material failure to comply with the requirements of the RFP Documents. The Sponsor may, in its sole discretion, decline to disqualify a non-compliant Proposal.

10.3 Sponsor's Liability for Proponent's Costs

10.3.1 General

- (1) Except as provided in RFP Section 10.3.2, the Sponsor shall not be liable for any expense, cost, loss or damage incurred or suffered by any Proponent, any Proponent Team Member, any Proponent Advisor or any person connected with any one of them, as a result of any action taken by the Sponsor in accordance with RFP Sections 10.1 or 10.2.

10.3.2 Design and Bid Fee

- (1) A Design and Bid Fee is offered for this Project, the amount of which is set out in the RFP Data Sheet. The Design and Bid Fee, plus any applicable HST, shall be paid to each Proponent other than the Proponent that achieves Commercial Close under the Project Agreement to this RFP, subject to the following conditions:
- (a) a Proponent must submit a full and proper Proposal for that Proponent to be eligible for the Design and Bid Fee, provided that the Sponsor shall determine whether a Proposal is full and proper based on factors that include whether the Proposal is compliant with this RFP (as determined in accordance with RFP Section 6.3) and whether the Proposal received a Final Proposal Score with respect to its Technical Submission of at least **[REDACTED]**%;
 - (b) a Proponent must not withdraw from this RFP Process after the Submission Deadline in contravention of this RFP;
 - (c) if the Sponsor draws upon a Proponent's Letter of Credit in accordance with this RFP or the Proponent's Standby Letter of Credit in accordance with the Project Agreement, then such Proponent will not be eligible for the Design and Bid Fee;

- (d) Financial Close must be achieved with a Proponent under the Project Agreement to this RFP, provided that in the event that Financial Close is not achieved with a Proponent under the Project Agreement because of the Sponsor, as a result of a Severe Market Disruption,
- (i) exercises its rights under Section 2.4(b) of the Project Agreement (the “Severe Market Disruption Event Date”), and
 - (ii) concludes and reaches Financial Close under a new project agreement respecting the Project within 6 months after the Severe Market Disruption Event Date,

then this condition 10.3.2(1)(d) shall be satisfied.

For greater certainty, a Proponent shall not be eligible to receive both a Design and Bid Fee and the compensation contemplated under Section 2.4(c) of the Project Agreement.

- (2) Any additional requirements for Proponents to take into consideration in relation to the Design and Bid Fee are set out in the RFP Data Sheet.
- (3) Payment of a Design and Bid Fee shall represent full and final satisfaction of any obligation or liability of the Sponsor to the Proponent and Proponent Team Members in connection with this RFP, and the Sponsor’s obligation to pay the Design and Bid Fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to the Sponsor, from the Proponent and Proponent Team Members to that effect.

10.4 Applicable Law, Attornment and Limit on Liability

- (1) This RFP shall be governed and construed in accordance with Applicable Law as defined in the Project Agreement.
- (2) The Proponent agrees that,
 - (a) any action or proceeding relating to this RFP Process shall be brought in any court of competent jurisdiction in the Province of Ontario and for that purpose the Proponent irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court;
 - (b) it irrevocably waives any right to and shall not oppose any Ontario action or proceeding relating to this RFP Process on any jurisdictional basis, including forum non conveniens; and
 - (c) it shall not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from an Ontario court as contemplated by this RFP Section 10.4.
- (3) Except as provided in RFP Sections 10.3.2, the Proponent agrees that if the Sponsor or the Sponsor’s Advisors commit a material breach of their obligations under or in connection with this RFP (that is, a material breach of the bidding contract or “Contract A”), the Sponsor’s liability to the Proponent and the aggregate amount of damages recoverable against the Sponsor for any matter relating to or arising from that material breach, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the Sponsor, shall be the lesser of,

- (a) the Proposal preparation costs that the Proponent seeking damages from the Sponsor can demonstrate; and
- (b) \$[REDACTED] or the Design and Bid Fee, whichever is greater.

10.5 Licences, Permits, etc.

- (1) If a Proponent, Proponent Team Member or Proponent Advisor is required by Applicable Law to hold or obtain a licence, permit, consent or authorization to carry on an activity contemplated in this Proposal or in the Project Agreement, neither acceptance of the Proposal nor execution of the Project Agreement by the Sponsor shall be considered to be approval by the Sponsor of carrying on such activity without the requisite licence, permit, consent or authorization. The Sponsor reserves the right, in its discretion, to reject any Proposal that does not meet the requirement of this Section.

10.6 Power of Ottawa City Council

- (1) Proponents are advised that no provision of the RFP Documents (including a provision stating the intention of the Sponsor) is intended to operate, nor shall any such provision have the effect of operating, in any way, so as to interfere with or otherwise fetter the discretion of the Ottawa City Council.

11 NOTIFICATION AND DEBRIEFING

- (1) Any time after the Preferred Proponent has been identified, the Sponsor will formally notify all Proponents who were not successful in the RFP Process that they have not been selected. Notwithstanding such notification, the Proponents' Proposals shall be irrevocable until the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable) or Financial Close, in accordance with RFP Section 5.4.
- (2) Any time after Financial Close, the Sponsor, and a member or members of the Evaluation Committee will meet with any unsuccessful Proponents, at the request of the unsuccessful Proponent, to provide a de-briefing.
- (3) Proponents may request a debriefing up to 30 Business Days after Financial Close.

12 DEFINITIONS

12.1 General

- (1) Unless otherwise defined in this RFP Section 12, capitalized terms and expressions used in this RFP have the meaning given to them in the Form of the Project Agreement found in Schedule 10 to this RFP. In this RFP, the singular shall include the plural and the plural shall include the singular, except where the context otherwise requires.
- (2) Any reference in this RFP to a submission deadline means the noted time to the second, even where seconds are not explicitly noted. For greater certainty, a submission deadline is as of the zero count in seconds of the noted time.
- (3) All references in this RFP to the Sponsor's "discretion" or "sole discretion" means in the sole and absolute discretion of the Sponsor.
- (4) All references in this RFP to "day" or "days" means calendar days, unless otherwise stated.

- (5) All references in the RFP Documents to dollars mean Canadian dollars.

12.2 RFP Definitions

Whenever used in the RFP:

- (1) **“Acquiree”** is defined in RFP Section 3.6(9);
- (2) **“Acquirer”** is defined in RFP Section 3.6(9);
- (3) **“Addendum”** means a written addendum to the RFP Documents issued by the Sponsor as set out in RFP Section 3.7;
- (4) **“Additional Visits”** is defined in RFP Section 3.5.2(2);
- (5) **“Advisor”** means any person or firm retained to provide professional advice to any one of the Sponsor, a Proponent, a Proponent Team Member or a Financial Services Provider, as applicable;
- (6) **“Affiliate”** means any Person Controlled by, that Controls or that is under common Control another Person;
- (7) **“Affordable Proposal”** is defined in Part 2 of Schedule 3 to this RFP;
- (8) **“Affordability Determination”** is defined in RFP Section 6.5.3(3);
- (9) **“Applicable Deadline”** is defined in RFP Section 5.1(1);
- (10) **“Background Information”** means various types of information provided by the Sponsor and is defined in RFP Section 2.4(1)(b);
- (11) **“Bonding Submission”** is defined in RFP Section 4.2(2);
- (12) **“Business Day”** means any day other than a Saturday, a Sunday, a statutory holiday in the province of Ontario or any day on which banks are not open for business in the city of Ottawa, Ontario;
- (13) **“CCM-Ad Hoc Meeting”** is defined in Section 2.0 of Schedule 2 to this RFP;
- (14) **“CCM-Design Consultation Session”** is defined in Section 2.0 of Schedule 2 to this RFP;
- (15) **“CCM-Design Feedback Meeting”** is defined in Section 2.0(a)(ii) of Schedule 2 to this RFP;
- (16) **“CCM-Design Presentation Meeting”** is defined in Section 2.0(a)(i) of Schedule 2 to this RFP;
- (17) **“CCM-Topic Meeting”** is defined in Section 2.0(a)(iv) of Schedule 2 to this RFP;
- (18) **“City’s Purchasing By-law”** means the By-Law of the City of Ottawa Respecting the Purchasing of Goods, Services and Construction, By-Law No. 50 of 2000, as amended from time to time;
- (19) **“City of Ottawa Construction Insurance Program”** or **“COCIP”** is defined in RFP Section 3.11.3(1);
- (20) **“Commercial Close”** means the date the Project Agreement is signed by the Preferred Proponent and the Signing Party;

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- (21) **“Commercial Close Target Date”** means the date set out as the Commercial Close Target Date in the Timetable;
- (22) **“Commercially Confidential Meetings”** is defined in RFP Section 3.4.1(1);
- (23) **“Commercially Confidential RFIs”** is defined in RFP Section 3.2.2(1)(a)(ii);
- (24) **“Confidential Information”** is defined in RFP Section 3.8.3(1);
- (25) **“Conflict of Interest”** is defined in RFP Section 3.9.1(7);
- (26) **“Construction Contractor”** is defined in RFP Section 1.1(10);
- (27) **“Contact Person”** is defined in RFP Section 3.2.1;
- (28) **“Contract A”** is defined in RFP Section 1.1(3);
- (29) **“Control”** means to directly or indirectly hold securities or other interests in a Person to which are attached more than 50% of the votes that may be cast to elect directors or persons exercising similar functions, and the words “Controlled”, “Controls” and “Controlling” have corresponding meanings;
- (30) **“Credit Spread Election Facilities”** is defined in RFP Section 5.5(2)(a);
- (31) **“Credit Spread(s)”** means the financing premiums/spreads in excess of the Benchmark Rate as calculated/illustrated in the Financial Model in accordance with Table A in Section 3.0 of Part B of Part 2 of Schedule 3 to this RFP. For greater certainty, Credit Spread(s) do not include any hedge premiums, swap counterparty spreads or any other applicable fees;
- (32) **“Data Room”** is defined in RFP Section 2.4(1);
- (33) **“Design and Bid Fee”** means an amount to compensate a Proponent for some of the costs the Proponent had incurred in developing and submitting a Proposal, as determined by the Sponsor in accordance with RFP Section 10.3.2;
- (34) **“Design Consultation Process”** is defined in Schedule 2 to this RFP;
- (35) **“Design Consultation Team”** is defined in Schedule 2 to this RFP;
- (36) **“Designated Vehicle Supplier”** means up to two suppliers for the supply and delivery of DMU Vehicles for the Project as selected by the Sponsor through the RFVSO process;
- (37) **“DMU”** means a diesel multiple unit;
- (38) **“Draft Funders Commitment Letter”** is defined in RFP Section 5.5(1);
- (39) **“Design Submission”** means the component of the Technical Submission submitted in response to the requirements set out in Section 2.0 of Part 1 of Schedule 3 to this RFP;
- (40) **“Evaluation Categories”** is defined in Part 3 of Schedule 3 to this RFP and “Evaluation Category” shall be construed accordingly;
- (41) **“Evaluation Committee”** is defined in RFP Section 6.1(1);
- (42) **“Exempt Financial Institution”** is defined in RFP Section 10.1(4);

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- (43) **“Existing Trillium Line”** has the meaning given in the Project Agreement;
- (44) **“Fairness Commissioner”** is defined in the RFP Data Sheet;
- (45) **“Final Credit Spread Election Facilities”** is defined in RFP Section 5.5(4)(e)(i)
- (46) **“Final Credit Spread Lock-in Date”** is defined in RFP Section 5.5(5)
- (47) **“Final Proposal Score”** is defined in RFP Section 6.5.4(1);
- (48) **“Financial Close”** has the meaning given in the Project Agreement;
- (49) **“Financial Evaluation Categories”** is defined in Section 2.0 of Part B of Part 3 of Schedule 3 to this RFP and “Financial Evaluation Category” shall be construed accordingly;
- (50) **“Financial Model”** means the computer model a Proponent has used and which is proposed to become the Financial Model under the Project Agreement in the format specified in Part 3 of Schedule 3 to this RFP;
- (51) **“Financial Services Provider”** means any Lender and any other provider of financial services or products;
- (52) **“Financial Submission”** means the component of the Proposal submitted in response to the requirements set out in Part 2 of Schedule 3 to this RFP;
- (53) **“Financial Submission Score”** means the sum of the scores for Total Submission Price and Quality of Proposed Financing Plan;
- (54) **“Financing Timetable”** is defined in RFP Section 9.2(2);
- (55) **“FIPPA”** is defined in RFP Section 3.8.1(1);
- (56) **“First Credit Spread Lock-in Date”** is defined in RFP Section 5.5(4)
- (57) **“First Negotiations Proponent”** is defined in RFP Section 8.1(1)(b);
- (58) **“Funder”** means an entity providing funding of any form or amount to be used by Project Co to fund Project capital costs up to the Initial Capital Investment or thereafter if required;
- (59) **“Funders Commitment Letter”** is defined in RFP Section 5.5(1);
- (60) **“General RFIs”** is defined in RFP Section 3.2.2(1)(a)(i);
- (61) **“Held Pricing Facilities”** is defined in RFP Section 5.5(2)(b);
- (62) **“Identified Proponent Parties”** is defined in RFP Section 3.6(1);
- (63) **“includes”** and **“including”** means “includes without limitation” and “including without limitation” respectively;
- (64) **“Indicative Credit Spread Benchmark(s)”** as described in Section 2.9 of Part D of Part 2 of Schedule 3 to this RFP;
- (65) **“Ineligible Person’s Affiliate”** is defined in RFP Section 3.9.2(1);

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- (66) **"Ineligible Persons"** is defined in RFP Section 3.9.2(1);
- (67) **"Key Individual"** means an Identified Proponent Party who was identified as a "Key Individual" in a Proponent's Prequalification Proposal, or an individual who is replacing such "Key Individual" in a Proposal following an approved request for change of an Identified Proponent Party, as contemplated in Sections 3.6(2) to 3.6(10) to this RFP;
- (68) **"Lands"** has the meaning provided in the Project Agreement;
- (69) **"Lenders"** means, where applicable, the lenders providing the debt financing described in the Financial Submission;
- (70) **"Letter of Credit"** is defined in RFP Section 9.1(2);
- (71) **"Letter of Credit Provider"** is defined in RFP Section 9.1(2);
- (72) **"Material Deviation"** is defined in RFP Section 6.3(1);
- (73) **"MFIPPA"** is defined in RFP Section
- (74) **"Negotiations Proponents"** is defined in RFP Section 8.1(1)(b);
- (75) **"Person"** means any individual, partnership, limited partnership, Joint Venture, syndicate, sole proprietorship, company, corporation or body corporate with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency authority or entity however designated or constituted;
- (76) **"Preferred Proponent"** is defined in RFP Section 1.1(2);
- (77) **"Prequalification Stage"** is defined in RFP Section 1.3(1)(a);
- (78) **"Prequalification Submission"** is defined in RFP Section 1.2(1);
- (79) **"Prequalified Parties"** is defined in RFP Section 1.2(1);
- (80) **"Price Form"** means the price form submitted by a Proponent as part of its Proposal in the form attached as Schedule 8 to this RFP;
- (81) **"Prohibited Act"** means:
- (a) offering, giving or agreeing to give to the Sponsor or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing, or for having done or not having done, any act in relation to a Proponent becoming a Negotiations Proponent or the Preferred Proponent; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to a Proponent's Proposal;
- provided that this definition shall not apply to a Proponent or Proponent Team Member (or anyone employed by or acting on their behalf) providing consideration to the Sponsor or any public body in the ordinary course;

- (b) entering into any other agreement with the Sponsor or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by a Proponent or any Proponent Team Members, Key Individuals or any of their Affiliates, or on its behalf or to its knowledge, to the Sponsor or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to the Sponsor, provided that this definition shall not apply to a fee or commission paid by the Proponent or any Proponent Team Member or any of their Affiliates (or anyone employed by or acting on their behalf) to the Sponsor or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course without contravening the intent of this section;
 - (c) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts, or breaches of the Criminal Code or of the Competition Act in relation to this RFP Process; or
 - (d) defrauding or attempting to defraud or conspiring to defraud the Sponsor or any other public body;
- (82) **“Project”** is defined in RFP Section 1.1(6);
- (83) **“Project Agreement”** means the Form of Project Agreement found in Schedule 10 to this RFP;
- (84) **“Project Co”** is the Preferred Proponent that has executed the Project Agreement with the Signing Party;
- (85) **“Property Request Submission”** is defined in RFP Section 3.12.1(1);
- (86) **“Proponent”** is defined in RFP Section 1.1(2);
- (87) **“Proponent Representative”** is defined in RFP Section 1.2(2);
- (88) **“Proponent Team Members”** means all members of the Proponent team that were identified in the RFQ process and were prequalified as a Proponent team to submit a Proposal in this RFP Process;
- (89) **“Proposal”** is defined in RFP Section 1.1(2);
- (90) **“Proposal Information”** is defined in RFP Section 3.8.4(5);
- (91) **“Proposal Information Licence”** is defined in RFP Section 3.8.4(4);
- (92) **“Proposal Validity Period”** is defined in RFP Section 5.4(1);
- (93) **“Proposed Change in Identified Proponent Party”** is defined in RFP Section 3.6(3);
- (94) **“Restricted Person”** means any person who, or any member of a group of persons acting together, any one of which:
- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
 - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;

- (c) in the case of an individual, he or she (or in the case of a legal entity, any members of its board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence or for any offence under any Provincial statute, other than offences under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction, or under any municipal laws, less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;
- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
- (e) is subject to a material claim of the Sponsor or the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “Restricted Person” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in the Sponsor’s view, in either case, be reasonably likely to materially affect the ability of the Proponent to perform its obligations under the Project Agreement, if it were to become the successful Proponent under the RFP Process; or
- (f) has a material interest in the production of tobacco products;
- (95) “**Revenue Vehicle Supply Contract**” means the contract between the Vehicle Supplier and the Construction Contractor, defined in RFP Section 1.1(10);
- (96) “**Revised Bonding Submission**” is defined in RFP Section 4.2(3);
- (97) “**RFI**” is defined in RFP Section 3.2.2(1);
- (98) “**RFP**” is defined in RFP Section 1.1(1);
- (99) “**RFP Data Sheet**” means Schedule 1 to this RFP;
- (100) “**RFP Documents**” is defined in RFP Section 2.1;
- (101) “**RFP Process**” is defined in RFP Section 1.1(3);
- (102) “**RFVSO**” is defined in RFP Section 1.1(10)1.2(1), and means City of Ottawa Solicitation No. 09717-55800-P01;
- (103) “**RFQ**” is defined in RFP Section 1.2(1), and means City of Ottawa RFQ No. 09717-92594-Q02;
- (104) “**RTG**” means Rideau Transit Group General Partnership, a general partnership established under the laws of Ontario by its Partners [REDACTED], and each of their permitted successors and assigns;
- (105) “**Scheduled Visits**” is defined in RFP Section 3.5.1(1);
- (106) “**Second Negotiations Proponent**” is defined in RFP Section 8.1(1)(b);
- (107) “**Severe Market Disruption Event Date**” is defined in RFP Section 10.3.2(1)(d)(i);
- (108) “**Signing Party**” is defined in RFP Section 1.1(17);
- (109) “**Sponsor**” is defined in RFP Section 1.1(1) and means the City of Ottawa;

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- (110) **“Submission Deadline”** means the deadline for the submission of Part C – Financial Submission, as set out in the Timetable;
- (111) **“Submission Requirements”** means all of the submission requirements set out in this RFP;
- (112) **“Surety’s Consent”** is defined in RFP Section 4.2(1);
- (113) **“Technical Evaluation Categories”** is defined in Section 2.0 of Part B of Part 3 of Schedule 3 to this RFP and “Technical Evaluation Category” shall be construed accordingly;
- (114) **“Technical Submission”** means the component of the Proposal submitted in response to the requirements set out in Part 1 of Schedule 3 to this RFP;
- (115) **“Technical Submission Information”** means the information contained in the Proponent’s Technical Submission;
- (116) **“Technical Submission Score”** means the sum of the scores for General Technical Submission, Design Submission, Construction Submission and Maintenance and Rehabilitation Submission;
- (117) **“Timetable”** is defined in RFP Section 3.1(1);
- (118) **“Total Submission Price”** means the price submitted by the Proponent in the Financial Submission that includes the aggregate Construction Period Payments, Substantial Completion Payment, aggregate Annual Service Payments – Capital Portion, aggregate Annual Service Payments – Service Portion, aggregate Lifecycle Payments, aggregate Base Relevant Insurance Costs, Aggregate Target Lane Closure Cost, aggregate Utility Costs, and Schedule Completion Adjustment each as shown in the Price Form;
- (119) **“Train”** means a Vehicle or Vehicles operating as one unit, and may comprise of more than one Vehicle;
- (120) **“Unaffordable Proposal”** means, in respect of a Proposal, that the Total Submission Price submitted in the Financial Submission is not an Affordable Proposal;
- (121) **“Vehicle”** means a single DMU with cabs on both ends;
- (122) **“Vehicle Maintenance Provider”** means the entity engaged by the Preferred Proponent in accordance with the special rules stipulated at Appendix B of Schedule 1 to supply the Vehicle Maintenance Services;
- (123) **“Vehicle Maintenance Services”** shall mean the services identified in the Form of Project Agreement found in Schedule 10 to this RFP, which are to be procured by the Preferred Proponent after Financial Close in accordance with the special rules stipulated at Appendix B of Schedule 1 to this RFP;
- (124) **“Vehicle Procurement Agreement”** means a contract between the City and a Designated Vehicle Supplier, as defined in RFP Section 1.1(11);
- (125) **“Vehicle Supplier Activities”** has the meaning stipulated in section 1.56 of Attachment 1 to Part 1 of the Revenue Vehicle Supply Contract;
- (126) **“Vehicle Supplier”** is defined in RFP Section 1.1(10); and
- (127) **“Works Schedule”** has the meaning provided in the Project Agreement.