



**Ministry of Public Safety and
Solicitor General**

**Ministry of Citizens' Services
Shared Services BC**

REQUEST FOR PROPOSALS
for
Surrey Pretrial Services Centre Expansion Project

TECHNICAL SUBMISSION CLOSING TIME	December 7, 2010 At 2:00 p.m. (local time in Vancouver, BC)
FINANCIAL SUBMISSION CLOSING TIME	February 15, 2011 At 2:00 p.m. (local time in Vancouver, BC)
DELIVERY ADDRESS	2320 – 1111 West Georgia Street Vancouver, BC V6E 4M3
CONTACT PERSON	Catherine Silman
EMAIL ADDRESS	Catherine.silman@partnershipsbc.ca

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APPENDIX J DRAFT PROJECT AGREEMENT

SUMMARY OF KEY INFORMATION

RFP TITLE	The title of this RFP is: <p style="text-align: center;">Surrey Pretrial Services Centre Expansion Project</p> Proponents should use this title on all correspondence.
CONTACT PERSON	The Contact Person for this RFP is: <p style="text-align: center;">Catherine Silman</p> Email: catherine.silman@partnershipsbc.ca Please direct all Enquiries, in writing, to the above named Contact Person. No telephone or fax enquiries please.
ENQUIRIES	Proponents are encouraged to submit Enquiries at an early date to permit consideration by the Authority; the Authority may, in its discretion, decide not to respond to any Enquiry received after 3:00 p.m. (local time) on the day that is 15 days before the Technical Submission Closing Time.
TECHNICAL SUBMISSION CLOSING TIME	December 7, 2010 At 2:00 p.m. (local time in Vancouver, BC)
FINANCIAL SUBMISSION CLOSING TIME	February 15, 2011 At 2:00 p.m. (local time in Vancouver, BC)
DELIVERY ADDRESS	The Delivery Address is: <p style="text-align: center;">2320 – 1111 West Georgia Street Vancouver, BC V6E 4M3</p>
DELIVERY HOURS	Deliveries will be accepted at the Delivery Address on weekdays (excluding Statutory Holidays) from 8:30 a.m. to 4:00 p.m. (local time in Vancouver, BC).

1. INTRODUCTION

1.1 Purpose of this RFP

The purpose of this request for proposals (“**RFP**”) is to invite eligible Proponents to prepare and submit competitive Proposals for the design, construction, financing and maintenance of a 180-cell addition to the Surrey Pretrial Services Centre, together with associated renovations to the existing facility (collectively the “**Project**” or the “**Facility**”) under a long-term project agreement (the “**Project Agreement**”).

1.2 Eligibility to Participate in this RFP

Through a request for qualifications (“**RFQ**”) issued April 28, 2010 by the Authority, the following consortia are qualified to participate in this RFP:

- (a) BC Community Partners;
- (b) Brookfield Partnerships Surrey; and
- (c) Plenary Justice.

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

2. RFP PROCUREMENT PROCESS

2.1 Estimated Timeline

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

Activity	Timeline
RFP issued to Proponents	August 3, 2010
Initial Meeting with all Proponents to Review Reference Design	August 24, 2010
First Collaborative Meeting between Proponents and Authority	Week of September 20, 2010
Second Collaborative Meeting between Proponents and Authority	Week of October 11, 2010
Third Collaborative Meeting between Proponents and Authority (if required)	Week of November 8, 2010
Final Draft Project Agreement issued	November 23, 2010
Technical Submission Closing Time	2:00 pm on December 7, 2010
Response to Technical Submission	January 14, 2011

Activity	Timeline
Base Rate(s) Submission	20 days before Financial Submission Closing Time
Financial Submission Closing Time	2:00 pm on February 15, 2011
Credit Spread Hold Lock-In Date	A date prior to Preferred Proponent selection, to be set out in a notice from the Authority given at least 10 days in advance of such date
Selection of Preferred Proponent	Approximately by March 10, 2011
Financial Close (“ Effective Date ”)	Approximately by May 13, 2011
Construction Commences	May, 2011
Occupancy	November, 2013

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

2.2 Collaborative Meetings

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

- (a) the purpose of the Collaborative Meetings is to provide a process that will assist the Proponents to develop optimal solutions for the Project while minimizing the risk that a Proponent’s solution is unresponsive to the Authority’s requirements, and in particular:
 - (1) to permit the Proponent’s Representatives to provide the Authority’s Representatives with comments and feedback on material issues such as affordability or provisions of the Initial Draft Project Agreement; and
 - (2) to permit a Proponent to discuss with the Authority potential solutions and approaches that the Proponent may be considering for various aspects of its Proposal;
- (b) at least five Business Days in advance of each Collaborative Meeting (10 Business Days in the case of any Collaborative Meeting with respect to insurance matters), each Proponent should provide the Authority with a proposed meeting agenda, a list of prioritized issues it would like to discuss and any materials relevant to such issues and the Authority may provide Proponents with comments on the agenda and a list of any prioritized issues the Authority would like to discuss;
- (c) the Authority will determine which Authority Representatives will be present at any Collaborative Meeting;

- (d) at each Collaborative Meeting, a Proponent may have such officers, directors, employees, consultants and agents of the Proponent and the Proponent Team members present as the Proponent considers reasonably necessary for effective communication with the Authority and to fulfil the objectives of the Collaborative Meeting provided that the Authority may, in its discretion, limit the number of participants at any one meeting;
- (e) to facilitate free and open discussion at the Collaborative Meetings, Proponents should note that any comments provided by or on behalf of the Authority during any Collaborative Meeting, including in respect of any particular matter raised by a Proponent or which is included in any documents or information provided by a Proponent prior to or during the Collaborative Meeting, and any positive or negative views, encouragement or endorsements expressed by or on behalf of the Authority during the Collaborative Meetings to anything said or provided by Proponents, will not in any way bind the Authority and will not be deemed or considered to be an indication of a preference by the Authority even if adopted by the Proponent;
- (f) if for the purposes of the preparation of its Proposal a Proponent wishes to rely upon anything said or indicated at a Collaborative Meeting, then the Proponent must submit an Enquiry describing the information it would like to have confirmed and request that the Authority provide that information to the Proponent in written form and, if such information relates to a clarification, explanation or change to a provision of this RFP or the Project Agreement, request an Addendum to this RFP clarifying and amending the provision in question;
- (g) by participating in the Collaborative Meetings a Proponent confirms its agreement with these procedures and acknowledges that the meetings are an integral part of the procurement process as described in this RFP and are in the interests of all parties; and
- (h) the Authority anticipates holding an initial meeting with all Proponents which would focus on the Reference Design, followed by three or more Collaborative Meetings with each Proponent prior to the Technical Submission Closing Date. Following the release of the RFP, the Authority will consult with each Proponent to confirm specific dates for Collaborative Meetings. If the Authority considers it desirable or necessary to schedule additional or fewer Collaborative Meetings, the Authority may, in its discretion, amend the anticipated schedule.

2.3 Comments on the Project Agreement

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

- (a) the Authority will invite Proponents as part of the Collaborative Meeting process to discuss possible clarifications or amendments to the Initial Draft Project Agreement, including with respect to commercial, legal, design and construction, and facilities management matters;

- (b) at least five Business Days in advance of the Collaborative Meeting at which the Proponent wishes to discuss the Initial Draft Project Agreement, each Proponent should provide the Authority with a prioritized list of requested changes, if any, to the Initial Draft Project Agreement using the Proponent Comments Form attached as Appendix E, together with the agenda and issues list described in Section 2.2(b); and
- (c) the Authority will consider all comments and requested clarifications or amendments received from the Proponents in the Collaborative Meetings and may respond to some or all of the comments received, and will amend the Initial Draft Project Agreement as the Authority may determine in its discretion.

Prior to the Technical Submission Closing Time, the Authority intends to issue by Addendum one or more revised drafts of the Project Agreement, including one that will be identified as the “Final Draft Project Agreement” (the “**Final Draft Project Agreement**”). The Final Draft Project Agreement will be the common basis for the preparation of all Proposals, and Proponents should not in their Proposal make any modifications, changes or additions to the Final Draft Project Agreement except for modifications, changes or additions to the Performance Specifications as provided for in Section 4.5 or modifications, changes or additions provided for in Section 8.2.

2.4 Data Room

The Authority has established a web site to be used as an electronic data room (the “**Data Room**”) in which it has placed documents in the possession of the Authority that the Authority has identified as relevant to the Project and to the Project site, and that may be useful to Proponents. The Authority does not make any representation as to the relevance, accuracy or completeness of any of the information available in the Data Room except as the Authority may advise in writing with respect to a specific document. The Authority will grant Proponents access to the Data Room and will require Proponents to execute an agreement to keep information contained in the Data Room confidential.

The information in the Data Room may be supplemented or updated from time to time. Although the Authority will attempt to notify Proponents of all updates, Proponents are solely responsible for ensuring they check the Data Room frequently for updates and to ensure the information used by the Proponents is the most current, updated information.

2.5 Interim Financial Review on Affordability

It is in the interests of the Authority and all Proponents to identify at an early stage of the procurement whether the Project, as defined in this RFP, is affordable within the limits set out in Section 4. Accordingly, as part of the second Collaborative Meeting, Proponents and the Authority will conduct an interim financial review as follows:

- (a) the purpose of the interim financial review is to give early warning of any difficulty in staying within the Affordability Ceiling, and to permit the Authority and the Proponents to consider and implement steps so that the Competitive Selection Process can proceed with confidence that Proposals will be within the Affordability Ceiling;

- (b) at least 5 days prior to the second Collaborative Meeting, each Proponent should submit to the Authority its best estimate of the anticipated Net Present Cost of its Proposal based upon its expected funding terms, and a summary of the proposed Financing Plan containing the high level aspects of information contemplated in Section 4.4.1 of Appendix B. While not prescribing the form of the submission, the Authority is expecting it to be no more than 10 pages in length and to include cost and input assumptions in sufficient detail to allow the Authority to understand the Proponent's cost base (with at least all major cost headings included) and financing structure;
- (c) the Authority will retain each of the interim financial submissions as strictly confidential, and will invite each Proponent, as part of the second Collaborative Meeting, to discuss any aspect of its submission, including any recommendations for amendment of the Project requirements if a Proponent determines that the Project as described will exceed the Affordability Ceiling; and
- (d) unless expressly referred to or included by reference in its Proposal, a Proponent's interim financial submission will not be considered part of its Proposal and the Evaluation Committee will not consider or evaluate it as to adequacy, quality, content or otherwise.

The Authority understands that the values indicated in a Proponent's interim financial submission are not a commitment and that all aspects could change in the final Proposal.

2.6 Authority Response to Technical Submission

Within approximately 25 business days of the Technical Submission Closing Time, the Authority will respond to Proponents with an opinion on substantial compliance with the Draft Project Agreement and the changes that are necessary for compliance. The Authority will require that these changes have been incorporated into the Technical Submission and reflected in the Financial Submission in accordance with Section 6.1 (b)(3).

3. KEY PROJECT ISSUES

3.1 Municipal Approvals

In accordance with the Project Agreement, Project Co will be responsible for obtaining all permits and approvals required for the design and construction of the Facility, and to ensure that its design for the Facility complies with the applicable zoning and related City of Surrey ("**City**") requirements. In addition, Project Co will be responsible for all off-site development costs, development cost charges, development and building permit fees.

The Authority has initiated preliminary discussions with respect to City requirements for the Project and the Competitive Selection Process as follows:

- (a) off -site servicing and services relocation;
- (b) City Engineering Department requirements;

- (c) design guidelines; and
- (d) Advisory Design Panel requirements.

Pursuant to the Project Agreement, Project Co will have the responsibility to obtain a Development Permit from the City as required for Project Co's design of the Facility, and to obtain the City's approval for utility connections and other matters. Project Co may, at its risk, seek zoning variances or permit modifications for the benefit of its design and Proposal.

The City has developed a Proponent's package which is available in the Data Room. In addition, the City will meet separately and confidentially with individual Proponents. Proponents may request a meeting with the City, through the City representative designated in the Proponent's package, prior to the Technical Submission Closing Time to allow Proponents to obtain information they may require for the preparation of Proposals.

3.2 Equipment

Project Co will be responsible for designing the Facility to accommodate the installation, operation, repair and maintenance of all equipment required as part of the Facility operations, or for the intended uses of the Facility, in accordance with the Project Agreement. The Authority and Project Co will be responsible to procure and deliver the equipment in accordance with Appendix 2E [Equipment] of the Project Agreement.

3.3 Services

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

- (a) Plant Services (see Appendix 4C of the Initial Draft Project Agreement);
- (b) Roads, Grounds and Landscaping Maintenance Services (see Appendix 4F of the Initial Draft Project Agreement);
- (c) Utilities Management Services (see Appendix 4E of the Initial Draft Project Agreement);
and
- (d) Help Desk Services (see Appendix 4D of the Initial Draft Project Agreement).

Project Co will not be responsible for corrections operations.

3.4 LEED® / Energy

Project Co will be required to obtain LEED® Gold Certification for the New Infrastructure under the LEED® NC2009 rating system. In addition, Appendix 2D [Energy] of the Project Agreement will include provision for a design and construction energy target for energy efficiency, including new and existing spaces, and a requirement for Project Co to apply to the BC Hydro Power Smart New Construction Program and to take all reasonable steps to obtain funding or incentives for the Authority under that program.

The Authority has established the maximum acceptable level of energy performance at 1000 Megajoules per meter squared per annum.

3.5 Wood First

As required by the Wood First Act (British Columbia), Project Co will be required to use wood wherever the Building Code requirements permit. Schedule 3 [Design and Construction Specifications] of the Project Agreement indicates specific locations where wood must be used. In addition, Proponents are encouraged to use wood in areas that may require innovation, including any Building Code alternate solutions.

4. AFFORDABILITY

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

4.1 Project Work Scope Levels

The Province has identified Project Work Scope Levels to allow Proponents to maximize the Project scope and ensure that Proponents can submit a Proposal that meets the Affordability Requirements. The Project Work Scope Levels are as follows:

- (a) Minimum Acceptable Scope: The Minimum Acceptable Scope is the delivery (in accordance with the Project Agreement) of the Project Work as defined in the Draft Project Agreement, including Schedules 2, 3 and 4;
- (b) Adjusted Scope Level 1: This Project Work Scope Level requires the provision of the Minimum Acceptable Scope and the addition of one complete living unit of 36 inmate cells, for a total of 216 inmate cells in the New Infrastructure;
- (c) Adjusted Scope Level 2: This Project Work Scope Level requires the provision of the Minimum Acceptable Scope, Adjusted Scope Level 1, and 300 square meters of additional program space; and
- (d) Adjusted Scope Level 3: This Project Work Scope Level requires the provision of the Minimum Acceptable Scope, Adjusted Scope Level 1, Adjusted Scope Level 2, and Existing Facility Performance Upgrades.

The Authority has identified a mandatory affordability ceiling for the Project of \$137.4 million (the "**Affordability Ceiling**") for the Net Present Cost of the Project. Project approvals by or for the Authority have been based on the Affordability Ceiling.

4.2 Affordability Ceiling

In determining the Affordability Ceiling, the Authority and its advisors developed a shadow financial model for the Minimum Acceptable Scope based on the requirements of the Initial Draft Project Agreement, including the Performance Specifications, level of Construction Payments, the Reference Design, costing information, and market-based financial and other assumptions, including:

- (a) Project costs incurred by Project Co in performing its obligations under its Proposal and the Final Draft Project Agreement will be financed by a combination of privately financed debt sourced by Project Co and approximately \$47.5 million of Construction Payments from the Authority;
- (b) all Project capital and development costs (which do not include interest) to the end of the Construction Period will be \$100.9 million (nominal);
- (c) a Discount Rate of 7.50%;
- (d) CPI at a constant rate of 2.50% for portions of the Services Payments that are Index-Linked;
- (e) Life Cycle Costs based on the cost consultant's estimation of the quantum and timing of costs over the life of the Project;
- (f) construction schedule of 31 months, starting April 2011;
- (g) no Deductions from the Service Payments;
- (h) the funding structure and terms represent a reasonable estimation of the likely market for funding based on current markets and reasonable assumptions of where markets will be when the Project reaches Financial Close; and
- (i) a Base Date of April 1, 2011.

4.3 Affordability Model

The Authority has developed a financial model (the "**Affordability Model**") to determine the Net Present Cost to the Provincial Government of the Project based on a Proposal.

Each Proponent should calculate the Net Present Cost of its Proposal using the Affordability Model provided by the Authority. The Affordability Model is available in the Data Room as "AffordabilityModel.xls", and should be completed by linking to the appropriate outputs from the Proponent's Financial Model.

4.4 Life Cycle Costs

Each Proponent must propose that the portion of its proposed Service Payments that covers life cycle Costs be either uniform or non-uniform. The proposed life cycle payments schedule should be consistent

with the Proponent's life cycle/capital replacement plan as contemplated under Section 3.2.4.4 of Appendix B.

4.5 Changes to Performance Specifications to Ensure Affordability

The Authority has defined the Minimum Acceptable Scope in Section 4.1 to ensure the Project is feasible. If not all of the elements of the Minimum Acceptable Scope are achievable within the Affordability Ceiling, the Project may not be considered feasible and the RFP may be cancelled. Proponents are encouraged to discuss issues related to the Minimum Acceptable Scope early in the Collaborative Meetings process.

Proponents are encouraged to exceed the Minimum Acceptable Scope within the Affordability Ceiling. The Authority has defined adjusted scope levels in Section 4.1 of this RFP. Adjusted Scope Levels include items which a Proponent may include in order of Authority priority.

5. PROPOSAL REQUIREMENTS

5.1 Participation Agreement

As a condition of participating in this RFP each Proponent and each of its Equity Members must sign and deliver to the Contact Person a participation agreement ("**Participation Agreement**"), substantially in the form attached as Appendix F or otherwise acceptable to the Authority in its discretion. Proponents will not be provided with access to the Data Room (including the Initial Draft Project Agreement), be invited to participate in Collaborative Meetings, or participate further in the Competitive Selection Process unless and until they have signed and delivered a Participation Agreement as required by this Section.

5.2 Proposal Form and Content

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

5.3 Financing Plan

Proponents should include with their Proposals a Financing Plan as contemplated in Section 4.4.1 of Appendix B.

In its Financing Plan, it is assumed that Proponent's lending facilities will have a credit spread that will be held from the Credit Spread Hold Lock-In Date to Financial Close (the "**Credit Spread Hold Facilities**").

5.4 Base Rate Fluctuation Risk

The Authority assumes the risk of fluctuations in the Base Rate for senior debt financing facilities (and not for subordinated debt or shareholders' equity) up to Financial Close, as set out in this Section. Subject to the Authority's rights under this RFP, including Sections 8.7 and 10.1, at Financial Close the Service Payments will be set to reflect the Base Rate for senior debt financing agreements as at Financial Close.

If a Proponent's Financing Plan contains several senior finance facilities, each having a different Base Rate, the Service Payment adjustment will take into account fluctuations (positive or negative, as the case may be) in the Base Rate for each senior finance facility.

Twenty Business Days before the Financial Submission Closing Time, Proponents should provide to the Authority the Base Rate it will propose to use in its Financial Submission, together with all supporting information (including a copy of the screen from which the Base Rate was extracted, the average life and/or drawdown and repayment profile) that would allow the Authority to verify the Base Rate. For this submission, Proponents should provide the Base Rate as priced at the end of the prior trading day (i.e., as priced at the end of the twenty-first Business Day before the Financial Submission Closing Time).

Based on the information provided by the Proponent, the Authority will verify within approximately five Business Days the Base Rate that the Proponent should use in preparation of its Financial Submission. The Authority will verify the respective Base Rate to each Proponent independently and such information will not be provided to other Proponents.

If a Proponent's Financing Plan contains assumptions with respect to the value of a reinvestment product associated with the unused portion of a senior finance facility, then:

- (a) the information requested in Section 4.2.3 of Appendix B in relation to each Base Rate should also be provided by the Proponent for each reference interest rate used to calculate the value of the reinvestment product; and
- (b) the Service Payment adjustment at Financial Close will also take into account fluctuations (positive or negative, as the case may be) in the reference interest rate used in the Financial Model to calculate the value of the reinvestment product.

5.5 Credit Spread Hold Facilities Lock-In

The Authority will set out a date (with 10 days advance notice) for the credit spread lock-in prior to the selection of Preferred Proponent (the "**Credit Spread Hold Lock-In Date**"). On the Credit Spread Hold Lock-In Date, each Proponent, for each Credit Spread Hold Facility proposed in its Financial Submission, will either:

- (a) confirm to the Authority that the Credit Spread for such Credit Spread Hold Facility has not changed since its Financial Submission and will be applicable to such facility for a period of 90 days from the Credit Spread Hold Lock-In Date; or
- (b) advise the Authority of the revised Credit Spread for such Credit Spread Hold Facility that will be applicable to such facility for a period of 90 days from the Credit Spread Hold Lock-In Date, and submit to the Authority:
 - (1) any resulting changes to the Financing Plan (including any changes to the term sheets provided by the proposed funders) provided as part of its Proposal;
 - (2) a revised (and fully optimized) Financial Model incorporating the changed Credit Spread(s) and any changes (including changes required to remain within the Affordability Ceiling) that arise and are required as a result of the change to the Credit Spread(s) (but without changing or updating Base Rate(s));

- (3) written confirmation of the changed variables in the Financial Model (and that no other changes have been made);
- (4) any required revisions to the Pricing Forms resulting from the changed Credit Spread;
- (5) if required exclusively as a result of the changed variables in the Financial Model, any revision in the Net Present Cost of the Proposal (as calculated using the Affordability Model) and Pricing Forms reflecting the financial effect of the changes in the Credit Spread; and
- (6) confirmation from the Proponent's lenders of the changed Credit Spread and their continued commitment to lend to the Proponent, subject only to such change.

Any submission under (b) above will be used in the financial evaluation as set out in this RFP. Proponents should note that if a revision in the Credit Spread results in the Net Present Cost of the Proposal being above the Affordability Ceiling, this will not violate the Mandatory Requirement set out in Section 7.1(c), however the fact that the Proposal is above the Affordability Ceiling may impact Project approvals.

6. SUBMISSION INSTRUCTIONS

6.1 Closing Times and Delivery Address

With respect to the delivery of Proposals:

- (a) Technical Submission: Proponents must submit to the Delivery Address by the Technical Submission Closing Time the technical portion of the Proposal (the "**Technical Submission**"), which should be made up of the following:
 - (1) the cover letter (and all attachments) to the Technical Submission as described in the Technical Submission section of Appendix B;
 - (2) the portion of the Proposal Requirements described in the Technical Submission section of Appendix B; and
- (b) Financial Submission: Proponents must submit to the Delivery Address by the Financial Submission Closing Time the financial portion of the Proposal (the "**Financial Submission**"), which should be made up of the following:
 - (1) a completed Proposal Declaration Form in the form attached as Appendix C;
 - (2) the cover letter (and all attachments) to the Financial Submission as described in the Financial Submission section of Appendix B;
 - (3) amendments to the Technical Submission as described in Section 2.6. Changes to the Technical Submission should be clearly marked. Any changes that are not

in substantial compliance with Schedule 3 may not be considered at the discretion of the Authority;

- (4) the portion of the Proposal Requirements described in the Financial Submission section of Appendix B; and
- (5) the completed Pricing Forms as described in Appendix B;

6.2 Number of Copies

For each of its Technical Submission and Financial Submission, a Proponent should submit 11 hard copies (10 bound copies numbered 1 through 10; plus one unbound copy marked as "Master") and one electronic copy (CD or USB flash drive, with a label on each describing its contents) appropriately packaged and clearly marked "Request for Proposals for Surrey Pretrial Services Centre Expansion Project", except the Financial Model should be submitted in electronic (CD or USB flash drive) form only.

6.3 No Fax or Email Submission

Proposals submitted by fax or email will not be accepted.

6.4 Language of Proposals

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

6.5 Receipt of Complete RFP

Proponents are responsible to ensure that they have received the complete RFP, as listed in the table of contents of this RFP, plus any addenda. A submitted Proposal will be deemed to have been prepared on the basis of the entire RFP issued prior to the Technical Submission Closing Time. The Authority accepts no responsibility for any Proponent lacking any portion of this RFP.

6.6 Enquiries

All enquiries regarding any aspect of this RFP should be directed to the Contact Person by email (each, an "**Enquiry**"), and the following applies to any Enquiry:

- (a) responses to an Enquiry will be in writing;
- (b) all Enquiries, and all responses to Enquiries from the Contact Person, will be recorded by the Authority;
- (c) the Authority is not required to provide a response to any Enquiry;
- (d) a Proponent may request that a response to an Enquiry be kept confidential by clearly marking the Enquiry "Commercial in Confidence" if the Proponent considers the Enquiry is commercially confidential to it;

- (e) if the Authority decides that an Enquiry marked “Commercial in Confidence”, or the Authority’s response to such an Enquiry, must be distributed to all Proponents, then the Authority will permit the enquirer to withdraw the Enquiry rather than receive a response and if the Proponent does not withdraw the Enquiry, then the Authority may provide its response to all Proponents;
- (f) notwithstanding Sections 6.6(d) and 6.6(e):
 - (1) if one or more other Proponents submits an Enquiry on the same or similar topic to an Enquiry previously submitted by another Proponent as “Commercial in Confidence”, the Authority may provide a response to such Enquiry to all Proponents; and
 - (2) if the Authority determines there is any matter which should be brought to the attention of all Proponents, whether or not such matter was the subject of an Enquiry, including an Enquiry marked “Commercial in Confidence”, the Authority may, in its discretion, distribute the Enquiry, response or information with respect to such matter to all Proponents.

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

6.7 Electronic Communication

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

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

- (a) the Authority does not assume any risk or responsibility or liability whatsoever to any Proponent:
 - (1) for ensuring that any electronic email system being operated for the Authority or Partnerships BC is in good working order, able to receive transmissions, or not engaged in receiving other transmissions such that a Proponent’s transmission cannot be received; or
 - (2) if a permitted email communication or delivery is not received by the Authority or Partnerships BC, or received in less than its entirety, within any time limit specified by this RFP; and
- (b) all permitted email communications with, or delivery of documents by email to, the Contact Person will be deemed as having been received by the Contact Person on the dates and times indicated on the Contact Person’s electronic equipment.

6.8 Addenda

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

6.9 Intellectual Property Rights

(a) Grant of Licence

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

- (1) granted to the Authority a royalty-free license without restriction to use for this Project any and all of the information, ideas, concepts, products, alternatives, processes, recommendations, suggestions and other intellectual property or trade secrets (collectively the “**Intellectual Property Rights**”) contained in the Proponent’s Proposal, or that are otherwise disclosed by the Proponent to the Authority; and
- (2) waived or obtained a waiver of all moral rights contained in the Proposal.

Proponents will not be responsible or liable for any use by the Authority or any sub-licensee or assignee of the Authority of any Intellectual Property Rights contained in a Proposal.

(b) Exceptions to Licence

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

6.10 Inconsistency between Paper and Electronic Form

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

6.11 Amendments to Proposals

A Proponent may:

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

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

6.12 Changes to Proponent Teams

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

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

6.13 Validity of Proposals

By submitting a Proposal, each Proponent agrees that:

- (a) its Proposal, including all prices and input costs (except senior debt margins), will remain fixed and irrevocable from the Financial Submission Closing Time until midnight at the end of the 120th day following the Financial Submission Closing Time (the "**Proposal Validity Period**"); and
- (b) after the expiry of the Proposal Validity Period, all prices and input costs (except senior debt margins) in its Proposal may not be adjusted unless the Proponent provides notice to the Authority of any proposed adjustment and demonstrates to the satisfaction of the Authority that the Proponent has used its best efforts to continue to maintain the prices and input costs firm and valid, but that despite such best efforts, the specified

adjustments to the prices and input costs are required solely as a direct result of one or more events that:

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

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

6.14 Material Change after Financial Submission Closing Time

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

7. EVALUATION

7.1 Mandatory Requirements

The Authority will review Technical Submissions to determine whether they substantially comply with the Final Draft Project Agreement and provide comments to the respective Proponents regarding any non-compliant omissions or inclusions with their Technical Submission identified by the Authority. A Proponent's Financial Submission should include revisions to a non-compliant Technical Submission that respond to the Authority's comments to that Proponent, if any.

The Authority reserves the right to reassess whether the revised Technical Submission is substantially compliant. Any response or revision from the Proponent will not be assumed to mean that the Proponent has complied with the Authority's request. If a Proponent cannot comply with a requested change, or chooses not to without acceptable reason, as determined by the Authority, the Authority reserves the right to reject the Financial Submission (and revised Technical Submission) and not consider it further in the evaluation process.

By responding to a request from the Authority to make a change to its Technical Submission, the Proponent is not relieved in any way from taking full responsibility for the contents and terms of its Technical Submission according to the terms of this RFP.

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

- (a) the Proponent and each of its Equity Members must have signed and delivered to the Contact Person the Participation Agreement in accordance with Section 5.1;
- (b) the Technical Submission must be received at the Delivery Address no later than the Technical Submission Closing Time and the Financial Submission must be received at the Delivery Address no later than the Financial Submission Closing Time;

- (c) the Net Present Cost of the Proposal as at the Financial Submission Closing Time must not exceed the Affordability Ceiling; and
- (d) the Technical Submission has been amended in accordance with the Authority's response to the Technical Submission.

7.2 Evaluation of Proposals

The Authority will evaluate Proposals in the manner set out in Appendix A. To assist in evaluation of the Proposals, the Authority may, in its sole and absolute discretion, but is not required to:

- (a) conduct reference checks relevant to the Project with any or all of the references cited in a Proposal, or with any other person not listed in a Proposal, to verify any and all information regarding a Proponent, including its directors, officers and Key Individuals;
- (b) conduct any background investigations that it considers necessary in the course of the Competitive Selection Process;
- (c) seek clarification or rectification of a Proposal or supplementary information from any or all Proponents; and
- (d) request interviews or presentations with any, all or none of the Proponents to clarify any questions or considerations based on the information included in Proposals during the evaluation process, with such interviews or presentations conducted in the discretion of the Authority, including the time, location, length and agenda for such interviews or presentations,

and the Authority may, in its sole and absolute discretion, rely on and consider any information received as a result of such reference checks, background investigations, requests for clarification or supplementary information and interviews or presentations in the evaluation of Proposals.

8. SELECTION OF PREFERRED PROPONENT AND AWARD

8.1 Selection and Award

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

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

- (a) terminating the procurement process entirely and proceeding with some or all of the Project in some other manner, including using other contractors; or

- (b) inviting one of the other Proponents to enter into discussions to reach final agreement for completing the Project.

Any final approvals required by the Authority, such as from the Provincial Government, will be conditions precedent to the final execution or commencement of the Project Agreement.

8.2 Final Draft Project Agreement

It is the intention of the Authority that:

- (a) any issues with respect to the Project Agreement will be discussed during the Collaborative Meetings and fully considered prior to issuance of the Final Draft Project Agreement; and
- (b) once issued, the Final Draft Project Agreement will not be further substantively modified and will be executed by the Preferred Proponent without further substantive amendment, except for changes, modifications and additions:
 - (1) relating to the determination by the Authority, in its discretion, of which:
 - (A) parts, if any, of the Proposal are to be incorporated by reference or otherwise, into the Project Agreement or otherwise pursuant to express provisions of the Project Agreement; or
 - (B) modifications, changes or additions, if any, requested by a Proponent pursuant to Section 4.5 that are acceptable to the Authority;
 - (2) to those provisions or parts of the Final Draft Project Agreement which are indicated as being subject to completion or finalization, or which the Authority determines in its discretion require completion or finalization, including provisions which require:
 - (A) modification or the insertion or addition of information relating to the Proponent's formation (e.g., corporate, partnership or trust structure) and funding structure; and
 - (B) modification or the insertion or addition of information in order to reflect accurately the nature of the Proponent's relationships with its principal subcontractors (including each of the Project Contractors);
 - (3) required by the Authority to complete, based on the Proposal, any provision of the Final Draft Project Agreement, including changes, modifications and additions contemplated in, or required under the terms of, the Final Draft Project Agreement;
 - (4) that are necessary to create or provide for a legally complete, enforceable and binding agreement;

- (5) that enhance clarity in legal drafting; or
- (6) that may be required as a consequence of Changed Funding Arrangements.

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

8.3 Preferred Proponent Security Deposit

Subject to the terms of this RFP:

- (a) the Authority will invite the Preferred Proponent to deliver the Preferred Proponent Security Deposit on or before the date and time specified by the Authority, such date not to be earlier than 5 Business Days after notification of the appointment of the Preferred Proponent; and
- (b) the Preferred Proponent's eligibility to remain the Preferred Proponent is conditional upon the Preferred Proponent delivering the Preferred Proponent Security Deposit to the Authority on or before the date and time specified by the Authority.

8.4 Return of Security Deposit

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

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

8.5 Retention of Security Deposit

Notwithstanding any receipt by the Authority of the notice described in Section 8.4, the Authority may, in its discretion, draw on, retain and apply the proceeds of the Preferred Proponent Security Deposit for the Authority's own use as liquidated damages, if:

- (a) the Proponent or any Proponent Team member is in material breach of any term of this RFP or the Participation Agreement; or
- (b) after receipt of written notice from the Authority:
 - (1) the Preferred Proponent fails to execute and deliver an agreement substantially in the form of the Final Draft Project Agreement finalized by the Authority in accordance with Section 8.2; or
 - (2) Financial Close fails to occur within 30 days (or such longer period as the parties may agree) of receipt of such notice from the Authority,

unless:

- (3) any such failure was the result of a significant event which could not have been reasonably prevented by, or was beyond the reasonable control of, the Preferred Proponent; and
- (4) the Preferred Proponent demonstrates to the Authority's satisfaction, acting reasonably, that the occurrence of such significant event would materially frustrate or render it impossible for the Preferred Proponent to perform its obligations under the Project Agreement for a continuous period of 180 days as if the Project Agreement was in force and effect.

8.6 Communication Regarding Progress to Financial Close

Between selection as Preferred Proponent and Financial Close, the Preferred Proponent should communicate regularly with the Authority with respect to progress towards Financial Close and any credit market issues or other circumstances which could lead to material changes in Base Rates.

Prior to Financial Close, the Preferred Proponent will undertake several "dry runs" with the Authority so that the parties are familiar with, and agree on, the technical process for determining the final Base Rate(s) and Financial Model.

8.7 Changed Funding Arrangements

Without limiting the Authority's rights under this RFP, if at any time after selection of the Preferred Proponent the Net Present Cost of the Preferred Proponent's Proposal exceeds the Affordability Ceiling, the Authority may request the Preferred Proponent to seek alternative funding arrangements, subject to the review and approval of the Authority; or the Authority may obtain additional or other funding; or the Authority and the Preferred Proponent may together seek any alternative funding arrangements

(collectively the “**Changed Funding Arrangements**”), and the parties may negotiate the Changed Funding Arrangements and any related matter.

8.8 Spread Decrease on Credit Spread Hold Facilities

With respect to Credit Spread Hold Facilities, if the Preferred Proponent or any Affiliate of the Preferred Proponent is able to secure financing for the Project on terms more favourable than the terms submitted on the Credit Spread Hold Lock-In Date, the resulting gain will accrue 50% to the Preferred Proponent and 50% to the Authority. The mechanism and process to be used to calculate and apportion such gain will be substantially similar to that used to calculate a Refinancing Gain under the Project Agreement.

8.9 Partial Compensation for Participation in this RFP

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

- (a) submitted a bona fide and responsive Proposal, including meeting the Mandatory Requirements;
- (b) has not withdrawn from the Competitive Selection Process or been disqualified by the Authority in accordance with the terms of this RFP; and
- (c) provides to the Authority written acknowledgment of:
 - (1) the disclaimers, limitations and waivers of liability and Claims contained in this RFP, including Section 10.13; and
 - (2) the grant of Intellectual Property Rights to the Authority and waiver of moral rights pursuant to Section 6.9.

If the Authority exercises its right under Section 10.1 to terminate the RFP process prior to entering into the Project Agreement with a Proponent, the Authority will pay to each Proponent the lesser of:

- (d) \$250,000 (inclusive of any GST/HST payable); and
- (e) the substantiated out-of-pocket costs reasonably incurred by the Proponent in preparing its Proposal,

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

In determining whether to make available the partial compensation described in this Section 8.9, the Authority considered the potential value of obtaining the licence to the Authority of rights to the Intellectual Property Rights and the waiver of moral rights pursuant to Section 6.9. Accordingly, after selection of the Preferred Proponent, Financial Close or the expiry of the Proposal Validity Period, the Authority may be willing to consider payment of up to \$250,000 (inclusive of any GST/HST payable) to a Proponent that fails to meet the Mandatory Requirements on conditions satisfactory to the Authority and the Proponent.

The conditions may include the Authority reviewing the Intellectual Property Rights (such as for a Proposal that was returned) and being satisfied with the value of such rights and the Proponent entering into an agreement with the Authority granting license rights to the Authority. Such arrangements will not be governed by this RFP.

8.10 Debriefs

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

9. CONFLICT OF INTEREST AND RELATIONSHIP DISCLOSURE

9.1 Reservation of Rights

The Authority reserves the right to disqualify any Proponent that in the Authority's opinion has a conflict of interest or an unfair advantage (including access to any confidential information not available to all Proponents), whether real, perceived, existing now or likely to arise in the future, or may permit the Proponent to continue and impose such conditions as the Authority may consider to be in the public interest or otherwise required by the Authority.

9.2 Relationship Disclosure

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

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

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

9.3 Use or Inclusion of Restricted Parties

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

- (a) to advise or otherwise assist the Proponent respecting the Proponent's participation in the Competitive Selection Process; or
- (b) as a Proponent Team member or as an employee, advisor or consultant to the Proponent or a Proponent Team member.

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

9.4 Current Restricted Parties

At this RFP stage, and without limiting the definition of Restricted Parties, the Authority has identified the following persons, firms or organizations as Restricted Parties:

- (a) Boughton Law Corporation (COI Adjudicator);
- (b) Jane Shackell (Miller Thompson), QC (Fairness Advisor);
- (c) PricewaterhouseCoopers LLP (Business Advisor);
- (d) Borden Ladner Gervais LLP (Legal Advisor);
- (e) CEI Architecture Planning Interiors and sub-consultants including:
 - Bogdonov Pao Associates Ltd.;
 - AME Group;
 - Acumen Consulting Engineers;
 - Aplin & Martin Consultants Ltd.;
 - Kaisen Foodservice Planning & Design Inc.;
 - Recollective; and
 - John Sampson.
- (f) Carter Goble Lee;
- (g) Miller Thompson LLP;
- (h) Lawrence LaCompte;
- (i) Hanscomb Limited;
- (j) Edward Moniz (doing business as "REI"); and

- (k) the Authority, Ministry of Public Safety and Solicitor General, and Partnerships BC, including their former and current employees who fall within the definition of “Restricted Party”.

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

Current Service Provider

The Authority does not intend to restrict the current service provider, Workplace Solutions Inc., or any other service provider or contractor to the Facility (or their respective affiliates), from participating in this Competitive Selection Process and will adopt measures during the RFQ and the RFP stages to ensure that no Respondent or Proponent obtains an unfair competitive advantage in the Competitive Selection Process from utilizing any such service provider or contractor.

9.5 Conflict of Interest Adjudicator

The Authority has appointed a conflict of interest adjudicator (the “**COI Adjudicator**”) to provide decisions on conflicts of interest or unfair advantage issues, including whether any person is a Restricted Party. The Authority may, at its discretion, refer matters to the COI Adjudicator.

9.6 Request for Advance Decision

A Proponent or a prospective member or advisor of a Proponent who has any concerns regarding whether a current or prospective employee, advisor or member of that Proponent is, or may be, a Restricted Party, or has a concern about any conflict or unfair advantage it may have, is encouraged to request an advance decision in accordance with this Section through the following process:

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

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

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

9.7 The Authority May Request Advance Decisions

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

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

9.8 Decisions Final and Binding

The decision of the Authority or the COI Adjudicator, as applicable, is final and binding on the persons requesting the ruling and all other parties including Proponents, Proponent Team members and the Authority. The Authority or the COI Adjudicator, as applicable, has discretion to establish the relevant processes from time to time, including any circumstances in which a decision may be reconsidered.

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

9.9 Shared Use

A “**Shared Use Person**” is a person identified by the Authority as eligible to do work for more than one Proponent, including a person who has unique or specialized information or skills such that the Authority considers in its discretion their availability to all Proponents to be desirable in the interests of the Competitive Selection Process. Any Shared Use Person will be required to agree not to enter into exclusive arrangements with any Proponent. As of the date of this RFP, no Shared Use Persons have been identified.

9.10 Exclusivity

Unless permitted by the Authority in its discretion, or permitted as a Shared Use Person, a firm or individual may only participate as a member of one Proponent Team.

10. RFP TERMS AND CONDITIONS

10.1 No Obligation to Proceed

This RFP does not commit the Authority to select a Preferred Proponent or enter into a Project Agreement and the Authority reserves the complete right to at any time reject all Proposals, and to terminate this RFP and the Competitive Selection Process and proceed with the Project in some other manner.

10.2 No Contract

Other than to the extent provided in the Participation Agreement, this RFP is not a contract between the Authority and any Proponent nor is this RFP an offer or an agreement to purchase work, goods or services. No contract of any kind for work, goods or services whatsoever is formed under, or arises from this RFP, or as a result of, or in connection with, the submission of a Proposal, unless the Authority and the Preferred Proponent execute and deliver the Project Agreement, and then only to the extent expressly set out in the Project Agreement.

10.3 Freedom of Information and Protection of Privacy Act

All documents and other records in the custody of, or under the control of, the Authority are subject to the Freedom of Information and Protection of Privacy Act (“**FOIPPA**”) and other applicable legislation. Except as expressly stated in this RFP, and subject to FOIPPA or other applicable legislation, all documents and other records submitted in response to this RFP will be considered confidential.

By submitting a Proposal, the Proponent represents and warrants to the Authority that the Proponent has complied with applicable Laws, including by obtaining from each Person any required consents and authorizations to the collection of information relating to such individual and to the submission of such information to the Authority as part of the Proposal for the purposes of this RFP and the Competitive Selection Process.

10.4 Cost of Preparing the Proposal

Subject to Section 8.9, each Proponent is solely responsible for all costs it incurs in the preparation of its Proposal, including all costs of providing information requested by the Authority, attending meetings and conducting due diligence.

10.5 Confidentiality of Information

All information pertaining to the Project received by any Proponent or Proponent Team member through participation in this RFP is confidential and may not be disclosed without written authorization from the Contact Person, and in no event will a Proponent discuss the Project with any member of the public or the media without the prior written approval of the Authority.

10.6 Reservation of Rights

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

- (a) amend the scope of the Project, and/or modify, cancel or suspend the Competitive Selection Process at any time for any reason;
- (b) accept or reject any Proposal based on the Evaluation Committee's evaluation of the Proposals in accordance with Appendix B, and in particular the Authority is not obliged to select the Proposal with the lowest Net Present Cost;
- (c) waive a defect or irregularity in a Proposal and accept that Proposal;
- (d) reject, disqualify or not accept any or all Proposals without any obligation, compensation or reimbursement to any Proponent or any of its team members subject to any payment required pursuant to Section 8.9;
- (e) re-advertise for new Proposals to this or a modified RFP, call for tenders, or enter into negotiations for this Project or for work of a similar nature;
- (f) make any changes to the terms of the business opportunity described in this RFP;
- (g) negotiate any aspects of a Preferred Proponent's Proposal; and
- (h) extend, from time to time, any date, time period or deadline provided in this RFP, upon written notice to all Proponents.

10.7 No Collusion

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

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

10.8 No Lobbying

Proponents, Proponent Team members and Key Individuals, and their respective directors, officers, employees, consultants, agents, advisors and representatives will not engage in any form of political or other lobbying whatsoever in relation to the Project, this RFP, or the Competitive Selection Process, including for the purpose of influencing the outcome of the Competitive Selection Process. Further, no such person (other than as expressly contemplated by this RFP) will attempt to communicate in relation to the Project, this RFP, or the Competitive Selection Process, directly or indirectly, with any representative of the Authority, the Government of British Columbia (including any Minister or Deputy Minister, any member of the Executive Council, any Members of the Legislative Assembly or any employee of the

Ministry of Citizens' Services, the Ministry of Public Safety and Solicitor General, Partnerships BC, any Restricted Parties, or any director, officer, employee, agent, advisor, consultant or representative of any of the foregoing, as applicable, for any purpose whatsoever, including for purposes of:

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

In the event of any lobbying or communication in contravention of this Section, the Authority in its discretion may at any time, but will not be required to, reject any and all Proposals submitted by that Proponent without further consideration and the Proponent will not be eligible for, or receive, the partial compensation as set out in Section 8.9.

10.9 Partnerships BC Projects

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

10.10 Ownership of Proposal

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

10.11 Disclosure and Transparency

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

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

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

Following Financial Close, the Authority expects to publicly disclose:

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

Each Proponent agrees that:

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

10.12 Fairness Advisor

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

The Fairness Advisor will be:

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

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

10.13 Limitation of Damages

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

- (a) agrees not to bring any Claim against the Authority or any of its employees, advisors or representatives for damages in excess of the amount equivalent to the reasonable costs incurred by the Proponent in preparing its Proposal for any matter in respect of this RFP or Competitive Selection Process, including:
 - (1) if the Authority accepts a non-compliant proposal or otherwise breaches, or fundamentally breaches, the terms of this RFP or the Competitive Selection Process; or
 - (2) if the Project or Competitive Selection Process is modified, suspended or cancelled for any reason (including modification of the scope of the Project or modification of this RFP or both) or the Authority exercises any rights under this RFP; and
- (b) waives any and all Claims against the Authority or any of its employees, advisors or representatives for loss of anticipated profits or loss of opportunity if no agreement is made between the Authority and the Proponent for any reason, including:
 - (1) if the Authority accepts a non-compliant proposal or otherwise breaches or fundamentally breaches the terms of this RFP or the Competitive Selection Process; or
 - (2) if the Project or Competitive Selection Process is modified, suspended or cancelled for any reason (including modification of the scope of the Project or modification of this RFP or both) or the Authority exercises any rights under this RFP.

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

11. INTERPRETATION

11.1 Definitions

In this RFP:

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

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

Affordability Ceiling has the meaning set out in Section 4.2;

Affordability Model has the meaning set out in Section 4.3;

Authority means Shared Services BC;

Authority Representatives has the meaning set out in Section 2.1;

Base Rate means the base interest rate for any proposed senior debt facility as shown in the Proponent's Financial Model;

Changed Funding Arrangements has the meaning set out in Section 8.7;

City means the City of Surrey;

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

COI Adjudicator means the person described in Section 9.5;

Collaborative Meetings has the meaning set out in Section 2.12.2;

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

Construction Payments means payments from the Authority to Project Co during the Construction Period pursuant to Schedule 8 [Payments] of the Project Agreement;

Contact Person means the person identified as such on the cover page of this RFP;

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

Credit Spread Hold Facilities has the meaning set out in Section 5.3;

Credit Spread Hold Lock-In Date means the date set out in a written notice from the Authority to Proponents given at least 10 days in advance of such date on which Proponents must confirm the Credit Spreads on all Credit Spread Hold Facilities;

Data Room has the meaning set out in Section 2.4;

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

Energy Adjusted Net Present Cost has the meaning set out in Appendix A, Section 3;

Enquiry has the meaning set out in Section 6.6;

Equity Member of a Proponent means an individual, corporation, joint venture, partnership or other legal entity who will have an ownership or equity interest in the Project, as described in the Proposal;

Existing Facility means the Surrey Pretrial Services Centre;

Existing Facility Performance Upgrades means improvements to non-upgraded infrastructure;

Facility has the meaning set out in Section 1.1;

Fairness Advisor has the meaning set out in Section 10.12;

Final Draft Project Agreement has the meaning set out in Section 2.3;

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

Financing Plan has the meaning set out in Section 4.4.1 of Appendix B;

Financial Model has the meaning set out in Section 4.5 of Appendix B;

Financial Submission has the meaning set out in Appendix B;

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

FOIPPA has the meaning set out in Section 10.3;

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

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

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

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

- Project Co’s Project Director;
- Design Builder’s Project Manager;
- Design Builder’s Design Manager;
- Design Builder’s Construction Manager;
- Design Builder’s Civil Engineer;
- Project Co’s Operations Maintenance and Rehabilitation Manager;
- Project Co’s Communications Director (or a professional firm that delivers communications services);
- Project Co’s Corrections Advisor; and
- Project Co’s Financing Lead Manager.

Mandatory Requirements means the Proposal requirements described in Section 7.1;

Minimum Acceptable Scope means the minimum level of Project scope considered to be acceptable to the Authority to make the Project feasible.

Net Present Cost of a Proposal means the present value of the Construction Payments and the Service Payments that would be payable under the Project Agreement, as calculated using the Affordability Model;

New Infrastructure means the 180-cell addition to the Surrey Pretrial Services Centre;

Partnerships BC means Partnerships British Columbia Inc.;

Participation Agreement has the meaning set out in Section 5.1;

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

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

Preferred Proponent Security Deposit means an irrevocable letter of credit in the amount of \$250,000 in the form set out in Appendix H, or in such other form acceptable to the Authority in its discretion;

Pricing Forms means the forms set out in Appendix B;

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

Project Agreement has the meaning set out in Section 1.1;

Project Co means the entity that enters into the Project Agreement with the Authority;

Project Work means the scope of work undertaken by Project Co in the completion of the Project;

Project Work Scope Level has the meaning set out in Section 4.1;

Proponent means one of the consortia identified in Section 1.2;

Proponent Team means a Proponent, its Equity Members and Key Individuals;

Proposal means a proposal submitted in response to this RFP;

Proposal Requirements means the requirements described in Appendix B;

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

Reference Design has the meaning set out in the Performance Specifications;

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

Restricted Party means those persons or firms (including their former and current employees) who had, or currently have, participation or involvement in the Competitive Selection Process or the design,

planning or implementation of the Project, and who may provide a material unfair advantage or confidential information to any Proponent that is not, or would not reasonably be expected to be, available to other Proponents;

RFP means this request for proposals;

RFQ has the meaning set out in Section 1.2;

Selected Project Work Scope has the meaning set out in Section 4.1;

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

Technical Submission has the meaning set out in Appendix B;

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

Third Party Intellectual Property Rights means all Intellectual Property Rights of any Person which is not a member of, or a related party to, a member of the Proponent Team.

11.2 Interpretation

In this RFP:

- (a) the use of headings is for convenience only and headings are not to be used in the interpretation of this Agreement;
- (b) a reference to a Section or Appendix, unless otherwise indicated, is a reference to a Section of or Appendix to this RFP;
- (c) words imputing any gender include all genders, as the context requires, and words in the singular include the plural and vice versa;
- (d) the word “including” when used in this RFP is not to be read as limiting; and
- (e) each Appendix attached to this RFP is an integral part of this RFP as if set out at length in the body of this RFP.

APPENDIX A

EVALUATION OF PROPOSALS

1. TECHNICAL SUBMISSIONS

Subject to the terms of this RFP, the Technical Submission evaluation will consider whether the Technical Submission substantially satisfies the requirements of this RFP, including the requirements set out in the Final Draft Project Agreement, and demonstrates to the satisfaction of the Authority that the Proponent is capable of performing the obligations and responsibilities of Project Co and delivering the Project in accordance with the Project Agreement, and that the Proponent has a proper understanding of the Project and of the Project Work.

Each Proponent should confirm that the Affordability Requirements have been met in its Financial Submission and the Project Work Scope Level that it expects to achieve.

At the Technical and Financial Submission, the Proponent must identify the Selected Project Work Scope Level that corresponds to the pricing proposal provided.

2. FINANCIAL SUBMISSION

The Evaluation Committee will evaluate each of the Financial Submissions as follows:

1. **Affordability**. The Net Present Cost of the Proposal must not exceed the Affordability Ceiling, and if it does the Evaluation Committee will not evaluate the Proposal.
2. **Satisfaction of Financial Requirements**. If the Net Present Cost of the Proposal does not exceed the Affordability Ceiling, the Evaluation Committee will evaluate whether the Financial Submission substantially satisfies the following requirements:
 - (a) the Proponent has arranged sufficient financing for the Project having regard to the requirements of the RFP and the Final Draft Project Agreement;
 - (b) the Proponent's Financing Plan, including security, bonding, guarantees and insurance elements, is robust and deliverable;
 - (c) the Proponent's Financing Plan can be executed expediently if the Proponent is selected as Preferred Proponent;
 - (d) each of the equity funders of the Proponent continue to have the ability to raise sufficient capital to fund the equity requirements; and
 - (e) the Proponent is financially viable.

If the Evaluation Committee determines that the Financial Submission does not substantially satisfy the above requirements, the Evaluation Committee may decide not to complete a detailed evaluation of the Proposal.

Notwithstanding compliance with 2.1, the Authority may, in its discretion, decide not to further evaluate a Proposal if the Affordability Ceiling has not been met, and if the Authority receives a Proposal from another Proponent that has met the Affordability Ceiling.

The Authority also reserves the right to evaluate all Proposals where the Affordability Ceiling has not been met, but will do so only in the event that the Proposals received from all the Proponents do not meet the Affordability Ceiling.

Subject to the terms of this RFP, the Financial Submission evaluation will consider whether the Financial Submission substantially satisfies the requirements of this RFP, including the requirements set out in the Final Draft Project Agreement and revisions in response to Authority comments on the Technical Submission.

3. RANKING PROCESS

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

- (a) The Proposal that contains the commitment to achieve the most Project Work within the Affordability Requirements will be designated the highest-ranked Proposal.
- (b) If two or more Proposals provide the same Project Work Scope Level and meet the Affordability Requirements, the Proposal which offers the lowest Energy Adjusted Net Present Cost will receive the highest ranking and be designated the highest-ranked Proposal. The Energy Adjusted Net Present Cost is the total of the Net Present Cost plus the net present cost of energy used over the contract period.

The net present cost of energy used over the contract period will be calculated by the Authority using the proposed Design and Construction Energy Target, similar assumptions as used for the Net Present Cost in the Affordability Model calculations, and a current cost of energy at \$300/Megajoule.

APPENDIX B

PROPOSAL REQUIREMENTS

Provide as separate document.

DRAFT

APPENDIX C

PROPOSAL DECLARATION FORM

- 1. This Proposal Declaration should be executed by the Proponent, each entity that comprises the Proponent, and each member of the Proponent Team (excluding Key Individuals)**
- 2. Capitalized terms are defined in Section 11.1 of the RFP.**

[RFP Proponent's Letterhead]

To: **[Insert client and submission location]**

Attention: **[Insert contact person]**

In consideration of the Authority's agreement to consider our Proposal in accordance with the terms of the RFP, the Proponent hereby agrees and acknowledges that:

1. Proposal

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

2. Acknowledgements with Respect to the RFP

- (a) the Proponent has received, read, examined and understood the entire RFP including all of the terms and conditions, all documents listed in the RFP "Table of Contents", and any and all Addenda;
- (b) the Proponent has provided a Proposal that does not exceed the Affordability Ceiling as defined in the RFP;
- (c) the Proponent agrees to be bound by the entire RFP including all of the terms and conditions, all documents listed in the RFP "Table of Contents", and any and all Addenda;

- (d) the Proponent's representative identified below is fully authorized to represent the Proponent in any and all matters related to its Proposal, including but not limited to providing clarifications and additional information that may be requested in association with the RFP;
- (e) the Proponent has disclosed all relevant relationships, in accordance with the instructions and format outlined in the Relationship Disclosure Form; and
- (f) the Final Draft Project Agreement is in a form acceptable to the Proponent Team and the Senior Lenders.

3. Proponent Team consists of:

Name	Address	Equity Member or Key Individual

PROPONENT REPRESENTATIVE

Name Name of Employer

Address E-mail Address

Name of Authorized Signatory Telephone

Signature Fax Number

APPENDIX D

RELATIONSHIP DISCLOSURE FORM

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

The Proponent declares that:

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

that could constitute a conflict of interest or unfair advantage.

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

NAME OF PROPONENT:

Name of Firm – Proponent/Key Individual:

Address:

E-mail Address:

Telephone:

Fax:

Name of Authorized Signatory for Proponent/Key Individual:

Signature:

APPENDIX E

PROPONENT COMMENTS FORM

**(Collaborative Meetings – s. 2.3(b))
Surrey Pretrial Services Centre Expansion Project**

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

APPENDIX F

PARTICIPATION AGREEMENT

August 3, 2010

Ministry of Citizens' Services
Shared Services BC
c/o Partnerships British Columbia Inc.
300 – 707 Fort Street
Victoria, BC V8W 3G3

Attention: Catherine Silman, Contact Person

Dear Sirs/Mesdames:

Re: **Surrey Pretrial Services Centre Expansion Project – Participation Agreement in respect of the Request for Proposals issued by Shared Services BC (the “Authority”) on August 3, 2010, as amended or otherwise clarified from time to time, including by all Addenda (the “RFP”)**

This letter agreement sets out the terms and conditions of the Participation Agreement between ▼ [insert name of Proponent] (the “**Proponent**”) and the Authority, pursuant to which the Proponent agrees with the Authority as follows:

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

- (b) to be bound by the disclaimers, limitations and waivers of liability and Claims and any indemnities contained in the RFP, including Section 10.13 (Limitation of Damages) of the RFP. In no event will the liability of the Authority exceed the amount calculated pursuant to Section 8.9 (Partial Compensation for Participation in the RFP) of the RFP;
- (c) that the Authority's and the Proponent's obligations in respect of payments of partial compensation or other similar payment are as set out in Section 8.9 (Partial Compensation for Participation in the RFP) of the RFP; and
- (d) that the Authority's and the Proponent's obligations in respect of the Preferred Proponent Security Deposit are as set out in Sections 8.3, 8.4 and 8.5 of the RFP.

5. Amendments. The Proponent acknowledges and agrees that:

- (a) the Authority may in its sole discretion amend the RFP at any time; and
- (b) by submitting a Proposal the Proponent accepts, and agrees to comply with, all such amendments and, if the Proponent does not agree to any such amendment, the Proponent's sole recourse is not to submit a Proposal.

6. General.

- (a) *Capacity to Enter Agreement.* The Proponent hereby represents and warrants that:
 - (i) it has the requisite power, authority and capacity to execute and deliver this Participation Agreement;
 - (ii) this Participation Agreement has been duly and validly executed by it, or on its behalf by the Proponent's duly authorized representatives; and
 - (iii) this Participation Agreement constitutes a legal, valid and binding agreement enforceable against it in accordance with its terms.
- (b) *Survival following cancellation of the RFP.* Notwithstanding anything else in this Participation Agreement, if the Authority, for any reason, cancels the Competitive Selection Process or the RFP, the Proponent agrees that it continues to be bound by, and will continue to comply with, Sections 3 and 4(b) of this Participation Agreement.
- (c) *Severability.* If any portion of this Participation Agreement is found to be invalid or unenforceable by law by a court of competent jurisdiction, then that portion will be severed and the remaining portion will remain in full force and effect.
- (d) *Enurement.* This Participation Agreement enures to the benefit of the Authority and binds the Proponent and its successors.
- (e) *Applicable Law.* This Participation Agreement is deemed to be made pursuant to the laws of the Province of British Columbia and the laws of Canada applicable therein and will be governed by, and construed in accordance with, such laws.

- (f) *Headings.* The use of headings is for convenience only and headings are not to be used in the interpretation of this Participation Agreement.
- (g) *Gender and Number.* In this Participation Agreement, words imputing any gender include all genders, as the context requires, and words in the singular include the plural and vice versa.
- (h) *Including.* The word “including” when used in this Participation Agreement is not to be read as limiting.

Yours truly,

(Name of Proponent)

Authorized Signatory

(Name of Equity Member)

Authorized Signatory

(Name of Equity Member)

Authorized Signatory

[Add signature block for each Equity Member]

SCHEDULE 1

CONFIDENTIALITY CONDITIONS

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

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

evaluation of Proposals or proposals, as the case may be, or otherwise retained by the Receiving Party, the Authority or Partnerships BC in connection with the Project.

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

provision of this Schedule 1 by the Receiving Party or any of its Representatives, or to enforce the terms and provisions hereof, by an action instituted in a court of competent jurisdiction, which remedy or remedies are in addition to any other remedy to which the Authority may be entitled at law or in equity.

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

APPENDIX G

COMMITMENT LETTER TEMPLATE

Letter to be in substantially the following form, addressed to the Authority, and sent from all Senior Lenders supporting the Proposal, either individually or (provided that all of them sign the letter) as a group. Separate letters from separate groups of Senior Lenders (e.g., senior, mezzanine, capital markets, and financial guarantors) will be permitted, if appropriate.

**To: Ministry of Citizens' Services
Shared Services BC
c/o Partnerships British Columbia Inc.
300 – 707 Fort Street
Victoria BC V8W 9W6**

**Re: Surrey Pretrial Services Centre Expansion Project
(the "Project")**

[Individual letter - Bank or other financial institution name] [Group letter]

The signatories of this letter provide(s) this letter in support of the Proposal (as defined in the RFP) submitted by [the Proponent's name] (the "Proponent") in response to the RFP issued by the Authority on August 3, 2010, as amended, in relation to the Project and in consideration of the Authority inviting the Proponent to submit such Proposal.

1. We confirm that we have undertaken the due diligence that we consider necessary on the Project to enable us to offer committed financing to the Proponent in an amount of not less than \$▼.00 in support of the Proponent's Proposal, which the Proponent has confirmed to us complies with the requirements of the RFP. The provision of such financing will be subject only to the following:
 - (a) the completion of a satisfactory audit of the financial close financial model;
 - (b) negotiation and finalization of funding documentation based on the attached debt term sheet; and
 - (c) negotiation and finalization of Principal Contracts based on the heads of terms included in the Proposal.
2. We have carried out and relied upon the due diligence referred to in paragraph 1 above with support from, and in cooperation with, [name] (our legal advisors), [name] (our technical advisors) and [name] (our insurance advisors) [and [name] (our model auditors)]. In particular:
 - (a) due diligence on the Technical Submission proposed for the Project by the Proponent has been undertaken on our behalf and we are satisfied with the Technical Submission;
 - (b) due diligence on the insurance proposals contained in the Proposal and the Authority's requirements in relation to insurances for the Project has been undertaken on our behalf and we can confirm that we are satisfied with the adequacy of the proposed insurance arrangements contained within the Proposal (assuming that such insurance arrangements are commercially available at the time of financial close);

- (c) due diligence has been undertaken on the Financial Model included in the Proposal and we confirm that the results of the Financial Model (including the sensitivities) are satisfactory and capable of supporting the proposed financing described in the attached debt term sheet; and
 - (d) we confirm that we accept the terms and risk allocation of and have no further comments on the Final Draft Project Agreement, and that this agreement is acceptable without modification (except as contemplated therein) for purposes of financing the Project as contemplated in this letter.
3. We are satisfied that the attached debt term sheet sets out all significant commercial terms and conditions relating to the financing referred to in paragraph 1 above and the debt funding structure and, if any, all required terms relating to any material adverse change conditions to which the commitment referred to in paragraph 1 above is subject.
4. [If individual letters submitted] We confirm that we have received credit committee approval and, if any, other required internal approvals for the underwriting of up to [] % of the [describe relevant facilities referred to in debt term sheet] on the terms contemplated by this letter and the attached debt term sheet.
- [If group letters submitted] We confirm that we have received credit committee approval and, if any, other required internal approvals for the underwriting of the facilities referred to in the attached debt term sheet in the following percentages and on the terms contemplated by this letter and the attached debt term sheet:
- [List banks/financial institutions individually and the percentage participations of each of them in each facility]
- [If individual or group letters submitted] We confirm that [our commitment] [the commitment of each signatory of this letter] described in this letter in the amount represented by the percentage[s] detailed above will not be affected by any subsequent withdrawal by, or removal of, any other Senior Lender from the Proponent's financing plan].
5. We confirm that we will be able to meet the Authority's timetable to achieve Financial Close (i.e., execution and delivery of all funding agreements and satisfaction of all conditions precedent to initial drawdown) by 13 weeks after the announcement of the Proponent as the Preferred Proponent.

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

The provisions of this letter and attached debt term sheet have been approved for a period expiring not less than 120 days from the date of submission of the Financial Submission forming part of the Proposal on [Insert Date of Financial Submission Closing Time] (the "Financial Submission Closing Time" under the RFP).

APPENDIX H

PREFERRED PROPONENT SECURITY DEPOSIT

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

TO: **Insert Authority Name**

<>
(the "**Beneficiary**")

RE: **PREFERRED PROPONENT SECURITY DEPOSIT**

IRREVOCABLE LETTER OF CREDIT NO: _____

Dear Sirs:

At the request of our client, _____ (the "**Customer**"), we hereby issue in your favour our irrevocable letter of credit No. _____ ("**Letter of Credit**") for a sum not exceeding in the aggregate Two Hundred and Fifty Thousand Canadian Dollars (CDN \$250,000) effective immediately.

This bank shall immediately pay to you under this Letter of Credit any amount or amounts claimed, not exceeding in the aggregate the sum of CDN \$250,000 upon your written demand(s) for payment being made upon us at our counter during normal business hours, <> **[Note: insert address of Bank in Vancouver, British Columbia]**, Canada referencing this irrevocable Letter of Credit No. _____ dated _____.

Partial drawings are permitted.

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

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

- (a) the person signing the certificate is an authorized signatory of the Beneficiary; and
- (b) the Beneficiary is entitled to draw upon this Letter of Credit.

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

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

All banking charges are for the account of the Customer.

This Letter of Credit shall remain in full force and effect and, unless renewed, will expire at the close of business on _____ [insert 180 days after the Financial Closing Time]

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

Authorized Signatory

Authorized Signatory

APPENDIX I

CONSTRUCTION INSURANCE UNDERWRITING QUESTIONNAIRE

<p>CONSTRUCTION INSURANCE UNDERWRITING QUESTIONNAIRE</p>	<p>SUBMIT THE COMPLETED QUESTIONNAIRE TO: Risk Management Branch, PO Box 9405 Stn Prov Govt, Victoria BC V8W 9V1 OR FAX to (250) 953-3050</p>
<p>✓ Complete this questionnaire for any/all construction being performed on your property. ✓ Only fill in areas applicable to your construction project.</p>	

CONSTRUCTION PROJECT TYPE:	New Construction <input checked="" type="checkbox"/> Addition <input type="checkbox"/> Renovation <input type="checkbox"/> Envelope Repair <input type="checkbox"/> Roofing <input type="checkbox"/>
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Owner:	Insert Authority Name
Mailing Address:	Insert Address
Project Location Address:	Insert Address
Legal Description:	Insert Legal Description
Project Description (name):	Insert Project Name

NAME AND ADDRESS OF THE FOLLOWING:	
Project Manager:	_____
General Contractor:	_____
Architect:	_____
Architectural & Engineering Consultants:	_____
Mortgagee:	1 st _____
(include address)	2 ⁿ _____ d _____

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

Project Duration:	Proposed Starting Date: _____	Estimated Completion Date: _____
	<small>dd-mmm-yyyy</small>	<small>dd-mmm-yyyy</small>

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

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

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

SURROUNDING EXPOSURES:							
	Buildings:	North _____ feet	South _____ feet	East _____ feet	West _____ feet		
	Roads:	North _____ feet	South _____ feet	East _____ feet	West _____ feet		

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

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

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

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

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

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

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

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

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

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

WHAT "OFF-SITE" WORKS INVOLVED?	Describe any works involving transmission lines, pipelines, access roads, railways, dams, bridges, tunnels, etc.
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RELOCATION (if applicable):	Details of relocation of existing services (e.g. roads, railways, utilities, etc.) _____
Performed By: _____	

VOLUNTEERS (if applicable):	Liability coverage required? Yes <input type="checkbox"/> No <input type="checkbox"/>	No. of volunteers _____
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Activities Description:

ADDITIONAL INFORMATION: <i>REQUIRED FIELD</i>	One Page Site Plan (all Projects)	Attached: Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
	Soils Report (New Construction)	Attached: Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

(Signature)

(Title)

(Date Signed)

APPENDIX J

DRAFT PROJECT AGREEMENT

Posted in Data Room.