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**DURHAM CONSOLIDATED COURTHOUSE  
REQUEST FOR PROPOSALS II FOR AN ALTERNATIVE FINANCING AND  
PROCUREMENT PROJECT**

Conformed Volume I: Instructions to Proponents

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Infrastructure Ontario

OIPC-06-06-I002

**[THIS CONFORMED VOLUME I: INSTRUCTIONS TO PROPONENTS INCORPORATES ALL AMENDMENTS INCLUDED IN ADDENDA 1 THROUGH 18 AS WELL AS ADDITIONAL AMENDMENTS ISSUED HEREIN FOR THE FIRST TIME. THIS DOCUMENT SUPERSEDES THE VOLUME I: INSTRUCTIONS TO PROPONENTS ISSUED TO PROPONENTS ON FEBRUARY 15, 2006]**

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This Request for Proposals document consists of four volumes as listed below. For a description of the contents in each volume, please see Section 1.1.7 of this RFP-2 Volume I.

**LIST OF VOLUMES:**

- Volume I: Instructions to Proponents
- Volume II: Initial Form Project Agreement
- Volume III: Draft Facilities Management Specifications (content to be reflected in Schedule E, Part I of the Project Agreement)
- Volume IV: Payment Mechanism (Schedule F of the Project Agreement)

In addition, a separate document titled “Design Requirements” has been issued that will consist of contents as described in Section 1.1.7 of this RFP-2 Volume I.

## 1. BACKGROUND

### 1.1 Introduction

#### 1.1.1 Infrastructure Planning, Financing and Procurement (IPFP) Framework

Modern, efficient public infrastructure is essential to delivering quality public services, stimulating economic growth, creating jobs and improving the quality of life we enjoy in Ontario. To help meet the Government of Ontario's ("Government's") commitment to deliver better health care, higher-quality education and a clean and safe environment, in July 2004, the Minister of Public Infrastructure Renewal ("MPIR") released "Building a Better Tomorrow – An Infrastructure Planning, Financing and Procurement Framework for Ontario's Public Sector" ("IPFP Framework").

This comprehensive framework was established to guide Ontario government ministries and agencies, municipalities and broader public sector partners, including hospitals, in the planning, financing and procurement of public infrastructure assets. The framework was developed in consultation with provincial infrastructure ministries, the public and hundreds of stakeholders representing communities, businesses and infrastructure partners from across the province, and incorporates research and best practices from other jurisdictions.

The IPFP Framework sets out five fundamental principles for the procurement of public infrastructure:

- The public interest is paramount;
- Value for the investment of public money must be demonstrated;
- Appropriate public control and ownership must be maintained;
- Accountability must be maintained; and
- Fair, transparent and efficient processes must be used.

In the case of hospitals, public schools and water and sewer systems, the IPFP Framework Principles specifically state that public ownership, control and accountability must be maintained. The Framework also provides guidance for the adoption of Alternative Financing and Procurement (AFP) models, which allow for access to more capital investment and more sophisticated project risk management.

It is recommended that Proponents review “Building A Better Tomorrow – An Infrastructure Planning, Financing and Procurement Framework for Ontario’s Public Sector” published by MPIR. The “Framework Paper” is available at [www.pir.gov.on.ca](http://www.pir.gov.on.ca).

### 1.1.2 The Five-Year Infrastructure Plan – ReNew Ontario

The Government of Ontario recently released a five-year infrastructure investment plan. Over the next five years, the Government and its partners will invest more than \$30 billion in public infrastructure in Ontario. This investment represents the first step in a long-term plan to renew public infrastructure in Ontario and will be accompanied by improvements in the way these investments are planned and managed:

- Planned over a longer period to support major priorities in health care, education and economic growth;
- Co-ordinated with partners in the broader public sector;
- New sources of investment will be utilized such as private sector investment, pension funds and the savings of Ontario residents; and
- New ways of harnessing the expertise of the private sector.

The Government has directed MPIR to examine and identify new and innovative AFP models that would successfully deliver major infrastructure projects, while adhering to the fundamental principles that protect and promote the public interest, and provide Ontario’s taxpayers value for money, i.e. public infrastructure investments should be cost-effective, optimize risk allocation, and be completed on time and within budget. AFP approaches facilitate the acquisition/redevelopment of complex infrastructure projects transferring to the private sector the appropriate risks of design, build, finance, maintenance and/or operation.

These strategies provide a way to fund the development of infrastructure over time, using resources in addition to Government’s and to transfer to the private sector the risk of delivering a project on time and on budget. It enables the Government to build sooner and provide services more quickly. The strategy not only brings additional investment into public services, it is also a new way of working that brings additional expertise, ingenuity and rigour to the process of managing and renewing public infrastructure.

MPIR recognizes that AFP models are continually evolving. MPIR also recognizes that some models are more suitable than others for the delivery of specific services or infrastructure and therefore MPIR encourages innovations and unique made-in-Ontario AFP approaches.

Notwithstanding the need for model flexibility there are common benefits that accrue from any AFP model:

- Allows the Province to pay for assets over their useful life;
- Transfers risk to the parties that can best manage them;
- Promotes fast tracking of construction or project completion;
- Encourages capital investment planning that takes into account ongoing operating and maintenance costs based on pre-determined standards through life-cycle costing; and
- Establishes price certainty for both public and private sector parties.

It is recommended that Proponents review “ReNew Ontario 2005-2010 Strategic Highlights: A five-year infrastructure investment plan to strengthen our economy and communities” published by MPIR. Renew Ontario is available at [www.pir.gov.on.ca](http://www.pir.gov.on.ca).

### 1.1.3 Project Description

The Government is pleased to present this Request for Proposals (“RFP-2”) to those Proponents who have been short listed as a result of responding to the RFQ and who have met the requirements of the RFP-1. As Proponents are aware, the opportunity covered by RFP-2 is to undertake the design, construction, financing, property management and ownership of a new Consolidated Courthouse in Durham Region.

This section provides an overview of the Durham Consolidated Courthouse project (“DCC” or “Consolidated Courthouse” or “Project”).

It is anticipated that this Project will generate long-term value-for-money for the primary occupant of the DCC, Ministry of the Attorney General (“MAG”), via the design, construction and technical expertise, and efficient operational practices, of the private sector.

It is also anticipated that the experience and knowledge gained through this Project will be used in the development of other Alternative Financing and Procurement (“AFP”) projects in Ontario, not only in the justice area but also in other major sectors of the provincial economy, such as transportation, healthcare and others.

### 1.1.4 Project Objectives

The primary objective of the Project is to provide a fully functional consolidated courthouse facility for delivery of essential Court Services and Ancillary Services in the Durham Region. The Project will be delivered through an AFP structure which will incorporate private sector innovation and expertise, to deliver a competitively priced and efficient facility. MAG, which administers court services on behalf of the Government, expects the new DCC to achieve the following objectives:



- **Operational Improvements** - Flexibility to accommodate changing caseload volumes, efficient courtroom scheduling and ability to apply the latest technology to streamline court processes.
- **Enhanced Security** - Provision of secure facilities for the judiciary, witnesses, and persons in custody and other court users.
- **Enhanced Customer Service** - Provision of quality service in a safe environment.
- **Economies of Scale** - Elimination of duplicate functions and travel time among the various existing court locations in Durham Region.
- **Adaptability** - Ability to meet new justice sector initiatives by creating a courthouse model capable of quickly adapting to change.
- **Financial Efficiency** - Ensure that the taxpayers of the Government are receiving fair value for the court accommodations provided.

Through this RFP-2, the Government is encouraging Proponents to provide innovative approaches for consideration in the Consolidated Courthouse, not only in facility design but also in the provision of facilities management services for MAG.

### 1.1.5 RFP-2 Objectives

The primary objective of this RFP-2 is to obtain from Proponents complete and comprehensive Proposals for the Project that meet the requirements of this RFP-2.

All Proposals received in response to this RFP-2 will be evaluated in accordance with the provisions set out herein. Subject to possible negotiations (as further described in Section 6.8.5 of this RFP-2 Volume I), the Preferred Proponent will be identified. The Ontario Infrastructure Projects Corporation (“OIPC”) will work with the Preferred Proponent to finalize and conclude the Project Agreement.

### 1.1.6 Proponent Eligibility

This RFP-2 is being issued to the following Proponents which were expressly selected and invited to participate in the RFP-2 and to submit a Proposal:

- Durham Courthouse Centre Corporation, consisting of EllisDon Inc, EllisDon Design Build Inc., LPF Realty (owned 100% by Labourers' Pension Fund of Central and Eastern Ontario), CIBC World Markets and Carillion Canada Inc.
- Access Justice Durham, consisting of ABN AMRO Bank N.V., Canada Branch, PCL Constructors Canada Inc. and Johnson Controls LP.

- SNC Lavalin Engineers & Constructors Inc., Bondfield Construction Company Limited and ProFac Facilities Management Services Inc.

It is a condition of this RFP-2 that the Proponent understands and agrees that it will sign a Preferred Proponent Agreement if selected as the Preferred Proponent and will undertake to address all Items of Non-Compliance with the Design Requirements identified by OIPC during the course of review of Proposals.

Section 7.12 of this RFP-2 Volume I addresses parties who are ineligible to participate as a Proponent, Proponent Team Member, or advisor to a Proponent Team Member.

### **1.1.7 RFP-2 Structure**

The RFP-2 consists of four volumes as follows:

#### **(a) Volume I – Instructions to Proponents**

Volume I provides background details on OIPC and the Project. It sets out the proposal process, the information required from Proponents for the evaluation of proposals, the form in which proposals should be submitted and the criteria which will be used by OIPC and its advisors to evaluate proposals.

The Appendices to Volume I are an integral part of this Volume.

#### **(b) Volume II – Initial Form Project Agreement**

Volume II sets out the Initial Form Project Agreement. The Initial Form Project Agreement will incorporate all aspects of the Project including the design, construction, financing and operation of the Consolidated Courthouse. The Initial Form Project Agreement as presented is considered a draft document. The RFP-2 process includes a consultative process whereby Proponents will be given an opportunity to provide feedback on the Initial Form Project Agreement. The goal of the consultative process is to develop a mutually beneficial and commercially viable Final Form Project Agreement acceptable to both the Preferred Proponent and the Government.

The Final Form Project Agreement will then be issued by OIPC upon consideration of Proponent feedback, Requested Amendments and the Consultative Meetings Process in accordance with the schedule provided in Section 1.3.2 of this RFP-2 Volume I.

#### **(c) Volume III – Facilities Management Specifications**

The content of this Volume, as amended during the RFP-2 process will be incorporated within **Schedule E, Part I** of the Project Agreement. This Volume includes the

specifications for all the associated services connected with the Project, for on-going operation, maintenance and rehabilitation of the Consolidated Courthouse.

**(d) Volume IV – Payment Mechanism**

The content of this Volume, as amended during the RFP-2 process will ultimately constitute **Schedule F** of the Project Agreement. This Volume describes how the Government proposes to pay for the Consolidated Courthouse and services provided as part of the Project.

**(e) Design Requirements**

In addition, a separate document titled “Design Requirements” has been issued that will ultimately constitute **Schedule B, Part I** of the Project Agreement. This document is divided into two volumes and provides detailed information on the design and construction requirements of the Project. The documents contained within each volume are listed below, each of which will form a key part of the overall Design Requirements:

Volume 1:

- i) Design Brief – describes the design intent for the DCC.
- ii) Facilities Program – identifies all required spaces, defines adjacencies and organizing principles.
- iii) Space Layout – illustrate layouts for certain spaces to further define functionality.

Volume 2:

- i) Space Data – identify specific space or room requirements.
- ii) Performance Specifications – provide performance requirements for building elements.

**1.1.8 Definitions and Interpretation**

Terms used in this RFP-2 and defined in Appendix 1 of this RFP-2 Volume I shall have the meanings given to them in Appendix 1. Terms not defined in Appendix 1 but which are defined within the text of this RFP-2 or in the Project Agreement (or its relevant schedules) shall have the meanings given to them within the text of this RFP-2 or in the Project Agreement (or its relevant schedules, as applicable), respectively. Terms defined in the singular include the plural of those terms.

## 1.2 Project Overview

### 1.2.1 Project Background

Relevant background information to the DCC is described in this Section 1.2 of this RFP-2 Volume I.

### 1.2.2 Bid Enhancement Factors

Proponents must satisfy all provisions of the Project Works and Service Period Works, unless explicitly permitted by OIPC in order to develop an Alternative Proposal. In addition, OIPC has identified four key areas, defined as Bid Enhancement Factors, where Proponents are encouraged to develop additional value-added solutions in their Alternative Proposal(s) to address Government priorities. These solutions must not be addressed in the Base Proposal. If a Proponent opts to address the Bid Enhancement Factors, they must do so in an Alternative Proposal, as further described in Section 5.1.3. The four Bid Enhancement Factors are as follows:

#### (a) Optimized Energy Performance

OIPC values the efficient use of energy at the DCC in order to promote energy consciousness and operating cost savings over the long term. The Design Brief has established minimum energy performance standards that all Proposals must meet; however, OIPC encourages Proponents to exceed these standards. Energy performance will be assessed using standards as set out by the Canada Green Building Council (“CaGBC”).

Proponents should note that they must achieve the Optimized Energy Performance Threshold in their Alternative Proposal(s) before that Alternative Proposal is eligible for the Bonus Points associated with any other Bid Enhancement Factor.

#### (b) LEED Gold Certification

The DCC facility will be a landmark public infrastructure asset for the Region of Durham that will meet LEED Silver Certification requirements as set out by CaGBC, including certain mandatory energy credits. OIPC encourages Proponents to achieve LEED Gold Certification to allow DCC to set a new standard for green buildings in Ontario. LEED certification will be evaluated using the LEED-NC 1.0 rating system as set out by CaGBC.

#### (c) Re-Certification Plan

OIPC encourages its industry partners to explore opportunities for continual improvement in energy performance and sustainability practices over the lifetime of the DCC.

Participation in the Building Operators and Managers Association's (BOMA) Go Green Comprehensive program will be required by Project Co throughout the lifetime of the Project as part of the Base Proposal. OIPC also encourages proponents to develop a LEED for Existing Building ("LEED-EB") re-certification plan to set new standards of best practice and added value as part of an Alternative Proposal.

**(d) Value-Added Enhancements**

Proponents are encouraged to develop value-added and innovative solutions to the RFP-2 requirements. Any innovative approach to the design or maintenance of the DCC will be evaluated on its demonstrated value. Proponents may consider alternative technologies and creative solutions to the challenges posed by the Project objectives.

The Bid Enhancement Factors, including a description of the opportunity to earn evaluation Bonus Points, are further described in Appendix 2 of this RFP-2 Volume I.

**1.2.3 Project Management**

The following representatives comprise the public-sector Project team responsible for the development of the DCC:

***Ontario Infrastructure Projects Corporation ("OIPC" or "Infrastructure Ontario"):*** OIPC, as an independent agency reporting directly to MPIR, will work closely with MPIR to oversee the planning and implementation of the Project.

OIPC has been appointed as the project manager for the Project, on behalf of MPIR. OIPC is responsible for leading the Project Implementation Process, as described in Section 1.3 of this RFP-2 Volume I. The interests of the public sector stakeholders involved in the Project will be coordinated through OIPC. OIPC's mandate is to provide expertise and implement best practices for all areas of infrastructure planning, financing, construction and management, with a focus on AFP projects.

Infrastructure Ontario ("IO") was incorporated under the Ontario Business Corporations Act on November 7, 2005, with the Province of Ontario as its sole shareholder, and it was continued as a statutory corporation under the Ontario Infrastructure Projects Corporation Act (the "OIPC Act"). By virtue of the OIPC Act and the Crown Agency Act (Ontario), IO is an agent of the Crown in right of Ontario.

Under the Ontario Infrastructure Projects Corporation Act (the "Act"), Infrastructure Ontario will be continued as a corporation under that legislation and will be amalgamated with the Ontario Strategic Infrastructure Financing Authority. Once the Act comes into force, Infrastructure Ontario will continue to be an agent of the Crown. Proponents should note that Infrastructure Ontario has not and does not intend to make a written declaration in the Project Agreement to the effect that Infrastructure Ontario is acting as a Crown agent for the purposes of the Project Agreement.

**Ministry of the Attorney General (MAG):** MAG will occupy and use the DCC during the operating phase of the Project.

MAG is responsible for providing a fair and accessible justice system which reflects the needs of the diverse communities it serves across government and the province. It strives to manage the justice system in an equitable, affordable and accessible way throughout the province.

The Ministry delivers and administers a wide range of justice services including:

- Administering approximately 115 statutes;
- Conducting criminal proceedings throughout Ontario;
- Providing legal advice to, and conducting litigation on behalf of, all government ministries and many agencies, boards and tribunals;
- Providing advice on, and drafting, all legislation and regulations; and
- Coordinating and administering court services throughout Ontario.

The Office of the Public Guardian and Trustee, the Children's Lawyer (formerly called the Official Guardian), and the Special Investigations Unit (SIU) all fall within MAG's responsibilities. The Ministry also funds Legal Aid Ontario which is administered by an independent Board.

**Ministry of Public Infrastructure Renewal ("MPIR"):** MPIR has overall lead responsibility for the DCC project. MPIR leads the project steering committee, which provides strategic direction and guidance for the implementation of the Project. MPIR is the public sector party that will contract with Project Co regarding the Project, based on the Final Form Project Agreement established pursuant to Section 4.3 of this RFP-2 Volume I.

MPIR is the ministry responsible for managing infrastructure planning and priority setting for the Government. It works closely with other Ontario ministries to make strategic investments that will meet the needs of a growing population and economy by:

- Identifying what infrastructure developments will most benefit key public sectors and the standard of living in Ontario over the long run
- Finding the best models for financing infrastructure projects, and
- Ensuring the stock of public infrastructure assets in Ontario is maintained in a state of good repair.

### 1.3 Project Implementation Process

#### 1.3.1 Overview

The implementation process for the development of the Project (the “Project Implementation Process”) is comprised of the five stages described in Sections 1.3.1(a) to 1.3.1(e) below. This Project Implementation Process, however, is subject to modification and amendment as described in Section 7.1 of this RFP-2 Volume I.

##### (a) RFQ

The RFQ stage of the Project Implementation Process commenced with the issuance of the Request for Qualifications inviting respondents to respond and qualify with and in the manner set out in the RFQ. It included the evaluation and scoring of RFQ Proposals, following which the Proponents selected to participate in the Request for Proposal Stage were confirmed. The RFQ stage ended with the selection of the Proponents.

##### (b) RFP-1

The RFP-1 stage of the Project Implementation Process commenced with the issuance of the RFP-1 inviting Proponents to respond and qualify the members of their Design Teams. The RFP-1 process was used to assess and confirm the courthouse design expertise and technical capability of the proposed Design Teams presented by the Proponents. In order to proceed to RFP-2 stage, Proponents had to respond and identify their Design Teams in the manner set out in RFP-1.

##### (c) RFP-2

The RFP-2 stage of the Project Implementation Process commences with the issue of this RFP-2. By accepting this RFP-2, Proponents commit to abide by the terms of RFP-2. The RFP-2 stage includes the evaluation and scoring of the Proposals and, subject to possible negotiations (as further described in Section 6.8.5 of this RFP-2 Volume I), the identification of the preferred Proposal (“the Preferred Proposal”), which will in turn identify the Preferred Proponent.

##### (d) Project Agreement Finalization and Financial Close Stage

The Project Agreement Finalization and Financial Close Stage commences when the Preferred Proposal and Preferred Proponent have been identified and confirmed in writing by OIPC. Except as otherwise provided in the Preferred Proponent Agreement, during this stage, any minor (non-material) changes to the Final Form Project Agreement and other agreements will be finalized and prepared for execution and the Preferred Proponent will finalize all documents required for the provision of financing for the Project.

If all outstanding matters and Project Agreement terms and conditions are finalized to the complete satisfaction of OIPC, it is intended that the Project Agreement will be executed with that Preferred Proponent (who will be the Successful Proponent), subject to the approval process described in Section 1.3.3 of this RFP-2 Volume I, Financial Close and to acceptance of final design plans.

If everything is not finalized to the satisfaction of OIPC as the result of the Preferred Proponent failing to meet agreed milestones during the Financial Close Stage, the Letter of Credit of the initial Preferred Proponent may be retained as liquidated damages and another Proposal and Proponent will become the Preferred Proposal and Preferred Proponent, subject to OIPC's unqualified subjective discretion.

The selection of the Successful Proponent will be subject to an approval process as described in Section 1.3.3.

**(e) Project Development Stage**

The fifth stage (the "Project Development Stage") of the Project Implementation Process commences on Financial Close and includes the design, development and construction of DCC.

**1.3.2 Project Schedule**

The schedule for implementation of the Project is as follows.

<b><u>STAGE OF PROJECT IMPLEMENTATION PROCESS</u></b>	<b><u>DATE/MONTH</u></b>
<b><u>Request for Qualifications (RFQ)</u></b>	
Issue Request for Qualifications	Complete
Deadline for RFQ Proposal	Complete
Evaluation of Proposals and selection of Proponents	Complete



<b><u>STAGE OF PROJECT IMPLEMENTATION PROCESS</u></b>	<b><u>DATE/MONTH</u></b>
<b><u>Request for Proposals – 1 (RFP-1)</u></b>	
Issue RFP-1	Complete
Deadline for RFP-1 Proposal	Complete
Evaluation of Proposals and approval of Design Teams	Complete
<b><u>Request for Proposals – 2 (RFP-2)</u></b>	
Issue of RFP-2	February 15, 2006
<ul style="list-style-type: none"><li>▪ Volume I: Instructions to Proponents</li><li>▪ Volume II: Initial Form Project Agreement</li><li>▪ Volume III: Facilities Management Specifications</li><li>▪ Volume IV: Payment Mechanism</li><li>▪ Design Requirements</li></ul>	
Consultative Meetings Process	See table below
Deadline for Phase One Requested Amendments on Project Agreement	April 13, 2006
Issue of Revised Initial Form Project Agreement	June 9, 2006
Deadline for Phase Two Requested Amendments on Project Agreement	June 30, 2006
Issue Selected Project Agreement Schedules	June 30-July 7, 2006
Deadline for Phase Three Requested Amendments on Selected Project Agreement Schedules	July 17, 2006
Issue Revised Form Project Agreement and all Schedules	August 8, 2006

<b><u>STAGE OF PROJECT IMPLEMENTATION PROCESS</u></b>	<b><u>DATE/MONTH</u></b>
Deadline for Phase Four Requested Amendments on Revised Form Project Agreement and all Schedules	August 18, 2006 (5:00 pm EST)
Issue Final Form Project Agreement	September 8, 2006
Deadline for Submission of Requests for Information	September 14, 2006
Submission of Proposals (the Closing Time)	October 5, 2006
Evaluation of Proposals	October 2006
Negotiation Process	November 2006
Notification of Preferred Proponent	December 2006
<b><u>Project Agreement Finalization and Financial Close Stage</u></b>	
Finalization of Project Agreement with Preferred Proponent,	December 2006/
Finalization of Lender’s Direct Agreement	January 2007
Schematic Design Acceptance	December 2006 /
	January/February
	2007
Financial Close / Project Agreement Execution	January/February
	2007
<b><u>Target Dates for Project Development Stage</u></b>	
Commencement of Construction	February/March 2007
Completion Date	August 2009

The timing indicated above for the period after submission of Proposals and leading to Financial Close is indicative only and is subject to Sections 6.8.5 and 6.9 of this RFP-2 Volume I, and to terms of the Preferred Proponent Agreement.

OIPC fully supports expediting the time required from submission of Proposals to Financial Close, and will endeavour to do so where reasonable and practicable based on the quality of the Proposals received.

The schedule for the Consultative Meetings Process is summarized in the table below and more fully described in Section 6.2 and Appendix 5 to this RFP-2 Volume I.

<b><u>CONSULTATIVE MEETINGS PROCESS</u></b>	<b><u>DATE</u></b>
Proponent Meeting	██████████
Design Consultation Phase 1 Presentation	██████████
Proponents submit proposed Workshop A agenda items	██████████
Workshop A	██████████
Design Consultation Phase 1 Feedback	██████████

**CONSULTATIVE MEETINGS PROCESS**

**DATE**

Proponents submit proposed Workshop B agenda items  
Workshop B  
Design Consultation Phase 2 Presentation  
Design Consultation Phase 2 Feedback  
Proponents submit proposed Workshop C agenda items  
Workshop C  
Proponents submit proposed Workshop D agenda items  
Workshop D



**1.3.3 The Approval Process**

Execution of the Preferred Proponent Agreement and Project Agreement with the Preferred Proponent and Project Co, respectively, are subject to the approval of the Ontario Treasury Board/Management Board of Cabinet or designate.

**1.3.4 Agreement on Internal Trade**

This RFP-2 is governed by Chapter V of the Agreement on Internal Trade. Additional information can be obtained online at <http://strategis.ic.gc.ca/epic/internet/inait-aci.nsf/en/il00006e.html>.

**2. PROJECT SCOPE**

This Section 2 describes the general scope of work and services to be provided by Project Co for the Project, and provides further detail on specific aspects of the Project for the guidance of Proponents in preparing Proposals.

**2.1 General**

Project Co will provide the financing, design, development, construction, ownership, building operation, building maintenance, and Facilities Management Services for a complete Consolidated Courthouse encompassing 33 courtrooms and 5 conference/settlement rooms in accordance with and meeting the requirements of the Project Agreement, including the Project Works and Service Period Works. In general, Project Co will provide the following, all in such a manner as will enable MAG to achieve and satisfy all objectives of the Project Works and Service Period Works:

- Design, develop, construct, finance, and own the Consolidated Courthouse, all in such a manner and with sufficient flexibility that the Consolidated Courthouse will accommodate future caseloads and future changes in courtroom operations, technology and service delivery, and be fit for its purposes.
- From and after Completion, provide, maintain, repair and, as appropriate, upgrade all physical plant and plant maintenance and other equipment, and all fixtures, fittings, building related equipment, building finishes and furnishings as required by the Project Works and Service Period Works and other provisions of the Project Agreement.
- Receive into and install within the Courthouse all furniture, fixtures, and equipment, as described in Section 2.5.
- Without limiting the generality of the above, provide, own, maintain, repair and, as appropriate, structured cabling system and any upgraded or replacement information distribution system, including all cabling and power points, for the information management and technology systems which will be initially installed.
- Participate, as part of the Project Management Oversight Committee, in developing a Pre-Completion Communications Plan pursuant to Schedule P (Pre-Completion Communications Plan) of the Project Agreement.
- Prepare and update a Communications Plan to be implemented during the Service Period pursuant to Section 4.7 of Schedule E, Part I (Facilities Management Specifications).
- Provide the Facilities Management Services described in Schedule E, Part I (Facilities Management Specifications) of the Project Agreement.

## **2.2 Consolidated Courthouse Site**

### **2.2.1 General**

The Site on which the Consolidated Courthouse is to be built is located in the City of Oshawa and will be made available to Project Co for a lease period to match the duration of the Project Agreement. At the end of the lease, the Consolidated Courthouse and Site will be returned by Project Co in accordance with the terms and requirements specified in Schedule E, Part II (Handback Requirements) of the Project Agreement. Information relating to the legal description of the Site can be found in Schedule A (Property Matters) of the Project Agreement.

Proponents shall assume the risks for geotechnical, subsurface and above surface conditions at the Site to the extent set forth in the Project Agreement.

Notwithstanding Section 7.13 of this RFP-2 Volume I, the City will be conducting environmental assessments and geotechnical surveys upon which Proponents may refer to

in its planning only. These environmental assessments and geotechnical surveys, as well as other information relating to the Site, may be viewed in the Electronic Data Room as they become available.

### **2.2.2 City Undertakings**

The Province of Ontario has executed an agreement with the City of Oshawa to remediate the Site in accordance with the Remedial Action Plan dated January 31, 2006. The City has undertaken to file a Record of Site Condition with the Ministry of the Environment before the anticipated date of Financial Close.

### **2.2.3 This section has been removed**

## **2.3 Project Works and Service Period Works**

### **2.3.1 Design Requirements**

The Design Requirements are contained in Schedule B, Part I (Design Requirements) of the Project Agreement. Project Co will be required to design and construct the Consolidated Courthouse in accordance with the Project Agreement. This will involve, among other things, the provision of resources, materials and equipment for the management, planning and delivery of the design and construction of the Consolidated Courthouse in accordance with the Design Requirements.

The technical scope of the Consolidated Courthouse includes both the Design Requirements that will ultimately form as Schedule B, Part I (Design Requirements) of the Project Agreement as well as any additional works that Project Co commits to provide as described in Section 5 of this RFP-2 Volume I.

#### **(a) Intended Use of Design Requirements**

The Design Requirements represent the Government's detailed design requirements for the proposed DCC facility, to the extent such requirements can be documented in the absence of a design to graphically illustrate the requirements. They capture the information that is of foremost importance to MAG and OIPC for design of a large fully functional consolidated courthouse. These documents are thorough, of very high quality, and are as complete as can reasonably be expected for use in an AFP delivery approach.

OIPC recognizes that Design Requirements alone no matter how well prepared cannot, and need not, convey all the information that should reasonably be understood by experienced design teams to design the DCC. Further, they cannot anticipate or regulate every permutation of design approach that may be presented as an RFP Proponent's intended solution. Therefore, OIPC expects that the design teams accepted in the RFP-1 process, having the knowledge and expertise of current courthouse design, will interpret the intent of the Design Requirements correctly, and will supplement these documents with their expertise in order to achieve a complete, high quality and fully functional design.

The design and construction work will be delivered using a design build approach. Accordingly, this RFP-2 expects that each Proponent's proposal will include a design that is complete in every way, and will provide the durability, serviceability, and full functionality anticipated by the Design Requirements for the contracted term, notwithstanding that the Design requirements may not have completely described the technical requirements or arrangement of any or every component of the facility.

**(b) Mandatory Requirements**

OIPC has established a set of Mandatory Requirements that must be met in order for Proposals to proceed to the Scored Requirements stage. The Mandatory Requirements for design and construction of the Consolidated Courthouse are described in detail in Appendix 2 to this RFP-2 Volume I.

**(c) Scored Requirements**

OIPC has established a set of Scored Requirements for each Evaluation Category as set out in Appendix 2 to this RFP-2 Volume I. Proponents are encouraged to develop innovative solutions in the preparation of the scored components of their Proposals that will allow them to best meet each Scored Requirement's evaluation criteria. This might include value engineering solutions to achieve capital and life-cycle cost savings or fast track solutions for the construction of the Consolidated Courthouse.

**2.3.2 Facilities Management Services**

Project Co will provide the on-going operation, maintenance and lifecycle management of the Consolidated Courthouse in accordance with the Project Agreement. This will involve, among other things, providing the resources, materials and equipment to manage, plan and deliver the Facilities Management Services, in accordance with the Facilities Management Specifications that will ultimately form as Schedule E, Part I of the Project Agreement.

Project Co will provide all Facilities Management Services, including:

- Cleaning services – building exterior;
- Cleaning services – building interior;
- Grounds maintenance and landscaping services;
- Security services;
- Utilities management services;
- Plant services;
- Help desk services;
- Environmental services;
- Special projects services;
- Life cycle renewal services;
- Food services;
- Parking services;
- Furniture and office equipment services; and
- Material services.

**(a) Mandatory Requirements**

The Mandatory Requirements for Facilities Management Services for the Consolidated Courthouse are described in Appendix 2 to this RFP-2 Volume I.

**(b) Scored Requirements**

Proponents are encouraged to develop innovative solutions in the preparation of the scored components of their Proposals that will allow them to best meet each Scored Requirement's evaluation criteria. This might include lower maintenance and rehabilitation costs after the Handback of the Consolidated Courthouse to the Government.

**2.4 Court Services and Ancillary Services**

Court Services and Ancillary Services will be delivered at the DCC solely through MAG. Neither OIPC nor Project Co will provide any Court Services and Ancillary Services at the DCC.

**2.5 Furniture, Fixtures and Equipment**

This Section should be read in conjunction with the Project Agreement, and more particularly, Schedule B Parts III (Furniture, Fixtures, and Equipment Process) and IV (Cash Allowance Procedure).

Furniture, fixtures and equipment (“FF&E”) generally refers to the non-fixed items added to the interior of the DCC base building to prepare all operational areas for the courthouse function. FF&E includes but is not limited to contents of open area and enclosed office work areas, including desks, systems work stations and individual components, tables, seating, file cabinets and office accessories, and meeting room furniture, and equipment such as motorized compact file storage equipment, security scanning equipment, mail sorting equipment and the like. Some of the equipment items may require a power supply.

For greater clarity, FF&E includes New MAG FF&E, Existing FF&E, and Non-MAG Occupant FF&E which may be comprised of some new and existing items.

This Section describes the responsibilities of Project Co to install New MAG FF&E into the Project Facilities. The installation will include New MAG FF&E procured by Project Co. FF&E will be designed and installed by Project Co for all MAG occupants.

The process to complete the FF&E installation will include the following activities:

- OIPC/MAG will retain and pay for an independent “FF&E consultant” who will inventory all FF&E items in existing Durham courthouses, and will provide to Project Co an inventory of existing items to be included in the DCC.
- In consultation with OIPC/MAG, OIPC’s Design and Construction Compliance Consultant and the FF&E consultant, Project Co will design furniture layouts that include new and existing FF&E for all occupied areas of the DCC. FF&E design is a key part of the Schematic Design stage that is described in the Preferred Proponent Agreement. FF&E design in this stage will be resolved to a level sufficient for Project Co to achieve Schematic Design Acceptance. OIPC anticipates that additional detailed FF&E design will be required in as part of the Design and Construction Procedure to finalize the layouts and to prepare procurement documents.
- New MAG FF&E will be procured through the Government’s vendor of record (VOR) for items covered by the VOR. Items not covered by a VOR will be purchased by Project Co in accordance with the then current OIPC competitive procurement process. Existing FF&E for MAG occupants will be shipped to the DCC receiving area in a just-in-time approach by a bonded moving contractor retained and paid by OIPC. New FF&E for non MAG occupants will be procured by the non MAG occupants at their expense. The new and existing FF&E for non MAG occupants will be shipped to the DCC receiving area by a bonded moving contractor retained and paid by OIPC. The moving contractor will also move the contents of offices, workstations and central file systems from existing locations into the DCC.
- New MAG FF&E will be funded in the form of an FF&E budget retained by OIPC. This budget is intended to compensate Project Co for the net procurement cost and applicable taxes for the New MAG FF&E items, delivered to the Project Facilities loading dock. This budget is a preliminary estimate prepared by OIPC without the benefit of a detailed design or inventory of existing assets; the value of which is



disclosed to Proponents to permit them to estimate their related fees, overhead and profit related to completing the installation of the New MAG FF&E portion of the work. Additional details related to this FF&E budget can be found in Schedule B, Part IV (Cash Allowance Procedure) of the Project Agreement.

- For greater clarity, all costs for procurement of New MAG FF&E shall be initially incurred by Project Co, and Project Co will be entitled to be reimbursed for the costs directly from OIPC after installation and after Completion.
- The Government is exempt from the GST under a reciprocal taxation arrangement between the Government of Canada and the Government of Ontario. Purchases of all FF&E items under this section made on behalf of OIPC and MAG will be GST exempt.

A full description of Project Co's responsibilities for purchase, installation, commissioning, project management, and cost recovery for FF&E is described in Schedule B (Project Works) Part III and Part IV of the Project Agreement. In the event of a conflict between this section and Schedule B, the contents of Schedule B of the Project Agreement shall prevail.

## **2.6 Audio-Visual Systems**

Project Co will install and maintain the audio-visual systems used in the Project Facilities. In order to delay the design of courtroom audio-visual systems used within the Project Facilities to a stage where MAG can take advantage of the most current technology, and to custom-design the courtroom audio-visual systems to MAG's exact requirements, OIPC will isolate this work through a cash allowance as per Schedule B, Part IV (Cash Allowance Procedure) of the Project Agreement. Project Co will retain an audio-visual consultant to prepare a bid package for tender by Project Co to audio-visual sub contractors. Until the successful tender of this bid package, Project Co's responsibilities will be limited generally to the design and construction of the audio-visual service rooms, central court recording rooms, cable management systems, power supplies, and equipment space and cable management provisions in millwork. Additional details related to this cash allowance can be found in Schedule B, Part IV (Cash Allowance Procedure) of the Project Agreement.

## **2.7 IT/TEL Services**

Project Co's responsibility in respect to telephone systems and information systems in the Project Facilities is limited to the provision of the entire certified structured cable system in accordance with the Design Requirements, and to its responsibilities for the structured cable system through the Service Period in accordance with the Project Agreement. Project Co's responsibility for these systems at the Completion Date is limited to the installation of the structured cable system, once accepted by the Independent Certifier. OIPC will engage third party contractors to provide, install, commission, and maintain

the telephone and information equipment for all building occupants (not including Project Co equipment) through the Service Period.

## **2.8 Opportunities Not Available to Project Co**

Project Co shall not engage in any activities which are not specifically related to, required by and conducted for the purposes of the Project, as specified in the Project Agreement.

## **2.9 Disposal of Current Courthouse Accommodations and Termination of Existing Leases**

The existing courthouse accommodations in Durham Region will not be transferred to the Project Co under the terms of the Project Agreement. The Government will be responsible for terminating the current leases and Provincially-owned sites independently from the Project.

## **2.10 Compliance with Applicable Laws and Permits, Licences and Approvals**

Project Co shall throughout the term of the Project Agreement comply with all Applicable Laws and the terms and conditions of all Permits, Licences and Approvals required for or applicable to the Project Agreement or the Project, shall provide all required notifications to the Governmental Authorities, and shall facilitate inspections of work areas by the Governmental Authorities.

Project Co shall be responsible for obtaining all Permits, Licences and Approvals required for the DCC, including those relating to or required for the design and construction of the Consolidated Courthouse and the performance of the Facilities Management Services, or which are otherwise applicable to and required for the Project. Pursuant to Section 2.2 of this RFP-2 Volume I, Proponents should note that the City has undertaken to secure selected Permits, Licences and Approvals in some instances related to design and construction

If the Governmental Authorities or Applicable Laws require that one or more specific Permits, Licences and Approvals for which Project Co is responsible can only be applied for by or obtained in the name of OIPC, then in all such cases the applications for such Permits, Licences and Approvals shall be prepared by Project Co in OIPC's name and submitted by Project Co to OIPC for review and approval prior to submitting same to the Governmental Authorities. Project Co shall make such changes to the applications as OIPC may reasonably require. After OIPC confirms in writing to Project Co that OIPC has approved the application, Project Co will forward the application to the applicable Governmental Authorities. All communications between the Governmental Authorities and either Project Co or OIPC shall be coordinated by Project Co and OIPC. Project Co shall reimburse OIPC for all costs which they may incur related to such Permits, Licences and Approvals.

## **2.11 The Independent Certifier**

This Section should be read in conjunction with the Project Agreement and more particularly, Schedule B, Part V (Draft Independent Certifier Contract).

At or before the execution of the Project Agreement, Project Co and OIPC will jointly retain and pay for an Independent Certifier to perform functions and make determinations as specified in the Project Agreement, to the mutual benefit of both parties and the project in general. The Independent Certifier will in all respects act as an independent professional, operating at arms length from Project Co, OIPC and the Government of Ontario, with no direct or indirect material interest in any entity involved in the Project.

The appointment of the Independent Certifier shall be carried out in accordance with applicable Government of Ontario procurement procedures to ensure that the appointment is made in a manner that is open, transparent and fair, and that it complies with the obligations of the Government of Ontario under the Agreement on Inter-provincial Trade and other applicable trade arrangements of Government of Ontario. OIPC, in consultation with Project Co, will manage the procurement process.

## **3. PAYMENT ARRANGEMENTS**

### **3.1 Payment Mechanism Principles**

#### **3.1.1 Introduction**

The Payment Mechanism for the DCC is designed to reflect a simplified and bankable scheme consistent with similar projects in other jurisdictions. In developing the Payment Mechanism, OIPC has reviewed and considered the methods adopted in many other projects and based the Payment Mechanism on payment mechanisms which have been successfully implemented in the past. The Payment Mechanism has been constructed to:

- Encourage full functionality of the courthouse for its intended purpose;
- Emphasize the relative criticality of various functional units within the Consolidated Courthouse;
- Create incentives for Project Co to remedy failure events or facility unavailability;
- Enable simple monitoring by Government; and
- Provide a bankable solution as required by Proponents, their lenders, and related stakeholders.

The Payment Mechanism is comprised of a formula based on a number of components. The key components are described below.

### 3.1.2 Monthly Service Payment

The Monthly Service Payment is derived from the Annual Service Payment priced by Proponents as part of their Proposals.

The Monthly Service Payment is calculated as set out below, details for which are described in Schedule F (Payment Mechanism) of the Project Agreement and summarized in the following sections.

$$\text{Monthly Service Payment} = \frac{\text{Annual Service Payment}}{12} + \text{Total Volume Adjustment} - \text{Failure Event Deduction} - \text{Unavailability Deduction} +/- \text{Other Adjustments}$$

### 3.1.3 Total Volume Adjustment

The Monthly Service Payment will be subject to adjustments for actual volumes based on usages of specific Volume Remunerated Items and the actual costs of those items. Such adjustments will apply to contracted services including mail, special operational events, access control, and light refreshment services.

### 3.1.4 Failure Event Deduction

Failure Event Deductions will be subtracted from the Monthly Service Payment on a trailing thirty (30) day period. The total Failure Event Deduction in respect of a Contract Month shall, in general, be calculated as the aggregate of the number of performance failures multiplied by the pre-determined Failure Event Deduction, for each Failure Event category.

### 3.1.5 Unavailability Deduction

Unavailability Deductions will be subtracted from the Monthly Service Payment in instances where Functional Areas or Functional Units become unavailable, on a trailing thirty (30) day period. Unavailability Deductions vary based on the relative importance of the Functional Area and Functional Unit.

### 3.1.6 Other Adjustments

Schedule F (Payment Mechanism) of the Project Agreement provides full details on the treatment of energy Gainshare/Painshare adjustments, and insurance.

### **3.2 Third Party Income**

Notwithstanding Schedule E, Part I of the Project Agreement, Proponents should identify any third party income that will be shared with the Government and reflect such net benefit in its Annual Service Payment included in the Proposal.

### **3.3 Taxation Issues**

#### **3.3.1 General**

Each Proponent is solely responsible for obtaining and relying on tax advice from its own advisors and experts, including obtaining advance interpretations and rulings from the Canada Revenue Agency and the Ontario Ministry of Finance in relation to the Project (including in relation to the proposed structure and its tax consequences) as it considers appropriate or necessary. For the purpose of their Proposals, proponents shall satisfy themselves as to the tax treatment that will apply to them and the different elements of the Project Agreement.

HMQ will pay any applicable RST or GST exigible on payments to be made by HMQ in accordance with the Project Agreement but not any RST or GST or any other Taxes which may be payable by Project Co in the ordinary course of its business.

#### **3.3.2 Goods and Services Tax**

Project Co shall adhere to the treatment of the GST as described in Article 36 of the Project Agreement.

#### **3.3.3 Property Tax**

Ownership of the Site will be retained by the City of Oshawa under a 99-year ground lease by OIPC. The DCC to be built thereon will be used for the provision of Judicial and Ancillary Services.

## **4. PROJECT AGREEMENT**

### **4.1 Introduction**

All Proposals shall be based on the Final Form Project Agreement, as issued in accordance with Section 4.3 of this RFP-2 Volume I.

## 4.2 Initial Form Project Agreement

A draft form of agreement for the Project (the “Initial Form Project Agreement”) will be issued by OIPC to Proponents in the form of RFP-2 Volume II.

Proponents are invited to provide their comments on proposed amendments to the Initial Form Project Agreement in accordance with the provisions of this Section, which will be considered by OIPC as described herein. As identified in Appendix 5 to this RFP-2 Volume I, Proponents will have the opportunity to raise for discussion the comments and proposed amendments it is considering during the Consultative Meetings Process.

### (a) Phase One Requested Amendments

On or before the date specified for their delivery in Section 1.3.2 of this RFP-2 Volume I, each Proponent shall provide OIPC (through the Contact Person) with the Proponent’s written comments on and requested specific amendments (“Requested Amendments”) to the Initial Form Project Agreement that they wish OIPC to consider. It is recommended that Proponents involve their proposed Funders in this review, as well as financial advisors experienced with project finance requirements.

Requested Amendments may range from the correction of minor errors and ambiguities in the Initial Form Project Agreement, to altering the risk profile of particular provisions to improve the overall value or affordability, or both, to OIPC and MAG.

To facilitate and expedite review and consideration by OIPC, Proponents have the option of providing Phase One Requested Amendments in one or both of the following formats: (i) in tabular format using a template similar to that provided below; or (ii) in a mark-up of the Initial Form Project Agreement using blackline or other form. In either case, Proponents should include a brief summary of the reason for each Requested Amendment so that OIPC may better understand the business issues underlying each of the Requested Amendments.

No.	Document/ Schedule	Section	Proposed Wording	Rationale

### (b) Phase Two Requested Amendments

Following the consideration to and acceptance of Phase One Requested Amendments at the sole discretion of OIPC, a revised draft form of agreement for

the Project (the “Revised Initial Form Project Agreement”) will be issued in accordance to the schedule set out in Section 1.3.2 of this RFP-2 Volume I.

Proponents will be invited to provide a second round of Requested Amendments on the Revised Initial Form Project Agreement (“Phase Two Requested Amendments”). Similar to Phase One Requested Amendments and as identified in Appendix 5 to this RFP-2 Volume I, Proponents will have the opportunity to raise for discussion the Requested Amendments it is considering during the Consultative Meetings Process.

To facilitate and expedite review and consideration by OIPC, Phase Two Requested Amendments must be provided in tabular format using a format similar to that provided below. Proponents are required to include a brief summary of the reason for each Requested Amendment so that OIPC may better understand the business issues underlying each of the Requested Amendments.

Phase Two Requested Amendments are to be provided as an electronic file using Microsoft Word.

No.	Document/ Schedule	Section	Proposed Wording	Rationale

Proponents are asked not to re-submit any Requested Amendments included as part of their Phase One Requested Amendments. Previously submitted Requested Amendments will have been carefully considered by OIPC and reflected in the Revised Initial Form Project Agreement if accepted.

**(c) Phase Three Requested Amendments**

Proponents will be invited to provide a third round of Requested Amendments on the Selected Project Agreement Schedules only (“Phase Three Requested Amendments”). Similar to Phase One Requested Amendments and Phase Two Requested Amendments, and as identified in Appendix 5 to this RFP-2 Volume I, Proponents will have the opportunity to raise for discussion the Requested Amendments it is considering during the Consultative Meetings Process (Workshop C).

On or before the date specified for their delivery in Section 1.3.2 of this RFP-2 Volume I, each Proponent shall provide OIPC (through the Contact Person) with

its Phase Three Requested Amendments to the Revised Initial Form Project Agreement that they wish OIPC to consider.

Phase Three Requested Amendments must be provided electronically in tabular format consistent with that described in Section 4.2(b) above.

Proponents are reminded not to re-submit any Requested Amendments included as part of their Phase One Requested Amendments. Previously submitted Requested Amendments will have been carefully considered by OIPC and reflected in the Revised Initial Form Project Agreement if accepted.

**(d) Phase Four Requested Amendments**

Following the consideration to and acceptance of Phase Two and Phase Three Requested Amendments at the sole discretion of OIPC, a revised draft form of agreement for the Project (the “Revised Form Project Agreement”) will be issued in accordance to the schedule set out in Section 1.3.2 of this RFP-2 Volume I.

Proponents will be invited to provide a fourth round of Requested Amendments on the entire Revised Form Project Agreement (“Phase Four Requested Amendments”). The Phase Four Requested Amendments may also include Requested Amendments related to the Preferred Proponent Agreement and the Proposal Form.

On or before the date specified for their delivery in Section 1.3.2 of this RFP-2 Volume I, each Proponent shall provide OIPC (through the Contact Person) with its Phase Four Requested Amendments to the Revised Form Project Agreement that they wish OIPC to consider.

Phase Four Requested Amendments must be provided electronically in tabular format consistent with that described in Section 4.2(b) above.

Proponents are reminded not to re-submit any Requested Amendments previously submitted. Previously submitted Requested Amendments will have been carefully considered by OIPC and reflected in the Revised Form Project Agreement if accepted.

**(e) OIPC Consideration of Requested Amendments**

OIPC, within such time as it may require at its discretion, may meet with one or more Proponents to try to clarify any misunderstandings that a Proponent may have regarding the Initial Form Project Agreement or Revised Initial Form Project Agreement that gave rise to Requested Amendments, or that OIPC may have regarding the intent of Requested Amendments. As Requested Amendments from



one Proponent may not be acceptable to one or more other Proponents, OIPC reserves the right at its sole discretion to meet and discuss with any and all Proponents some or all Requested Amendments received from other Proponents. The purpose of such discussions will be to identify any Requested Amendments that, if originally contained as a provision within the Initial Form Project Agreement, Revised Initial Form Project Agreement, or Revised Form Project Agreement at the time it was first issued, may have been the subject of a Requested Amendment by another Proponent.

**(f) Finalization of the Revised Form Project Agreement**

OIPC will amend the Revised Form Project Agreement to incorporate those of the Phase Four Requested Amendments which are accepted by OIPC at its sole discretion.

The amended form of the Revised Form Project Agreement will be issued on or about the date indicated in Section 1.3.2 of this RFP-2 Volume I (depending on the extent of amendments) to all Proponents. At the time of issue to Proponents, it will be expressly identified as the Final Form Project Agreement.

Subject to Section 6.8.5, Proponents should note that it is the intention of OIPC that there will be no further changes to the Final Form Project Agreement.

**4.3 Final Form Project Agreement**

The Final Form Project Agreement that is issued to each Proponent shall be used by that Proponent without amendment as the basis for its Proposal.

**4.4 Allocation of Risks**

Risks will be allocated between Project Co and OIPC as set out in the Project Agreement.

**5. RFP-2 DELIVERABLES**

**5.1 Mandatory Requirements**

**5.1.1 General**

To be eligible for consideration, a Proponent must submit a Base Proposal which conforms to and includes all of the Mandatory Requirements as listed in Appendix 2 to this RFP-2 Volume I.

Proposals that fail to comply with the Mandatory Requirements will be subject to disqualification pursuant to Section 6.8.4(a) of this RFP-2 Volume I.

### **5.1.2 Base Proposal**

The Final Form Project Agreement shall be used without amendment by all Proponents as the basis for all Base Proposals.

For the Base Proposal:

- There must not be any departures whatsoever to any provision of the Project Works as outlined in Schedule B of the Project Agreement.
- There must not be any departures to the Service Period Works as outlined in Schedule E of the Project Agreement.

### **5.1.3 Alternative Proposals**

In addition to submitting a Base Proposal, Proponents may submit an Alternative Proposal which, in the Proponent's opinion:

- Achieves one or more of the Bid Enhancement Factors;
- Requires a departure to the Project Works or Service Period Works; and/or
- Requires a departure to the risk allocation as set out in the Project Agreement.

Whether some or all of these conditions are satisfied, no Alternative Proposal submitted by a Proponent shall result in an increase in the overall NPV cost of the Project by greater than **2%** over that Proponent's Base Proposal. Any Alternative Proposal that exceeds such limit may be rejected by OIPC subject to Section 7.2 of this RFP-2 Volume I.

If a Proponent wishes to submit an Alternative Proposal, the Proponent shall:

- Submit a Base Proposal. Submission of a Base Proposal is mandatory and no Alternative Proposal will be considered unless a Base Proposal is also submitted.
- Submit a separate Alternative Proposal.

If both a Base Proposal and an Alternative Proposal are submitted, each of those Proposals will be considered to be a separate Proposal from that Proponent.

To be considered and to facilitate the identification and evaluation of Alternative Proposals, the Alternative Proposal should include, in a separately sealed package, all of the following:

- A cover or title page, identifying the Alternative Proposal by Alternative Proposal number and the name of the Proponent.

- A narrative description of the Alternative Proposal.
- A separately sealed and complete schedule of prices for that Alternative Proposal.
- A separate and complete Proposal for the Alternative Proposal, subject to the following:
  - Those parts of the Base Proposal which are not changed by the Alternative Proposal should not be repeated in the Alternative Proposal. Instead, they should be incorporated by reference through an express statement that, except as expressly amended in the Alternative Proposal, all provisions of the Base Proposal shall be deemed incorporated into and apply to the Alternative Proposal.
  - Those parts of the Base Proposal changed by the Alternative Proposal, including any schedules, tables or any other documents specified in the Proposal Requirements to be completed by Proponents, should be completed and submitted as part of the Alternative Proposal.

Each Alternative Proposal should provide the following as part of the narrative description of the Alternative Proposal:

- Full details of the proposed Alternative.
- The reason(s) for the proposed Alternative.
- The specific provisions of the RFP-2, Project Agreement and Project Works or Service Period Works that relate to or may be affected by the Alternative Proposal, and proposed legal language to affect the Alternative Proposal.
- If the Alternative Proposal requires a modification to the Project Works or Service Period Works, the specific provision(s) that will be modified, and the specific benefits which the Proponent believes will accrue to OIPC and relevant stakeholders if the Alternative Proposal is acceptable to OIPC.
- If the Alternative Proposal requires a departure from the risk allocation as set out in the Project Agreement, the specific provision(s) that will be modified, and the specific benefits which the Proponent believes will accrue to OIPC and relevant stakeholders if the Alternative Proposal is acceptable to OIPC.
- Any changes to the construction schedule and completion date, and any other factors which the Proponent wishes the Proposal Evaluation Committee and OIPC to consider in evaluating and considering the Alternative Proposal.

Proponents are required to organize their Alternative Proposals in a format parallel to that required of Base Proposals, including the preparation of two separately sealed submittals.

Prior to preparing and submitting an Alternative Proposal, a Proponent must request a written indication from OIPC as to whether the Alternative Proposal may generally be of interest to OIPC. In making such a request, which shall be made through the Contact

Person in the form of a Request for Information, Proponents should provide full details of the proposed Alternative Proposal to OIPC, identifying:

- If the Alternative Proposal is to address a Bid Enhancement Factor, the specific Bid Enhancement Factor that will be addressed and the specific benefits which the Proponent believes will accrue to OIPC and relevant stakeholders if the Alternative Proposal is acceptable to OIPC;
- If the Alternative Proposal requires a modification to the Project Works or Service Period Works, the specific provision(s) that will be modified, and the specific benefits which the Proponent believes will accrue to OIPC and relevant stakeholders if the Alternative Proposal is acceptable to OIPC; and
- If the Alternative Proposal requires a departure from the risk allocation as set out in the Project Agreement, the specific provision(s) that will be modified, and the specific benefits which the Proponent believes will accrue to OIPC and relevant stakeholders if the Alternative Proposal is acceptable to OIPC.

Proponents are explicitly instructed not to include detailed pricing information in its request for OIPC to consider an Alternative Proposal. Any confirmation by OIPC shall be subject to such terms and conditions as OIPC at its discretion may require. Failure by any Proponent to seek approval for the submission of an Alternative Proposal prior to the Closing Time will result in the rejection of that Alternative Proposal from consideration by OIPC during the evaluation process.

If a Proponent believes it has a unique and innovative Alternative which is unlikely to be known, discovered or considered by other Proponents and if the Proponent wishes OIPC to keep the potential Alternative confidential then, when requesting an indication from OIPC as to whether the Alternative Proposal may be of interest to OIPC, the Proponent must expressly state in its request that it wishes OIPC to treat the inquiry as confidential.

OIPC will be under no obligation or liability whatsoever in relation to the consideration or rejection of any Alternative Proposal at any stage of the RFP-2 process, up to and including Schematic Design Acceptance.

For Alternative Proposals which affect the Project Works, the Selected Proponent will be required to submit design details, specifications, samples and other relevant materials as requested by OIPC, for review and approval during the Design Development and Construction Documents phases. The design and performance of an Alternative Proposal which affects the Project Works must be consistent with the intent of Schedule B, Part I, (Design Requirements, Volumes 1 and 2) of the Project Agreement.

## **5.2 Proposal Deliverables**

### **5.2.1 Proposals**

The Proposal Requirements in Appendix 2 to this RFP-2 Volume I apply to all Proposals. Proponents are cautioned, however, to carefully review the whole of the RFP-2 to ensure all requested documentation and information is submitted with their Proposals.

The organization and structure of the Proposal Requirements generally corresponds to the Evaluation Categories in Appendix 2 to this RFP-2 Volume I. To facilitate review and evaluation of Proposals by the Proposal Evaluation Committee, Proponents in their Proposals must provide the information requested in the same order as used in the Proposal Requirements. If information is relevant to more than one heading or numbered Section in the Proposal Requirements, Proponents should ensure that either the information is duplicated in each relevant Section or that appropriate cross-references are included to confirm where the information can be found in the Proposal. Otherwise, the Proponent runs the risk that, in evaluating and scoring a particular Evaluation Category, relevant information elsewhere in the Proposal may be overlooked by the Proposal Evaluation Committee and its OIPC Advisors.

Proposals should be as complete and comprehensive as reasonably possible. Proponents should not assume that the Proposal Evaluation Committee will refer to or consider the general reputation of Proponents or Proponent Team Members or anything other than what is actually contained within their Proposals.

### **5.2.2 Use of RFQ and RFP-1 Proposals**

The Proposal Evaluation Committee in its evaluation and consideration of Proposals may at its discretion take into account and rely upon information submitted as part of the RFQ and RFP-1 Proposals. In such case and notwithstanding Section 6.5, Proponents should ensure that if any such RFQ or RFP-1 information is incorrect or has been superseded that it is corrected and new information is provided as part of the Proposal.

Proponents are reminded, however, that the Proposal Evaluation Committee's key objective is to evaluate the RFP-2 Proposals submitted and that information provided as part of the RFQ and RFP-1 submissions will not be re-evaluated.

## **5.3 Proposal Format**

All Proposals must be prepared in accordance to the format outlined in Appendix 2 to this RFP-2 Volume I.

## 6. RFP-2 PROCESS

### 6.1 Fairness Advisor

OIPC has appointed a fairness advisor (the “Fairness Advisor”) that will be available to OIPC and OIPC Advisors during the RFP-2 process. On all matters as necessary, OIPC and OIPC Advisors will consult with the Fairness Advisor to ensure that activities related to the RFP-2 process are conducted in a fair and consistent manner. The Fairness Advisor will report directly to OIPC.

### 6.2 Consultative Meetings Process

Prior to the Closing Time for the submission of Proposals, OIPC, related stakeholders, and MAG will make available certain of their personnel, consultants and advisors to participate in consultative meetings with Proponents (including any persons in attendance on behalf of the Proponents) in accordance with the Consultative Meetings Process described in Appendix 5 to this RFP-2 Volume I.

The Consultative Meetings Process will provide the personnel, consultants and advisors of OIPC, related stakeholders, and MAG with advance familiarity of the designs and concepts proposed by Proponents, Proponent Team Members, and Members, as applicable and provide Proponents, Proponent Team Members, and Members, as applicable with some comments and feedback on general acceptability to OIPC with particular solutions Proponents may be considering for various aspects of their Proposals.

No statement, consent, waiver, acceptance, approval or anything else said or done in any consultative meeting by any personnel, consultants or advisors of or to OIPC, related stakeholders, OIPC or MAG shall amend or waive any provision of the RFP-2, the Project Works, Service Period Works, Payment Mechanism or the Project Agreement, or be binding on OIPC, related stakeholders, personnel, consultants, or advisors of the Government, OIPC, or MAG, or be relied upon in any way by Proponents, Proponent Team Members, or other Members, except when and only to the extent expressly confirmed in writing by the Contact Person by means of:

- An Addendum to the RFP-2 or the Project Agreement issued in accordance with Section 7.1 of this RFP-2 Volume I by OIPC.
- A clarification issued in writing by the Contact Person in accordance with Section 6.3.1 of this RFP-2 Volume I.

Furthermore, no comments made by any Proponent during any consultative meeting will be binding on the Proponent.

In addition to the Consultative Meetings Process described in Appendix 5 to this RFP-2 Volume I, prior to the Closing Time for Proposals, OIPC at its discretion may from time to time schedule meetings in person, by videoconference, by telephone conference or by

any combination thereof with any one or more Proponents. At the discretion of OIPC such meetings and conference calls may be joint meetings with all Proponents, or may be separate meetings with each Proponent. Where separate meetings or conference calls are held, OIPC will use reasonable efforts to afford to each Proponent an approximately equal opportunity in terms of number of meetings and conference calls, as applicable, but it is up to each Proponent to determine for itself whether and the extent to which they wish to take advantage of such meetings and conference calls. The agenda for such meetings and conference calls may include, among other things:

- Proposed or contemplated changes, if any, by OIPC to the RFP-2, Project Works, Service Period Works, Payment Mechanism, or Project Agreement.
- Potential Alternative Proposals which may be raised by Proponents and for which Proponents have requested from OIPC a prior indication of their general acceptability to OIPC and related stakeholders.
- Such other matters as Proponents or OIPC consider appropriate for the agenda, or which may arise during the meetings or conference calls.

OIPC reserves the right to have such personnel, consultants and advisors of and to OIPC, related stakeholders, MAG and others participate in such meetings and conference calls as OIPC at its discretion may require to facilitate discussion or to advise OIPC on the Project.

OIPC reserves and has the right at its sole discretion to issue written guidance notes, directions or an Addendum to the RFP-2 to all Proponents on any matter which may arise during the course of any of meetings, videoconferences or telephone conferences with Proponents, whether pursuant to the above or Appendix 5 to this RFP-2 Volume I, in order to provide all Proponents with generally comparable access to relevant information.

### **6.3 Enquiries and Communication Process**

#### **6.3.1 Enquiries and Questions**

Except for communications during meetings, videoconferences and telephone conferences established pursuant to the Consultative Meetings Process in accordance with Appendix 5 to this RFP-2 Volume I and Section 6.1 of this RFP-2 Volume I, all enquiries, questions and other communications regarding the RFP-2 shall be directed to the following (the “Contact Person”):

Contact Person: 

Address: Infrastructure Ontario /  
Ontario Infrastructure Projects Corporation  
777 Bay, 6<sup>th</sup> Floor

Toronto, ON  
Canada M5G 2C8

Fax: (416) 326 9291

Email: [REDACTED]

All written questions, enquiries, requests for information, requests for clarification and other communications with OIPC must be submitted on the Request for Information (“RFI”) Form, a copy of which is attached as Appendix 4 to this RFP-2 Volume I. The RFI Form is available in the Electronic Data Room in Microsoft Word for use by Proponents. Although completed RFI Forms should normally be sent by e-mail, Proponents may also send them by fax or mail.

The following shall apply to all RFIs:

- Each RFI must be in writing and submitted by the Authorized Representative of the Proponent to the Contact Person in accordance with the process described in this Article, using the RFI Form attached as Appendix 4 to this RFP-2 Volume I.
- Each RFI must give the Proponent’s name and be numbered sequentially, stating the nature of the question, inquiry, request for information, request for clarification or other purpose of the communication, and the date by which a response is requested.
- OIPC will endeavour to respond to all RFIs as soon as it reasonably can. All RFIs must be submitted by the date specified in Section 1.3.2 of this RFP-2 Volume I otherwise OIPC reserves the right to not prepare a response.
- To facilitate and expedite both responses and the tracking of responses to RFIs, where Proponents have a number of questions, requests for information, or requests for clarification they are encouraged to break them up by subject matter and submit them as a number of separate and short RFIs.
- Written responses by the Government to an RFI may not be distributed to all Proponents if the RFI is of a minor or administrative nature that the Government, in its discretion, considers relates only to the Proponent who submitted the RFI and is not material to other Proponents.
- If a Proponent does not want a response to its RFI to be shared with other Proponents, the RFI must be clearly marked “Commercial in Confidence” by the Proponent. If the Government in its discretion considers that it should answer the RFI on a confidential basis, then it will be entitled to do so. However, if the Government in its discretion for any reason considers that it should (having regard to the fairness of the procurement process) not answer the query on a confidential basis, it will notify the Proponent who submitted such RFI marked “Commercial in Confidence” of its decision and the Proponent will have the opportunity to withdraw the RFI. If the Proponent does not withdraw the RFI, then the Government in its discretion may provide its response to the RFI to all Proponents.



- If the Government identifies a need for general clarification on an issue which does not require an Addendum, or if it identifies a matter of substance which the Government in its discretion considers should be formally brought to the attention of all Proponents, a letter of clarification will be sent or an Addendum will be issued to Proponents at the same time, whether or not the matter is identified as “Commercial in Confidence”.
- The Government, in its discretion, may respond to an RFI from one Proponent by way of a circular or e-mail to all Proponents or an Addendum and will post the response in the Electronic Data Room.

No communications or responses from OIPC, related stakeholders, or MAG or their advisors in relation to the RFP-2 and Project Agreement, the RFP-2 Process or the Project may be relied upon by Proponents, Proponent Team Members or other Members unless and only to the extent confirmed in writing by an Addendum to the RFP-2 or by a written response issued by the Contact Person to an RFI in accordance with this Section 6.3.1. Any reliance by a Proponent, Proponent Team Member or other Member on any information obtained by it/them which is not contained in an Addendum to the RFP-2 or in a formal written response issued in accordance with this Section 6.3.1 by the Contact Person to an RFI shall be at its/their sole risk and without recourse against OIPC, related stakeholders, MAG, MPIR, the Government, or any of their respective directors, officers, representatives, employees, consultants, advisors and agents.

### **6.3.2 Arranging Access to Site**

#### **(a) Access to Site**

The designated Site for DCC on which Proponents are to base their Proposals has been identified by OIPC as specified in Section 2.2 of this RFP-2 Volume I. Proponents are not to access the Site without prior written arrangement in each instance with OIPC.

Proponents wishing to arrange a Site visit for any purpose (other than for a meeting previously arranged by the Contact Person) should submit their request to the Contact Person by RFI in accordance with Section 6.3.1 above and describe the date(s) and time(s) they will be at the Site and the purpose for the visit(s). The RFI should be submitted at least 48 hours in advance of the time for the Site visit(s).

OIPC reserves the right to have a person present during any and all Site visits to monitor the Proponent’s activities during the Site visit, particularly if the purpose of the Site visit includes any activities which may disturb the environment or cause damage to any property at or adjacent to the Site.

**(b) Visits to Existing Courthouses in Ontario**

Proponents are not to make their own arrangements for visits to existing courthouses in Ontario, except as members of the general public. OIPC will coordinate official, guided visits to an existing Ontario courthouse for each Proponent in order to provide them with a better understanding of the Ontario courthouse environment. Additional visits may also be arranged at the discretion of OIPC.

Proponents will be notified by the Contact Person once scheduled visit times have been confirmed.

**6.3.3 Communications with the City and Other Governmental Authorities**

Proponents, Proponent Team Members or other Members may not communicate directly with the City or other Governmental Authorities for any reason whatsoever unless expressly approved by the Contact Person. OIPC at its discretion may request representatives from the City and other Governmental Authorities to be present during any one or more of the consultative meetings with Proponents scheduled pursuant to the Consultative Meetings Process.

In no event shall OIPC be responsible for any written or oral representations, statements, assurances, commitments or agreements which Proponents, Proponent Team Members or other Members believe they may have received from the City or any Governmental Authorities. Proponents, Proponent Team Members or other Members rely on such representations, assurances, commitments and agreements at their sole risk without recourse against OIPC, related stakeholders, MAG, MPIR, the Government, or any of their respective directors, officers, representatives, employees, consultants, advisors and agents, and if they wish to rely on such representations, assurances, commitments and agreements they are solely responsible for ensuring they are incorporated into binding written agreements between the Proponent and the City or other Governmental Authorities.

**6.4 Electronic Data Room and Contents**

An Electronic Data Room at a secure website address has been established for the convenience of Proponents. The Electronic Data Room will contain, among other things, the Background Information and the RFP-2 (including any addenda).

Proponents are solely responsible for ensuring they have software which allows them access to download and use any of the information in the Electronic Data Room. Such software may include, but is not limited to, Microsoft Office Suite, Adobe Acrobat Reader, AutoCAD, and VectorWorks. In the event of conflict between any hard copy documents provided to the Proponents by OIPC and the contents of the Electronic Data Room, the contents of the Electronic Data Room shall govern and take precedence.

The information in the Electronic Data Room may be supplemented or updated from time to time. Although OIPC will attempt to notify Proponents by email of all updates, Proponents are solely responsible for ensuring they check frequently for such updates from time to time and that, from and after the time updated information is issued, only the most current, updated information is used by Proponents – including the RFP-2 and all its components.

All information in the Electronic Data Room is subject to the disclaimers and limitations of liability and responsibility in the RFP-2 and in any documents in the Electronic Data Room, including the provisions of Sections 7.13 and 7.16 of this RFP-2 Volume I.

#### **6.4.1 Electronic Data Room Access**

The Electronic Data Room is a secure website allowing Proponents access, following authorization, to electronic copies of the information in the Electronic Data Room.

Each Proponent will be given an authorized username and password that will allow access to the Electronic Data Room on an unlimited basis. It will be the responsibility of the Proponent to ensure that the username and password issued (and any subsequent username and passwords issued) be fully protected and treated in a manner consistent with the confidentiality provisions as outlined in Section 7.4 of this RFP-2 Volume I.

Proponents may request additional username and passwords by contacting the Contact Person.

#### **6.4.2 Investigations by Proponents**

Proponents shall at their own cost obtain such information and perform such investigations as they may consider necessary to satisfy themselves as to all conditions affecting the Project and the performance of the Project Agreement, including relating to labour relations, existing and future site conditions, requirements of the City, requirements of all Applicable Law, and requirements of all other Governmental Authorities.

#### **6.5 Changes to Proponents and Proponent Team Members**

It is recognized that, due to circumstances beyond the control of a Proponent or a Proponent Team Member, Proponents may require a change in their proposed members, proposed Proponent Team Members, or proposed contractors, consultants and others from those which Proponents identified in the RFQ and RFP-1, or from those which Proponents name in their Proposals.

If, prior to its Proposal, as applicable, a Proponent discovers or requires a change in its members or shareholders, in its Proponent Team Members, or in any proposed contractors, consultants, advisors or others named in the RFQ or RFP-1, or if a Proponent

requires a change to any personnel named in the RFQ or RFP-1 because such personnel are no longer willing or able to participate in the Project, the Proponent shall notify OIPC in writing by email, delivery or facsimile to the Contact Person within five (5) business days. Such notification shall clearly identify the proposed substitution and include reasonable documentation to demonstrate that the proposed substitute meets, overall, the applicable requirements as set out in the RFQ or RFP-1..

The Proponent shall provide such further documentation as may be requested by OIPC at its discretion to satisfy itself as to the qualifications, experience and ability of the proposed substitute. If, upon reference to the qualification requirements as set out in the RFQ and RFP-1, OIPC considers the proposed substitute to be acceptable to OIPC, at its sole discretion, OIPC will consent to such substitution. Consent to such substitution, however, may be subject to such terms and conditions as OIPC may require confirming the qualifications, experience, ability and availability of the proposed substitute. If the proposed substitute is not acceptable to OIPC, the Proponent shall propose an alternate substitute who the Proponent can demonstrate to OIPC's satisfaction does have the requisite qualifications, experience, ability and availability for the proposed role.

If at or after the Proposal and prior to execution of the Project Agreement there is an actual or proposed addition, deletion, substitution or other change in the membership or effective control of the Proponent, of any member of a Proponent, or of any Proponent Team Member, or if there is a material adverse change in circumstances that may adversely affect a Proponent, the members of the Proponent, or any Proponent Team Member in a way which could impair the Proponent's or their ability to perform their respective obligations under the Project Agreement, then the Proponent shall promptly notify OIPC in writing by email, delivery or facsimile to the Contact Person. Such a change, even if after the applicable Closing Time, shall not automatically disqualify a Proponent.

OIPC reserves the right at its sole discretion to allow a proposed or actual change on such terms and conditions (if any) as it may require, to disallow any proposed change, and in the case of an actual change previously made without consent by OIPC to disqualify the Proponent and terminate its continued involvement, or allow the Proponent to continue under such terms and conditions as OIPC at its discretion may require. In exercising its discretion, OIPC will take into account the qualification requirements as set out in the RFQ and RFP-1, the extent to which the addition, deletion, substitution or other change has or may have, in the sole opinion of OIPC, a material adverse impact on the Proponent and its ability, if ultimately awarded a contract for the Project, to successfully complete the Project on schedule and budget. If a change or substitution is allowed by OIPC, the Proposal Evaluation Committee may request additional information to form part of the Proposal and to be taken into account in the evaluation process, all as described in Section 6.8 below.

Without limiting the foregoing, OIPC may require some or all of the Proponent Team Members, including any Proponent Team Member that is being deleted from the

Proponent, to confirm in writing their agreement to the addition, deletion, or change in the Proponent or Proponent Team Members. However, any request for written confirmation shall in no way be seen as acceptance or condonation by OIPC of any such addition, deletion, or change in the Proponent or Proponent Team Members and will not impair OIPC's right to disqualify any such Proponent and/or to reject the Proposal of any such Proponent.

## 6.6 Amendments to Proposals Prior to Closing Time

Prior to the Closing Time, Proponents are permitted to amend their original Proposal(s). Written amendments to any submitted Proposal must be delivered in person to the Closing Location specified in Section 6.7 below. Amendments must also:

- Be addressed to the Contact Person;
- Identify the name of the Proponent;
- Include confirmation that it is sent by a representative of the Proponent authorized to make the amendment on behalf of the Proponent and to bind the Proponent; and
- Clearly state that it is an amendment to a Proposal.

Amendments to Proposals prior to the Closing Time submitted by email or fax will not be accepted.

## 6.7 Closing Time and Place for Proposals

Proposals must be received at the following address (the "Closing Location"), addressed to the Contact Person, on or before 2:00:00 p.m. local Toronto, ON time on the date identified in Section 1.3.2 of this RFP-2 Volume I for Submission of Proposals (the "Closing Time"):

DATE: Refer to Section 1.3.2 of this RFP-2 Volume I.

TIME: 2:00:00 P.M. (local Toronto, ON time)

PLACE: Infrastructure Ontario /  
Ontario Infrastructure Projects Corporation  
777 Bay Street, 6<sup>th</sup> Floor  
Toronto, ON  
Canada M5G 2C8

Attention: 

Faxed Proposals will not be accepted in response to this RFP-2.

OIPC reserves the right from time to time by notice to Proponents to amend the Closing Time. Without limiting the foregoing, if within the 24 hour period prior to the Closing Time a Proponent who has already couriered all or major parts of its Proposal to Toronto discover there is a risk that their couriers may be delayed as a result of strikes, bankruptcies, weather or other conditions which delay or could delay their courier shipment to Toronto, ON, then the Proponent shall immediately notify the Contact Person. If the potential for such delays is confirmed by the Contact Person, OIPC reserves the right to extend the Closing Time immediately prior to the Closing Time by a reasonable period of time to allow courier shipments already enroute to Toronto to be delivered to Toronto and then to OIPC.

It is the sole responsibility of Proponents to ensure that Proposals are received on or before the Closing Time and that they obtain confirmation from OIPC as to whether their Proposal was received prior to the Closing Time.

## **6.8 Review and Evaluation of Proposals**

### **6.8.1 Introduction**

Proposals will be reviewed, evaluated and scored as described in this Section 6.8.

### **6.8.2 Proposal Evaluation Committee**

Proposals will be evaluated by a committee (the “Proposal Evaluation Committee”) established for that purpose by OIPC. The size and composition of the Proposal Evaluation Committee is at OIPC’s sole discretion and appointments to the Proposal Evaluation Committee will include, among others, personnel from OIPC, MPIR, related stakeholders, and MAG.

### **6.8.3 OIPC Advisors**

The Proposal Evaluation Committee may be assisted by and consult with various technical consultants and advisors (each an “OIPC Advisor”), including engineering, architectural, financial, legal, operating, marketing and other consultants and advisors, and other personnel from OIPC, MPIR, related stakeholders, and MAG, in respect to any and all parts of the Proposals. The Proposal Evaluation Committee may appoint the OIPC Advisors to assist with any and all aspects of Proposal review as it determines at its sole discretion. This may entail reviewing Proposals with respect to their general compliance with the RFP-2 and Project Agreement.

In its evaluation and scoring of Proposals, the Proposal Evaluation Committee may consider any and all reports, comments and recommendations from and by the OIPC Advisors in relation to any and all parts of the Proposals. Without limiting the ability of the Proposal Evaluation Committee to establish its own procedures for the review,

evaluation and scoring of Proposals, the Proposal Evaluation Committee may utilize the OIPC Advisors in any way that the Proposal Evaluation Committee at its sole discretion considers will be of assistance to the Proposal Evaluation Committee. Final scoring of each Evaluation Category, however, will be performed only by the Proposal Evaluation Committee.

#### **6.8.4 Evaluation Process for Proposals**

##### **(a) Satisfaction of Mandatory Requirements**

Base Proposals will be reviewed by the Proposal Evaluation Committee and the OIPC Advisors to determine whether they comply with all the Mandatory Requirements as described in Section 5 of this RFP-2 Volume I. Base Proposals which do not comply with all the Mandatory Requirements will be rejected and not considered further in the evaluation process.

Each Alternative Proposal will then be reviewed by the Proposal Evaluation Committee to determine the following:

- Whether the Proponent who submitted that Alternative Proposal submitted a Base Proposal that meets all the Mandatory Requirements for Base Proposals as described in Section 5 of this RFP-2 Volume I. If a Base Proposal meeting all the Mandatory Requirements was not submitted by that same Proponent, the Alternative Proposal will be rejected and not considered further in the evaluation process.
- Whether the Alternative Proposal is substantially in compliance with the requirements of the RFP-2 for Alternative Proposals. If not, in the opinion of the Proposal Evaluation Committee, then at the sole discretion of the Proposal Evaluation Committee it may be rejected and not considered further in the evaluation process.

Pursuant to Section 5.1.3, failure by any Proponent to seek approval for the submission of an Alternative Proposal prior to the Closing Time will result in the rejection of that Alternative Proposal from consideration by OIPC during the evaluation process.

As described in Section 6.8.6 below, from time to time after the Closing Time one or more Proponents may be requested to meet with the Proposal Evaluation Committee and/or one or more OIPC Advisors to clarify their Proposals and to provide such additional information as may requested by the Proposal Evaluation Committee or the OIPC Advisors.

##### **(b) Scored Evaluation**

All Base Proposals and Alternative Proposals which have satisfied the Mandatory Requirements will be evaluated using the evaluation criteria and in accordance with the

methodology set out in Appendix 2 to this RFP-2 Volume I to result in a score for such all Proposals.

### 6.8.5 Selection of the Preferred Proponent

OIPC will at its sole discretion choose one of the following two options in the selection of the Preferred Proponent:

- (a) Select the highest scoring Proponent as the Preferred Proponent and notify the second highest scoring Proponent that it is the reserve Proponent (“Reserve Proponent”); or
- (b) Enter into separate and distinct negotiations, using Commercially Confidential Meetings (“Negotiation Process”) with the highest scoring Proponent or the two highest scoring Proponents (“Negotiation Proponents”). During the Negotiation Process, OIPC may propose adjustments to the terms and conditions (shared with the Negotiation Proponents) and/or Negotiation Proponents may propose options in order to meet OIPC’s objectives or requirements (not shared with the other Negotiation Proponent).

Following this Negotiation Process, OIPC will inform each of the Negotiation Proponents of those adjustments to the terms and conditions which are acceptable to OIPC. Proponents may be asked to submit, by the Revision Closing Time, revised RFP-2 Proposals (“Revised Proposals”) which will be irrevocable and binding on the submitting Proponent for 120 days from the date of its submission. Revised Proposals will be evaluated in order to determine which Revised Proposal offers the best value to OIPC. The Preferred Proponent will be the Proponent that offers the best value. The other Negotiation Proponent will be designated as the Reserve Proponent.

OIPC reserves the right to award on the basis of the original RFP-2 Proposal. The Fairness Advisor will oversee the Negotiation Process.

Once a Preferred Proponent has been selected through option “a” or “b” above, the Preferred Proponent will be required to execute the Preferred Proponent Agreement found as Appendix 6 of this RFP-2 Volume I.

### 6.8.6 Clarifications and Additional Information

If a Proposal appears unclear, deficient or to have an omission in one or more material or substantial respects, the Proposal Evaluation Committee at its sole discretion has the option to and may request clarifications and additional information from the Proponent from time to time after the Closing Time and prior to the completion of the scoring of Proposals by the Proposal Evaluation Committee.

If the Proposal Evaluation Committee requests clarifications or additional information, such requests will be made in writing and submitted to the applicable Proponent by the



Contact Person on behalf of and for the Proposal Evaluation Committee. The Proposal Evaluation Committee may consider and take into account in the evaluation and scoring of Proposals any and all clarifications and additional information provided by Proponents in response to such written requests, in the same manner, for the same purposes and to the same extent as if those clarifications and additional information were originally part of the Proposal and submitted prior to the Closing Time.

Any clarifications or information provided after the Closing Time that are not given in response to an express written request in accordance with the foregoing will not be considered by the Proposal Evaluation Committee or the OIPC Advisors.

## **6.9 Project Agreement Finalization Stage**

### **6.9.1 General**

This Section 6.9 provides an overview of the Project Agreement Finalization Stage.

OIPC intends to finalize and execute the Project Agreement with the Successful Proponent through this RFP-2 process. Finalization of the Project Agreement will be conducted in accordance with the Preferred Proponent Agreement and will not commence, however, until after OIPC has confirmed the overall viability and financeability of the Project based on the Preferred Proposal.

### **6.9.2 Schematic Design**

During the Project Agreement Finalization stage, the Preferred Proponent will be required to advance the Project design work to produce the Schematic Design Components as detailed in Appendix 6 of this RFP-2 Volume I (Preferred Proponent Agreement).

The Preferred Proponent will cooperate with OIPC to ensure appropriate input is obtained from OIPC, MAG, and other stakeholders such that their requirements as stipulated in the Project Works and Service Period Works are taken into account in the Schematic Design.

### **6.9.3 Project Agreement Execution**

If the process for finalizing the Project Agreement with a Preferred Proponent is successful, the Preferred Proponent has demonstrated that is in a position to reach Financial Close, and the resulting Project Agreement is acceptable to OIPC, OIPC intends to execute the Project Agreement with that Preferred Proponent.

Execution of the Project Agreement is subject to OIPC obtaining all necessary governmental authorizations and approvals required for execution of the Project Agreement, as described in Section 1.3.3 of this RFP-2 Volume I.

Failure by the Preferred Proponent to finalize the Project Agreement, or any delay on the part of the Preferred Proponent in execution of the Project Agreement or Financial Close, may lead to consequences as described in the Preferred Proponent Agreement. More specifically, OIPC may at its sole and absolute discretion and without liability immediately terminate all further negotiations and attempts to finalize the Project Agreement with that Preferred Proponent, call on the Letter of Credit posted by that Preferred Proponent, and immediately thereafter commence the process of finalizing the Project Agreement with another Proponent.

#### **6.9.4 Provincial Tax Compliance Declaration**

The Government expects all suppliers to pay their Provincial taxes on a timely basis. In this regard, Proponents are advised that any contract with the Ontario Government will require a declaration from each Proponent Team Member of the Successful Proponent that its company's Provincial taxes are in good standing. In order for a company to be considered for execution of the Project Agreement as part of the Successful Proponent, it must declare in the Tax Compliance Declaration that it is in full compliance with all tax statutes administered by the Ministry of Finance for Ontario and that, in particular, all taxes due and payable have been paid or satisfactory arrangements for their payment have been made and maintained all as stated in the Tax Compliance Declaration.

After selection of the Successful Proponent, OIPC will forward to the Ministry of Finance a copy of the Successful Proponent's signed Tax Compliance Declaration for verification. By signing the Tax Compliance Declaration, the Proponent is consenting to the release of such information from the Ministry of Finance to OIPC. Proponents may direct all enquiries regarding tax compliance to:

Ministry of Finance  
Collections Branch  
33 King Street West, 6<sup>th</sup> Floor  
Oshawa, Ontario L1H 8H5  
Telephone (905) 433-6801 or toll free at 1-800-246-4441

All Proponents must submit with their Proposals completed and signed Tax Compliance Declarations by each Proponent Team Member.

#### **6.9.5 Debriefing**

Once the Successful Proponent has executed the Project Agreement with OIPC and achieved Financial Close, representatives of OIPC and the Proposal Evaluation Committee, together with the Fairness Advisor, will be prepared to meet with the unsuccessful Proponents to provide them with a general de-briefing. During such a de-briefing, the scores awarded to any Proposal and the pricing of any Proposal will not be disclosed; only the relative strengths and weaknesses of their Proposals, in general terms, will be disclosed and discussed.

## 7. GENERAL PROVISIONS

### 7.1 OIPC's Right to Amend or Cancel RFP-2

OIPC reserves the right at its sole discretion at any time and for whatever reason, and without liability to the Proponents or anyone else, by Addenda to modify, amend or otherwise change, to extend any schedule or time periods (including the Closing Time and the schedule for implementation of the Project) specified within, and to suspend, postpone or cancel, any part or all of this RFP-2 or the Project Agreement. All such Addenda shall be issued by OIPC in writing and shall be expressly identified as an Addendum to this RFP-2.

Although it is the intent of OIPC to see that a Project Agreement is executed, OIPC reserves the right to cancel this RFP-2 and issue a new request for proposals for any reason. In such case, OIPC may proceed with the Project in such manner as OIPC at its discretion considers appropriate to obtain the best overall value for OIPC and related stakeholders, including by using some or all of the Proponents' ideas and concepts and by proceeding through a traditional design-bid-build or other procurement model rather than the Alternative Financing and Procurement model contemplated by the RFP-2.

If OIPC cancels the RFP-2 and then elects to proceed with the Project through a conventional procurement process, OIPC shall be entitled to contract directly with one or more of the Proponent Team Members or any one or more of the contractors, consultants, advisors and others engaged by or through the Proponent or its Proponent Team Members, for any matters related to the Project. Without limiting the generality of the foregoing, in such case OIPC may contract directly with the architects and other designers engaged by or through a Proponent to provide a design for the Project which OIPC can then issue a request for tenders, including on a conventional design-bid-build basis or a design-build basis.

If OIPC does not receive a Proposal from at least two different Proponents, OIPC may at its sole discretion at any time and without liability to any Proponent modify or cancel the RFP-2, or abandon the RFP-2 process, and either:

- Negotiate with the Proponent who submitted the most complete Proposal and attempt to finalize a Project Agreement with that Proponent on terms, conditions and with scope acceptable to OIPC; or
- Negotiate with anyone else whom OIPC considers appropriate, and who OIPC at its discretion considers may be able to complete the Project for a price and on terms and conditions acceptable to OIPC.

### 7.2 OIPC's Right to Reject any and all Proposals

OIPC reserves the right at its sole discretion to reject any Proposal. OIPC also reserves the right at its sole discretion to reject any and all Alternative Proposals for whatever

reasons OIPC at its sole discretion deems appropriate and to be solely in the best interest of OIPC and related stakeholders, including to obtain higher overall value to OIPC and related stakeholders as determined by OIPC, and notwithstanding any custom of the trade to the contrary nor anything contained elsewhere in the RFP-2. Without limiting but in addition to the foregoing, OIPC reserves the right at its discretion to refuse to consider, to remove from the evaluation process entirely, and to reject outright any Proposal which in the opinion of the Proposal Evaluation Committee is materially incomplete, obscure or irregular, which contains exceptions or variations not acceptable to the Proposal Evaluation Committee and OIPC, or which omits any material information required to be submitted by the RFP-2.

As described in Section 7.16 below, OIPC shall not, under any circumstances, be responsible to any Proponent for any costs incurred or damages suffered by a Proponent in relation to the RFP-2 (including in relation to the preparation of, review or evaluation of a Proposal).

### **7.3 OIPC's Right to Verify**

OIPC may independently verify any information in any Proposal. OIPC has the right to disqualify any Proponent and/or to reject the Proposal of any Proponent whose Proposal contains any false or misleading information. OIPC also has the right to disqualify any Proponent and/or to reject the Proposal of any Proponent, who, in OIPC's sole discretion, has failed to disclose any information that would, if disclosed, materially adversely affect OIPC's evaluation of the relevant Proponent's Proposal.

### **7.4 Confidentiality**

OIPC reserves the right to require Proponents, Proponent Team Members, and any other Member to execute a separate confidentiality agreement. In addition and in any event, and without limiting any other confidentiality obligations imposed on a Proponent, the Proponent Team Members, and any other Member, the Proponent shall and shall cause each Proponent Team Member and any other Member to hold at all times all Confidential Information in confidence and shall not use or disclose (except as and only to the extent necessary for the preparation of its Proposal and, if executed with the Proponent, for the performance of the Project Agreement) any Confidential Information to anyone without OIPC's prior written approval. Whenever requested by OIPC, the Proponent shall execute and deliver to OIPC, and shall cause its personnel and advisors and its Proponent Team Members and other Members and their personnel and advisors, to execute and deliver to OIPC a confidentiality agreement in a form prescribed by and with terms and conditions acceptable to OIPC at its discretion.

Proposals, and all information submitted by Proponents, Proponent Team Members, and any other Members to OIPC, the Proposal Evaluation Committee and the OIPC Advisors, shall become the property of OIPC upon their submission.

The confidentiality obligations of the Proponent, Proponent Team Members or other Members shall not apply to any information which falls within any one or more of the following exceptions:

- Information which is lawfully in the public domain at the time of first disclosure to the Proponent, or which after disclosure to the Proponent becomes part of the public domain other than by a breach of the foregoing confidentiality obligations by the Proponent or by any act or fault of the Proponent.
- Information which was in the Proponent's possession prior to its disclosure to the Proponent by OIPC, and provided that it was not acquired by the Proponent under an obligation of confidence.
- Information which was lawfully obtained by the Proponent from a third party without restriction of disclosure, provided such third party was at the time of disclosure under no obligation of secrecy with respect to such information.

OIPC will use reasonable efforts to maintain the confidentiality of Proposals but only so far as the consultation, evaluation, scoring and approval processes for proceeding to the next stage of the Project Implementation Process will allow, having regard to the involvement of third parties including the City in such processes.

#### **7.5 Restrictions on Communication between Proponents**

A Proponent, Proponent Team Members and other Members shall not discuss or communicate, directly or indirectly, with any other Proponent (including any Proponent Team Member or other Member of such other Proponent), any information whatsoever regarding the preparation of their Proposals in a fashion that would contravene the Applicable Law. Proponents shall prepare and submit Proposals independently and without any connection, knowledge, comparison of information, or arrangement, direct or indirect, with any other Proponent (including any Proponent Team Member or other Member of such other Proponent).

#### **7.6 No Lobbying**

Proponents, Proponent Team Members or any other Member must not in relation to the Project, the RFP-2, or the Project Implementation Process, engage in any form of political or other lobbying whatsoever to influence the outcome of the Project Implementation Process or the selection of the Preferred Proponent. Further, no such person (other than as expressly directed or permitted by this RFP-2) must attempt to communicate in relation to the Project or the RFP-2, directly or indirectly, with any OIPC employee, any Minister or Deputy Minister of the Government, any member of the Government, any member of the Executive Council, any Members of Legislative Assembly, any Restricted Parties, or any director, officer, employee, agent, advisor, consultant or representative of any of the foregoing, before or after the Closing Time, for any purpose whatsoever, including:

- Commenting on or attempting to influence views on the merits of the Proponent's Proposals in relation to Proposals of other Proponents;
- Influencing, or attempting to influence, through outside pressure, the scoring by the Proposal Evaluation Committee of Proposals, the selection of the Preferred Proponent, or any negotiations between the Government or OIPC and the Preferred Proponent;
- Promoting the Proponent or its interests in the Project in preference to that of other Proponents;
- Criticizing aspects of the RFP-2 or Project Agreement in a manner which may give the Proponent a competitive or other advantage over other Proponents;
- Criticizing the Proposals of other Proponents; and
- In the event OIPC determines, in its discretion, that there has occurred any lobbying or communication by a Proponent, Proponent Team Member or other Member in contravention of the foregoing the Government 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, in the Government's discretion, either terminate that Proponent's right to continue participating in the Project Implementation Process or impose such conditions on that Proponent's continued participation in the Project Implementation Process as OIPC in its discretion may consider in the public interest or otherwise appropriate.

#### 7.7 Public Announcements and Publicity

Proponents should be aware of and be prepared to accept the Government's commitment to openness and transparency in relation to the RFP-2 and this Project. OIPC is bound by this public policy commitment and Proponents shall cooperate and extend all reasonable accommodation to assist OIPC to meet this public policy commitment.

To ensure that all publicity originating from or directed to Proponents and their Proponent Team Members is fair and accurate and will not inadvertently or otherwise influence the outcome of the RFP-2 or Project Implementation Process, all publicity in relation to the Project, including communications with the press, the media and the public, by or from Proponents or their Proponent Team Members (or their respective directors, officers, employees, consultants and agents) shall be coordinated with and are subject to the prior written approval of OIPC, not to be unreasonably withheld.

No press releases shall be issued by any Proponent or Proponent Team Member in relation to the Project without first submitting same to OIPC or OIPC for review and approval, acting reasonably. Proponents and their Proponent Team Members shall promptly notify OIPC of requests for information or interviews from the press and media. The subject and content of all responses to such information requests and to interviews shall be reviewed and coordinated in advance with OIPC in the same manner as press

releases to provide fair and accurate release of information in a coordinated fashion. Proponents shall use all reasonable efforts to ensure all of its Proponent Team Members and others associated with the Proponent comply with these requirements.

## **7.8 Insurance and Workers Compensation**

### **7.8.1 Insurance During RFP-2 Process**

During the RFP-2 Process and until execution of the Project Agreement, the Proponent shall ensure that insurance is obtained, and at all times kept and maintained in force, in accordance with the following requirements whenever the Proponent, a Proponent Team Member or any of their respective directors, officers, employees, consultants or agents are present at the Site or at any facilities or premises of OIPC, MAG or other Government premises:

- Comprehensive General Liability Insurance, having an inclusive limit of not less than \$5,000,000 for each occurrence or accident and covering all sums which the Proponent may become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to, destruction of, or loss of use of property caused by an occurrence or accident arising out of any operations carried on in connection with this RFP-2. The policy shall have added as additional named or unnamed insurers each of OIPC, MAG, and the Government (and their respective directors, officers, employees, consultants and agents), and an endorsement specifying that the said policy shall be primary and without right of contribution from any insurance otherwise maintained by OIPC, MAG, or the Government.
- Vehicle Public Liability and Property Damage Insurance, of not less than \$5,000,000 per occurrence, for vehicles used by Proponents or Proponent Team Members (or their respective directors, officers, employees, consultants and agents) while on or at the Site, or on or at any facilities or premises owned by any of OIPC, MAG, or the Government.
- As a condition of allowing access to the Site or to the facilities or premises of OIPC, MAG, or the Government each of them reserves the right to require Proponents to provide evidence acceptable to OIPC that the above insurance is in place. Proponents shall within seven (7) business days of request from OIPC, provide OIPC with certificates of insurance confirming that the above insurance is in place.

If a Proponent proposes to perform any site investigations at the Site the risks related to which may not be fully insured under the above policies, OIPC reserves the right to require the Proponent at its own cost to obtain insurance additional to that specified above.

All insurance policies required to be obtained by the Proponent shall provide that the insurance shall not be cancelled, reduced, restricted, modified or changed in any way without the insurer giving at least 60 calendar days prior written notice to OIPC.

### **7.8.2 Insurance After Execution of Project Agreement**

From and after execution of the Project Agreement, Project Co shall be responsible for procuring and at all times keeping and maintaining in force all insurance specified in the Project Agreement to be the responsibility of Project Co. OIPC shall be responsible for procuring and at all times keeping and maintaining in force all insurance, if any, specified in the Project Agreement to be the responsibility of OIPC.

### **7.8.3 Workers Compensation During RFP-2 Process**

During the RFP-2 Process and until execution of the Project Agreement, and as a condition of allowing access to the Site or to the facilities or premises of OIPC, MAG, or the Government, each of them reserves the right to require Proponents to provide evidence acceptable to them that the Proponent and its Proponent Team Members are registered with the Workers' Compensation Board of Ontario, where such registration is required by Applicable Law in Ontario, or if not required to be registered then to provide evidence acceptable to them that the Proponent and its Proponent Team Members have employer's liability insurance in amounts and on terms and conditions acceptable to them.

### **7.8.4 Workers Compensation After Execution of Project Agreement**

From and after execution of the Project Agreement, workers compensation insurance shall be provided by Project Co in accordance with the requirements of the Project Agreement.

### **7.9 Familiarity with Labour Conditions**

By submitting its Proposal, each Proponent represents and warrants that the Proponent and the Proponent Team Members are familiar with all existing collective agreements, labour legislation, arbitral jurisprudence and rulings of the Ontario Labour Relations Board as they relate to or may affect the performance or the cost of performance of the Project Agreement.

### **7.10 Freedom of Information and Protection of Privacy Act**

The Proponent acknowledges that OIPC is bound by the provisions of FIPPA. The Proponent will respect the spirit of the FIPPA, and for greater certainty the Proponent will not either directly or indirectly use, disclose or destroy Personal Information provided to it by OIPC pursuant to this RFP-2.



"FIPPA" means the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31, as amended.

### 7.11 Copyright and Use of Information in Proposals

Proponents shall not use or incorporate into their Proposals any concepts, products or processes which are subject to copyright, patents, trademarks or other intellectual property rights of third parties unless Proponents have, or will procure through licensing without cost to OIPC, the right to use and employ such concepts, products and processes in and for the Project.

All requirements, designs, documents, plans and information supplied by OIPC to the Proponents in connection with this RFP-2 are and shall remain the property of OIPC and must be treated as confidential and not used for any purpose other than preparing a Proposal and fulfilling the Project Agreement. Upon request of OIPC, all such designs, documents, plans and information (and any copies thereof created by or on behalf of the Proponent) must be returned to OIPC.

Unless OIPC otherwise agrees in writing, OIPC shall be entitled to retain and use, without compensation to any Proponent or anyone else, all Proposals and any additional information submitted by or through Proponents in connection with their Proposals, including any concept, element, idea or other information disclosed in or evident from the foregoing or which may be revealed during any meetings with Proponents. It is a fundamental condition of the Proponent's receipt of the RFP-2 and participation in the RFP-2 process that OIPC shall have and shall be deemed to be granted a royalty free license without restriction to use for the DCC and for the Project (including without limitation to use for any one or more of negotiations with a Preferred Proponent, negotiations with third parties if Preferred Proponent negotiations are unsuccessful, and/or any contract in relation to the subject matter of the Project or the DCC), and that OIPC shall have the right to grant royalty free sub-licenses to MAG and other government ministries or agencies for other projects, all of the foregoing and including the following:

- All information contained in a Proposal or which is disclosed by or through a Proponent to OIPC during the evaluation of Proposals or during the process of finalizing a Project Agreement.
- Any and all ideas, concepts, products, alternatives, processes, recommendations and suggestions developed by or through a Proponent and revealed to or discovered by OIPC, including any and all those which may be connected in any way to the preparation, submission, review or negotiation of any Proposal or Project Agreement.

Proponents shall ensure that all intellectual property rights associated with any and all of the foregoing (including copyright and moral rights but excluding patent rights) provide for and give OIPC the aforesaid rights and licenses. It is expressly understood and agreed that any actual or purported restriction in the future on OIPC's ability to use any of the

above ideas, concepts, products, alternatives, processes, recommendations, suggestions, other information or anything else obtained by or through Proponents shall be absolutely null and void and unenforceable as against OIPC and related stakeholders, and that the provisions of this Section 7.11 of the RFP-2 shall take precedence and govern.

#### **7.12 Conflict of Interest / Ineligible Proponent Team Members and Advisors**

Each Proponent Team Member must complete and submit with its Proposal the required Conflict of Interest Declaration forms attached as part of Appendix 8 to this RFP-2 Volume I and must comply with the Government's conflict of interest requirements.

Proponents must declare all conflicts of interest or any situation that may be reasonably perceived as a conflict of interest that exists now or may exist in the future. The following firms (and their affiliates, parents, subsidiaries and related entities and directing minds, and individuals) or former employees with a known conflict are considered to have a conflict of interest from their role as OIPC Advisors or as previous advisors to the Government and are not, without the specific consent of OIPC, eligible to participate as Proponent Team Members or advisors to Proponents in respect of the Project:

- Altus Helyar Cost Consulting
- Bank of Montreal
- Caruthers and Wallace
- Deloitte & Touche LLP
- DGS Consulting
- Engineering Harmonics
- Ernst & Young Orenda Corporate Finance Inc.
- Fasken Martineau
- IBI Group Architects
- Julian Jaffary Architect
- KJA Consultants
- KMA Architects Inc.
- Knowles Canada
- KPMG LLP
- Matrix Planning Associates
- Ogilvy Renault LLP
- Pricewaterhouse Coopers LLP

- Project Control Group Inc.
- Robert Hann and Associates Limited
- Smith & Andersen
- Trow Consultants
- Valcom Ltd.

Other consulting firms or persons contracted or retained by OIPC to work on the Project subsequent to the issuance of this RFP-2 and who are deemed to be in a conflict of interest situation will also be ineligible to participate as a Proponent Team Member.

OIPC has the right to request replacement of any Proponent Team Member or other advisor to the Proponent, or to request a re-Proposal from any Proponent that, in the unqualified subjective judgment of OIPC, has a conflict of interest, whether such conflict exists now or arises in the future.

### **7.13 No Reliance on Background Information or Other Information**

OIPC does not represent or warrant the accuracy or completeness of any information set out in the RFP-2 (or its appendices) or made available to Proponents, Proponent Team Members or other Members in the Electronic Data Room, or of any other background or reference information or documents prepared by third parties and which may be made available to Proponents, Proponent Team Members or other Members by or through OIPC, MAG or any employee, advisor or related stakeholders,. Proponents, Proponent Team Members or other Members shall make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information as any use of or reliance by them on any and all of such information shall be at their sole risk and without recourse against OIPC, MAG or their employees, advisors, related stakeholders, or the Government.

Without limiting the generality of the foregoing, unless otherwise provided in the Project Agreement:

- Any and all use of or reliance upon Background Information or anything in the Background Information by Proponents, Proponent Team Members or other Members shall be and is subject to all express disclaimers of liability in the Background Information, as well as all disclaimers of liability in the Project Agreement.
- OIPC, related stakeholders, MAG and the Government do not warrant and are not responsible in any way for the scope, completeness, appropriateness or accuracy of the Background Information, or any information, representations, statements, assumptions, opinions, interpretations in the Background Information, including in relation to any one or more of: descriptions of site, geological or subsurface conditions; dewatering; opinions or interpretations based on existing or assumed information; previous studies or optimization; conceptual designs or layouts,

statements or estimates of quantities of any part of the work; assumptions or descriptions as to construction means or methods; availability and quality of construction materials; spoil disposal; requirements of the City, requirements of other Governmental Authorities, or for any assumptions or interpretations made by Proponents, Proponent Team Members or other Members based on any information contained in any of the Background Information. Any interpretation, conclusion, opinion or assumption reached or made by Proponents based on anything in the Background Information, the Electronic Data Room or disclosed or discussed during the Consultative Meeting Process is the sole responsibility of the Proponent.

- Where investigations and information relating to site conditions, including to subsurface conditions, has been performed or obtained by OIPC, related stakeholders, or MAG and produced or made available to Proponents, Proponent Team Members or other Members, such investigations and information are of a preliminary nature only and are not to be relied upon by them except at their sole risk. Proponents are cautioned that any bore hole logs or test pit logs provided with any geotechnical information record only the observations which were made at the specific locations described and at the specific times recorded, and may not be representative of conditions encountered either at locations immediately adjacent thereto or, with respect to groundwater and other conditions, at any other times. Data shown for bore hold logs and test pit logs may not necessarily be representative of anticipated conditions. Proponents shall perform or cause to be performed such additional geotechnical and other investigations as they consider necessary and shall obtain and rely on their own geotechnical consultants for all interpretation and opinions, including based on any bore hole logs and test pit logs made available through OIPC, related stakeholders, MAG and others.

By submitting a Proposal, each Proponent acknowledges, represents and warrants that its Proposal is based on and relies solely upon the Proponent's own examination, knowledge, information, judgment and investigations and not upon any statement, representation or information made, furnished or given by or on behalf of any of OIPC, related stakeholders, MAG or their directors, officers, employees, consultants or agent, except where expressly made in the body of the RFP-2 (excluding the appendices to the RFP-2 and other documents which may be incorporated by reference into the RFP-2) and warranted in the body of the RFP-2 to be accurate by OIPC for purposes of reliance by the Proponent.

#### **7.14 No Contract**

By submitting a Proposal and participating in the RFP-2 process as outlined in this RFP-2, Proponents expressly agree that no contract of any kind whatsoever is formed under, or arising from, this RFP-2 save and except only the Proposal Form, the Preferred Proponent Agreement, and the Proposal.

### 7.15 Proponent Team Members and Subcontractors

Proponents shall ensure that all their Proponent Team Members, Subcontractors, suppliers, manufacturers and subconsultants, and everyone associated with or related to the foregoing, are subject to and comply with the provisions of this RFP-2, particularly the provisions of this Section 7.

### 7.16 No Liability

It is a fundamental condition of this RFP-2 and the participation of Proponents and everyone engaged by or through Proponents in the Project Implementation Process (including in connection with this RFP-2 and any Proposals submitted in response to the RFP-2) that OIPC, related stakeholders, MAG and the Government, and their respective directors, officers, employees, consultants and agents, shall not under any circumstances, including pursuant to contract, tort, statutory duty, law, equity or otherwise, or any actual or implied duty of fairness, be responsible or liable for any costs, expenses, loss of opportunities, claims, losses, damages or any other liabilities (collectively and individually any and all of the foregoing referred to in this Section 7.16 as “Claims”) to anyone, including to any Proponent, member of a Proponent, Proponent Team Member, and any other Member and their contractors, consultants and agents, arising out of or in any way related to any one or more of: the RFP-2; the Project Implementation Process; attendance at any meetings with OIPC or the Proposal Evaluation Committee or the OIPC Advisors; the preparation, negotiation, acceptance or rejection of any Proposal (whether conforming or non-conforming and whether otherwise valid or void); the amendment, cancellation, suspension or termination of the RFP-2, the Project Implementation Process or the Project; or the issue by OIPC or receipt by the Proponent of the RFP-2, the Background Information, the Form of Project Agreement, Project Works, Service Period Works or any other documents and information in connection with the Project, including any supplemental documents, amendments or changes thereto issued by OIPC prior to the Closing Date by Addenda or otherwise. By accepting the RFP-2 and by submitting a Proposal, the Proponent shall be conclusively deemed to have waived and released all of the following (collectively and individually any and all of the foregoing referred to in this Section 7.16 as “Releasees”) from any and all Claims: OIPC, MAG, the Government and their respective directors, officers, employees, consultants and agents.

In consideration of the Proponent receiving the RFP-2 and being invited to submit a Proposal for review and evaluation by OIPC, the Proponent shall indemnify and hold harmless OIPC and the other releasees from and against any and all Claims brought by third parties (including Members of Proponent Teams) against them arising out of or related to the RFP-2, the participation of the Proponent in the Project Implementation Process, or the preparation, Proposal, negotiation, acceptance or rejection of any Proposal. Without limiting the generality of the foregoing, it is expressly understood and agreed that OIPC shall not be under any obligation whatsoever to execute the Project Agreement with the Proponent or anyone else and may cancel the RFP-2 at any time for

whatever reasons OIPC in its sole discretion considers to be in the best interests of OIPC and related stakeholders.

#### **7.17 Canadian Police Information Centre Clearance**

Notwithstanding Schedule H (Background Check Requirements) of the Project Agreement, the Preferred Proponent must submit, for all Designated Project Team Members, authorization to conduct a Canadian Police Information Centre (“CPIC”) clearance. Such authorization shall take the form of written consent on a prescribed Government of Ontario or Ontario Provincial Police form.

OIPC will coordinate the CPIC clearance process on behalf of the Preferred Proponent. As part of this coordination, OIPC will inform the Preferred Proponent of the cost to undergo CPIC clearance for all Designated Project Team Members. All costs for CPIC clearance of Designated Project Team Members will be the responsibility of the Preferred Proponent and OIPC will not proceed with the CPIC clearance process until fees sufficient to cover the cost of CPIC clearance for all Designated Project Team Members have been remitted to OIPC.

For greater clarity, Designated Project Team Members will not be required to undergo a CPIC clearance until selection as the Preferred Proponent. Additional details related to the CPIC clearance required of the Designated Project Team Members are found in the Preferred Proponent Agreement.

#### **7.18 No Liability for Expenses or Damages**

OIPC will not be liable for any loss or damage suffered by any respondent including, without limitation, any expenses incurred in the preparation and delivery of the Proposal or from the demonstration of goods or services.

Notwithstanding the foregoing a Proponent that submits a bona fide Base Proposal but which is not chosen as the Preferred Proponent will be paid a Design and Bid Fee. For purposes of determining whether a Base Proposal is bona fide, it must be deemed by the Proposal Evaluation Committee to have satisfied all Mandatory Requirements and, further, it must have received at least two-thirds of the total evaluation points available to a Base Proposal in the Scored Evaluation.

*For Information Purposes Only*