



**THE CORPORATION OF THE CITY OF VICTORIA**

**REQUEST FOR PROPOSALS**

**Issued May 28, 2012**

This project is being funded, in part, by the Government of Canada through the Building Canada Fund and the Gas Tax Agreement's General Strategic Priorities Fund.

Title: Johnson Street Bridge Replacement Project

Reference No.: 12-011

## Table of Contents

<b>1</b>	<b>INTRODUCTION.....</b>	<b>1</b>
1.1	The Project .....	1
1.2	Purpose of this RFP .....	1
1.3	Definitions.....	1
1.4	Invited Proponents.....	2
1.5	Participation Agreement.....	3
<b>2</b>	<b>RFP PROCUREMENT PROCESS .....</b>	<b>3</b>
2.1	Draft Contract .....	3
2.2	Indicative Design .....	3
2.3	Indicative Pricing Submission.....	4
2.4	Competitive Review of Indicative Design.....	5
2.5	Collaborative Meetings .....	6
2.6	Comments on the Draft Contract.....	8
2.7	Data Room: Reference Information and Draft Contract Documents.....	8
<b>3</b>	<b>SUBMISSION INSTRUCTIONS.....</b>	<b>9</b>
3.1	Closing Time .....	9
3.2	Delivery Address .....	9
3.3	Number of Copies of Proposal .....	9
3.4	No Faxed or Emailed Proposal .....	9
3.5	Late Proposals .....	9
3.6	Contact Person .....	10
3.7	Receipt of Complete RFP.....	10
3.8	Enquiries and Responses.....	10
3.9	Electronic Communication .....	10
3.10	Addenda .....	11
3.11	Revisions Prior to the Closing Time.....	11
3.12	Changes to a Proponent’s Team .....	11
<b>4</b>	<b>SUBMISSION CONTENT .....</b>	<b>12</b>
4.1	General.....	12
4.2	Cover Letter .....	12
4.3	Proposal Contents.....	12
4.4	Alternate Proposals.....	14
4.5	Design Build.....	14
<b>5</b>	<b>EVALUATION.....</b>	<b>14</b>
5.1	Evaluation Committee .....	14
5.2	Evaluation Criteria.....	15
5.3	Evaluation and Selection Process.....	15
5.4	Recommendation of Preferred Proponent .....	16
<b>6</b>	<b>PREFERRED PROPONENT STAGE .....</b>	<b>16</b>
6.1	Selection and Award .....	16
6.2	Debriefs .....	17
6.3	Partial Compensation for Participation in Indicative Design Review .....	17
<b>7</b>	<b>RFP TERMS AND CONDITIONS.....</b>	<b>17</b>
7.1	No Obligation to Proceed.....	17
7.2	Confidentiality of Information .....	17
7.3	No Representation or Warranty by City.....	17
7.4	Cost of Preparing a Proposal.....	17
7.5	No Claims .....	18
7.6	Ownership of Proposal.....	18

7.7	Publicity, Disclosure and Transparency.....	18
7.8	No Collusion or Solicitation .....	19
7.9	No Lobbying .....	19
7.10	Relationship Disclosure .....	19
7.11	Restricted Parties .....	20
7.12	Use or Inclusion of Restricted Parties. ....	20
7.13	Request for Advance Rulings .....	21
7.14	Appointment of Fairness Monitor .....	21
Schedule 1 – Participation Agreement		
Schedule 2 – Relationship Disclosure Form		
Schedule 3 – Draft Contract		

## 1 INTRODUCTION

### 1.1 The Project

The Corporation of the City of Victoria (the “**City**”) intends to construct a new, moveable bridge (the “**New Bridge**”) to replace the existing Johnson Street Bridge. It also intends to construct certain related street and utility works, and to demolish the existing Johnson Street Bridge (collectively, the “**Related Works**”).

### 1.2 Purpose of this RFP

The purpose of this Request for Proposals (this “**RFP**”) is to invite each of the Proponents to submit a competitive proposal (a “**Proposal**”) for the construction of the New Bridge and the Related Works (collectively, the “**Project**”).

### 1.3 Definitions

In this RFP, the following terms will have the meanings set out below:

“**Addendum**” has the meaning set out in Section 3.10;

“**Affordability Ceiling**” means \$66 million, which is the amount of the City’s budget (including the City’s contingency), for the construction of the Project;

“**Bridge Architect**” means Wilkinson Eyre Architects;

“**City**” has the meaning set out in Section 1.1;

“**Claim**” has the meaning set out in Section 7.5(a);

“**Closing Time**” has the meaning set out in Section 3.1;

“**Contact Person**” has the meaning set out in Section 3.6;

“**Contract**” means the final contract between the City and the Preferred Proponent for the completion of the Project, entered into in accordance with this RFP, based on the Draft Contract;

“**Contractor**” means the Preferred Proponent after it has entered into the Contract;

“**Collaborative Meeting**” has the meaning set out in Section 2.5;

“**Data Room**” has the meaning set out in Section 2.7;

“**Draft Contract**” has the meaning set out in Section 2.1;

“**Delivery Address**” has the meaning set out in Section 3.2;

“**Evaluation Committee**” has the meaning set out in Section 5.1;

“**Fairness Monitor**” has the meaning set out in Section 7.14;

“**Final Draft Contract**” has the meaning set out in Section 2.6;

“**Fixed Contract Price**” has the meaning set out in Section 2.1;

“**Indicative Design**” has the meaning set out in Section 2.2;

“**Indicative Pricing Submission**” has the meaning set out in 2.3;

“**New Bridge**” has the meaning set out in Section 1.1;

“**Preferred Proponent**” has the meaning set out in Section 6.1;

“**Project**” has the meaning set out in Section 1.2;

“**Proponent**” has the meaning set out in Section 1.4;

“**Proponent’s Team**” means, with respect to a particular Proponent, the team identified in the Proponent’s response to the RFQ, including persons, entities, firms, or organizations, as may be changed as permitted by this RFP;

“**Proposal**” has the meaning set out in Section 1.2;

“**Reference Information**” has the meaning set out in Section 2.7(a);

“**Related Works**” has the meaning set out in Section 1.1;

“**Restricted Party**” means a person, entity, firm, or organization as described in Section 7.11;

“**RFP**” has the meaning set out in Section 1.2; and

“**RFQ**” has the meaning set out in Section 1.4.

Any words or phrases defined elsewhere in this RFP will have the particular meaning assigned to such words or phrases and words importing the singular included the plural, and vice versa.

#### 1.4 Invited Proponents

The City issued a Request for Qualifications (the “**RFQ**”) dated March 16, 2012 which was open to participation by any interested party, and under the RFQ the City selected the following entities (each, a “**Proponent**”) to participate in this RFP:

- (a) PCL Constructors Westcoast Inc.;
- (b) Peter Kiewit Infrastructure Co.; and
- (c) WCC Construction Canada.

This RFP is the next stage in the procurement process for the Project, following from the RFQ, and as provided in the RFQ. Only these three Proponents, subject to changes in the membership of a Proponent's Team as permitted by this RFP, are invited to submit Proposals or otherwise participate in this RFP. Notwithstanding the above, if for any reason a Proponent decides to discontinue its participation in this RFP then the City reserves the right to invite another party to participate in this RFP as a Proponent.

### 1.5 Participation Agreement

As a condition of participating in this RFP process, including obtaining a copy of the Draft Contract and obtaining access to the Data Room, each Proponent is required to sign and deliver (in hard copy or a pdf copy by email) to the Contact Person a Participation Agreement in the form attached to this RFP as Schedule 1. Signed Participation Agreements must be delivered on or before June 15, 2012. Any Proponent who does not deliver its signed Participation Agreement in accordance with this Section 1.5 will be deemed to have discontinued its participation in this RFP and the City may invite another party to participate in this RFP as a Proponent.

## **2 RFP PROCUREMENT PROCESS**

### 2.1 Draft Contract

As described in Section 4, this RFP invites Proposals from the Proponents that include:

- (a) design optimizations for the design of the New Bridge or other parts of the Project; and
- (b) a fixed price (the "**Fixed Contract Price**") for the complete performance of all of the Contractor's obligations under the Contract.

The scope of the Contractor's obligations with respect to the Project, including the specifications and drawings for the New Bridge and the Related Works, will be set out in the Contract, a draft of which is attached to this RFP as Schedule 3 (the "**Draft Contract**").

### 2.2 Indicative Design

The City retained the MMM Group as its consulting engineers for the Project, including for the engineering and preparation of a detailed design for the New Bridge. The MMM Group retained the Bridge Architect to prepare a concept design for the New Bridge. The Bridge Architect is available to provide services relating to the Project as a sub-consultant to the MMM Group.

The Bridge Architect prepared a concept design for the New Bridge, which has been generally approved by the City Council, and by the electors of the City under a referendum conducted by the City related to approvals of funding for the Project. The MMM Group has proceeded with the development of a detailed design of the New Bridge based on the approved concept design and, as of the date of this RFP, the MMM Group has advised the City that the detailed design for the New Bridge and for the Related Works is approximately 60% complete.

The Draft Contract includes design documentation, including specifications and drawings, prepared by the MMM Group that describe the current detailed design for the New Bridge to be constructed by the Contractor under the Contract, if awarded by the City. For the purposes of this RFP, the MMM Group

detailed design, as described in the Draft Contract, as may be up-dated by way of Addenda issued under this RFP, will, for the purposes of this RFP, be considered as an indicative design (the “**Indicative Design**”).

The Indicative Design documents have not been prepared for the purposes of final pricing or construction, and it is the responsibility of each Proponent to verify and confirm the validity and accuracy of any quantities that may be included in the Indicative Design documents.

### 2.3 Indicative Pricing Submission

The City does not have authority to enter into a Contract for a Fixed Contract Price that exceeds the Affordability Ceiling. It is in the interests of the City and all Proponents for the City to receive confirmation at an early stage of this RFP process that the Project, including the New Bridge, designed generally in accordance with the Indicative Design, can be constructed within the Affordability Ceiling. If any Proponent is not able to confirm that the Project, designed generally in accordance with the Indicative Design, can be completed within the Affordability Ceiling, then early notice of a potential problem will give the City and the Proponents an opportunity to identify, consider and implement adjustments that might be made so as to permit the Project to proceed.

Accordingly, in addition to the requirements for submission of Proposals, Proponents should prepare and submit a preliminary indicative pricing submission (the “**Indicative Pricing Submission**”) as follows:

- (a) each Proponent should review the Indicative Design and consider the elements of missing design required to achieve 100% design for the Project and consider the total completion of the New Bridge and the Related Works based generally on the Indicative Design, and on the basis of such complete design and the total completion of the New Bridge and the Related Works prepare its best estimate of the Fixed Contract Price. Each Proponent should then prepare and submit to the City an Indicative Pricing Submission, in the form of a letter addressed to the Contact Person, setting out either:
  - (i) that it is confident the Fixed Contract Price will be less than the Affordability Ceiling; or
  - (ii) that it is not confident that the Fixed Contract Price will be less than the Affordability Ceiling, and in that case include its estimate of the Fixed Contract Price;
- (b) each Proponent should submit its Indicative Pricing Submission to the Contact Person on or before:

**4:00 pm local time  
June 27, 2012;**

An Indicative Pricing Submission should be in writing, and should not be sent by email or fax;

- (c) a Proponent may, at its election, request a Collaborative Meeting(s) during the time for the preparation of its Indicative Pricing Submission to discuss and consider any additional design details or Project information that the Proponent might request to assist the Proponent to prepare a more accurate estimate of the Fixed Contract Price;

- (d) the City will retain all information set out in an Indicative Pricing Submission, including prices, as strictly confidential, and will not disclose such information to the other Proponents or any third party;
- (e) a Proponent may, at its election, refer to the Indicative Pricing Submission in its Proposal but, unless expressly referred to or included by reference in a Proposal, the Indicative Pricing Submission will not be included as part of a Proposal and will not be considered, as to quality, content or otherwise, by the Evaluation Committee in the evaluation of Proposals;
- (f) if any of the Indicative Pricing Submissions are over the Affordability Ceiling, then because of the risk of a cost overrun, the City may, at its election and sole discretion:
  - (i) suspend or terminate this RFP and proceed with the Project, including the construction of the New Bridge and the Related Works, in some other manner; or
  - (ii) review the scope of the Project, in separate confidential collaborations with each of the Proponents, for the purpose of identifying scope adjustments that might be made to bring the Project within the Affordability Ceiling; and
- (g) if a Proponent submits an Indicative Pricing Submission that exceeds the Affordability Ceiling, then, on invitation from the City, such Proponent will engage in a confidential collaborative meeting(s) with the City for the purposes of:
  - (i) discussing the Proponent's estimates of the Fixed Contract Price to permit the City to understand the cost of the major elements of the estimate;
  - (ii) considering amendments to the Indicative Design that would be acceptable to the City and might offer cost savings; and
  - (iii) considering a process, taking account fairness to all Proponents, of introducing amendments to the Indicative Design so as to permit the Proponent to prepare an estimate of the Fixed Contract Price that is within the Affordability Ceiling.

The City understands that the indication in a Proponent's Indicative Pricing Submission is not a commitment and that such indication could change in the final Proposal. Notwithstanding the non-binding nature of an indicative Pricing Submission, if, for any reason, a Proponent fails to deliver an Indicative Pricing Submission as requested by this RFP then the City may, at its election, disqualify such Proponent from participating further in this RFP.

#### 2.4 Competitive Review of Indicative Design

The City invites the Proponents to review critically the Indicative Design for the purpose of identifying optimizations to the Indicative Design that will result in cost savings, operating and maintenance cost savings or provide other benefits to the City. A Proponent's Proposal may include amendments to the Indicative Design, and a Proponent's Fixed Contract Price may be based on such amendments.

A Proponent is under no obligation to disclose a proposed innovation to the Indicative Design in advance of the submission of a Proposal, but the City reserves the complete right, in its sole and absolute discretion, to not accept a proposed amendment of the Indicative Design. A Proponent may request a



Collaborative Meeting(s) with representatives of the City to discuss any proposed amendment of the Indicative Design, and, except as expressly provided otherwise in this RFP, the City will retain all information received from a Proponent regarding a proposed amendment to the Indicative Design as strictly confidential, and will not disclose such information to the other Proponents or any third party.

Notwithstanding the above, the City retains the complete right and discretion to disclose information received from a Proponent if the interests of fairness, or the integrity of this RFP process, so requires.

## 2.5 Collaborative Meetings

On the request of a Proponent prior to the Closing Time, the City will coordinate confidential collaborative meetings (each, a “**Collaborative Meeting**”) as follows:

- (a) the purpose of the Collaborative Meetings is to provide a process that will assist the Proponents to develop optimal solutions for the Project while minimizing the risk that a Proponent’s solution is unresponsive to this RFP or is above the Affordability Ceiling, subject to ensuring equal access to relevant and significant information for all Proponents, and in particular:
  - (i) to permit a Proponent to discuss with the City potential solutions and approaches to optimizing the Indicative Design or the completion of the design for the Project that the Proponent may be considering for its Proposal; and
  - (ii) to permit the Proponent’s representatives to provide the City’s representatives with comments and feedback on major issues such as affordability or unacceptable provisions of the Draft Contract;
- (b) by participating in the Collaborative Meetings, a Proponent confirms its agreement that the meetings are an integral part of this RFP process and are in the interests of all parties;
- (c) by participating in the Collaborative Meetings, a Proponent acknowledges and agrees that the Collaborative Meeting process is structured to provide all Proponents with equal access to significant information that may be relevant to the Proponent’s Proposal;
- (d) in advance of each Collaborative Meeting:
  - (i) each Proponent will be requested to provide the City with a list of issues it would like to have discussed at the Collaborative Meeting;
  - (ii) the City may request that additional issues be included; and
  - (iii) a Proponent may, at its initiative, submit to the City drawings or other written materials describing or relating to proposed Indicative Design optimizations for review and comment by the City;
- (e) except as may be expressly stated otherwise in this RFP, the City will retain all information received from a Proponent during a Collaborative Meeting(s) as strictly confidential, and will not disclose such information to the other Proponents or any third party;

- (f) at each Collaborative Meeting, the City and the Proponent may each bring such officers, directors, employees, consultants and agents as each party considers necessary (which for the City may include representatives of both the City of Victoria, MMM Group and the Bridge Architect), but the City and the Proponents will attempt to bring to each Collaborative Meeting representatives who can best speak to the issues identified under Section 2.5(d);
- (g) all discussions and communications at, arising from or relating to a Collaborative Meeting, including all written materials exchanged, will be without prejudice to the City or a Proponent unless such information is included in an Addendum, and without limitation, comments provided by any of the City's representatives, such as positive or negative views, or encouragement or approvals, will not be interpreted or deemed to be an indication of a preference by the City, will not in any way bind the City or the Evaluation Committee, and will not otherwise be taken into account or acted upon by the City or the Evaluation Committee;
- (h) each participant at a Collaborative Meeting may make and retain its own notes of the discussions at the Collaborative Meeting but no minutes or other record of discussions will be exchanged between the participants;
- (i) as provided by Section 3.8, a Proponent may from time to time submit to the Contact Person written questions or requests for clarifications relating to the Draft Contract;
- (j) if, in the course of, or arising out of a Collaborative Meeting, or in response to a question or a request for clarification under Section 3.8, the City provides a Proponent with any relevant and significant information with respect to this RFP, then the City will promptly provide such information to all Proponents in the same form, except the City will, to the extent fairness to all Proponents permits, delete from any such distribution information that is commercially confidential to a Proponent;
- (k) if, for the purposes of the preparation of its Proposal, a Proponent wishes to be able to rely on any information or clarification given by a City representative at a Collaborative Meeting, or arising out of a Collaborative Meeting, that is not included in this RFP (which includes the Draft Contract), then:
  - (i) the Proponent may submit a written enquiry to the Contact Person requesting the issuance of an Addendum to amend this RFP so as to include such information; and
  - (ii) as provided by Section 3.10, no written or oral communication by a City representative as part of the Collaborative Meetings will amend this RFP (including the Draft Contract) or may be relied upon by a Proponent unless included in this RFP by way of written Addendum;
- (l) the City may, in its discretion, upon written request of a Proponent, confirm in writing that a defined optimization of the Indicative Design would not be rejected as unacceptable by the City if included in a Proposal, except that, for certainty, nothing in such confirmation will be interpreted as meaning that the City in any way commits to any design optimization in advance of the evaluation of Proposals and the selection of a Preferred Proponent pursuant to Section 5, other than as may be included in this RFP or the Draft Contract by way of Addendum;

- (m) by participating in the Collaborative Meetings the Proponents confirm their agreement with the procedures set out in this Section 2.5; and
- (n) following the issuance of this RFP, the City will consult with each Proponent to confirm an anticipated schedule with specific dates for conducting Collaborative Meetings. If one or more Proponents requests additional or fewer Collaborative Meetings, or if the City considers it desirable or necessary to schedule additional or fewer Collaborative Meetings, the City in its sole discretion may amend the anticipated schedule.

## 2.6 Comments on the Draft Contract

Proponents should review the Draft Contract for the purpose of identifying any issues or provisions that a Proponent would like to see clarified or amended, although the City does not anticipate that such requests will be extensive. Each Proponent should, within 14 calendar days (the first calendar day after the date of this RFP will be the day immediately following the date of this RFP) of the submission of the Indicative Pricing Submission, provide the City with any suggested changes the Proponent would like to see made to the Draft Contract, including clarifications or amendments to commercial, legal, and construction issues in the Draft Contract, and the following will apply:

- (a) the City may invite Proponents to attend a Collaborative Meeting(s) for the purpose of discussing the requested clarifications or amendments; and
- (b) the City will consider all comments and requested clarifications or amendments received from the Proponents and may, in its sole discretion, issue Addenda to amend the Draft Contract as the City may determine.

Prior to the Closing Time, the City intends to issue by Addendum one or more revised drafts of the Draft Contract, including one that will be identified as the 'Final Draft Contract' (the "**Final Draft Contract**") that will be the basis for the preparation of all Proposals.

## 2.7 Data Room: Reference Information and Draft Contract Documents

The City, through the MMM Group, has established a secure web site (the "**Data Room**") for the purposes of this RFP which will contain information as follows:

- (a) reference or background documents in the possession of the City, or that the City can obtain, that the City has identified as relevant to the Project and that may be useful to Proponents (collectively "**Reference Information**"). None of the Reference Information will be included as part of this RFP, or part of the Draft Contract, except as expressly set out in this RFP. The City does not make any representation as to the relevance, accuracy or completeness of any of the Reference Information except as may be expressly set out in this RFP with respect to a specific document, and a Proponent has the full responsibility to form its own judgement as to the use of any Reference Information; and
- (b) Draft Contract documents, which are included in the Draft Contract by specific and express reference in the Draft Contract including for certainty additional or amended Draft Contract documents that incorporated into the Draft Contract by way of Addendum.

The City will provide Proponents with access to the Data Room. Proponents will keep information contained in the Data Room confidential and use the information only for purposes related to the preparation of Proposals.

The Data Room may contain documents prepared by the MMM Group, or by subconsultants to the MMM Group, and such information may include information that was converted from hard copy to digital format. Proponents will assume all responsibility to confirm that such conversion was accurate and complete.

The information in the Data Room may be supplemented or updated from time to time as the City in its discretion may decide. Although the City will attempt to notify Proponents of all updates, Proponents are solely responsible for ensuring that they check the Data Room for updates so as to be aware of any updated or additional information.

### **3 SUBMISSION INSTRUCTIONS**

#### **3.1 Closing Time**

Proposals must be received at or before:

4:00 pm local time  
October 18, 2012  
(the “**Closing Time**”)

#### **3.2 Delivery Address**

Proposals must be received at or before the Closing Time at the following address:

Supply Management Services  
City Hall, 1 Centennial Square  
Victoria, British Columbia V8W 1P6  
(the “**Delivery Address**”)

#### **3.3 Number of Copies of Proposal**

Proponents should submit six hard copies and one electronic (CD or USB Key) copy of their Proposal in a sealed envelope clearly marked on the outside with this RFP Title and Reference Number (as shown on the face page of this RFP). If there is any discrepancy between the hard copy and the electronic copy, the hard copy will be considered the correct copy.

#### **3.4 No Faxed or Emailed Proposal**

Faxed or emailed Proposals will not be considered or accepted.

#### **3.5 Late Proposals**

Proposals received after the Closing Time will not be considered and will be returned unopened.

### 3.6 Contact Person

All enquiries related to this RFP should be directed by email to the following person (the "**Contact Person**"):

Keith Hennessey, SCMP, C.P.M.  
Senior Buyer, Supply Management Services  
Email: jsbrfp@victoria.ca

### 3.7 Receipt of Complete RFP

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

### 3.8 Enquiries and Responses

All enquiries regarding this RFP must be directed to the Contact Person, and the following will apply to any enquiry:

- (a) subject to Section 3.8(e), the Contact Person will respond by email;
- (b) enquiries to and responses from the Contact Person will be recorded;
- (c) the City reserves the right to decline to answer an enquiry, considering fairness to all Proponents and the integrity of this RFP process;
- (d) in preparing a response to any enquiry, the Contact Person may consult with other persons, including other City employees or the City's consultants and advisors;
- (e) a Proponent may request that an enquiry and the response be kept confidential if the Proponent considers the enquiry is commercially confidential to it; if the City determines that an enquiry or the response must be distributed to all Proponents, then the Contact Person will permit the enquirer to withdraw the enquiry rather than receive a response; and
- (f) subject to Section 3.8(c) and notwithstanding Section 3.8(e), any enquiry and the response may, in the City's discretion, be distributed to all Proponents, or the Contact Person may keep either or both the enquiry and response confidential if, in the judgment of the City, it is fair and appropriate to do so.

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

### 3.9 Electronic Communication

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

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

### 3.10 Addenda

If the City determines that an amendment is required to this RFP, the City will issue a written addendum (an "**Addendum**") that will form part of this RFP. No amendment of this RFP is effective unless contained in a formal written Addendum. No other form of communication whether written or oral, including written responses to enquiries as provided by Section 3.8, will be included in or in any way amend this RFP. Only the Contact Person is authorized to amend or clarify this RFP by issuing an Addendum. No other employee or agent of the City is authorized to amend or clarify this RFP. The City will issue all issued Addendum to each Proponent.

### 3.11 Revisions Prior to the Closing Time

Submitted Proposals may be amended or withdrawn in writing, provided such written amendment or withdrawal is received by the City at the Delivery Address prior to, but not after, the Closing Time. Oral or emailed or faxed amendments or withdrawals will not be considered or accepted.

### 3.12 Changes to a Proponent's Team

If, for any reason, a Proponent wishes or requires to change the membership of the Proponent's Team, or to include new members on the Proponent's Team, then the Proponent should submit a written application to the City for approval, including supporting information that may assist the City in evaluating the change. The City may, in its absolute discretion, grant or refuse an application under this Section 3.12 and, in exercising its discretion; the City will consider the objective of achieving a competitive procurement process that is not unfair to the other Proponents. The City may refuse to permit a change to the membership of a Proponent's Team if the change would, in the City's sole judgment, result in a team which is weaker than the Proponent's Team as described in its response to the RFQ.

The City may, in the exercise of its discretion, permit any changes to a Proponent's Team, including changes as may be requested arising from changes in ownership or control of a Proponent or a member of the Proponent's Team, or arising from changes to the legal relationship between the Proponent or individual member of the Proponent's Team, such as the creation of a new joint venture or other legal entity or relationship in place of the Proponent that was short-listed under the RFQ.

## 4 SUBMISSION CONTENT

### 4.1 General

For ease of reference, Proposals should follow the order and organization suggested in Section 4. All Proposals should be in English.

### 4.2 Cover Letter

A Proposal should be sent with a cover letter, signed by an authorized representative of the Proponent, providing:

- (a) a completed Relationship Disclosure Form attached as Schedule 2 to this RFP;
- (b) confirmation that the signatory has the authority to sign on behalf of the Proponent; and
- (c) the name and contact details of the Proponent's representative who can receive, on behalf of the Proponent, information and communications from the Contact Person.

### 4.3 Proposal Contents

A Proposal should include the following:

- (a) Indicative Design Review: A description of:
  - (i) the critical review of the Indicative Design undertaken by the Proponent, including identification of the elements of the Indicative Design the Proponent selected for specific review and for each such element the extent of the review; and
  - (ii) any design alterations or adjustments proposed that will optimize the Indicative Design, or provide benefits in the construction of the Project, including the rationale for the proposed optimizations.

With respect to any proposed design alterations or adjustments as described in Section 4.3(a)(ii) Proponents should:

- (iii) set out the technical description in a separate appendix or schedule to assist the Evaluation Committee and its advisors to be able to obtain input from specialist technical advisors without distributing the entire Proposal; and
- (iv) separate from the technical description in Section 4.3(a)(iii) set out the anticipated benefit to the City of a proposed design alteration or adjustment, expressed as a cost benefit or in qualitative terms (and in the case of design optimizations proposed to achieve lower maintenance or lower life cycle costs, include an estimate of the net present value of such benefit, calculated over the first 30 year life of the Project) so that the technical review can be conducted without reference to the cost or other benefit.

- (b) Technical Submission: A comprehensive explanation and description of the proposed approach to the performance of all aspects of the Project, consistent with the Proponent’s proposed organizational framework including:
- (i) the construction methodology for all elements of the Project, including elements such as deconstruction, temporary access and staging;
  - (ii) an organization chart, including all key individuals, sub-trades and sub-consultants and corresponding roles;
  - (iii) a preliminary work schedule, considering GC. 4.12 of the Draft Contract, including key milestone dates for the Project, taking into account any governmental restrictions on the time for the performance of the Project such as deadlines imposed as a condition of funding, and permitting and regulatory deadlines and restrictions;
  - (iv) an outline of the anticipated technical services delivery schedule (such as inspection or materials sampling programs) that accords with the work schedule in Section 4.3(b)(iii) above;
  - (v) a proposed resource allocation for each key component of the Project construction, taking into account the applicable provisions of the Draft Contract, including GC. 4.12;
  - (vi) detailed narratives describing the approach for implementing and executing major tasks;
  - (vii) a description of the Proponent’s proposed quality management plan for the performance of the Contract taking into account the applicable provisions of the Draft Contract, including GC. 4.11; and
  - (viii) a description of the Proponent’s proposed environmental management plan it would implement for the performance of the Contract;
- (c) Financial Submission: A financial submission, including the Fixed Contract Price for the complete performance of all of the Contractor’s obligations under the Contract including the construction of the New Bridge and the Related Works as described by the Indicative Design as modified by any design alterations or adjustments proposed under Section 4.3(a)(ii). For clarity:
- (i) it is not required that a Proposal include a “base case” price for the unaltered Indicative Design, but a financial submission should include the pricing information relating to any proposed design alterations or adjustments as described in Section 4.3(a)(iv); and
  - (ii) while it is the City’s intention that the Contract Price as defined in the executed Contract will be a firm fixed price, the Fixed Contract Price set out in the financial submission may, at the election of the Proponents, be expressed as a “Not-to-Exceed Price” with the intention that the final Contract Price agreed with the Preferred Proponent may vary from the Preferred Proponent’s Proposal “Not-to-Exceed Price” as the City and the Preferred Proponent complete the discussions as described in Section 6.1, but that the final Contract Price will in no event exceed the “Not-to-Exceed Price”; and



- (d) Proposed Amendments to Final Draft Contract: Details of any proposed amendments to the Final Draft Contract, including proposed language where appropriate, together with the rationale for any proposed change and the anticipated benefit to the City. Amendments may, without limitation, include cost-saving incentive clauses by which the parties would retain the incentive to reduce costs, and share savings, after the award and execution of the Contract.

#### 4.4 Alternate Proposals

A Proponent may, at its election, include more than one alternate Indicative Design optimization as called for under Section 4.3(a)(ii) as follows:

- (a) include a separate price for a defined Indicative Design optimization or optimizations, such that the City may at its election select or not select a proposed optimization, with corresponding defined adjustments to the Fixed Contract Price; or
- (b) include different combinations of Indicative Design optimizations to the Indicative Design with a correspondingly different Fixed Contract Price for each such combination;

and the Evaluation Committee may evaluate each alternate as a separate Proposal under Section 5.

#### 4.5 Design Build

A Proponent may, at its election:

- (a) include as part of a design alteration or adjustment as described in Section 4.3(a)(ii) the assumption by the Contractor of technical design responsibility (including development of construction drawings) for the design and implementation of the alteration or adjustment; or
- (b) propose the assumption by the Contractor of technical design responsibility for the complete Project.

Any such assumption of design responsibility by the Contractor would be incorporated in the Contract together with provisions under which the City would retain the right to approve any variations from the Indicative Design, or any variation from the design concept for the New Bridge as generally approved by the electors of the City as described in Section 2.2.

## 5 EVALUATION

### 5.1 Evaluation Committee

The evaluation of Proposals to identify the Preferred Proponent will be carried out by a committee appointed by the City (the “**Evaluation Committee**”). The Evaluation Committee may be assisted by other persons as the Evaluation Committee may decide it requires, including technical, financial, legal and other advisors or employees of the City.

## 5.2 Evaluation Criteria

The Evaluation Committee will compare and evaluate the Proposals to identify the Proposal that the Evaluation Committee judges, in its sole and absolute discretion, to be the most advantageous to the City, using the following criteria:

- (a) the demonstrated critical review and understanding by the Proponent of the Indicative Design as requested under Section 4.3(a)(i) – 15 points
- (b) design optimization and innovation related to the Indicative Design as requested under Section 4.3(a) – 25 points;
- (c) the demonstrated strength and ability of the Proponent to perform the Project, including the approach to delivery of the Work as requested under Section 4.3(b), and the extent of technical detail provided with design optimizations, if any, and the risk to the City of reaching final agreement with respect to proposed design optimizations – 15 points;
- (d) financial submission as requested under Section 4.3(c), including the Fixed Contract Price proposed and the uncertainty, risk and benefits to the City associated with such Fixed Contract Price – 40 points; and
- (e) proposed amendments to the Final Draft Contract as requested under Section 4.3(d) – 5 points.

The Evaluation Committee is not obligated to apply the weightings set out in this Section 5.2 strictly and is not obligated to select as Preferred Proponent the Proponent that submits the Proposal that receives the highest score under this Section 5.2.

The Evaluation Committee specifically may select a Preferred Proponent that does not submit the lowest cost Proposal, and while a Proposal that is over the Affordability Ceiling is not prohibited under this RFP, the City does not anticipate selecting a Proposal with a Fixed Contract Price that the City determines exceeds the Affordability Ceiling. The City anticipates that the City's contingency will be 10% but it could be less depending on the risk and Project scope retained by the Contractor under the Contract. The City will evaluate the financial implications of a Proposal, including any proposed optimization, on a net-impact basis, considering Project cost increases and decreases to the City offered in a Proposal. The Evaluation Committee may select, as Preferred Proponent, the Proponent which submits a Proposal that the Evaluation Committee overall determines, by application of the criteria listed in this Section 5.2, is the most advantageous to the City.

## 5.3 Evaluation and Selection Process

To assist in evaluation of Proposals, the Evaluation Committee may, in its sole and absolute discretion, but is not required to:

- (a) conduct reference checks relevant to the Contract and the Project to verify any and all information regarding a Proponent, inclusive of the Proponent's directors/officers and key individuals, and to conduct any background investigations that the Evaluation Committee considers necessary in the course of this RFP process and rely on and consider any relevant information from such cited references in the evaluation of Proposals;

- (b) seek clarification or additional information from any, some, or all Proponents with respect to their Proposal and consider such supplementary information in the evaluation of Proposals; and
- (c) request interviews/presentations with any, some, or all Proponents to clarify any questions or considerations based on the information included in Proposals and consider any supplementary information from interviews/presentations in the evaluation of Proposals.

The Evaluation Committee is not obligated to complete a detailed evaluation of all Proposals and may, after completing a preliminary review of all Proposals, identify and drop from any detailed evaluation any Proponent who, when compared to the other Proponents, the Evaluation Committee judges, in its sole and absolute discretion, to not be in contention to be selected as the Preferred Proponent. The City expressly reserves the right to reject any design optimizations proposed by a Proponent.

#### 5.4 Recommendation of Preferred Proponent

The Evaluation Committee will recommend to the City the Proposal that it determines is most advantageous in accordance with this RFP. The City may accept or reject the Evaluation Committee's recommendation.

## 6 PREFERRED PROPONENT STAGE

### 6.1 Selection and Award

The Evaluation Committee will perform the evaluation and ranking and may recommend a preferred Proponent and its recommended Proposal to the City (the "**Preferred Proponent**"). The City may accept the recommendation and invite the identified Preferred Proponent to enter into final discussions to settle all terms of the Contract, including Appendix G so as to permit the parties to enter into the Contract for the Fixed Contract Price, based on the Preferred Proponent's selected Proposal, including any clarifications that the Preferred Proponent may have provided during the evaluation of Proposals. The City reserves the right in its discretion to negotiate changes to the Final Draft Contract.

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

- (a) terminating this RFP process entirely and proceeding with some or all of the Project in some other manner, using other contractors; or
- (b) inviting one of the other Proponents to enter into discussions to reach agreement for the Project.

Final approval will be required from City Council prior to a final award and execution of the Contract.

The City does not anticipate entering into any preliminary agreements with the Preferred Proponent in advance of the execution of the Contract by both parties, but the City reserves the right to award a preliminary agreement if, in the judgement of the City, a preliminary agreement with the Preferred Proponent was necessary to permit the Project to go forward, and if the City would not be prejudiced as a result.

## 6.2 Debriefs

After entering into the Contract with the Preferred Proponent, the City will, upon request from an unsuccessful Proponent, conduct a debriefing for that unsuccessful Proponent. In a debriefing, the City will discuss the relative strengths and weaknesses of that Proponent's Proposal, but the City will not disclose or discuss any confidential information of another Proponent.

## 6.3 Partial Compensation for Participation in Indicative Design Review

Within 60 days after the City enters into the Contract with the Preferred Proponent, the City will pay to each unsuccessful Proponent that submit a bona fide Proposal the lesser of (i) \$75,000 (inclusive of any GST or HST payable) and (ii) the substantiated internal and third party costs reasonably incurred by the Proponent in undertaking a bona fide review of the Indicative Design for the purpose of identifying optimizations to the Indicative Design as requested under Section 2.4.

# **7 RFP TERMS AND CONDITIONS**

## 7.1 No Obligation to Proceed

This RFP is not a tender and does not commit the City in any way to proceed to any further stages of a competitive procurement process for the Project, including to select a Preferred Proponent or award the Contract. The City reserves the complete right to, at any time, reject all Proposals and to terminate the competitive procurement process for the Project and proceed with the Project or the Contract or both in some other manner.

## 7.2 Confidentiality of Information

The information provided by the City and its representatives pursuant to this RFP is confidential and as set out in the Participation Agreement will not be disclosed by a Proponent without the prior approval of the City. Notwithstanding any term of this RFP to the contrary, Proponents should be aware the City is a "public body" defined by and subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia). Pursuant to such Act, the City will endeavour to keep all Proposals (and their contents) confidential.

## 7.3 No Representation or Warranty by City

The Proponent will investigate and satisfy itself of every condition that affects the preparation of its Proposal. The Proponent further acknowledges and represents that the Proponent's investigations have been based on its own examination, knowledge, information, and judgment, and not upon any statement, representation, or information made or given by the City, its employees or representatives, the Contact Person or any advisor to the City, other than the information contained in this RFP.

## 7.4 Cost of Preparing a Proposal

Each Proponent will be solely responsible for all costs incurred in the preparation of a Proposal, including all costs providing information requested by the City, preparing for and attending meetings, such as the Collaborative Meetings, and conducting due diligence.

## 7.5 No Claims

Each Proponent, by submitting a Proposal, irrevocably:

- (a) agrees that it will not bring any claim, action, demand, suit or cause of action, whether arising in contract, tort (including negligence) or otherwise (a “**Claim**”) against the City or any of its elected officials, employees, directors, officers, advisors or representatives, or any one of them, for any costs, damages or other compensation for any matter relating directly or indirectly to this RFP (including, without limitation, in the event that the City terminates this RFP, rejects or disqualifies or for any other reason fails to accept a Proposal, accepts a non-compliant Proposal or otherwise breaches, or fundamentally breaches, the terms of this RFP or any duties arising from this RFP); and
- (b) waives any Claim against the City and its elected officials, employees, directors, officers, advisors or representatives for any compensation of whatsoever nature or kind including, without limitation, for loss of anticipated profits, indirect, incidental or consequential damages or losses if no Contract is entered into between the Proponent and the City for any reason whatsoever, including, without limitation, in the event that the City terminates this RFP, rejects or disqualifies or for any other reason fails to accept a Proposal, accepts a non-compliant Proposal or otherwise breaches, or fundamentally breaches, the terms of this RFP or any duties arising from this RFP.

## 7.6 Ownership of Proposal

All Proposals submitted to the City become the property of the City when received and until the execution of the Contract by the City and the Preferred Proponent will be held in confidence by the City, subject to the provisions of this RFP. Upon submission of a Proposal the City will be deemed to have acquired all rights to any design proposal, including any design alteration or adjustment to the Indicative Design relating to the Project as may be included in a Proposal, and such rights will include the City’s right to use a design proposal included in an unsuccessful Proponent’s Proposal by incorporating such design proposal into the final design for the Project and the Contract between the City and the Preferred Proponent.

## 7.7 Publicity, Disclosure and Transparency

The City is committed to an open and transparent procurement process, while understanding the Proponents’ need for protection of confidential commercial information. Proponents will cooperate with the City with respect to publicity and transparency.

The City expects to disclose the following information to the general public during this RFP process:

- (a) this RFP document (not including the schedules, including the Draft Contract and Indicative Design); and
- (b) the names of the Proponents.

Proponents should not make any public releases or announcements or issue any advertising pertaining to the Project or their involvement with this RFP. Proponents will notify the City through the Contact Person of requests for information or interviews from the media. Proponents will obtain the approval of

the City, through the Contact Person, before releasing any information relating to the Project to the public.

Proponents will ensure all members of the Proponent's Team and others associated with the Proponent also comply with these requirements.

#### 7.8 No Collusion or Solicitation

By submitting a Proposal, a Proponent, for and on behalf of the Proponent and the Proponent's Team, represents and confirms to the City that the Proponent has prepared its Proposal without any connection, knowledge, comparison of figures, arrangement or collusion with any other person or persons submitting or participating in the preparation of a Proposal submitted by another Proponent. A consultant or contractor may not be a member of more than one Proponent team without the express written approval of the City.

Each Proponent may not make any representations, solicitations or other communication to any director, officer or employee of the City, including City Council, or to a Restricted Party, or to a member of the Evaluation Committee with respect to its Proposal, either before or after submission of its Proposal, except as expressly provided in this RFP. If any representative of a Proponent communicates improperly contrary to this paragraph then the City may, in its discretion, regardless of the nature of the communication, reject the Proposal submitted by the Proponent.

#### 7.9 No Lobbying

Proponents will not engage in any form of political or other lobbying whatsoever with respect to the Project, or otherwise attempt to influence the outcome of this RFP process other than by submitting a Proposal. In the event of any such activity, the City, in its sole and absolute discretion, may at any time, but is not required to, reject any Proposal by that Proponent without further consideration, and either terminate that Proponent's right to continue participating in this RFP process, or impose such conditions on that Proponent's continued participation in this RFP process, as the City, in its sole discretion, may consider in the public interest or otherwise appropriate.

#### 7.10 Relationship Disclosure

Without limiting any other term of this RFP, the City may in its sole discretion disqualify any Proponent if, in the City's opinion, the Proponent, or a member of the Proponent's Team, has an actual conflict of interest or unfair advantage or has a relationship that has the potential for a conflict of interest to occur.

Each Proponent, including each member of the Proponent's Team, and all other firm, corporation and individual members of the Proponent's Team, must fully disclose all relationships they may have with the City, any Restricted Party, or any other Person providing advice or services to the City with respect to the Project:

- (a) by submission of the completed Relationship Disclosure Form with its Proposal; and
- (b) thereafter during this RFP process, by written notice addressed to the Contact Person, promptly after becoming aware of any such relationship.

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

#### 7.11 Restricted Parties

A restricted party is a person, entity, firm, or organization (including their former and current employees) who:

- (a) is participating or is involved in the RFP process or in the design, planning or implementation of the Project or who has so participated or has been so involved; and
- (b) may provide a material unfair advantage or material confidential information to any Proponent that is not, or would not reasonably be expected to be, available to other Proponents.

As of the date of this RFP, the City has identified the following persons, entities, firms, or organizations as Restricted Parties. The Restricted Parties are restricted from participating as a member of a Proponent's Team:

- MMM Group (design consultant);
- Wilkinson Eyre Architects (architectural consultant);
- Stafford Bandlow Engineering Inc. (engineering consultant);
- MEG Consulting Limited (geotechnical consultant);
- H.W. Lochner (structural consultant);
- Speirs and Major (lighting consultant);
- Sharp and Diamond (landscape consultant);
- PBA Engineering (roadway illumination consultant);
- Advicas (cost estimating consultant);
- Typlan (navigation consultant);
- Stantec Consulting (permit consultant);
- B. Larkin & Associates Ltd.;
- Fraser Milner Casgrain LLP (external legal advisors); and
- TPG Enterprises Ltd. and Thorsten Gaul (structural steel consultant).

The above may not be an exhaustive list of Restricted Parties. Additional persons, entities, firms, or organizations may be added to the list at any stage of this RFP process by issuance by the City of an Addendum, as the City becomes aware of additional persons, entities, firms, or organizations who should be restricted.

#### 7.12 Use or Inclusion of Restricted Parties.

Each Proponent is responsible to ensure that neither the Proponent nor any member of the Proponent's Team uses, consults or seeks advice from any Restricted Party or includes any Restricted Party in the Proponent's Team. The City may, in its sole discretion, disqualify a Proponent or impose such conditions on the Proponent's continued participation in this RFP process as the City may consider to be in the public interest or otherwise appropriate, if the Proponent uses or includes a Restricted Party in the Proponent's Team:

- (a) to advise or otherwise assist the Proponent in connection with the Proponent's participation in this RFP process, including in connection with the Proponent's preparation of its Proposal; or
- (b) as an employee, advisor or consultant to the Proponent or a member of the Proponent's Team.

#### 7.13 Request for Advance Rulings

A Proponent or a prospective member or advisor of a Proponent who has any concerns regarding whether a current or prospective employee, advisor or member of that Proponent is or may be a Restricted Party, is encouraged to request an advance ruling in accordance with this Section 7.13 through the following process.

To request an advance ruling of whether a Person is a Restricted Party, a Proponent or prospective team member or advisor of that Proponent should submit to the Contact Person, not less than 10 days prior to the Closing Time by email, the following information:

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

Subject to the terms of this RFP, all requests for advance rulings will be treated in confidence. If a member of a Proponent's Team or a prospective team member or advisor becomes a Restricted Party, it may be listed in an Addendum as a Restricted Party.

The City may seek whatever advice it deems necessary to assist in connection with the foregoing.

#### 7.14 Appointment of Fairness Monitor

The City has appointed Mr. Jamie Cassels QC. as fairness monitor for the Project (the "**Fairness Monitor**") who will be independent from the City and its advisors, for the purpose of monitoring the procurement process for the award of the Contract. The Fairness Monitor will, after the selection of the Preferred Proponent, provide a written report to the City on whether the Fairness Monitor observed any unfairness or bias during the procurement process, and the City will make any such report available to the Proponents and to interested parties.

The City will:

- (a) provide the Fairness Monitor full access to all documents, meetings and information related to this RFP process which the Fairness Monitor decides is required; and
- (b) keep the Fairness Monitor fully informed of all documents and activities associated with the issued procurement documents, including this RFP.



## SCHEDULE 1 – PARTICIPATION AGREEMENT

**SCHEDULE 1 – PARTICIPATION AGREEMENT**  
**JOHNSON STREET BRIDGE REPLACEMENT PROJECT**

**RFP #12-011**

May 28, 2012

Keith Hennessey, SCMP, C.P.M.  
Senior Buyer, Supply Management Services  
City of Victoria  
#1 Centennial Square, Victoria, BC V8W 1P6

**RE: RFP #12-011**

In consideration of the City of Victoria's (the "**City**") agreement to allow \_\_\_\_\_ (the "**Proponent**") to participate in the Johnson Street Bridge Replacement Project RFP #12-011 (including any Addendum, the "**RFP**"), the Proponent hereby agrees as follows:

**1.0 DEFINED TERMS**

In this Participation Agreement capitalized terms will have the meanings as set out in the RFP, unless defined otherwise in this Participation Agreement.

**2.0 RFP**

**2.1 RFP Terms**

As a condition of participating in any and all aspects of the RFP, including the Collaborative Meetings and the preparation of a Proposal, the Proponent will be bound by all the terms of the RFP and the Proponent will ensure that each member of its team complies with the terms of the RFP and this Participation Agreement.

**2.2 Background Checks**

The City may verify, confirm and investigate any information submitted or prepared by or on behalf of the Proponent pursuant to the RFP, including any and all information contained in a Proposal, conduct background investigations, including criminal record investigations as the City may decide, make credit enquiries, conduct litigation searches, bankruptcy registrations and taxpayer information investigations or other investigations.

**2.3 No Representation or Warranty by City**

The Proponent will investigate and satisfy itself of every condition that affects the preparation of its Proposal. The Proponent acknowledges and represents that the Proponent's investigations have been based on its own examination, knowledge, information, and judgment, and not upon any statement, representation, or information made or given by the City, its employees or representatives, the Contact Person or any advisor to the City, other than the information contained in the RFP and the Proponent

further acknowledges that none of the City, its employees or representatives, the Contact Person or any advisor to the City make any representation or warranty with respect to the accuracy of any such information.

#### 2.4 Data Room

The City, through the MMM Group, has established the Data Room. The Data Room contains electronic data, including computer-aided design (CAD/BIM) files, including native file formats (DWG, RVT, RFA, etc.), files produced by word processing, spreadsheet, scheduling, database, and other software programs. The electronic data in the Data Room may be provided in an original format produced by the MMM Group or in an alternate “translated” format. The Proponent acknowledges that any electronic data transferred in any manner or translated to an alternate system or format is subject to errors that may affect the accuracy and reliability of the data.

#### 2.5 Confirmation of Participation

The Proponent confirms that the Proponent intends to participate in the RFP and to prepare and submit a bona fide Proposal, in accordance with the terms of the RFP.

#### 2.6 Costs of Preparing Proposal

The Proponent will be solely responsible for all costs incurred in the preparation of a Proposal, including all costs of providing information requested by the City, preparing for and attending meetings, such as the Collaborative Meetings, and conducting due diligence.

#### 2.7 No Claims

The Proponent:

- (a) agrees that it will not bring any claim, action, demand, suit or cause of action, whether arising in contract, tort (including negligence) or otherwise (a “**Claim**”) against the City or any of its elected officials, employees, directors, officers, advisors or representatives, or any one of them, for any costs, damages or other compensation for any Claim or matter relating directly or indirectly to the RFP (including, without limitation, in the event that the City rejects or disqualifies or for any other reason fails to accept a Proposal, accepts a non-compliant Proposal or otherwise breaches, or fundamentally breaches, the terms of the RFP or any duties arising from the RFP); and
- (b) waives any Claim against the City and its elected officials, employees, directors, officers, advisors or representatives for any compensation of whatsoever nature or kind, including, without limitation, for loss of anticipated profits, indirect, incidental or consequential damages or losses if no Contract is entered into between the Proponent and the City for any reason whatsoever, including, without limitation, in the event that the City rejects or disqualifies or for any other reason fails to accept a Proposal, accepts a non-compliant Proposal or otherwise breaches, or fundamentally breaches, the terms of the RFP or any duties arising from the RFP.

### 3.0 **CONFIDENTIALITY**

All information which has not otherwise been made public pertaining to the City or the Project, which is obtained by a Proponent directly or indirectly through participation in the RFP, including all information in the Data Room, is confidential and will not be disclosed to any third party without the prior written authorization from the City.

#### 3.1 **Interpretation**

In Section 3.0 of this Participation Agreement:

- (a) **“Confidential Information”** means all documents, knowledge and information provided by the City or any of its representatives, including its consultants or sub-consultants (collectively, the **“Disclosing Party”**) to, or otherwise obtained by, the Proponent or any of its Representatives (collectively, the **“Receiving Party”**), whether before or after the date of this Participation Agreement, and whether orally, in writing or other visual or electronic form in connection with or relevant to the Project, or the RFP process, and including information made available in the Data Room, including, without limitation, all design, operational and financial information, together with all analyses, compilations, data, studies, photographs, specifications, manuals, memoranda, notes, reports, maps, documents, computer records or other information in hard copy, electronic or other form obtained from the Disclosing Party or prepared by the Receiving Party containing or based upon any such information. Notwithstanding the foregoing, Confidential Information does not include information which:
- (i) is or subsequently becomes available to the public, other than through a breach of this Participation Agreement by the Receiving Party or through a breach of a confidentiality agreement which another person has entered into concerning the Confidential Information;
  - (ii) is subsequently communicated to the Receiving Party by an independent third party, other than a third party introduced to the Receiving Party by the Disclosing Party or connected with the Project, without breach of this Participation Agreement and which party did not receive such information directly or indirectly under obligations of confidentiality;
  - (iii) was rightfully in the possession of the Receiving Party or was known to the Receiving Party before the date of this Participation Agreement and did not originate, directly or indirectly, from the Disclosing Party;
  - (iv) was developed independently by the Receiving Party without the use of any Confidential Information; or
  - (v) is required to be disclosed pursuant to any judicial, regulatory or governmental order validly issued under applicable law.
- (b) **“Permitted Purposes”** means preparing a Proposal, and any other use permitted by Section 3.0 of this Participation Agreement; and

- (c) **“Representative”** means a director, officer, employee, agent, accountant, lawyer, consultant, financial adviser, subcontractor, or other member of the Proponent’s team or any other person contributing to or involved with the preparation of the Proponent’s Proposal, as the case may be, or otherwise retained by the Proponent, in connection with the Project.

### 3.2 Confidentiality

The Proponent will keep all Confidential Information strictly confidential and will not without the prior written consent of the City, which may be unreasonably withheld, disclose, or allow any person to disclose, in any manner whatsoever, in whole or in part, or use, or allow any of its Representatives to use, directly or indirectly, the Confidential Information for any purpose other than the Permitted Purposes. The Proponent will make all reasonable, necessary, and appropriate efforts to safeguard the Confidential Information from disclosure to any other person, firm, corporation, or other entity except as permitted in Section 3.0 of this Participation Agreement, and will ensure that any party receiving the Confidential Information agrees to keep such information confidential and to be bound by the terms contained in this Participation Agreement.

### 3.3 Survival of Confidentiality Obligations

The Proponent’s obligations and undertakings of confidentiality under this Participation Agreement will extend for ten years from the date of this Participation Agreement.

### 3.4 Ownership of Confidential Information

The Proponent acknowledges that the Confidential Information will at all times remain the property of the City and that the City may, from to time, disclose Confidential Information concerning the City to other third parties in connection with the RFP. The Proponent acknowledges that nothing in this Participation Agreement will be construed as granting to or conferring on the Proponent or any of its Representatives any property rights, including rights by license or otherwise, in or to any Confidential Information and that Confidential Information disclosed under this Participation Agreement is confidential and proprietary to the City.

### 3.5 No Warranty

The Confidential Information provided to the Proponent or its Representatives under this Participation Agreement is provided “as is”. No warranties with respect to the Confidential Information, either express or implied, statutory or otherwise, are made by the City.

### 3.6 Destruction on Demand

On written request from the City, the Proponent will promptly deliver to the City or destroy all documents and copies in its possession or control constituting or based on the Confidential Information and the Proponent will confirm that delivery or destruction to the City in writing, all in accordance with the instructions of the City; provided, however, that the Proponent may retain one copy of any Confidential Information which it may be required to retain or furnish to a court or regulatory authority pursuant to applicable law. All oral Confidential Information will continue to be subject to the terms of this Participation Agreement.

### 3.7 Acknowledgment of Irreparable Harm

The Proponent acknowledges and agrees that the Confidential Information is proprietary and confidential and that the City may be irreparably harmed if any provision of Section 3.0 of this Participation Agreement were not performed by the Proponent or any party to whom the Proponent provides Confidential Information in accordance with its terms, and that any such harm could not be compensated reasonably or adequately in damages. The Proponent further acknowledges and agrees that the City will be entitled to injunctive and other equitable relief to prevent or restrain breaches of any of the provisions of Section 3.0 of this Participation Agreement by the Proponent or any of its Representatives or to enforce the terms and provisions of this Participation Agreement, by an action instituted in a court of competent jurisdiction, which remedy or remedies are in addition to any other remedy to which the City may be entitled at law or in equity.

### 3.8 Waiver

No failure to exercise, and no delay in exercising, any right or remedy under Section 3.0 of this Participation Agreement by the City will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of Section 3.0 of this Participation Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

## 4.0 GENERAL

### 4.1 General Conditions

The following general provisions apply:

- (a) The terms of this Participation Agreement do not limit or in any way affect the Proponent's duties and obligations under the RFP.
- (b) The City may in its sole discretion amend the RFP by Addendum at any time and from time to time.
- (c) If the Proponent does not agree with an amendment to the RFP, the Proponent's sole recourse is to not submit a Proposal.
- (d) The Proponent confirms it has the legal capacity to enter into this Participation Agreement and participate in the RFP.
- (e) The Proponent will be responsible for any breach of this Participation Agreement by the Proponent or any of its Representatives (as defined in Section 3.1 of this Participation Agreement).

4.2 Proponent's Representative

The name and contact information of the individual the City will use to contact the Proponent under the RFP is as follows:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Bus Ph: \_\_\_\_\_

4.3 Severability

If any portion of this Participation Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, then that portion will be severed and the remaining portion will remain in full force and effect.

4.4 Enurement

This Participation Agreement enures to the benefit of the City and binds the Proponent and its successors.

Accordingly, the Proponent executes this Participation Agreement as of the \_\_\_ day of \_\_\_\_\_, 2012.

***[insert appropriate signature block]***

Per: \_\_\_\_\_  
Authorized Signatory

**SCHEDULE 2 – RELATIONSHIP DISCLOSURE FORM**

***This must be completed by each Proponent for and on its own behalf and on behalf of each member of the Proponent’s Team (including firms and individuals).***

TO: The Corporation of the City of Victoria

RE: Request for Proposals, Johnson Street Bridge Replacement Project

The Proponent, for and on its own behalf and on behalf of each member of the Proponent’s Team, declares that it has reviewed the list of Restricted Parties, and the following is a full disclosure of all relationships the Proponent and the members of the Proponent’s Team has with:

- (a) any Restricted Party or any Restricted Party’s current or former employees, shareholders, directors or officers; or
- (b) employees (both current or former) of the City or individuals of firms who have been involved in the procurement process for or the design, planning or implementation of the Project,

that could constitute a conflict of interest or unfair advantage.

Name of Restricted Party / Person	Name of Proponent or member of the Proponent’s Team, as applicable, and details of the nature of relationship with the listed Restricted Party / Person <i>(e.g. ABC was an advisor to XYZ (name of the Restricted Party) from 1999-2000)</i>

***[insert appropriate signature block]***

Per: \_\_\_\_\_  
Authorized Signatory



**SCHEDULE 3 – DRAFT CONTRACT**

(to be provided after return of Participation Agreement)