

**REQUEST FOR PROPOSALS**  
**FOR**  
**GORDIE HOWE INTERNATIONAL BRIDGE**  
**BY**  
**WINDSOR-DETROIT BRIDGE AUTHORITY**

**ISSUED NOVEMBER 10, 2016**

**INSTRUCTIONS TO PROPONENTS**

**THIS DOCUMENT CONTAINS A SECURITY REQUIREMENT**

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**SUMMARY OF KEY INFORMATION**

<b>RFP TITLE</b>	The title of this RFP is: “Gordie Howe International Bridge - DBFOM” Please use this title on all correspondence.
<b>CONTACT PERSON</b>	The Contact Person for this RFP may be contacted at:  Email: ProcurementContact@wdbridge.com  Contact with the Contact Person by telephone or fax is not permitted.
<b>ADDENDA</b>	Any Addenda and certain other information relating to this RFP will be distributed to Proponents through the Data Room.
<b>REQUESTS FOR INFORMATION</b>	Proponents are encouraged to submit any requests for information or clarification (“ <b>RFIs</b> ”) at an early date to permit consideration and response.  All RFIs must be submitted to the Contact Person through the Proponent Mailbox. RFIs must supply the information described in Schedule 3 [ <i>Request for Information</i> ]. The Electronic Data Room will describe the protocol and procedure for submitting RFIs.  The Windsor-Detroit Bridge Authority may decide not to give responses to any RFIs.
<b>TECHNICAL SUBMISSION DEADLINE</b>	The Technical Submission Deadline is 14:00 (local Windsor, Ontario time) on April 3, 2018.
<b>EARLY WORK SUBMISSION DEADLINE</b>	The Deadline for Submission of the Early Work Proposal is 14:00 (local Windsor, Ontario time) on April 30, 2018 (see Schedule 20 [ <i>Form of Project Co Early Work Agreement</i> ]).
<b>FINANCIAL SUBMISSION DEADLINE</b>	The Financial Submission Deadline is 14:00 (local Toronto, Ontario time) on May 8, 2018.

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<b>SUBMISSION LOCATION</b>	<p>The Submission Location for the Technical Submission is:</p> <p>Windsor-Detroit Bridge Authority 100 Ouellette Avenue, Suite 600 Windsor, ON N9A 6T3</p> <p>The Submission Location for the Financial Submission is:</p> <p>Fasken Martineau DuMoulin LLP Bay Adelaide Centre 333 Bay Street, Suite 2400 Toronto, ON M5H 2T6</p> <p>Faxed or electronically submitted Proposals will not be accepted.</p>
<b>DELIVERY HOURS</b>	<p>Deliveries made on the day of a Submission Deadline, will be accepted at the Submission Location from 8:30:00 to 14:00 (local Windsor, Ontario time). If a Proponent wishes to deliver a Submission prior to the applicable Submission Deadline day, the Proponent should contact the Contact Person to arrange for delivery.</p>
<b>CURRENCY</b>	<p>All dollar amounts referred to in this RFP are Canadian dollars. Any dollar amounts referred to in a Proposal must be Canadian dollars, except for the use of another currency as expressly permitted or provided in Section 1.12 (<i>Currency</i>) or Schedule 12 [<i>Financial Submission</i>] of this RFP.</p>

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SCHEDULE 20 Form of Project Co Early Work Agreement

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## 1. INTRODUCTION

### 1.1 Purpose of this RFP

This request for proposals is issued by the Windsor-Detroit Bridge Authority (“**WDBA**”). The purpose of this request for proposals is to invite eligible Proponents to prepare and submit Proposals to design, build, finance, operate and maintain a new crossing of the Detroit River between Windsor and Detroit (the “**Project**”) which will include the components (the “**Facility**”) and the services listed in Section 2.1 (*Facility Components and Services*). The bridge component of the Facility is called the Gordie Howe International Bridge. Acronyms and defined terms used in this RFP are either set out in the text of this RFP or in Section 11.2 (*Definitions and Interpretation*). For ease of reference, all acronyms and definitions used in this RFP are consolidated in Section 11.1. Definitions which are used only in a Schedule to this RFP are found only in such Schedule.

This RFP provides an overview of the Project and the Project Work, presents information relating to the Competitive Selection Process and lists the Proposal requirements, including required forms.

WDBA has delivered on the date of this RFP, separately to each Proponent and on a confidential basis, an initial draft of the Project Agreement that the Proponents may comment on in accordance with the provisions of this RFP. For the purposes of this RFP the term “**Initial Draft Project Agreement**” means such initial draft project agreement including all schedules, appendices and exhibits, which has been so delivered, as it may be supplemented, amended or restated by Addenda issued pursuant to this RFP, but does not include the Definitive Project Agreement.

### 1.2 Eligibility to Participate in this RFP

A request for qualifications for the Project was issued by WDBA on July 20, 2015 and it was subsequently amended and then restated on October 5, 2015 (the “**Request for Qualifications**” or “**RFQ**”). Pursuant to the RFQ, the following Persons were qualified to participate in the RFP Process:

- (a) Bridging North America;
- (b) CanAm Gateway Partners; and
- (c) Legacy Link Partners.

Only these three Proponents, subject to changes in Proponent Team Members as permitted by this RFP, may submit Proposals or otherwise participate in the RFP Process. Each Proponent and Proponent Team Member has signed an RFP Participation Agreement in the forms required by Schedule 1-1 [*RFP Participation Agreement (Proponent)*] and Schedule 1-2 [*RFP Participation Agreement (Team Member)*] and each Proponent had provided its Bid Security Deposit.

WDBA may replace a Proponent who has informed WDBA that it is withdrawing from the RFP Process by inviting other Respondents in the RFQ Process to be added to the list of Proponents based on their ranking in the RFQ Process (provided such Respondents have achieved the minimum scores required by Section 6.5 of the RFQ).

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### 1.3 Communication between WDBA and Proponents

In its RFQ Response Submission Agreement, each Proponent identified the name and contact information of the individual who will act as the authorised representative of the Proponent and the Proponent's point of contact with WDBA with respect to the RFP (the "**Proponent Representative**"). A Proponent shall notify the Contact Person immediately if there are any changes to such individual or such individual's contact information.

The Proponent Representative will be the contact for all communications between WDBA and the Proponent regarding this RFP and WDBA will be entitled to rely on any such communication with the Proponent Representative as having been duly authorized by the Proponent and as being duly given on behalf of the Proponent and all Proponent Team Members. The Proponent may change its Proponent Representative at any time during the Competitive Selection Process by providing written notice to the Contact Person.

The Contact Person is the point of communication for all communications between WDBA and the Proponents during the Competitive Selection Process.

No telephone or fax communication to the Contact Person is permitted with respect to this RFP or the Project during the RFP Process. Subject to Section 3.7 (*Data Room*) and Section 3.13 (*Questions, Requests for Information, Requests for Clarification*), all official communication to the Contact Person should be by email as set out in this RFP.

The following provisions apply to any email communications with, or delivery of documents by email to, the Contact Person where permitted or required by this RFP.

- (a) WDBA does not assume any risk or responsibility or liability whatsoever to any Proponent if a permitted email communication or delivery is not received by WDBA, or received in less than its entirety, within any time limit specified by this RFP.
- (b) All permitted email communications with, or delivery of documents by email to, the Contact Person will be deemed as having been received by the Contact Person on the dates and times indicated on the Contact Person's email system.

### 1.4 Crossing Agreement

In furtherance of the Project, on June 15, 2012, Her Majesty the Queen in Right of Canada as represented by the Minister of Transport entered into an agreement with Michigan, the Michigan Department of Transportation and the Michigan Strategic Fund and with a crossing authority to be established by Canada under the laws of Canada. Such agreement including its recitals and schedules, as it may be amended, supplemented or restated from time to time, is herein called the "**Crossing Agreement**". This RFP is being issued subject to and in accordance with the provisions of the Crossing Agreement. A copy of the Crossing Agreement has been posted on the WDBA Website. Proponents should carefully review the Crossing Agreement and should note in particular the requirements of Schedule B to the Crossing Agreement.

In accordance with the terms of the Crossing Agreement, Canada incorporated the Canadian crossing authority, namely the Windsor-Detroit Bridge Authority, on October 9, 2012 by letters patent issued under Section 29(1) of the *International Bridges and Tunnels Act* (Canada). By the terms of the Crossing Agreement, the International Authority was established as a public body corporate and legal entity. The International Authority has various oversight and approval responsibilities under the Crossing Agreement with respect to the Project including, among other things, certain approvals relating to the RFQ, the RFP, the winning proposal, the selected Fairness Monitor and the Project Agreement. The International Authority shall maintain on-going

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monitoring of compliance by WDBA with the Crossing Agreement and the compliance by Project Co with the Project Agreement.

Under the terms of the Crossing Agreement, WDBA is required to consult with individual members of the International Authority and with the Michigan Parties and their staff, attorneys and consultants in the development of this RFP and the selection of the Fairness Monitor. WDBA confirms that it has carried out such consultations and gained concurrence. The International Authority has approved the Fairness Monitor and this RFP and the Initial Draft Project Agreement as required by the terms of the Crossing Agreement.

### **1.5 Bridge to Strengthen Trade Act (Canada)**

Canada has passed the Bridge to Strengthen Trade Act, which came into force in December 2012. Under the Bridge to Strengthen Trade Act, the Fisheries Act, the Navigation Protection Act, the Species at Risk Act, Section 6 of the International Bridges and Tunnels Act, and the Port Authorities Operations Regulations do not apply to the construction of the Project. As provided by the same Act, the Canadian Environmental Assessment Act, 2012 does not apply to the Project, other than to its expansion, decommissioning or abandonment. However, Project Co shall prepare and file plans as required by the Bridge to Strengthen Trade Act to show how it will mitigate the impact of construction of those parts of the Facility located in Canada and shall consult with the Minister, the Minister of the Environment (Canada) and the Windsor Port Authority, as applicable before filing such plans. The Preferred Proponent and its Project Co shall commence consultation with the relevant Governmental Authorities in order to finalize such plans and present them to WDBA for approval as soon as practicable following its selection as Preferred Proponent in accordance with the approval plan set out in its Proposal. Project Co shall file the final plans as approved by WDBA under the Bridge to Strengthen Trade Act as soon as practicable following Financial Close. Once such plans are filed as required by Bridge to Strengthen Trade Act, Project Co shall implement and comply with such plans. Proponents should carefully review the provisions of Bridge to Strengthen Trade Act to ensure that they fully understand their obligations under such Act.

### **1.6 International Bridges and Tunnels Act (Canada) and National Bridges Inspection Standards**

Proponents acknowledge that the Bridge is subject to the *International Bridges and Tunnel Act* (Canada) and the regulations under such Act, as applicable. Project Co will have to carry out its obligations under the Project Agreement in manner that does not contravene and in a manner that is consistent with *International Bridges and Tunnel Act* (Canada) and the regulations under such Act including performing all obligations of an owner or operator of the Bridge under the *International Bridges and Tunnel Act* and the regulations under such Act, unless either (i) they are only capable at law of being performed by WDBA or a Governmental Authority or (ii) WDBA informs the Proponents or Project Co in writing that WDBA shall perform such obligations. WDBA will be designated by the Minister as the 'operator' of the Bridge under the *Bridge to Strengthen Trade Act* prior to Financial Close.

Proponents acknowledge that the US and Canadian portions of the Bridge shall be inspected in accordance with the US National Bridge Inspection Standards set forth in 23 CFR 650 Subpart C, in addition to any Canadian Applicable Law.

### **1.7 Tolling**

No tolls, fees or charges will be established or collected for use of the Michigan Interchange or the Michigan side of the Bridge. Tolling will occur only on the Canadian side of the Bridge, for those entering and exiting Canada. A toll systems study commissioned by Transport Canada recommended a mixed manual and electronic system. Details on the setting of toll rates, the

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collection and administration of tolls and toll revenues are set out in the Project Agreement. Project Co will have no right to set toll rates.

## 1.8 Certain US Requirements

### A. *Compliance with Federal Aid Eligibility Requirements under the Crossing Agreement*

The Proponents and Project Co shall perform all of WDBA's obligations under the Crossing Agreement relating to compliance with Federal Aid Eligibility Requirements applicable to Federal Aid Highway Project Activities performed by or on behalf of the Proponents and Project Co, except to the extent (i) such obligations are only capable at law of being performed by WDBA or (ii) WDBA informs the Proponents or Project Co in writing that WDBA shall perform such obligations. The following is a summary of certain of those obligations.

- (a) The Proponents and Project Co shall ensure that all Federal Aid Highway Project Activities performed by or on behalf of the Proponents or Project Co comply with all Federal Aid Eligibility Requirements.
- (b) MDOT and FHWA will perform certain oversight activities consistent with the Stewardship and Oversight Agreement as necessary to assure compliance with Federal Aid Eligibility Requirements, including all environmental, administrative, financial, procurement and contracting process requirements, in accordance with the Crossing Agreement. The Proponents and Project Co shall supply all information requested by WDBA, whether before or after the date that the Facility is open to public traffic, necessary for MDOT and FHWA to demonstrate compliance with these oversight responsibilities.
- (c) Examples of Federal Aid Eligibility Requirements include: Equal Opportunity requirements (Title VI of the Civil Rights Act of 1964, as amended, including environmental justice requirements (Executive Order 12898, 59 Fed. Reg. 7.629 (Feb. 16, 1994)); limited English proficiency requirements (Executive Order 13166, 65 Fed. Reg. 50.121 (Aug. 16, 2000)); equal employment opportunity on federal and federal-aid construction contracts requirements (23 CFR Part 230, Subpart A)); requirements applicable to Disadvantaged Business Enterprises (Title 49 Code of Federal Regulations Part 26, as amended); Small Business requirements (United States Code Sections 631 et seq.); and the Davis-Bacon and Related Acts prevailing wages rates. In addition, 23 CFR Part 636 Subpart A and in particular Section 636.116, sets out certain rules with respect to organizational conflicts of interest. Other examples of Federal Aid Eligibility Requirements, including the "Required Contract Provisions, Federal-Aid Construction Contracts, Form 1273," are set out in the Project Agreement, including Schedule 40 [*Certain US Requirements*].
- (d) There is no obligation by WDBA, the Proponents or Project Co to comply with Federal Aid Eligibility Requirements applicable to Federal Aid Highway Project Activities on any portion of the Project in Canada or on the US Federal Plaza Facilities (as defined in the Crossing Agreement), except for the additional requirements described in Section 1.8(B).

### B. *Additional Requirements*

In addition to performing WDBA's obligations under the Crossing Agreement relating to compliance with Federal Aid Eligibility Requirements, and notwithstanding the language of the Crossing Agreement and Section 1.8(A), above, Proponents and Project Co must comply with the following additional requirements pursuant to the terms of this RFP and the Project Agreement:

- (a) the Required Contract Provisions on Federal-Aid Construction Contracts contained within FHWA Form 1273 as follows:

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- (i) Section VIII (False Statements Concerning Highway Projects) and Section X (Compliance with Government-wide Suspension and Debarment Requirements) shall apply to all Facility Components and all activities and works relating to the Project and shall be physically incorporated into each subcontract pertaining to such Project Work;
  - (ii) Section VI (Subletting or Assigning the Contract) and Attachment A (Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts) shall not apply to any of the Facility Components; and
  - (iii) all other sections of the FHWA Form 1273 shall apply only to Federal Aid Highway Project Activities and shall be physically incorporated into each subcontract pertaining to such Project Work.
- (b) Project Co shall ensure that all iron and steel used in the Federal Aid Highway Project Activities, the US Border Services Plaza, and the Canadian half of the Bridge (not including the Canadian Bridge Approach or the Canadian POE) are produced in only the US and Canada. FHWA granted a public interest Buy America waiver which contains restrictions for the use of American and Canadian steel and iron products (See 77 Fed. Reg.74,048). Other materials required for the construction of the Facility are not restricted as to country of origin.
- (c) Project Co shall comply with the Federal Aid Eligibility Requirements applicable to Disadvantaged Business Enterprises (Title 49 Code of Federal Regulations Part 26, as amended), as referenced in Section 1.8(A)(c), even if such requirements may be deemed for any reason to discriminate in favour of the US over Canada. Otherwise, Project Co shall not discriminate in favour of the US over Canada or in favour of Canada over the US with respect to any products, materials, supplies, labour or services under any Federal Aid Eligibility Requirements.
- (d) Project Co shall ensure that all requirements under Section 1.8(A) and (B) are met until the later to occur of (i) the date that the Facility is open to transportation by the public or (ii) the date of rectification of all Minor Deficiencies related to Sections 1.8(A) and (B).
- C. *National Highway System Requirements and National Bridge Inspection Standards***
- (a) The Michigan portion of the Bridge, the US Bridge Plaza, and the US Bridge Approach will be designated as part of the National Highway System. The Michigan Interchange with I-75 will be designated as Interstate. During the term of the Project Agreement, Project Co shall ensure that Project components designated as NHS comply with applicable US federal regulations. NHS requirements include: design standards, right of way and real estate, contract administration, MDOT and FHWA oversight procedures, highway performance monitoring system reporting, national bridge inventory reporting, national performance measures data collection, and outdoor advertisement/junkyard control.
- (b) The US and Canadian portions of the Bridge shall be inspected in accordance with the US National Bridge Inspection Standards set forth in 23 CFR 650 Subpart C in addition to any Canadian Applicable Law.

## **1.9 WDBA Funding**

WDBA has obtained policy and funding approval from Canada to proceed with the Competitive Selection Process, including this RFP. Once the Preferred Proponent has been selected as

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described in Section 8 of this RFP (*Selection of Preferred Proponent and Award*), the entering into of the Project Agreement by WDBA is conditional on and subject to WDBA obtaining all required authorizations and approvals, including those set out in Section 8.8 (*Pre-Conditions of WDBA*).

### 1.10 Integrity Provisions

- (a) On April 4, 2016, Canada revised its Ineligibility and Suspension Policy which forms part of its integrity regime. The integrity regime consists of (i) The Ineligibility and Suspension Policy, found at <http://www.tpsgc-pwgsc.gc.ca/ci-if/politique-policy-eng.html>, (the "**Policy**") and (ii) Standard Instructions - Goods and Services - Competitive Requirements – Integrity Provisions – Bid, Sections 01 to 20 ("**Code of Conduct - Integrity Provisions**"), found at <https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual/1/2003/22>, each as they may be amended, supplemented or restated from time to time, or replaced by policies or Applicable Laws for substantially the same purpose or to the same effect from time to time (collectively the "**Integrity Regime**"). Although the Integrity Regime by its terms is not applicable to the Competitive Selection Process, WDBA has entered into a Memorandum of Understanding ("**Integrity MOU**") with the Public Services and Procurement Canada ("**PSPC**") and has agreed to have regard to the Integrity Regime in selecting the Proponents pursuant to the RFQ Process and will continue to have regard to it throughout the Competitive Selection Process. Pursuant to the Integrity MOU, PSPC will make its data base of entities who are suspended or otherwise not in compliance with the Integrity Regime available to WDBA throughout the Competitive Selection Process. Proponents should carefully review the provisions of the Integrity Regime and ensure that each Proponent Team Member takes steps to comply with the provisions of the Integrity Regime.
- (b) The United States has similar provisions relating to integrity. The following link is to the United States federal suspension and debarment list: <https://www.sam.gov/portal/SAM/>. Reference should also be made to 1980 Public Act 278 (180 PA 278), Michigan Compiled Law (MCL) 423.321 et seq. which requires that no contract may be entered into with a subcontractor, manufacturer, or supplier listed in the register maintained by the United States Department of Labor of employers who have been found in contempt of court by a federal court of appeals on not less than 3 occasions involving different violations during the preceding 7 years for failure to correct an unfair labor practice, as prohibited by Section 8 of Chapter 372 of the National Labor Relations Act, 29 USC 158, and any similar or comparable provisions of the Federal Aid Eligibility Requirements including any false statements regarding highway projects, each as they may be amended, supplemented or restated from time to time, or replaced by policies or Applicable Laws for substantially the same purpose or to the same effect from time to time.
- (c) Without limiting any other rights of WDBA, in order to ensure the integrity, openness and transparency of the Competitive Selection Process, WDBA may at any time during the Competitive Selection Process:
- (i) impose on Proponents and Proponent Team Members additional conditions, requirements or measures with respect to bidding practices or ethical behaviour required in connection with the Competitive Selection Process; and
  - (ii) require that a Proponent and/or a Proponent Team Member provide WDBA with copies of internal policies, processes and controls establishing ethical standards

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for bidding practices and evidence of compliance with such policies, processes and controls.

- (d) By participating in the Competitive Selection Process each Proponent certifies that:
- (i) it has read and understands the Policy which forms part of the Integrity Provisions;
  - (ii) it understands that certain domestic and foreign criminal charges and convictions, and other circumstances, as described in the Policy, will or may result in a determination of ineligibility or suspension under the Policy;
  - (iii) it is aware that WDBA may request additional information, certifications, and validations from the supplier or a third party for purposes of making a determination of ineligibility or suspension;
  - (iv) it will provide with its bid a complete list of all foreign criminal charges and convictions pertaining to itself, its Affiliates and its Prime Contractors that, to the best of its knowledge and belief, may be similar to one of the listed offences in the Policy;
  - (v) none of the domestic criminal offences, and other circumstances, described in the Policy that will or may result in a determination of ineligibility or suspension, apply to it, its Affiliates and its Prime Team Members; and
  - (vi) it is not aware of a determination of ineligibility or suspension issued by PSPC that applies to it.

#### **1.11 Media Releases, Public Disclosures and Public Announcements**

- (a) A Proponent and its Representatives shall not, and the Proponent shall ensure that its Proponent Team Members and their respective Representatives and Affiliates, do not, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) that relates to the RFP Process, the RFP Documents or the Project or any related matters, without the prior written consent of WDBA. Proponents shall notify the Contact Person of requests for information or interviews from the media.
- (b) Neither the Proponents nor the Proponent Team Members or any of their respective Representatives or Affiliates shall make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent or Proposal or to publicly promote or advertise their own qualifications, interest in or participation in the RFP Process, except that they may state publicly that they are participating in the RFP Process.
- (c) This Section 1.11 does not prohibit disclosures necessary to permit the Proponent or Proponent Team Members to discuss the Project with prospective subcontractors but such disclosure is permitted only to the extent necessary to solicit those subcontractors' participation in the Project.
- (d) WDBA is committed to an open, fair and transparent Competitive Selection Process, while understanding the Proponents' need for protection of confidential commercial information. To assist WDBA in meeting its commitment, Proponents will cooperate and extend all reasonable accommodation to this endeavour. WDBA expects to disclose the names of the Proponents as well as certain background information regarding the RFP

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during the RFP stage of the Competitive Selection Process and may release such other information and documentation regarding the Competitive Selection Process as it considers reasonable in interests of transparency, including the Instructions to Proponents. Following Financial Close, WDBA expects to publicly disclose:

- (i) the Fairness Monitor's report;
- (ii) a Project report;
- (iii) the contact information for the Proponent Representative of each Proponent; and
- (iv) the executed Project Agreement, excluding those portions that may be redacted pursuant to the application of ATI/FOI Legislation.

The Proponent and each Proponent Team Member, by participating in the RFP Process, consent to such disclosures.

### 1.12 Currency

All dollar amounts referred to in this RFP are, and all dollar amounts referred to in a Proposal must be, in Canadian dollars, except (i) for financial statements and other documents originally published using other currencies and (ii) as permitted by the terms of Schedule 12 [*Financial Submission*].

## 2. PROJECT OVERVIEW

### 2.1 Facility Components and Services

The description of the Components and services included in this Section 2.1 is included for convenience of reference only, and shall not amend or modify the descriptions contained in Schedule 6 [*Technical Submission*] and in the Project Agreement. A more detailed description of the Project is contained in the Data Room. In addition, WDBA reserves the complete right to amend the Project Agreement, including the scope of the Project Work and the risk allocation described in the Project Agreement, as WDBA may decide.

Each of the following items is a "**Component**" of the Facility:

- (a) the Bridge;
- (b) the Canadian POE;
- (c) the US POE; and
- (d) the Michigan Interchange.

In addition, Project Co will be required to provide the following services over a 30 year concession period after construction is completed:

- (e) operation, maintenance, rehabilitation and repair of the Facility (other than the Michigan Interchange), including the Tolling Infrastructure, and life cycle replacement as necessary; and
- (f) the collection of tolls.

Upon transfer of the Michigan Interchange as described in the Project Agreement, MDOT will assume responsibility for its operation, maintenance and repair.

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## 2.2 Risk Allocation

Table 1 describes WDBA's high level anticipated risk allocation in respect of certain aspects of the Project and the Project Work, all of which is more specifically set out in the Project Agreement. Table 1 is included in this RFP for convenience of reference only and shall not have any effect on the interpretation of the Project Agreement or be binding on WDBA or a WDBA Party. Proponents should refer to the Project Agreement for a full understanding of how risks will be allocated between WDBA and Project Co.

**Table 1**

Risks and responsibilities	Risks and responsibilities principally assigned to:	
	Project Co	WDBA
<b>Obtaining permits and authorizations</b>		
• Environmental assessment/Record of Decision		√
• Environmental approvals	√	
• Other permits, authorizations, and road permits	√	
<b>Design and construction for which Project Co is responsible</b>		
• Performing the DB Work	√	
• Cost overruns	√	
• Delays	√	
• Access to Land		√
• Relocation of public utility infrastructure		√
• Canadian Contaminated soil – undocumented, not knowable and in existence prior to Financial Close		√
• Canadian Contaminated soil – known at the Reference Date, or resulting from construction and OMR Work of the Components for which Project Co is responsible	√	
• US Contaminated Soil - shared risk as per Project Agreement	√	√
• Geotechnical risks	√	
<b>Financing and financial conditions</b>		
• Inflation risk during DB Period	√	
• Inflation risk during OMR Period		√
• Base Rate fluctuation risk in accordance with Schedule 11 [ <i>Financial Offer Adjustments</i> ]		√

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Risks and responsibilities	Risks and responsibilities principally assigned to:	
	Project Co	WDBA
• Credit Spread fluctuation risk in accordance with Schedule 11 [ <i>Financial Offer Adjustments</i> ]		√
• Currency risk up to Financial Close only		√
<b>Operation and maintenance for which Project Co is responsible</b>		
• Operation, maintenance and rehabilitation of OMR Infrastructure	√	
• Operation and maintenance of OM Infrastructure	√	
• Cost overruns	√	
• Delays	√	
• Condition of assets upon hand-over to WDBA at the end of the Project Agreement	√	
<b>Tolling</b>		
• Selecting the tolling technology	√	
• Setting up the Tolling Infrastructure	√	
• Collecting tolls and accessory fees	√	
• Setting Toll Rates		√
• Toll revenue risk		√

### 3. COMPETITIVE SELECTION PROCESS

#### 3.1 RFQ Stage

The RFQ stage of the Competitive Selection Process pursuant to which three Short-Listed Respondents were selected as Proponents has now been completed, except to the extent that additional or replacement Respondents are added by WDBA as Proponents to participate in the RFP Process, as provided by the terms of the RFQ or this RFP. Each Proponent and each Proponent Team Member agrees that its covenants and obligations in the RFQ and in its RFQ Response Submission Agreement will continue to bind such Proponent and such Proponent Team Member, notwithstanding the commencement of the RFP Process and such agreement has been reflected in its RFP Participation Agreement.

#### 3.2 Fairness Monitor

Prior to the issuance of the RFQ, P1 Consulting Inc. was selected by WDBA as Fairness Monitor and was engaged by WDBA to perform its functions under the Crossing Agreement and to monitor the fairness and transparency of the Competitive Selection Process as required by the terms of the Crossing Agreement. Proponents should refer to the Crossing Agreement for a description of the role of the Fairness Monitor in the Competitive Selection Process for this

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Project. Such selection was approved by the International Authority as required by the Crossing Agreement. The Fairness Monitor will be entitled to monitor:

- (a) the Commercially Confidential Meetings; and
- (b) the evaluation process undertaken by the Evaluation Committee.

The Fairness Monitor will be:

- (c) provided full access to all documents and information related to the Competitive Selection Process which the Fairness Monitor decides is required; and
- (d) kept fully informed by WDBA of all documents and activities associated with the Competitive Selection Process and this RFP.

Proponents acknowledge and agree to the Fairness Monitor's participation in the Competitive Selection Process as contemplated by this RFP.

The Fairness Monitor will provide one or more written reports to WDBA and the International Authority regarding the Competitive Selection Process in accordance with the terms of the Crossing Agreement. WDBA may make such reports available to the public after Financial Close.

### 3.3 RFP Stage

The RFP procurement process ("**RFP Process**") is the competitive procurement process described in detail in this RFP to select a Proponent which will become the preferred Proponent ("**Preferred Proponent**") and with whom WDBA will negotiate the final Project Agreement for execution by WDBA and Project Co, all pursuant to and in accordance with the terms of this RFP and the Crossing Agreement.

A public meeting on the selection process was held in Ontario on November 17, 2015 and in Michigan on November 18, 2015.

The RFP Process shall commence with the issuance of this RFP and shall terminate on Financial Close or on the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable) whichever is first. Except for WDBA's conditional obligations under Section 8.5 (*Return of Preferred Proponent Security Deposit*), Section 8.9 (*Design and Bid Fee*) and Section 8.10 (*Break Fee*):

- (a) any rights which a Proponent or Proponent Team Member may have under the RFQ and this RFP terminate:
  - (i) for the Preferred Proponent, on Financial Close; and
  - (ii) for the Proponents that are not the Preferred Proponent, on the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable) or Financial Close, whichever occurs first;
- (b) all obligations and liabilities of WDBA or a WDBA Party to a Proponent or any Proponent Team Member under the RFQ and this RFP terminate on Financial Close; and
- (c) all covenants, obligations and liabilities of Proponents and Proponent Team Members under the RFQ and this RFP shall continue in accordance with their respective terms.

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### 3.4 Estimated Timetable

The following is WDBA's estimated timetable ("**Timetable**") for the Project:

Item	Date
Data Room(s) accessible to Proponents	November 10, 2016
Introductory Meeting – ½ Day General AM	November 29, 2016
Individual Proponent Meetings – 3 1.5 Hour Meetings - Agenda/Topics Required	November 29, 2016
B2B Meetings – Walpole Island, Canada, US	November 30 and December 1, 2016
<b>Design/Technical - Commercially Confidential Meeting # 1 – Introductory</b> Technical Presentation to Proponents, overview of Technical Elements of Project – ½ Day Presentation. Individual sessions with Proponents - ½ Day – Issues/agenda to be submitted by Proponents	December 6, 7, 8, 2016
<b>Financial - Commercially Confidential Meeting # 1</b> - Introductory Financial meeting with issues/agenda to be submitted by the Proponents.	December 13,14,15, 2016
Submission by Proponents of their comments on version 1.0 of the Draft Project Agreement	January 9, 2017
<b>Design/Technical - Commercially Confidential Meeting # 2 – Technical</b> elements of Project	January 10, 11, 12, 2017
<b>O&amp;M - Commercially Confidential Meeting # 1 – General operations and</b> maintenance requirements and OM related Alternative Technical Concepts ("ATCs")	January 24, 25, 26, 2017
<b>Design/Technical - Commercially Confidential Meeting # 3 – Michigan</b> Interchange, Bridge & POEs, and ATCs (optional)	February 7, 8, 9, 2017
<b>Legal - Commercially Confidential Meeting # 1 – Discussion with</b> Proponents on their comments of version 1.0 of Initial Draft Project Agreement	February 21, 22, 23, 2017
<b>Community Benefits, Stakeholder Relations and Communications -</b> <b>Commercially Confidential Meeting # 1 – ½ day - Presentation to</b> Proponents, overview of Community Benefits Plan	March 7, 8, 9, 2017
<b>Design/Technical - Commercially Confidential Meeting # 3b – ½ day -</b> Michigan Interchange, Bridge & POEs, and ATCs (optional)	March 7, 8, 9, 2017
<b>Financial - Commercially Confidential Meeting # 2 – Issues/agenda to be</b> submitted by the Proponents.	March 21, 22, 23, 2017
<b>Community Networking Events – AM-Windsor, PM-Detroit</b>	March 29, 2017
Delivery to Proponents of version 2.0 of Initial Draft Project Agreement	March 31, 2017
<b>Design/Technical - Commercially Confidential Meeting # 4 – Submission</b> by Proponents of Preliminary Aesthetics Design Submittal and presentation. Presentation of design approach to the Bridge, MI Interchange & POEs, Security. ATCs (optional)	April 4, 5, 6, 2017
<b>Utility to Proponent Days – April 11 – US, April 12 – Canadian</b>	April 11, 12, 2017

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Item	Date
<b>O&amp;M - Commercially Confidential Meeting # 2</b> – Issues/agenda items to be provided by Proponents	April 25, 26, 27, 2017
Delivery to Proponents of written comments on Preliminary Aesthetic Design Submittal	May 1, 2017
Final Submission Deadline for ATCs	May 1, 2017
Submission by Proponents of their comments on version 2.0 of the Initial Draft Project Agreement	May 1, 2017
<b>Design/Technical - Commercially Confidential Meeting # 5</b> – Submission by Proponents of Preliminary Design Submittal and presentation. Presentation on aesthetic design progress	May 16, 17, 18, 2017
<b>Legal - Commercially Confidential Meeting #2</b> - Discussion with Proponents on their comments of version 2.0 of Initial Draft Project Agreement	May 23, 24, 25, 2017
Delivery to Proponents of written comments on new ATCs	June 5, 2017
<b>Financial Commercially Confidential Meeting #3</b> – Issues/agenda to be submitted by the Proponents.	June 6,7,8, 2017
Delivery to Proponents of written comments on Preliminary Design Submittal	June 9, 2017
<b>Design/Technical Commercially Confidential Meeting # 6</b> – Feedback to Proponents on Preliminary Design Submittal	June 13,14,15, 2017
<b>Ad Hoc Commercially Confidential Meeting</b> – Environmental Matters, CBSA/CBP Cross Border discussion, Issues/agenda items to be provided by the Proponents	
Final Submission Deadline for ATC Revisions	June 19, 2017
Submission by Proponents of Revised Aesthetics Design Submittal and Revised Design Submittal	June 26, 2017
Delivery to Proponents of written comments on revised ATC's	July 7, 2017
Delivery to Proponents of updated written comments regarding Revised Aesthetics Design Submittal and Revised Design Submittal	October 30, 2017
Delivery to Proponents of version 3.0 of Initial Draft Project Agreement	October 30, 2017
<b>Design/Technical - Commercially Confidential Meeting # 7-</b> Presentation by WDBA on Technical Requirements Changes and Proponent Agenda	November 7, 8, 9 2017
<b>Joint Insurance/Technical - Commercially Confidential Meeting # 1</b> Insurance and Environmental <b>Community Benefits- Commercially Confidential Meeting # 2</b> Presentation by Proponents on the Community Benefits Plan (2 hours each)	November 14, 15, 16, 2017
<b>Joint Finance &amp; O&amp;M - Commercially Confidential Meeting #3</b> Issues/agenda items to be provided by Proponents	November 28, 29, 30, 2017
<b>Design/Technical - Commercially Confidential Meeting # 8</b> – Presentation by Proponents of Aesthetics Design Progress and Proponent Agenda	December 12, 13, 14, 2017

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Item	Date
Submission by Proponents of their comments on version 3.0 of the Draft Project Agreement	December 20, 2017
Submission by Proponents of final Aesthetics Design Submittal	January 26, 2018
<b>Legal - Commercially Confidential Meeting #3</b> - Discussion with Proponents on their comments of version 3.0 of Initial Draft Project Agreement	January 23, 24, 25, 2018
Submission Deadline for Technical and Financial RFIs in advance of Definitive Project Agreement	February 2, 2018
Submittal of ad-hoc updates to the final Aesthetic Design Submittal	March 6, 2018
Aesthetics concept sign off issued to Proponents	Before Technical Submission
Delivery to Proponents of Definitive Project Agreement	March 6, 2018
Submission Deadline for Technical and Financial RFIs not requesting/requiring an Addendum to the Definitive Project Agreement	March 20, 2018
Technical Submission Deadline	April 3, 2018 at 14:00 (local Windsor, Ontario time)
Early Work Submission Deadline	April 30, 2018 at 14:00 (local Windsor, Ontario time)
Financial Submission Deadline	May 8, 2018 at 14:00 (local Toronto, Ontario time)
Identification of Preferred Proponent	Week of June 11, 2018
Project Co Early Work Agreement executed	Week of June 18, 2018
Financial Close Target Date	September 28, 2018

Dates are approximate (except for the Technical Submission Deadline, Early Work Submission Deadline and the Financial Submission Deadline or where otherwise indicated). WDBA may issue one or more Addenda at any time amending the Timetable.

### 3.5 RFP Participation Agreements

As a condition of participating in this RFP:

- (a) each Proponent and each of its Proponent Team Members (other than Key Individuals, who are employees of the Proponent or a Proponent Team Member, or Finance Prime Team Members) has signed and delivered to the Contact Person an agreement, substantially in the form attached as Schedule 1-1 [*RFP Participation Agreement (Proponent)*] and Schedule 1-2 [*RFP Participation Agreement (Team Member)*] respectively or otherwise acceptable to WDBA (each an “**RFP Participation Agreement**”); and
- (b) each Proponent has delivered the Bid Security Deposit to WDBA substantially in the form required by the Proponent RFP Participation Agreement.

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If a Proponent's Bid Security Deposit will or is likely to expire prior to the date referred to in Section 7(f)(i) of the RFP Participation Agreement, such Proponent will be required to provide to WDBA a renewed Bid Security Deposit on the same terms up to 30 days prior to such expiry date, failing which it may, at WDBA's discretion, be deemed to have withdrawn from the RFP Process and forfeited its Bid Security Deposit to WDBA as liquidated damages by the date of expiry.

### 3.6 RFP Documents

The RFP documents ("**RFP Documents**") consist of the following:

- (a) the body of the RFP, which consists of the Summary of Key Information, the Table of Contents and Sections 1 to 11 inclusive;
- (b) Schedule 1-1 - Proponent form of RFP Participation Agreement, and Schedule 1-2 - Team Member form of RFP Participation Agreement;
- (c) Schedule 2-1 - Design Consultation Process;
- (d) Schedule 2-2 - Aesthetics Design Consultation Process;
- (e) Schedule 3 - Request for Information;
- (f) Schedule 4 - Initial Draft Project Agreement Comment Form;
- (g) Schedule 5 - Joint Venture Information;
- (h) Schedule 6 - Technical Submission;
- (i) Schedule 7-1 - Proponent Technical Submission Agreement, and Schedule 7-2 Team Member Technical Submission Agreement;
- (j) Schedule 8 - Innovation (ATC) Submission;
- (k) Schedule 9 - Form of Former Public Servant Certification;
- (l) Schedule 10 - Security Requirements Checklist;
- (m) Schedule 11 - Financial Offer Adjustments;
- (n) Schedule 12 - Financial Submission;
- (o) Schedule 13-1 - Proponent Financial Submission Agreement, and Schedule 13-2 Team Member Financial Submission Agreement;
- (p) Schedule 14-1 - Financial Offer, and Schedule 14-2 - Affordability Prices;
- (q) Schedule 15 - Form of Insurance Broker Confirmation Letter;
- (r) Schedule 16-1 Form of Equity Member Support Agreement, and Schedule 16-2 Form of Equity Member Parent Support Agreement;
- (s) Schedule 17 – Form of Prime Team Member Guarantor Support Agreement;
- (t) Schedule 18 - Form of Senior Lender Commitment Letter;
- (u) Schedule 19 - Form of Letter of Credit for Preferred Proponent Security Deposit;

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- (v) Schedule 20 - Form of Project Co Early Work Agreement, and any Addenda to this RFP.

A reference to “this RFP” or “RFP” means the RFP Documents taken as a whole unless it is clear that the reference is only to the body of the RFP, as for example, when there is a reference to a section number “of this RFP”. The Schedules, Appendices to Schedules and Addenda, if any, constitute an integral part of this RFP and are incorporated by reference. Background Information is not part of this RFP.

### 3.7 Data Room

- (a) WDBA has established a collection of information and documents related to the Project and the Project Work (“**Data Room Documentation**”) which it has identified as relevant to the Project, the Project Work and the Competitive Selection Process. Proponents will be advised of protocols concerning access to the Data Room.
- (b) Documents which contain information which is “classified” under applicable designations of a Governmental Authority will be held at its offices at 100 Ouellette Avenue, Windsor, Ontario N9A 6T3 (“**Physical Data Room**”).
- (c) In addition, WDBA has established a web site, <https://fasken.firmex.com>, to be used as an electronic data room (the “**Electronic Data Room**”) in which it will place electronic versions of the Data Room Documentation, except for information which is “classified” under applicable designations of a Governmental Authority. Classified information or documents will be found only in the Physical Data Room. WDBA will provide each Proponent with instructions regarding access to the Electronic Data Room. Each Proponent is responsible for ensuring that it has the appropriate software required to obtain access to and download the documents contained in the Electronic Data Room.
- (d) The Data Room Documentation will include:
- (i) the RFP Documents (including black-lined RFP Documents revised by Addenda);
  - (ii) the Background Information;
  - (iii) the Guaranteed Engineering Data; and
  - (iv) the RFIs and WDBA’s responses.
- RFIs and WDBA’s responses to them will be placed only in the Electronic Data Room, unless they are commercially confidential in which case they shall not form part of Data Room Documentation and will not be posted to the Electronic Data Room.
- (e) The term “**Data Room**” when used in this RFP means the Physical Data Room and the Electronic Data Room, collectively.
- (f) The Electronic Data Room features a communication facility. WDBA will provide each Proponent with an individual mailbox (the “**Proponent Mailbox**”) within the Electronic Data Room allowing the Proponent and WDBA to communicate in respect of the RFP during the Competitive Selection Process in accordance with the process set out in Section 3.13 (*Questions, Requests for Information and Requests for Clarification*) and Section 3.16 (*Comments on Project Agreement*). Information sent by a Proponent or by WDBA to a Proponent Mailbox will not be accessible by other Proponents.

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- (g) The information in the Data Room may be supplemented or updated from time to time by WDBA. While WDBA may try to provide notice to the Proponents of new information that is added to the Data Room, Proponents are solely responsible to check the Data Room for new information from time to time so as to inform themselves of any new information in the Data Room. Notification to Proponents by WDBA that Data Room Documentation has been amended, deleted, changed, updated or supplemented is a courtesy only and Proponents are solely responsible to ensure that they have reviewed all Data Room Documentation.
- (h) The information contained in the Data Room is made available on the condition that it is to be used by Proponents in connection with the Project and for no other purpose whatsoever. None of WDBA, a WDBA Party or any other third party: (i) makes any representation as to the continuous availability of the Electronic Data Room or as to the relevance, accuracy or completeness of any of the information made available in the Data Room, except as may be otherwise expressly provided in this RFP; or (ii) assumes any responsibility with respect to the manner by which any Data Room Documentation is used by a Proponent, a Proponent Team Member or any of their respective Representatives. In the event of any conflict between or inconsistency with Data Room Documentation located in the Physical Data Room and Data Room Documentation posted to the Electronic Data Room, the Data Room Documentation in the Electronic Data Room shall prevail.
- (i) WDBA may circulate some RFP Documents in paper copy. If WDBA circulates any RFP Documents in paper copy, Proponents will be notified of a paper copy circulation by way of a notice sent by email.
- (j) Each Proponent is solely responsible to ensure that it:
  - (i) contacts the Contact Person to arrange access to the Physical Data Room and the Electronic Data Room; and
  - (ii) at all times during the RFP Process keeps itself fully informed of and takes into account the most current RFP Documents, Data Room Documentation and responses to RFIs.
- (k) Proponents will keep information contained in the Data Room confidential in accordance with the Confidentiality Provisions.

### 3.8 Distribution of Sensitive Information

It is possible that WDBA will consider some of the information (“**Sensitive Information**”) in the Data Room Documentation to be sensitive from a security or other perspective. Sensitive Information will be made available in the Physical Data Room and will be subject to protocols established by WDBA for its review by Proponents. Sensitive Information will not be posted to the Electronic Data Room.

### 3.9 Proponent Investigations

- (a) Each Proponent and each of its Proponent Team Members is solely responsible, at its own cost and expense, to carry out its own independent research, due diligence or to perform any other investigations, including seeking independent advice, considered necessary by the Proponent to satisfy itself as to all existing conditions affecting the Project or the Project Agreement. The Proponents’ and Proponent Team Members’ obligations set out in this Section 3.9 apply regardless of any Background Information in the Data Room or information contained in the RFP Documents or in responses to RFIs.

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The Proponents' and Proponent Team Members' obligation to carry out independent research, investigations, due diligence or to seek independent advice or, if applicable, their ability to rely on information provided by WDBA is more particularly set out in the Project Agreement.

- (b) Except as explicitly provided in the Project Agreement, WDBA, each WDBA Party and their respective Representatives do not represent or warrant (i) the accuracy or completeness of any information set out in the RFP Documents or made available to Proponents or Proponent Team Members in the Data Room Documentation or as Background Information (ii) any other background or reference information or documents prepared by or on behalf of WDBA, a WDBA Party or third parties, and which may be made available to Proponents or Proponent Team Members by or through WDBA (iii) any information gathered by a Proponent pursuant to a Site Visit or a Site Investigation. Proponents and Proponent Team Members shall make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information. Any use of or reliance by Proponents or Proponent Team Members on any and all such information shall be at the Proponents' and Proponent Team Members' sole risk and without recourse against WDBA, any WDBA Party or their respective Representatives.
- (c) Each Proponent acknowledges by its submission of a Proposal that it has investigated and satisfied itself of every aspect and condition relating to the Project. Each Proponent further acknowledges and represents that its investigations have been based on its own examination, knowledge, information, and judgment, and not upon any statement, representation, or information made or given by WDBA, the Contact Person, a WDBA Party or any of their respective Representatives, other than the information contained in this RFP or to the extent set out in the Project Agreement.
- (d) Submission of a Proposal is deemed to be conclusive evidence that the Proponent has made such investigations and that the Proponent is willing to assume and does assume all risks affecting the Project and the Project Work, except as otherwise specifically stated in this RFP or the Project Agreement. WDBA accepts no responsibility for any Proponent lacking any information.

### 3.10 Ownership or Control of Lands

As of the date of the issuance of this RFP, WDBA and WDBA Parties own or control only a portion of the lands and rights that will ultimately be required for the Project and may acquire more of such lands and rights during the RFP Process. Such lands and rights now owned or acquired during the RFP Process are herein called the "**Controlled Lands**". Full ownership or control of all the lands and rights required for the Project will not be completed until after Financial Close. WDBA will not be able to provide the Preferred Proponent with access to the portion of such lands not owned or controlled by WDBA or a WDBA Party, until the acquisition of such ownership or control is completed. The dates when lands required for the Project will be available to Project Co are set out in Appendix 4-6 and Appendix 4-7 to Schedule 4 [*Lands and Site*] of the Initial Draft Project Agreement. Updates to such appendices will be included in the Background Information as changes occur. The dates set out in such appendices at the Reference Date will be Guaranteed Engineering Data.

- (a) The following rules shall apply to visits ("**Site Visits**") by Proponents to the Controlled Lands.
  - (i) A Proponent may submit a request to the Contact Person for permission to schedule a Site Visit but will not proceed with any such Site Visit without WDBA's

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prior written approval. The Proponent's request for WDBA's prior written approval of a Site Visit should describe (A) the date and time of the Site Visit and (B) the purpose of the Site Visit and (C) the areas of the Site which will be the subject of the Site Visit.

- (ii) WDBA may (A) refuse any request for a Site Visit; (B) determine the date or dates of the Site Visit and require that the Site Visit be held at alternate dates and times than those requested by the Proponent; and (C) circumscribe the extent of the Site Visit, including by imposing conditions on the conduct of the Site Visit not otherwise contemplated by these rules. WDBA may require one or more of its Representatives to accompany the Proponent during a Site Visit.
  - (iii) A Proponent, if so requested by WDBA, will provide in advance of any Site Visit, evidence of suitable insurance coverage in accordance with Section 3.12, as well as any evidence of compliance with any other requirements which may reasonably be imposed by WDBA.
  - (iv) Each Representative of the Proponent who wishes to participate in a Site Visit will be required to execute and deliver to the Contact Person prior to the Site Visit, a Confidentiality Undertaking and Release in the form provided in Appendix 1 to the Proponent RFP Participation Agreement, unless such Representative has previously provided such document to WDBA pursuant to this RFP.
- (b) Project Co will have access to lands necessary to perform the Project Work in accordance with the terms of the Project Agreement.

### 3.11 Additional Geotechnical Investigations

- (a) WDBA may, but is not required to, commission or conduct geotechnical, environmental, subsurface or underwater investigations, surveys, and technical studies at the Controlled Lands or otherwise in respect of the Project (each a "**WDBA Site Investigation**"). WDBA intends to issue to all Proponents the results of any WDBA Site Investigation and may include these results as Guaranteed Engineering Data.
- (b) A Proponent may submit a request to the Contact Person for permission to conduct a geotechnical or other investigation (a "**Proponent Site Investigation**") but will not proceed with any such investigation without WDBA's prior written approval. The Proponent's request for WDBA's prior approval of a Proponent Site Investigation should describe (i) the date and time of the Proponent Site Investigation; (ii) the purpose of the Proponent Site Investigation and the activities which the Proponent is seeking to carry out pursuant thereto, including in particular any requested drilling activities or any other activities which in any way may disturb the Controlled Lands, any infrastructure located thereon or any users of such infrastructure and (iii) the areas of the Controlled Lands which will be the subject of the Proponent Site Investigation, specifying areas which are not accessible to the general public for which access is requested, where applicable.
- (c) Prior to granting its approval WDBA may invite suggestions from other Proponents regarding the Proponent Site Investigation, and may make arrangements for the requested Proponent Site Investigation to be undertaken as a WDBA Site Investigation. If WDBA carries out such WDBA Site Investigation, it shall do so at its own expense and shall make the results of such investigation available to all Proponents.
- (d) WDBA may (i) refuse any request for a Proponent Site Investigation; (ii) determine the date or dates of the Proponent Site Investigation and require that the Proponent Site Investigation be held at alternate dates and times than those requested by the

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Proponent; and (iii) circumscribe the extent of the Proponent Site Investigation, including by imposing conditions on the conduct of the Proponent Site Investigation not otherwise contemplated herein. WDBA may require one or more of its Representatives to accompany the Proponent during the Proponent Site Investigations.

- (e) Pursuant to any Proponent Site Investigation, the Proponent acknowledges and agrees that it:
  - (i) is responsible to pay the costs of any damage the Proponent causes to any land or infrastructure located at the Controlled Lands;
  - (ii) shall indemnify and hold WDBA and each WDBA Party harmless from and against any and all Losses which arise from Claims which occur as a result of or which relate to the Proponent Site Investigation or the Proponent's access to the Controlled Lands pursuant to the Proponent Site Investigation, except to the extent that a court of competent jurisdiction determines that such Losses and Claims were caused by or resulted from the gross negligence, wilful misconduct or fraud of WDBA, a WDBA Party or one or more of their respective Representatives or any or any Person who owns or controls premises on which Proponent Site Investigations take place;
  - (iii) will carry out any work in a reasonable, timely and prudent manner in such a way as to cause the least amount of disturbance to the Controlled Lands, any infrastructure located thereon or any users of such infrastructure; and
  - (iv) if so requested by WDBA, will provide in advance of any Proponent Site Investigation, evidence of suitable insurance coverage in respect of the activity contemplated thereby, as well as any evidence of compliance with any other requirements which may reasonably be imposed by WDBA.
- (f) The results of any Proponent Site Investigation are proprietary to the Proponent. Proponent shall provide the results of any Proponent Site Investigation to WDBA but WDBA shall not share such results with any other Proponent, or its Proponent Team Members or their respective Representatives.
- (g) Each Representative of the Proponent who wishes to participate in a Proponent Site Investigation will be required to execute and deliver to the Contact Person or to a Representative of WDBA present at the Controlled Lands prior to the Proponent Site Investigation, a Confidentiality Undertaking and Release in the form provided in Appendix 1 to the Proponent RFP Participation Agreement, unless such Representative has previously provided such document to WDBA pursuant to this RFP.

### **3.12 Insurance during the RFP Process and Workplace Safety**

- (a) During the RFP Process, each Proponent is required to obtain, and to cause all Proponent Team Members to obtain, and at all times keep and maintain in force the insurance as set out in this Section whenever the Proponent, a Proponent Team Member, or any of their respective Representatives are present at the Controlled Lands, or any part thereof or at any facilities or premises of WDBA or a WDBA Party for any purpose whatsoever:
  - (i) Commercial/Comprehensive General Liability insurance, having an inclusive limit of not less than \$[REDACTED] for each occurrence or accident and covering all sums which the Proponent, a Proponent Team Member or their respective Representatives may become legally obligated to pay for damages as a result of

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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 or activities carried out by any one or more of them in connection with this RFP or the RFP Process. The policy or policies of insurance shall include as insureds or additional insureds WDBA, each WDBA Party, the Michigan Department of Environmental Quality and their respective Representatives and an endorsement specifying that the policy shall be primary and without right of contribution from any insurance otherwise maintained by WDBA or a WDBA Party; and

- (ii) Motor Vehicle Liability insurance, in the amount of \$[REDACTED] per accident, for vehicles used by the Proponent, a Proponent Team Member or their respective Representatives while on or at the Controlled Lands or on or at any facilities or premises of WDBA or a WDBA Party.
- (b) As a condition of allowing access to the Controlled Lands or to the facilities or premises of WDBA or a WDBA Party, WDBA may require Proponents to provide evidence acceptable to WDBA that the insurance required by this Section is in place.
- (c) If a Proponent proposes to perform a Proponent Site Investigation, the risk related to which may not be fully insured under the policies set out in Section 3.12(a), WDBA may, require the Proponent, at its own cost and expense, to obtain insurance additional to that specified in Section 3.12(a).
- (d) All insurance policies required to be obtained by Proponents shall provide that the insurance shall not be cancelled, reduced, restricted, modified or changed in any way without the insurer giving at least thirty days prior written notice to WDBA.
- (e) As a condition of allowing access to the Controlled Lands or any facilities or premises of WDBA or a WDBA Party, WDBA may require Proponents to provide evidence acceptable to WDBA or such WDBA Party as applicable that the Proponent and its Proponent Team Members, and their respective Representatives, as applicable, are registered with the Workplace Safety Insurance Board of Ontario or the Michigan Occupational Safety and Health Administration, if such registration is required under Applicable Law, or, if such registration is not required under Applicable Law, to provide evidence acceptable to it that the Proponent and its Proponent Team Members have employer's liability insurance in amounts and on terms and conditions acceptable to WDBA or such WDBA Party.

### 3.13 Questions, Requests for Information and Requests for Clarification

- (a) Except at Commercially Confidential Meetings, the Proponents shall submit all questions and other communications regarding the RFP Documents, the RFP Process and their Proposals to the Contact Person through its Proponent Mailbox no later than the dates and times set out on the Timetable. Any questions, requests for information and requests for clarification (collectively "RFIs"), other than Project Agreement comments which are governed by Section 3.16 (*Comments on Project Agreement*), shall be submitted in accordance with Section 3.13(c) and shall supply the information described in Schedule 3 [*Request for Information*] using the Electronic Data Room as directed by WDBA. Proponents should refer to Section 1.11 (*Media Releases, Public Disclosures and Public Announcements*), Section 10.8 (*No Lobbying*) and Section 10.10 (*No Collusion*) for prohibited communications.
- (b) Subject to Section 3.13(a) and Section 3.13(d), WDBA intends to provide all RFIs and WDBA's responses in writing (without identifying the Proponent that submitted the RFI) by posting the RFIs and such responses to the Electronic Data Room. WDBA will not

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answer any RFI, or any other type of enquiry with respect to this RFP, the Competitive Selection Process or the Project, that is not submitted in accordance with Section 3.13(a).

- (c) Proponents are permitted to submit RFIs categorized as follows:
  - (i) RFIs that are of general application and that would apply to other Proponents; and
  - (ii) RFIs that the Proponent considers to be commercially sensitive or confidential to that particular Proponent (“**Commercially Confidential RFIs**”).
- (d) If Proponent wishes to submit a Commercially Confidential RFI, such Proponent must designate such RFI as “commercially confidential” and must submit it in accordance with Section 3.13(a). WDBA may consult with such Proponent with respect to the identification of proprietary or confidential information in the Commercially Confidential RFI. If WDBA determines, acting reasonably and after consultation with the Proponent, that such Proponent’s Commercially Confidential RFI is of general application or would provide a significant clarification of an RFP Document or the RFP Process to all Proponents, then, even if the RFI is withdrawn by the Proponent, WDBA may provide a response to all Proponents, subject to removing any portion of the RFI which is commercially confidential or proprietary to such Proponent. If WDBA agrees with the Proponent’s designation of the RFI as a Commercially Confidential RFI and determines that it is not of general application, WDBA may provide a response to only such Proponent.
- (e) WDBA reserves the right to decline to answer any RFI. WDBA will keep a record of all RFIs to, and responses from, the Contact Person. WDBA may give responses to RFIs of a minor or administrative nature to only the Proponent who submitted the minor or administrative RFI.
- (f) Despite any other term of this RFP, and despite any matter being identified as “commercially confidential”, WDBA may issue a letter of clarification, Addendum or other response to all Proponents, if WDBA considers that the matter should in fairness be brought to the attention of all Proponents.
- (g) Responses to RFIs prepared and circulated by WDBA are not RFP Documents and do not amend the RFP Documents. Any oral or written response provided by WDBA or its Representatives in connection with this RFP will neither be binding on WDBA nor will it change, modify, amend or waive the requirements of this RFP in any way. Proponents shall not rely on any response provided to an RFI. If WDBA determines that an RFI requires an amendment to the RFP Documents, such amendment will be prepared and circulated by Addendum in accordance with Section 3.18 (*Addenda*). Only a response to an RFI that has been incorporated into or issued as an Addendum will modify or amend the RFP Documents and, otherwise, responses to RFIs will have no force or effect whatsoever and shall not be relied upon by any Proponent.
- (h) WDBA may share process related information, including clarifying information with all Proponents should WDBA consider it necessary.
- (i) It is the Proponent’s obligation to seek clarification from WDBA of any matter it considers to be unclear in accordance with Section 3.13(a) by the deadline set out in the Timetable for the submission of RFIs. Neither WDBA nor any WDBA Party is responsible in any way whatsoever for any misunderstanding by the Proponent or any Proponent Team Members of the RFP Documents, Background Information, responses to RFIs, any Data

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Room Documentation or any other type of information provided by or communication made by WDBA, a WDBA Party or any of their respective Representatives.

### 3.14 General Proponent Meetings

- (a) WDBA may convene general Proponents meetings (each, a “**Proponents Meeting**”) on the dates and at the times set out in the Timetable and at the location and for the purposes set out in the Timetable or at any other time, at the discretion of WDBA. While attendance at a Proponents Meeting is not mandatory, Proponents are strongly encouraged to attend. A Proponent’s failure to attend a Proponents Meeting is at the Proponent’s sole risk and responsibility.
- (b) Proponents may ask questions and seek clarifications at a Proponents Meeting. Notwithstanding that WDBA or a WDBA Party may give oral answers at a Proponents Meeting, those answers shall not be considered final unless issued in writing. Accordingly, Proponents are strongly encouraged to submit these questions in accordance with Section 3.13 (*Questions, Requests for Information, Requests for Clarification*).
- (c) No statement, consent, waiver, acceptance, approval or anything else said or done in any Proponents Meeting by WDBA, a WDBA Party or any of their respective Representatives shall amend or waive any provision of the RFP Documents, or be binding on WDBA or be relied upon in any way by Proponents, Proponent Team Members or their Representatives, unless and only to the extent expressly confirmed in an Addendum to the RFP Documents issued in accordance with Section 3.18 (*Addenda*).

### 3.15 Commercially Confidential Meetings

- (a) As set out in the Timetable, WDBA intends to hold a number of meetings (“**Commercially Confidential Meetings**”) with Proponents. The purpose of the Commercially Confidential 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 WDBA’s requirements, including to:
  - (i) review the proposed design for the Facility pursuant to Schedule 2-1 [*Design Consultation Process*] and the aesthetics of the design for the Bridge pursuant to Schedule 2-2 [*Aesthetic Design Consultation Process*];
  - (ii) review the Community Benefits Plan of each Proponent;
  - (iii) review the Proponent’s plan for the rights of indigenous peoples;
  - (iv) review the Proponent’s plan to achieve the Local Canadian Workforce Requirements;
  - (v) receive and consider proposed changes to the Initial Draft Project Agreement, set out on a Proponent’s Initial Draft Project Agreement Comment Form;
  - (vi) permit the Proponent and Proponent Team Member Representatives to provide WDBA’s Representatives with comments and feedback on material issues relating to the Facility, its Components or their design, construction, financing, operation, maintenance and rehabilitation; and
  - (vii) permit a Proponent to discuss with WDBA potential solutions and approaches that the Proponent may be considering for various aspects of its Proposal.

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- (b) WDBA will make certain of its Representatives available to participate in Commercially Confidential Meetings with the Proponents. WDBA will determine which of its Representatives will be present at any Commercially Confidential Meeting.
- (c) Proponents acknowledge and agree that Commercially Confidential Meetings are an integral part of the Competitive Selection Process and are in the interests of all parties. If in the course of or arising out of a Commercially Confidential Meeting, WDBA determines that it provided a Proponent with information that clarifies or supplements the RFP or the Project Agreement and such information was not provided to all Proponents by Addenda, then WDBA may provide such information to all Proponents by Addenda, except that WDBA will, to the extent Applicable Law and fairness to all Proponents permits, delete from any such Addenda, information that is commercially confidential to a Proponent.
- (d) The Fairness Monitor will be entitled to attend all of the Commercially Confidential Meetings.
- (e) Subject to Section 3.16(b), at least 10 Business Days in advance of the first day of each round of Commercially Confidential Meetings, each Proponent must provide WDBA with a proposed meeting agenda, a list of prioritized issues it would like to discuss, any materials relevant to such issues and the names, titles and contact information of each Representative of the Proponent or Proponent Team Member who will attend the meeting. WDBA may provide Proponents with comments on the agenda and a list of any of the prioritized issues WDBA would like to discuss at least 1 Business Day prior to the date of the meeting. WDBA may however raise any issue for discussion at a Commercially Confidential Meeting prior to or during the meeting.
- (f) At each Commercially Confidential Meeting, a Proponent may have Representatives of the Proponent and the Proponent Team members present as the Proponent considers reasonably necessary for effective communication with WDBA and to fulfill the objectives of the Commercially Confidential Meeting, provided that WDBA may limit the number of participants at any one meeting. Participation in Commercially Confidential Meetings is in person only. WDBA will endeavor to have Representatives of it or a WDBA Party present at the meeting who are most qualified to address the issues on the Proponent's agenda.
- (g) WDBA anticipates holding a number of Commercially Confidential Meetings with each Proponent prior to the Technical Submission Deadline during the time periods set out in the Timetable. WDBA will consult with each Proponent to confirm specific dates for each Commercially Confidential Meeting within such specified time periods. If WDBA considers it desirable or necessary to schedule additional or fewer Commercially Confidential Meetings, WDBA may amend the Timetable by an Addendum.
- (h) Proponents may request that WDBA schedule additional Commercially Confidential Meetings on specific topics by providing the request in writing to the Contact Person with proposed dates and details of the topic or topics to be discussed.
- (i) To promote free and open discussion at the Commercially Confidential Meetings, Proponents acknowledge that any comments provided by WDBA, a WDBA Party or their Representatives during any Commercially Confidential Meeting, including in respect of any particular matter raised by a Proponent or which is included in any documents or information provided by a Proponent prior to or during a Commercially Confidential Meeting, and any positive or negative views, encouragement or endorsements expressed by or on behalf of WDBA, a WDBA Party or any of their Representatives during a Commercially Confidential Meeting, to anything said or provided by a Proponent, will not, except to the extent provided for in Schedule 2-1 [*Design Consultation Process*] and

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Schedule 2-2 [*Aesthetic Design Consultation Process*], in any way bind WDBA or a WDBA Party and will not be an indication of a preference by WDBA, even if adopted by the Proponent.

- (j) Proponents may ask questions and seek clarifications at a Commercially Confidential Meeting. Notwithstanding that WDBA, a WDBA Party or any of their Representatives may give oral answers at a Commercially Confidential Meeting, those answers shall not be relied on by a Proponent unless issued in writing by Addendum. If for the purposes of the preparation of its Proposal, a Proponent wishes to rely on anything said or indicated at a Commercially Confidential Meeting, then the Proponent must submit an RFI pursuant to Section 3.13 (*Questions, Requests for Information, Requests for Clarification*) (i) describing any confirmation, clarification, explanation or change to a provision of this RFP or the Initial Draft Project Agreement which has been discussed, and (ii) requesting WDBA to issue an Addendum to this RFP in accordance with Section 3.18 (*Addenda*).
- (k) Except to the extent provided for in Schedule 2-1 [*Design Consultation Process*] and Schedule 2-2 [*Aesthetic Design Consultation Process*], no statement, consent, waiver, acceptance, approval or anything else said or done in any Commercially Confidential Meeting or during the course of any Site Visit or Proponent Site Investigation by WDBA, a WDBA Party or any of their Representatives shall:
  - (i) be relied on in any way by a Proponent, a Proponent Team Member or any of their respective Representatives;
  - (ii) amend or waive any provision of the RFP Documents; or
  - (iii) be binding on WDBA or a WDBA Party,unless, and only to the extent, expressly confirmed in an Addendum to the RFP Documents issued in accordance with Section 3.18 (*Addenda*). WDBA is under no obligation to issue any such Addendum.
- (l) The Proponent, its Proponent Team Members and their respective Representatives:
  - (i) shall participate in the Commercially Confidential Meetings in accordance with the guidelines, procedures and processes set out in this RFP;
  - (ii) waive any and all rights to contest and/or protest this RFP and the processes and guidelines set out herein, including the Commercially Confidential Meetings, based on the fact that such Commercially Confidential Meetings occurred, or on the basis that information may have been received during a Commercially Confidential Meeting by another Proponent, Proponent Team Member or their respective Representatives that was not received by the Proponent, Proponent Team Member or any of their respective Representatives; and
  - (iii) agree that all information received at a Commercially Confidential Meeting is Confidential Information.
- (m) Each Representative of a Proponent or a Proponent Team Member who attends a Commercially Confidential Meeting will be required to execute and deliver a Confidentiality Undertaking and Release in the form provided in Appendix 1 to the Proponent RFP Participation Agreement prior to the Representative's attendance, unless such Representative has previously provided such document to WDBA pursuant to this RFP.

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- (n) WDBA expects that Commercially Confidential Meetings will be held in Windsor, Ontario.

### 3.16 Comments on Project Agreement

- (a) Proponents may provide comments on the Initial Draft Project Agreement in accordance with the Timetable and the procedure set forth in this Section 3.16, as part of the Commercially Confidential Meeting process. Each Proponent should review the Initial Draft Project Agreement for the purpose of identifying any issues or provisions that the Proponent would like to see clarified or amended including with respect to commercial, legal, design and construction, financing, tolling and operation and maintenance matters. As set out in the Timetable, WDBA will hold a number of Commercially Confidential Meetings to review the Initial Draft Project Agreement with each Proponent.
- (b) In advance of the first day of each round of Commercially Confidential Meetings at which the Initial Draft Project Agreement is to be reviewed with a Proponent, by the dates specified in the Timetable, such Proponent should provide WDBA with the agenda, issues list and comments which a Proponent wishes to make on the Initial Draft Project Agreement. The issues and comments shall be set out on the form ("**Initial Draft Project Agreement Comment Form**") annexed as Schedule 4 [*Initial Draft Project Agreement Comment Form*] and shall be sent to the Contact Person through its Proponent Mailbox. Schedule 4 will be posted to the Electronic Data Room in Excel format and no changes to the format of the form will be permitted. The issues and comments on the Initial Draft Project Agreement Comment Form shall be ranked in priority of importance to the Proponent in 3 categories - low, medium and high. WDBA is not obliged to respond to any such issue or comment.
- (c) WDBA will consider all comments and requested clarifications on, and proposed amendments to, the Initial Draft Project Agreement received from the Proponents in the Commercially Confidential Meetings relating to the Initial Draft Project Agreement and may respond to some or all of the comments received and may amend the Initial Draft Project Agreement. In such event it will issue a revised version of the Initial Draft Project Agreement to Proponents by way of Addendum. Proponents will then have the opportunity to make comments on such revised version. WDBA may offer additional Commercially Confidential Meetings to each Proponent to discuss and review Proponent comments on the Initial Draft Project Agreement should it determine that further meetings are necessary. WDBA may also issue additional revised versions of the Initial Draft Project Agreement by Addenda as it sees fit.
- (d) Prior to the Technical Submission Deadline, WDBA will issue by Addendum a final version of the Project Agreement ("**Definitive Project Agreement**"). WDBA may further modify the Definitive Project Agreement by Addendum prior to the Financial Submission Deadline. The Definitive Project Agreement will contain the detailed requirements for the Project and will be the common basis for the preparation and submission of all Proposals. Proponents should not in their Proposal make any modifications, changes or additions to the Definitive Project Agreement, except for modifications, changes or additions provided for in Section 8.3 (*Final Project Agreement*).
- (e) Any description or overview of the Initial Draft Project Agreement in this RFP is provided for convenience only and does not replace, supersede, supplement or alter any such agreement. If there are any inconsistencies between the terms of the Definitive Project Agreement and the description or overview of those terms set out in this RFP or in the Initial Draft Project Agreement, the terms of the Definitive Project Agreement will prevail.

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- (f) The commenting process described in this Section 3.16 shall not be interpreted as limiting in any way and at any time during the Competitive Selection Process WDBA's right to modify this RFP and the Initial Draft Project Agreement, or the Definitive Project Agreement, including after issuance of the Definitive Project Agreement.

### 3.17 RFP Documents Comments (other than Project Agreement)

- (a) WDBA may request Proponents to submit comments on the RFP Documents other than the Project Agreement. WDBA is not obliged to respond to each comment made by Proponents under this Section 3.17. If WDBA accepts a comment, or part of a comment, and that acceptance requires a change to the RFP Documents, WDBA shall issue an Addendum to implement that change.
- (b) WDBA may request Proponents to submit comments on particular technical or financial issues arising out of the Project and reflected in the RFP Documents. WDBA is not obliged to respond to comments made by Proponents under this Section 3.17(b).

### 3.18 Addenda

- (a) If WDBA, for any reason determines that it is necessary or desirable to amend this RFP, any amendment will be communicated in writing in the form of a written Addendum numbered for identification purposes. Each Addendum will be an integral part of this RFP.
- (b) WDBA may amend or supplement the RFP Documents at any time. WDBA shall issue changes to the RFP Documents by Addenda only. No statement, whether oral or written, made by WDBA, a WDBA Party or their respective Representatives or any other Person, shall amend the RFP Documents.
- (c) The Proponent is solely responsible to ensure that it has received all Addenda issued by WDBA. Proponents may, in writing, seek confirmation of the number of Addenda issued under this RFP from the Contact Person.
- (d) WDBA shall issue Addenda by placing them in the Data Room and notifying the Proponents' Representatives by email that an Addendum has been placed in the Data Room.

### 3.19 Restricted Authorities

Subject to any restrictions set out in this RFP including Section 10.8 (*No Lobbying*) the Proponent and Proponent Team Members, as well as any of their respective Representatives and Key Individuals, are permitted to communicate directly with any municipality, utility or other government authority with respect to any municipal, utility or governmental requirements related to the Project, except for the following, each of which is a "**Restricted Authority**":

- (a) Transport Canada
- (b) Infrastructure Canada
- (c) Public Services and Procurement (Canada)
- (d) Department of Fisheries and Oceans (Canada)
- (e) Ontario Ministry of Transportation
- (f) Ontario Ministry of the Environment and Climate Change

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- (g) WDBA
- (h) a Michigan Party
- (i) Michigan Department of Environmental Quality
- (j) FHWA
- (k) International Authority
- (l) the City of Windsor
- (m) the City of Detroit
- (n) Wayne County, Michigan
- (o) GSA
- (p) CBP
- (q) CBSA
- (r) CFIA
- (s) United States Department of Agriculture
- (t) United States Environmental Protection Agency
- (u) US Coast Guard
- (v) US Department of Transportation

A Proponent, a Proponent Team Member, or any of their respective Representatives must not communicate with any Restricted Authority nor any director, officer, employee or elected or appointed official of any Restricted Authority regarding the Project or enter into any arrangements or agreements with a Restricted Authority with respect to the Project.

### **3.20 Meetings with Restricted Authorities**

- (a) If a Proponent wishes to have a meeting with any Restricted Authority, the Proponent should submit a request for a meeting to the Contact Person which includes a description of the purpose of the meeting requested by the Proponent. WDBA may request that the Proponent provide additional information to WDBA with regard to the purpose of any meeting requested to be held with any Restricted Authority. WDBA may also determine whether a meeting with the Restricted Authority is required and, where applicable, the manner in which communications and meetings with the Restricted Authority will be conducted. WDBA may require one or more of its Representatives to accompany the Proponent during any meeting between the Proponent and a Restricted Authority.
- (b) WDBA may arrange meetings to introduce a Restricted Authority or any municipality, utility or government authority and other interested parties to the Proponents. To the extent WDBA determines that such meetings are required, WDBA will set the dates for such meetings and may consult Proponents in determining such dates.
- (c) Neither WDBA nor any of its Representatives are, in any way whatsoever, responsible for any representations, statements, assurances, commitments or agreements which the

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Proponent, a Proponent Team Member, and their respective Representatives, give, receive or determine they may have given to or received from a Restricted Authority, including any municipality, government authority or utility, including during any meeting conducted as contemplated in this Section. The Proponent, the Proponent Team Members, and their respective Representatives may rely on such representations, statements, assurances, commitments or agreements at their sole risk, without recourse against WDBA or any WDBA Party.

### **3.21 Meetings with Community Groups**

If a Proponent wishes to have a meeting with any community group which has expressed an interest in the Project, the Proponent should submit a notification of the meeting to the Contact Person which includes a description of the purpose of the meeting. WDBA may request that the Proponent provide additional information to WDBA with regard to the purpose of any meeting to be held with the community group. WDBA may also determine the manner in which communications and meetings with the community group will be conducted. WDBA may require one or more of its Representatives to accompany the Proponent during any meeting between the Proponent and a community group. Neither WDBA nor any of its Representatives are, in any way whatsoever, responsible for any representations, statements, assurances, commitments or agreements which the Proponent, a Proponent Team Member, and their respective Representatives, give, receive or determine they may have given to or received from a community group, including during any meeting conducted as contemplated in this Section.

## **4. PROPONENT REQUIREMENTS**

### **4.1 Project Co**

- (a) Project Co shall be created and organized as a corporation or partnership under the laws of Canada or of a Province of Canada. If Project Co is a corporation, each shareholder of Project Co must at all times be incorporated and organized under the laws of Canada or of a Province of Canada. If Project Co is a partnership, the partners and any general or limited partner must at all times be created and organized under the laws of a Province of Canada.
- (b) The sole object and purpose of Project Co must be to carry out and to complete the Project Work in accordance with the terms of the Project Documents and to carry on activities related thereto. At Financial Close, Project Co must demonstrate, to the satisfaction of WDBA that it has the power and capacity to enter into, to carry out the transactions contemplated by, and to observe and perform all of its covenants and obligations under, the Project Documents.
- (c) Any agreements among the shareholders or partners of Project Co must be governed by the laws of Ontario and the laws of Canada applicable in Ontario. Each shareholder or partner must (i) in such shareholders agreement or partnership agreement and (ii) in an agreement with WDBA delivered at Financial Close, attorn to the jurisdiction of the courts of Ontario and the applicable federal courts or tribunals of Canada in Ontario with respect to all matters arising under or related to such agreements.
- (d) Project Co and those Proponent Team Members involved in the design, construction, operation, maintenance and rehabilitation of any Component must be duly registered to carry on business in Ontario or Michigan, as required by Applicable Law.
- (e) Each Proponent must ensure that its Project Co and the shareholders or partners of Project Co comply with this Section 4.1. WDBA may require the Preferred Proponent to make changes to the constitution, organization or governance structure of Project Co

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and/or its shareholders or partners if it determines, acting reasonably, that (i) Project Co or any of its shareholders partners do not comply with this Section 4.1 or (ii) Project Co or any of its shareholders or partners do not have the capacity, power and authority to enter into and perform their respective obligations under the Project Documents. In such event, WDBA may require the Preferred Proponent to provide to WDBA final constitutional, organizational and governance documents relating to Project Co reflecting such required changes, including legal opinions, to satisfy its concerns.

- (f) Each Proponent should create and organize Project Co as early as practicable to ensure that Project Co is able to obtain all required security clearances under Section 4.2, but in any event no later than prior to Financial Close.
- (g) If a Proponent or Proponent Team member is, in whole or in part, a joint venture, the Proponent has provided to WDBA the documentation, information and confirmations set forth in Schedule 5 [*Joint Venture Information*], on or before the issue date of this RFP.

#### 4.2 SECURITY REQUIREMENTS

- (a) The RFP specifies in Schedule 10 [*Security Requirements Checklist*] and the Project Agreement specifies in Part 5 [*Security*] of Schedule 10 [*Design and Construction Specifications*] and in Schedule 11 [*Operations, Maintenance and Rehabilitation*] that Project Co and other firms and individuals working on the Project require various types of security clearances. This Section 4.2 sets out an overview of these security requirements, together with an overview of the process for obtaining the various types of security clearances (collectively “**Security Requirements**”). The information set out in this Section 4.2 is provided for information purposes only. Proponents are responsible for obtaining the required security clearances or US equivalent in accordance with requirements of this RFP, Applicable Laws and the terms and conditions of the Project Agreement. Proponents are responsible for obtaining all required security clearances as required by Canada, the US and Applicable Laws.
  - (i) Facility Security Clearance

Prior to executing the Project Agreement, and thereafter at all times during the term of the Project Agreement, Project Co shall hold a valid facility security clearance (“**FSC**”) at the level of [REDACTED], with approved document safeguarding at the level of [REDACTED], issued by the Canadian Industrial Security Directorate (“**CISD**”), of PSPC.
  - (ii) Security Clearance

Proponent personnel, Project Co and Project Co Persons requiring access to PROTECTED/CLASSIFIED information, assets or sensitive work sites must each hold a valid personnel security screening at the level of [REDACTED] or [REDACTED], granted or approved by CISD.
- (b) The Project Agreement sets out terms, conditions and restrictions regarding access to PROTECTED information, assets or sensitive work sites, including that processing of protected material electronically at Project Co’s site is not permitted until CISD has issued written approval. The Project Agreement requires that subcontracts which contain Security Requirements are not to be awarded without the prior written permission of WDBA or CISD. Proponents are advised that where subcontracts are entered into prior to the subcontractor obtaining the Security Requirements, access to PROTECTED information shall not be provided until the Security Requirements have been approved.

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- (c) Proponents should seek to obtain the required FSC with approved document safeguarding as soon as possible during the Competitive Selection Process. Proponents are advised that the time taken to process such clearance applications can be several months, depending on various factors. WDBA is not responsible for any delays in a Proponent achieving compliance with the Security Requirements. Proponents can obtain additional information on the process for compliance with the Security Requirements, together with required forms, on Canada's website regarding its Industrial Security Program (<http://ssi-iss.tpsgc-pwgsc.gc.ca/index-eng.html>). In this regard, Proponents should:
- (i) review and comply with the Security Requirements Checklist set out in Schedule 10 [*Security Requirements Checklist*] and provided for the purposes of Proponents obtaining the clearances; and
  - (ii) review and comply with the provisions of the latest edition of the PSPC Industrial Security Manual.

#### 4.3 Former Public Servant Certification

In order to be consistent with the Treasury Board of Canada's policies and directives on contracts with former public servants, each Equity Member and other Prime Team Members, together with their respective directors, should provide a completed former public servant certification form ("**Former Public Servant Certification Form**") in the form set out in Schedule 9 [*Form of Former Public Servant Certification*]. Each Proponent should include in its Financial Submission such Former Public Servant Certifications as are required, as contemplated by this Section 4.3. Where a Proponent omitted the documentation referred to in this Section 4.3 from its Proposal, WDBA may, but is not required to, request in writing that the Proponent provide such documentation.

#### 4.4 Changes to Proponent or Proponent Team Members

- (a) For the purposes of this Section 4.4, the term "**Change**" means (i) any Change in Control of a Proponent or Proponent Team Member (ii) any change of a Proponent Team Member or Key Individual or (iii) any change in the scope of work of a Proponent Team Member or Key Individual.
- (b) There shall be no Changes without WDBA's prior written consent. If for any reason a Proponent wishes or is required to make a Change prior to the Financial Submission Deadline, then such Proponent will be required to submit a written application to WDBA for approval as soon as possible but in any event not later than 7 days prior to the Financial Submission Deadline. For a Change with respect to the Preferred Proponent, a Preferred Proponent Team Member or Key Individual, the same rule applies except that the application must be submitted no later than 15 days prior to the Financial Close Target Date. The written application shall clearly identify the proposed Change including, if applicable, any proposed substitute and sufficient documentation to demonstrate that the proposed substitute would have met or exceeded any applicable criteria applied during the RFQ Process. WDBA may provide the Proponent with instructions as to the type of information required by it to consider the proposed Change as well as any deadlines for submission of information that the Proponent must provide in order to have its request considered by WDBA. In such event, the Proponent shall provide any further information and documentation as may be requested by WDBA to assess any proposed Change. The Project Agreement has provisions which govern Changes following Financial Close.
- (c) WDBA may grant permission to a Change on such terms and conditions as WDBA considers appropriate or refuse to grant permission for such Change, considering

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WDBA's objective of achieving a Competitive Selection Process that is not unfair to other Proponents. Without limiting the foregoing, in deciding whether to permit or refuse a Change, WDBA may consider the following factors and such other criteria as WDBA considers relevant:

- (i) would the proposed Change be inconsistent with or not permitted by any applicable provision of this RFP;
  - (ii) would the proposed Change, in WDBA's judgment, result in a less effective Proponent Team;
  - (iii) would the proposed Change have materially impacted the results of the evaluation of the Proponent in the RFQ Process;
  - (iv) would the proposed Change in the scope of work result in equal or better performance by the Proponent;
  - (v) would the evaluation of the Proponent's Proposal using the Evaluation Criteria, rank the Proponent's Proposal, after the proposed Change, lower than the ranking of the Proposal of another Proponent;
  - (vi) would the proposed Change result in a Conflict of Interest; and
  - (vii) has the Proponent satisfied the Security Requirements made necessary, or which would be made necessary, by such proposed Change.
- (d) WDBA's right to approve Changes includes the right to approve requests for changes to facilitate or permit a change in ownership or a Change in Control of a Proponent or a Proponent Team Member and the right to approve changes to the legal relationship between members of a Proponent Team including the creation of a new joint venture or other legal entity that will take the place of the Proponent.
- (e) WDBA may Disqualify a Proponent or the Preferred Proponent if a Change occurs which WDBA has not consented to, in accordance with the provisions of this Section 4.4.

#### **4.5 Confirmation of Changes by Team Members**

In any circumstance where WDBA requires or permits a Change, WDBA may require some or all of the Proponent's Team Members, including any original Team Member that will no longer be a Team Member, to confirm in writing their agreement to the Change. However, any request for written confirmation shall not be an acceptance by WDBA of a Proponent's request for a Change and will not impair WDBA's right to Disqualify any such Proponent from continued participation in the Competitive Selection Process. In addition the Proponent shall require any new Proponent Team Member to provide to WDBA (i) a completed Team Member Certification and Agreement and a Declaration Re Conflicts of Interest and Other Matters in the forms required by the RFQ and (ii) a Team Member RFP Participation Agreement.

#### **4.6 Required Change of a Preferred Proponent Key Individual**

If, after identification of the Preferred Proponent pursuant to Section 8.2 (*Selection and Award*), WDBA determines, acting reasonably, that it is in the best interests of WDBA that any individual proposed as a Key Individual in the Preferred Proponent's Proposal be changed, WDBA shall notify the Preferred Proponent (including a detailed explanation of the reasons for such determination), and, within 10 Business Days of receipt by the Preferred Proponent of such notice, the Preferred Proponent shall provide WDBA with relevant information on the proposed

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substitute Key Individual and shall consult with WDBA before finalizing the appointment of such substitute. The proposed substitute must have equal or better qualifications than the qualifications of the Key Individual that is being replaced.

#### **4.7 Replacement or Removal of Team Members or Key Individuals**

WDBA may require the Proponent to remove and/or replace any Team Member and/or Key Individual pursuant to Section 9.2(c) (*WDBA's Rights Re Conflict of Interest*), 10.2(f) (*Rights of WDBA*), 10.8(c) (*No Lobbying*) or 10.9(d) (*Ethical Behaviour Confirmation*). Any replacement of any such Team Member and/or Key Individual proposed by a Proponent will require the prior written consent of WDBA.

#### **4.8 Prohibition on Certain Exclusive Teaming Arrangements**

Without limitation, the provisions of Section 5.10 of the RFQ (*Participation by Team Members on More than One Respondent Team*) and Section 5.11 of the RFQ (*Prohibition on Exclusive Teaming Arrangements with Toll Systems Integrators, Steel Suppliers and Duty Free Operators*) continue to apply to Proponents through the RFP Process.

#### **4.9 Prohibition on Exclusive Teaming Arrangements with Lenders**

- (a) In order not to inhibit liquidity available for financing of the Project Work, Proponents shall not require any of their Senior Lenders, including prospective Senior Lenders, to act exclusively for that Proponent. The Proponent is required to confirm, pursuant to its Proponent Financial Submission Agreement, that the Senior Lenders providing a Senior Lender commitment letter as part of the Proponent's Financial Submission, have not been engaged to act or provide financing exclusively for that Proponent.
- (b) Notwithstanding any other provision of this RFP, but subject to the following proviso, the Senior Lenders may act in the capacity of Senior Lenders for more than one Proponent under this RFP Process provided the Senior Lenders have agreed with each Proponent:
  - (i) to establish industry standard confidentiality and conflict of interest screens to ensure that each Proponent is represented by a discrete team of Senior Lender personnel;
  - (ii) to prohibit any communication regarding this RFP Process between members of different teams of Senior Lender personnel;
  - (iii) to physically separate all documentation under the control of each team of Senior Lender personnel;
  - (iv) to keep all computer based information and data discrete and control access to prohibit individuals other than on a team of Senior Lender personnel to have access to that Proponent Team's information; and
  - (v) that any breaches of such confidentiality requirements are appropriately sanctioned including possible dismissal.
- (c) Senior Lenders or financial advisors participating in a Proposal shall not be Affiliates of any of the Proponent Team Members participating in that Proposal (unless such Affiliate or financial advisor is wholly owned by such Senior Lender) and shall act at all times at arm's length to every other Proponent Team Member (other than any other Senior Lender or financial advisor wholly owned by such Senior Lender).

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#### 4.10 Legal Capacity and Permits

- (a) By participating in the RFP Process, the Proponent certifies that its Project Co, along with each Proponent Team Member has the legal capacity and authority to enter into the Project Agreement and the agreements and subcontracts contemplated by the Project Agreement and that they are in possession of all valid licences, permits, registrations, certificates, declarations, filings, consents or other authorizations necessary to submit a Proposal and to enter into the Project Agreement and the agreements and subcontracts contemplated by the Project Agreement. The Proponent acknowledges the requirements for it and its Proponent Team Members to consult with various departments of Canada pursuant to the *Bridge to Strengthen Trade Act*.
- (b) With respect to all other licences, permits, consents or authorizations for an activity contemplated in a Proponent's Proposal or in the Project Agreement, neither the acceptance of the Proposal nor the execution of the Project Agreement by WDBA will be considered an approval by WDBA of the carrying out by the Proponent of such activity without the requisite licence, permit, registration, consent or authorization.

#### 4.11 Material Adverse Change

During the Competitive Selection Process prior to the date of Financial Close, where a Proponent, a Prime Team Member or an Equity Member, becomes aware of any event which has or may have a material adverse change on the Proponent, a Prime Team Member or an Equity Member (including any event or change which would render the Proponent's, the Prime Team Member's or the Equity Member's financial situation following the event or change materially different from that which was previously disclosed to WDBA pursuant to the RFQ Response), the Proponent Representative will forthwith disclose the event in writing to WDBA for its consideration. Based on such disclosure, WDBA may take such action as it considers necessary or advisable including Disqualification of such Proponent.

#### 4.12 International Sanctions

The Proponent, each Proponent Team Member and each of their respective Representatives must not supply WDBA or any WDBA Party with any goods or services which are subject to, or which are from countries, states or Persons which are subject to, economic sanctions imposed by Canada or the United States. Proponents should consult Foreign Affairs, Trade and Development Canada's website (<http://www.international.gc.ca/sanctions/index.aspx>) for information on sanctions currently in place. Each Proponent should immediately advise WDBA if it determines that the Proponent may be unable to perform its obligations under the Project Agreement as a result of the imposition of economic or other sanctions against a country, state or Person or the addition of a good or service to the list of sanctioned goods or services. Project Co shall also comply with all Applicable Laws relating to economic and other sanctions imposed by the United States.

#### 4.13 Selection of Independent Certifier

- (a) WDBA intends to initiate a procurement process for selection of an independent, suitably qualified and experienced consultant to act as the independent certifier ("**Independent Certifier**") for the purposes of the Project Agreement and the Project Co Early Work Agreement, subject to completion of the selection process. WDBA intends to provide Proponents with an opportunity to review and comment on the request for proposals for the selection of the Independent Certifier. Each Proponent acknowledges and agrees that if it is selected as the Preferred Proponent, it will cooperate with WDBA with respect to selection of the Independent Certifier by WDBA, including participating in the evaluation process for the selection of the Independent Certifier if requested to do so by WDBA.

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WDBA shall enter into an agreement (the “**Independent Certifier Agreement**”) with the Independent Certifier substantially in the form of Schedule 32 [*Form of Independent Certifier Agreement*] of the Project Agreement.

- (b) Neither the Preferred Proponent nor WDBA shall, without the prior written consent of the other, enter into any agreement with the Independent Certifier in connection with the Project other than the Independent Certifier Agreement, and the Preferred Proponent shall ensure that no Proponent Team Member enters into any separate agreement with the Independent Certifier in connection with the Project.
- (c) The provisions of this Section 4.13 are without limitation to or derogation from the requirements set out in Schedule 32 [*Form of Independent Certifier Agreement*] of the Project Agreement.
- (d) Project Co will not be a party to the Independent Certifier Agreement, to avoid a prohibited conflict of interest of the Independent Certifier under United States Applicable Law. Project Co will however be charged by WDBA for [REDACTED]% of the costs and expenses of the Independent Certifier.

#### **4.14 WDBA Early Works and Project Co Early Work**

- (a) WDBA Early Works in Canada consist of the construction of a perimeter access road, utility relocation and advance fill on the Canadian POE. During the RFP Process, updates on progress of Canadian early works will be provided to the Proponents. Further information on the scope of these activities can be found in the Background Information or in Schedule 20 [*WDBA Early Works*], Part 1 [*Canadian Perimeter Access Road Maintenance and Handover*] and Part 2 [*Sandwich Street South of Ojibway Reconstruction*] of Schedule 43 [*Canadian Roads*] to the Initial Draft Project Agreement.
- (b) Project Co Early Work will occur prior to Financial Close. The scope of the Project Co Early Work and the Early Work Submission requirements are set out in Appendix 20-1 to Schedule 20 [*Project Co Early Work Agreement*]. Proponents shall submit their Early Work Submission by the Early Work Submission Deadline, except for the Early Work Schedule of Values which shall be submitted as part of the Financial Submission on the Financial Submission Date. The Preferred Proponent shall execute the Project Co Early Work Agreement within 5 days after selection of the Preferred Proponent, substantially in the form of Schedule 20 [*Form of Project Co Early Work Agreement*], and shall complete the Project Co Early Work in accordance with the Project Co Early Work Agreement.

## **5. PROPOSAL REQUIREMENTS**

### **5.1 Proposal Form and Content**

A Proposal shall be in two parts, a Technical Submission and a Financial Submission. Proposals should be in the form and include the content described in Schedule 6 [*Technical Submission*] for the Technical Submission and Schedule 12 [*Financial Submission*] for the Financial Submission.

- (a) The Technical Submission should include technical information relating to:
  - (i) the Main Bridge and the Bridge Approaches;
  - (ii) the Canadian POE;
  - (iii) the US POE;

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- (iv) the Michigan Interchange;
- (v) the Tolling Infrastructure and related Intellectual Property;
- (vi) the Intelligent Transportation System; and
- (vii) the Security Design Plan,

each packaged separately along with the other documentation and agreements listed in Section 6.2 (*Content of Technical Submission*).

- (b) The Early Work Submission shall include items required to be submitted as described in Appendix 20-1 to Schedule 20 [*Form of Project Co Early Work Agreement*].
- (c) The Financial Submission should include the financial information required by Schedule 12 [*Financial Submission*] and the Financial Offer and Affordability Prices, along with the other documentation and agreements listed in Section 6.4 (*Content of Financial Submission*).

## 5.2 Financial Offer Adjustments

In order to deal with interest rate, credit spread and currency exchange rate changes between the Financial Submission Deadline and Financial Close, WDBA is offering Proponents the Financial Offer Adjustment mechanism set forth in Schedule 11 [*Financial Offer Adjustments*]. All Credit Spread, Base Rate and currency exchange rate submission information should be reflected in the Financial Submission in accordance with the provisions of Schedule 12 [*Financial Submission*].

## 5.3 [REDACTED]

## 5.4 Local Canadian Workforce Requirement

The Project Agreement will set out a Local Canadian Workforce Requirement. Except for the Local Canadian Workforce Requirement and the requirements in Section 1.8(B)(c) (*Certain US Requirements*), Project Co shall not discriminate in favour of the US over Canada or in favour of Canada over the US with respect to any products, materials, supplies, labour or services.

## 6. PROPOSAL SUBMISSION INSTRUCTIONS

### 6.1 Submission Times and Submission Location

Proponents must submit the Technical Submission at the Submission Location by the Technical Submission Deadline, the Early Work Submission at the Submission Location by the Early Work Submission Deadline and the Financial Submission at the Submission Location by the Financial Submission Deadline, by pre-paid courier or hand delivery. WDBA will apply a time and date stamp on each Submission delivered. The designated calendar and clock at the Submission Location, whether accurate or not, will govern the delivery of Submissions. Submissions received after the applicable Submission Deadline, as evidenced by the time and date stamp, will not be considered and will be returned unopened. Submissions must not be submitted by fax or email. This Section 6.1 also applies to any new Submissions made pursuant to Section 6.11 (*Amendment or Replacement of Submissions*).

### 6.2 Content of Technical Submission

The Technical Submission should consist of the following:

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- (a) the Technical Submission described in Schedule 6 [*Technical Submission*] in the order set out in that schedule;
- (b) the Proponent Technical Submission Agreement in the form of Schedule 7-1 [*Proponent Technical Submission Agreement*]; and
- (c) the Team Member Technical Submission Agreement in the form of Schedule 7-2 [*Team Member Technical Submission Agreement*].

### 6.3 Content of Early Work Submission

The Early Work Submission should consist of the following:

- (a) the Early Work Submission requirements described in Table 20-1-3 in Appendix 20-1 to Schedule 20 [*Form of Project Co Early Work Agreement*]; and
- (b) Proponents must submit copies of the Early Work Submission by the Early Work Submission Deadline, except for the Early Work Schedule of Values which will be submitted as part of the Financial Submission.

For its Early Work Submission, a Proponent shall submit separately in sealed packages, one, signed, original, marked as "Original", and 3 hard copies, numbered one through three. The Proponent shall also include in each package one electronic copy of such package (CD-ROM or USB flash drive, in PDF format, printable without copy protection or security), appropriately labelled and clearly marked "Early Work Submission for Gordie Howe International Bridge - DBFOM". The Early Work Submission shall be on 8.5" x 11" paper except for drawings which shall conform to the requirements of Section 1.5 of Schedule 6 [*Technical Submission*] of the RFP.

### 6.4 Content of Financial Submission

The Financial Submission should consist of the following:

- (a) the Financial Submission described in Schedule 12 [*Financial Submission*] in the order set out in that Schedule;
- (b) the Early Work Schedule of Values;
- (c) the Proponent Financial Submission Agreement in the form of Schedule 13-1 [*Proponent Financial Submission Agreement*];
- (d) the Team Member Financial Submission Agreement in the form of Schedule 13-2 [*Team Member Financial Submission Agreement*];
- (e) the Financial Offer in the form of Schedule 14-1 [*Financial Offer*] and Affordability Prices in the form of Schedule 14-2 [*Affordability Prices*];
- (f) Insurance Broker Confirmation Letter substantially in the form of Schedule 15 [*Form of Insurance Broker Confirmation Letter*];
- (g) Equity Member Support Agreements substantially in the form of Schedule 16-1 [*Form of Equity Member Support Agreement*];
- (h) Equity Member Parent Support Agreements substantially in the form of Schedule 16-2 [*Form of Equity Member Parent Support Agreement*];

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- (i) Prime Team Member Guarantor Support Agreement substantially in the form of Schedule 17 [*Form of Prime Team Member Guarantor Support Agreement*];
- (j) one or more Senior Lender commitment letters, substantially in the form of Schedule 18 [*Form of Senior Lender Commitment Letter*]; and
- (k) completed Former Public Servant Certifications in the form of Schedule 9 [*Form of Former Public Servant Certification*].

## 6.5 Copies and Format

For its Proposal Submission (except as otherwise provided in Section 6.3), a Proponent should submit separately in sealed packages, one, signed original, marked as “Original”, and 10 hard copies, numbered one through 10 of the following.

- (a) For its Technical Submission
  - (i) Package 1 - Executive Summary
  - (ii) Package 2 – Project Management
  - (iii) Package 3 - Bridge Design, Construction and OMR
  - (iv) Package 4 - POE Design, Construction and OMR
  - (v) Package 5 - Michigan Interchange, Design and Construction
  - (vi) Package 6 - Tolling and ITS
  - (vii) Package 7 - Community Benefits

The Security Design Plan should be submitted in a separate and sealed envelope.

- (b) For its Financial Submission one package containing
  - (i) Financing Plan
  - (ii) Financial Close Plan
  - (iii) Financial Model submitted only in electronic form as specified in this Section 6.5
  - (iv) Price Forms
  - (v) Insurance Documentation
  - (vi) Project Co Organizational Information
  - (vii) Financial Offer and Affordability Prices (submitted in Canadian dollars and inclusive of all taxes other than HST).

The Proponent shall also include in each package two electronic copies of such package (CD-ROM or USB flash drive, in PDF, .DWG and Microsoft Excel 2010 formats as appropriate, printable without copy protection or security), appropriately labelled and clearly marked “Request for Proposals for Gordie Howe International Bridge - DBFOM”. The Financial Model should be submitted in electronic (CD-ROM or USB flash drive) form only. In addition, Proponents should provide individual files for each drawing or sketch logically organized in folders for each discipline

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with a reference to the specific Section of the relevant Submission. Proponents should not include technical information in their Financial Submissions nor financial information in their Technical Submissions. In the event of a conflict, inconsistency or discrepancy between the wording of the "Original" version and any of the other physical or electronic copies submitted, the "Original" version shall prevail.

#### **6.6 Missing Information or Documentation**

If a Proponent has not provided all the information or documentation required by this RFP as part of its Proposal, WDBA may, but is not required to, request that the Proponent amend its Proposal or any Submission to include such missing information or documentation.

#### **6.7 Verification of Information**

WDBA may independently verify any information received in or in respect of any Proposal pursuant to this RFP. WDBA may Disqualify any Proponent whose Proposal:

- (a) contains any false or misleading information; or
- (b) fails to disclose any information that would, if disclosed, materially adversely affect WDBA's evaluation of such Proponent's Proposal.

#### **6.8 Language**

Pursuant to the RFQ, each of the Proponents selected English as the language in which to receive the RFP and any correspondence from and to WDBA. Each Proponent hereby agrees and accepts that WDBA may issue the RFP, the Project Agreement and any correspondence or associated documentation in the English language only. Proposals shall be submitted in English. Any portion of a Proposal not in English will not be evaluated.

#### **6.9 Receipt of Complete RFP**

Proponents are responsible to ensure that they have received the complete RFP. The Technical Submission and the Financial Submission will be deemed to have been prepared on the basis of the entire RFP in effect at the Technical Submission Deadline and the Financial Submission Deadline, as applicable. WDBA accepts no responsibility for any Proponent who did not receive a complete RFP or who did not prepare its Proposal on the basis of the complete RFP.

#### **6.10 Withdrawal From RFP Process/Disqualification**

- (a) A Proponent may withdraw from the RFP Process by giving written notice to the Contact Person duly signed by the Proponent Representative prior to the applicable Submission Deadline.
- (b) A Proponent will be deemed to have made a decision to withdraw from the RFP Process if it has failed to submit in good faith:
  - (i) a Technical Submission which is current and in effect by and at the Technical Submission Deadline; or
  - (ii) a Financial Submission which is current and in effect by and at the Financial Submission Deadline,

for any reason other than the cancellation of the Competitive Selection Process by WDBA. A withdrawal of a submitted Submission which is not replaced with a replacement

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Submission by the applicable Submission Deadline constitutes a failure to submit a Submission.

- (c) If a Proponent withdraws or is deemed to withdraw from the RFP Process or is Disqualified after it has submitted (i) its Technical Submission but such submission was submitted before the Technical Submission Deadline, or (ii) its Financial Submission but such submission was submitted before the Financial Submission Deadline, such Submission shall be returned to the Proponent by the Contact Person, unopened.
- (d) If such withdrawal or deemed withdrawal or Disqualification occurs after a Submission Deadline, any Technical Submission or Financial Submission which has been submitted shall be subject to the terms of Section 6.14 (*Ownership and Use of Proposal and Proposal Information*).
- (e) Any withdrawal, deemed withdrawal or Disqualification of a Proponent prior to the selection of the Preferred Proponent pursuant to Section 8.2 (*Selection and Award*), will result in the Proponent's Bid Security Deposit being forfeited to WDBA as provided in such Proponent's RFP Participation Agreement.
- (f) Any withdrawal, deemed withdrawal or Disqualification of a Preferred Proponent will not result in the forfeiture of its Bid Security Deposit. However its Preferred Proponent Security Deposit will be dealt with as provided in Section 8.5 (*Return of Preferred Proponent Security Deposit*) and its Proponent Financial Submission Agreement.

#### **6.11 Amendment or Replacement of Submissions**

- (a) If a Proponent wishes to amend or replace a Submission which it has submitted before the applicable Submission Deadline, it must withdraw its original Submission and submit a new Submission (clearly marked as new) in accordance with the terms of this RFP.
- (b) If a Proponent wishes to amend or replace a Submission after the applicable Submission Deadline, it must give notice to WDBA setting out the reasons it wishes to do so. WDBA may then consent or not consent to such request. If such consent is granted then the Proponent must withdraw its then current Submission and submit a new Submission (clearly marked as new and with all changes clearly marked) in accordance with the terms of this RFP. The new Submission shall constitute a withdrawal of all previous Submissions (Technical or Financial as applicable) which have been submitted by the Proponent.
- (c) If a Proponent wishes to amend or replace a Submission after the applicable Submission Deadline as a result of any request from WDBA made pursuant to Section 7.6(a)(iii) (*Reference Checks, Verifications, Clarifications and Meetings*) then the applicable provisions of Section 6.11(b) shall apply.
- (d) Sections 6.11(a) and 6.11(b) do not apply to:
  - (i) any amendments to a Financial Offer after the Financial Submission Deadline made in accordance with Schedule 11 [*Financial Offer Adjustments*]; or
  - (ii) any amendments to the DB Schedule made after the Technical Submission and prior to the Financial Submission Date.

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### 6.12 Proposal Irrevocability

Except for the Proponent's right to withdraw a Technical Submission before the Technical Submission Deadline, its Proposal including all prices and input costs (with the exception of permitted adjustments as set forth in Schedule 11 [*Financial Offer Adjustments*] shall remain fixed and irrevocable and shall remain in effect and open for acceptance for 165 days after the Financial Submission Deadline (the "**Proposal Validity Period**") or until Financial Close, whichever occurs first.

### 6.13 Extension of Proposal Validity Period

- (a) If WDBA determines that the Proposal Validity Period will expire prior to the Financial Close Target Date, it may request that those Proponents whose Proposals are still under consideration in the RFP Process, extend the expiry of the Proposal Validity Period to a date specified by WDBA. WDBA may make such request to extend the Proposal Validity Period after the Preferred Proponent has already been identified.
- (b) A Proponent may, in its discretion, refuse to extend the Proposal Validity Period. Notwithstanding a Proponent's refusal to extend the Proposal Validity Period, that Proponent's Proposal shall continue to be valid in accordance with the original Proposal Validity Period.
- (c) If WDBA determines that it will be unable to select the Preferred Proponent or reach Financial Close with a Preferred Proponent, prior to the expiration of the original Proposal Validity Period and one or more Proponents refuse to extend the Proposal Validity Period, WDBA may:
  - (i) discontinue the evaluation or consideration of any Proponent who refuses WDBA's request to extend the Proposal Validity Period; or
  - (ii) discontinue finalization of a Project Agreement with a Preferred Proponent if the Preferred Proponent has refused WDBA's request to extend the Proposal Validity Period and Disqualify such Preferred Proponent; and
  - (iii) continue the RFP Process with only those Proponents that have agreed to an extension of the Proposal Validity Period.
- (d) If none of the Proponents agrees to WDBA's request to extend the Proposal Validity Period, WDBA may exercise one or more of its rights under Section 10.2 (*Rights of WDBA*).
- (e) If a Proponent agrees to an extension of the Proposal Validity Period, all prices and input costs (except senior debt margins) in a Proposal may not be adjusted unless the Proponent provides notice to WDBA of any proposed adjustment and demonstrates to the satisfaction of WDBA that the Proponent has used its best efforts to continue to maintain the prices and input costs firm and valid, but that despite such best efforts, the specified adjustments to the prices and input costs are required solely as a direct result of one or more events that:
  - (i) are external to the Proponent and the Proponent Team Members;
  - (ii) could not have been prevented by, and are beyond the control of, the Proponent and any of its Proponent Team Members, and

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- (iii) constitute a material adverse change to the conditions underlying the prices and input costs that are subject to the adjustment.
- (f) A Proponent may indicate in its Financial Submission, a Proposal Validity Period that exceeds 165 days.

#### 6.14 Ownership and Use of Proposal and Proposal Information

- (a) All Proposals and Submissions submitted on or before the applicable Submission Deadline to WDBA and which are not returned to the Proponent pursuant to Section 6.10(c) (*Withdrawal from RFP Process/Disqualification*) (including all specifications, drawings, documentation, plans and information provided in or in connection with a Proposal) become the property of WDBA and will be received and held in confidence by WDBA as to other Proponents during the Competitive Selection Process, subject to (i) the provisions of this Section 6.14 and Section 6.15 (*Intellectual Property Rights and Licence*), (ii) disclosure by WDBA to its Representatives and to each other WDBA Party and their respective Representatives, (iii) the provisions of ATI/FOI Legislation and (iv) the provisions of Section 1.11(d) (*Media Releases, Public Disclosures and Public Announcements*) of this RFP.
- (b) Notwithstanding anything contained in this RFP and without limitation of its rights under Section 6.15 (*Intellectual Property Rights and Licence*), WDBA and each WDBA Party may use the information, concepts, ideas, suggestions and directions contained in the Proposal and in any communication whatsoever surrounding the Proposal provided by the Proponent, Proponent Team Members or their Representatives, including use of portions of the Proposal or of ideas, information, enhancements and specifications, drawings, documentation, plans and designs contained in the Proposal, without payment to the Proponent, any Proponent Team Member or any Representative or Affiliate of any of them, but solely in connection with the Project and the Project Work. The confidentiality obligation set out in Section 6.14(a) shall in no way limit or interfere with the rights of a WDBA or a WDBA Party under this Section 6.14(b).
- (c) Proponents and Proponent Team Members 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 including moral rights unless Proponents and/or Proponent Team Members have, or will procure through licensing without cost to WDBA, the right to (i) use and employ such concepts, products and processes in and for the Project and (ii) sublicense such concepts products and processes to WDBA and/or each WDBA Party pursuant to Section 6.15 (*Intellectual Property Rights and Licence*). Each Proponent shall indemnify and hold harmless WDBA and each WDBA Party against all Claims and Losses suffered or incurred by them as a result of any breach by the Proponent or any Proponent Team Member of this Section 6.14(c).

#### 6.15 Intellectual Property Rights and Licence

- (a) For the purpose of this Section 6.15, “**Proposal Information**” includes:
  - (i) all information and Intellectual Property Rights contained in a Proposal or which is disclosed by or through a Proponent or a Proponent Team Member to WDBA or a WDBA Party during the Competitive Selection Process;
  - (ii) any and all Intellectual Property, ideas, concepts, products, alternatives, processes, recommendations and suggestions developed by, for or through a Proponent or a Proponent Team Member and revealed to or used by WDBA,

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including any and all of those which may be connected in any way to the preparation, submission, review or negotiation of any Proposal or the Project Agreement; and

- (iii) any and all improvements, derivative works, or discoveries by WDBA or a WDBA Party relating to such ideas, concepts, products, alternatives, processes, recommendations and suggestions identified in Section 6.15(a)(i) and Section 6.15(a)(ii) (collectively "**Improvements**").
- (b) By participating in the RFP Process, the Proponent and all Proponent Team Members grant to WDBA and each WDBA Party a non-exclusive, perpetual, irrevocable, worldwide, fully-paid, royalty-free, transferable licence (fully assignable and sub-licensable without the consent of or payment to the Proponent or any Proponent Team Member) to use, execute, reproduce, practice, manufacture, display, copy, perform, distribute, disclose, modify, and create derivative works from any and all (i) Proposal Information, (ii) Intellectual Property and Intellectual Property Rights created, brought into existence, licensed or acquired by the Proponent or any Proponent Team Member which have been developed in whole or in part for the purposes of the Project, and (iii) Intellectual Property and Intellectual Property Rights brought into existence, licensed or acquired by the Proponent which have not been developed exclusively for the purposes of the Project but have been included in or are necessary to give effect to its Proposal, the Project Agreement, or the Project including (subject to Section 6.15(c)) the Tolling System IP (collectively the "**Project Proposal IP**"), solely for (i) use in the Project and (ii) the carrying out of any statutory or public duties or functions with respect to the Project. The rights granted by this Section 6.14(b) include the right to modify the Project Proposal IP ("**Modifications**"). All rights, title and interest in Modifications and Improvements vest in WDBA and each WDBA Party immediately upon creation. Such Modifications and Improvements shall not be used, executed, reproduced, practiced, manufactured, displayed, copied, performed, distributed, disclosed, modified, or retained by Proponent or any Proponent Team Members, or their respective Affiliates or Representatives, without the express written consent of WDBA.
- (c) The source code for the Tolling System IP shall not be subject to such license but the rights of WDBA to have the benefit of such software code, shall be protected pursuant to an industry standard source code escrow agreement delivered by Project Co at Financial Close.
- (d) If any Project Proposal IP is or becomes vested in any third party, then on or before the Technical Submission Deadline, the Proponent will either (at the Proponent's expense and free of charge to WDBA) obtain a licence from any such third party that permits compliance with this Section 6.15 or arrange for any such third party to convey directly to WDBA and each WDBA Party the same rights by documentation in form and substance acceptable to WDBA.
- (e) The licence granted under this Section 6.15 does not extend to Third Party Intellectual Property Rights to non-specialized third-party technology and software that are generally commercially available.
- (f) The rights granted under Section 6.14(b) (*Ownership and Use of Proposal and Proposal Information*) and this Section 6.15 shall be effective on submission or disclosure of any Project Proposal IP to WDBA, any WDBA Party or any of their respective Representatives.

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- (g) The Proponent shall indemnify, defend and hold WDBA harmless each WDBA Party and their respective Representatives from and against any and all Claims and Losses suffered, sustained or incurred by them as a result of WDBA or a WDBA Party's use and, where applicable, ownership of, the Proposal and the Project Proposal IP in accordance with the terms of this Section 6.15, including from and against allegations of or findings of infringement or misappropriation of Intellectual Property Rights of other Persons.

## 7. EVALUATION

### 7.1 Evaluation Committee

WDBA will establish an evaluation committee (the "**Evaluation Committee**") to evaluate the Technical Submission and the Financial Submission and the overall Proposal. WDBA will determine the size, structure and composition of the Evaluation Committee. The Fairness Monitor will be present as necessary. WDBA may appoint one or more evaluation teams to review each Submission and to present their findings to the Evaluation Committee. The Evaluation Committee and the evaluation teams may be assisted by such other Persons as the Evaluation Committee may decide it requires, including technical, financial, legal and other advisors and employees of WDBA, Canada or any other WDBA Party, or external expertise. The Submissions will be evaluated on the evaluation criteria set out in Schedule 6 [*Technical Submission*] and Schedule 12 [*Financial Submission*] and any other requirements of this RFP including those set forth in this Section 7 (collectively "**Evaluation Criteria**"). A summary of the items to be evaluated, the Evaluation Criteria to be applied and the available points for each such item is set out in such Schedules. The items set out in Section 2(c) of Schedule B of the Crossing Agreement are reflected in the Evaluation Criteria.

### 7.2 Evaluation Process

WDBA will not open Submissions in public. The Technical Submission will be evaluated as set out in Section 7.4 (*Evaluation of Technical Submissions*) and the Financial Submission will be evaluated as set out in Section 7.5 (*Evaluation of Financial Submissions*). WDBA will not evaluate a Submission of any Proponent who has been Disqualified or any Submission which is not substantially complete or which is non-compliant as determined pursuant to Section 7.3 (*Evaluation of Submissions For Substantial Completeness*).

### 7.3 Evaluation of Submissions For Substantial Completeness

The first step in the evaluation of a Submission is a review by the Evaluation Committee to determine whether the Submission is substantially complete and in compliance with the terms of this RFP without material deviation. The "substantial completeness" review will assess whether the required information and forms have been substantially provided in the Submission. A "material deviation" from the requirements of this RFP would be a term or provision of a Submission which (i) impedes in a material way WDBA's ability to evaluate the Submission (ii) affects WDBA's ability to enforce any agreement of the Proponent or a Proponent Team Member contained in an RFP Document (iii) materially alters a right or obligation of the Proponent, a Proponent Team Member, WDBA or a WDBA Party under this RFP or the Project Agreement or (iv) affects in a substantial way, the scope, quality or performance of what is being requested by this RFP. If WDBA determines that a Submission is not substantially complete or is not compliant, it may not give any further consideration to the Submission and Disqualify the Proponent. Prior to making any final decision as to substantial completeness or non-compliance, WDBA may notify a Proponent of any deficiency in its Submission which could lead to a decision that such Submission fails the substantial completeness test or the compliance test and give the Proponent the opportunity to correct any such deficiency as provided in Section 7.6 (*Reference Checks, Verifications, Clarifications and Meetings*).

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#### 7.4 Evaluation of Technical Submissions

The Evaluation Committee will then evaluate each Technical Submission to determine whether the Technical Submission demonstrates that it meets the following technical criteria (the “**Technical Evaluation Criteria**”):

- (a) the Technical Submission complies with the mandatory technical requirements set out in Schedule 6 [*Technical Submission*] (the “**Mandatory Technical Requirements**”); and
- (b) the Technical Submission achieves the minimum score for rated technical evaluation criteria as set out in such Schedule 6 (the “**Rated Technical Evaluation Criteria**”) which consist of criteria for Project Capability (as that term is defined in such Schedule 6).

Any Proponent which submits a Technical Submission that the Evaluation Committee determines did not satisfy the Mandatory Technical Requirements will be Disqualified. If the Proponent’s Technical Submission satisfies the Mandatory Technical Requirements, then it will be scored in accordance with Section [REDACTED].

#### 7.5 Evaluation of Financial Submissions

- (a) The Evaluation Committee will then evaluate each Financial Submission to determine whether the Financial Submission demonstrates that it meets the following financial criteria (the “**Financial Evaluation Criteria**”):
  - (i) the Financial Submission complies with the mandatory financial requirements as set out in Schedule 12 [*Financial Submission*] (the “**Mandatory Financial Requirements**”); and
  - (ii) the Financial Submission achieves a pass for rated financial evaluation criteria as set out in such Schedule 12 (the “**Rated Financial Evaluation Criteria**”).
- (b) The Evaluation Committee will conduct an Affordability Review of the Financial Offers in accordance with Section 11.5 of Schedule 12 [*Financial Submission*].
- (c) Any Proponent which submits a Financial Submission that the Evaluation Committee determines (i) did not satisfy the Mandatory Financial Requirements or (ii) failed a pass/fail Rated Financial Evaluation Criterion will, following announcement of the selection of the Preferred Proponent, be advised that its Proposal was not considered in the selection of the Preferred Proponent. If the Proponent’s Financial Submission satisfies the Financial Evaluation Criteria, the Evaluation Committee will then calculate the Financial Offer evaluation score in accordance with Section [REDACTED] and Section 11.6 of Schedule 12 [*Financial Submission*].
- (d) If none of the Financial Offers received by WDBA is within the Affordability Thresholds, WDBA may exercise its rights under this RFP including Section 10.1 (*No Obligation to Proceed*) or Section 10.2 (*Rights of WDBA*).

#### 7.6 Reference Checks, Verifications, Clarifications and Meetings

- (a) WDBA may take any one or more of the following steps, at any time and from time to time, in connection with the review and evaluation, including ranking, of any aspect of a Proposal, including if WDBA considers that any Proposal, including the Technical Submission or the Financial Submission, or any part of a Proposal, requires clarification or more complete information, contains defects, ambiguities, alterations, qualifications,

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omissions, inaccuracies or misstatements, or does not for any reason whatsoever satisfy WDBA that the Proposal meets any requirements of this RFP at any time, or for any other reason WDBA deems appropriate and in the interests of WDBA and this RFP:

- (i) waive any such defect, ambiguity, alteration, qualification, omission, inaccuracy, misstatement or failure to satisfy and any resulting ineligibility on the part of the Proponent or any Proponent Team Member;
  - (ii) request interviews or presentations with WDBA during the evaluation process with any, all or none of the Proponents to clarify any questions or considerations based on the information included in Proposals and to set the time, location, length and agenda for such interviews or presentations;
  - (iii) seek verification, clarification, acknowledgement or confirmation from the Proponent on any aspect of a Submission, a Proposal, the Proponent or any Proponent Team Member or otherwise require or invite the Proponent to submit more complete, supplementary, replacement or additional information or documentation in connection with any Proposal, including with any Technical Submission or Financial Submission or any part thereof for the purpose of clarifying or verifying any aspect of a Submission or Proposal and rely on and consider the information provided or not provided, in its evaluation of Proposals;
  - (iv) conduct reference checks with respect to a Proponent, including all Proponent Team Members and their respective Representatives and Key Individuals, and conduct background investigations relating thereto as WDBA may consider necessary, including credit, criminal record, litigation, bankruptcy, taxpayer information and with respect to compliance with the Integrity Provisions, and rely on and consider any relevant information from such references and background investigations in the evaluation of Proposals; and
  - (v) request specific information and documentation (including draft or executed agreements) with respect to (i) the legal status of a Proponent or a Proponent Team Member, including a copy of any licence, permit, registration, certificate, declaration, filing or other authorization which would be required by Project Co or a Proponent Team Member in order for them to fulfil their obligations under the Project Documents and any subcontract, and (ii) the contractual relationships between and among the Proponent Team Members regarding Project Co, the Project, and the funding and insurance arrangements in respect of Project Co and the Project Work.
- (b) Proponents may not submit any clarifications, information or documentation in respect of the Technical Submission after the Technical Submission Deadline and in respect of the Financial Submission after the Financial Submission Deadline, without the prior approval of WDBA or without an invitation or request by WDBA.
  - (c) With respect to any step referred to in this Section 7.6, WDBA may enter into separate and confidential communications of any kind whatsoever, with any Person, including any Proponent or Proponent Team Member. WDBA has no obligation whatsoever to take the same action, or to enter into the same or any communications in respect of all Proponents and Proposals, or in respect of any Proponent.
  - (d) The Evaluation Committee may rely on, take into account and include any information and documentation, including any clarification, more complete, supplementary and additional or replacement information or documentation, including information and documentation obtained through any of the investigations, research, analyses, checks,

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and verifications listed in this Section 7.6, in its evaluation and ranking of Proposals. If any information, including information as to experience or capacity, contained in a Proposal is not verified to WDBA's satisfaction, WDBA may not consider such cited experience, capacity or other information.

- (e) WDBA is not bound by industry custom or practice in taking any action referred to in this Section 7.6, in exercising any of its discretions, in formulating its opinions and considerations, in making any decisions and determinations, or in discharging its functions under or in connection with this RFP, or in connection with any Proponent, Proposal, or any part of any Proposal, including any Technical Submission or Financial Submission.
- (f) As part of the evaluation of a Proposal, WDBA may identify that WDBA is not satisfied that the Proposal meets one or more requirements of the Definitive Project Agreement. WDBA may, but is not required to, reject that Proposal in accordance with the terms of this RFP. If WDBA does not reject the Proposal, WDBA may provide to the Proponent notice (which may be in one list or in multiple notices) of the items that WDBA is not satisfied meet the requirements of the Definitive Project Agreement. The Proponent shall, if selected as Preferred Proponent, be required to comply with the requirements of the Definitive Project Agreement, including by rectifying any non-compliances (material or otherwise) in its Proposal. By submitting its Financial Submission, a Proponent that has received such notices of non-compliance will be deemed to have agreed to comply with the requirements of the Definitive Project Agreement, including by rectifying any non-compliances (material or otherwise) in its Proposal.
- (g) WDBA may consider in the evaluation of the Proposals or in the exercise of any of WDBA's rights under this RFP:
  - (i) any Dispute between WDBA or a WDBA Party involving a Proponent or Proponent Team Member which is ongoing, or which was ongoing within the past 5 years;
  - (ii) any instances of poor performance of a Proponent or Proponent Team Member, or any other unfavourable experiences with any of them, that WDBA or a WDBA Party has experienced; and
  - (iii) any publicly available information about a Proponent or a Proponent Team Member.
- (h) WDBA is not responsible for identifying all areas in which a Technical Submission does not meet the requirements of the Definitive Project Agreement. Irrespective of whether WDBA has identified or has failed to identify any such areas (including whether WDBA has provided notice or not), a Proponent is not relieved in any way from meeting the requirements of this RFP, and if selected as Preferred Proponent will not be relieved from meeting all requirements of the Definitive Project Agreement, including by rectifying any non-compliances (material or otherwise) in its Proposal.
- (i) WDBA does not intend to request or permit rectification of insufficiency or shortfall that fundamentally changes any or all aspects of a Proposal.
- (j) WDBA's receipt or acceptance of additional information or documentation from a Proponent as contemplated in this Section 7.6 shall in no way limit the extent of Project Co's obligations as set out in the Project Agreement. WDBA reserves the right to impose upon Project Co the provision contained in the Proposal or the Project Agreement that is more advantageous to WDBA, as determined by WDBA.

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## 7.7 Disqualification

WDBA may Disqualify a Proponent, a Proponent Team Member, or a Proposal or reverse its decision to make an award (even if the award has already been made to a Preferred Proponent under this RFP) at any time prior to Financial Close if:

- (a) WDBA determines that the Proposal is substantially incomplete or non-compliant pursuant to Section 7.3 (*Evaluation of Submissions For Substantial Completeness*);
- (b) the Proposal fails to meet the Mandatory Technical Requirements or the Mandatory Financial Requirements;
- (c) WDBA determines that the Proponent or any Proponent Team Member is ineligible, suspended or barred from bidding on any contract with Canada, the United States or Michigan by the Integrity Provisions;
- (d) the Proponent or a Prime Team Member of such Proponent is bankrupt or its activities are rendered inoperable for an extended period for any reason;
- (e) the Proponent or a Prime Team Member has suffered a material adverse change which cannot in the opinion of WDBA be mitigated and which renders the Proponent unable or unlikely to achieve Financial Close or perform the Project Work;
- (f) evidence, satisfactory to WDBA, of fraud, bribery, fraudulent misrepresentation or failure to comply with any Applicable Law (including any Applicable Law protecting individuals against any manner of discrimination), has been received with respect to the Proponent, a Proponent Team Member or any of their respective Representatives;
- (g) evidence satisfactory to WDBA that based on past conduct or behavior, the Proponent or any Proponent Team Member is unsuitable or has conducted itself improperly;
- (h) the Proponent or a Proponent Team Member fails to cooperate in any attempt by WDBA to verify any information provided by the Proponent or a Proponent Team Member in the Proponent's Proposal, an RFP Document or interview;
- (i) the Proponent contravenes Section 9.4 (*Use or Inclusion of Ineligible Parties*) or Section 10.8 (*No Lobbying*);
- (j) the Proposal contains false or misleading information or a misrepresentation;
- (k) the Proponent or a Proponent Team Member is subject to a material Conflict of Interest as described in Section 9.1 (*Conflicts of Interest*) and the Proponent:
  - (i) does not receive a waiver from WDBA in accordance with Section 9.2(a) (*WDBA's Rights Re Conflict of Interest*); or
  - (ii) fails to substitute the Person giving rise to the Conflict of Interest in accordance with Section 9.2(c) (*WDBA's Rights Re Conflict of Interest*);
- (l) the Proponent or a Proponent Team Member or any of their respective Representatives directly or indirectly colluded with one or more other Proponents or its Proponent Team Members or any of their respective Representatives in the preparation or submission of a Proponent's Proposal or otherwise contravened Section 10.10 (*No Collusion*);

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- (m) the Proponent or a Proponent Team Member has committed a material breach of any existing agreement between the Proponent or Proponent Team Member and WDBA or a WDBA Party;
- (n) there are any convictions related to inappropriate bidding practices or unethical behaviour by a Proponent or a Proponent Team Member or any of their Affiliates in relation to a public or broader public sector tender or procurement in Canada or the United States;
- (o) with respect to current or prior transactions with WDBA or a WDBA Party:
  - (i) WDBA or such WDBA Party has exercised, or intends to exercise, the contractual remedy of taking work away from the Proponent or a Proponent Team Member pursuant to any contract previously entered into with WDBA or such WDBA Party; or
  - (ii) WDBA determines that the Proponent's or a Proponent Team Member's performance on other contracts with WDBA or a WDBA Party is sufficiently poor to jeopardize the successful completion of the Project Work; or
- (p) WDBA determines, acting reasonably, that there are good reasons for doing so.

## 7.8 [REDACTED]

## 7.9 Evaluation Decisions Final and Binding

A Proponent shall have no right to contest any evaluation of a Submission made by the Evaluation Committee. WDBA's decisions with respect to (i) the evaluation of a Proponent's Proposal by the Evaluation Committee, and (ii) the matters contemplated in Section 7.7 (*Disqualification*), are final and binding. WDBA is not required to consult the relevant Proponent prior to making any such decision.

## 8. SELECTION OF PREFERRED PROPONENT AND AWARD

### 8.1 Selection of Preferred Proponent and Approval by International Authority

Subject to Section [REDACTED], if WDBA determines to select a referred Proponent, the Proponent whose Proposal receives the highest ranking score pursuant to Section [REDACTED] will be selected as the referred Proponent and its Proposal will be presented to the International Authority for approval as required by and in accordance with the terms of Article VI Section 5 Part III of the Crossing Agreement.

### 8.2 Selection and Award

If WDBA selects a Proponent as the Preferred Proponent and if such Proponent's Proposal has received the approval of the International Authority and any other necessary approvals, then WDBA shall notify such Proponent that it is the Preferred Proponent. In such notification, WDBA will invite the Preferred Proponent to enter into final discussions to settle all terms of the Project Agreement, based on the Preferred Proponent's Proposal, including any clarifications and supplementary information that the Preferred Proponent may have provided during the evaluation of Proposals.

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

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- (a) terminating the Competitive Selection Process entirely and proceeding with some or all of the Project in some other manner, including using other contractors; or
- (b) inviting one of the other Proponents (commencing with the Proponent whose Proposal received the next highest ranking score) to enter into discussions to reach final agreements for completing the Project.

### 8.3 Final Agreements

- (a) It is the intention of WDBA that:
  - (i) any issues with respect to the Project Co Early Work Agreement will be discussed during the Commercially Confidential Meetings and fully settled prior to the Technical Submission Deadline; and
  - (ii) the provisions of Section 8.3(c) shall apply to the Project Co Early Work Agreement with the necessary alterations, with the relevant date being the Technical Submission Deadline.

By submitting a Proposal, each Proponent agrees that if it is selected as the Preferred Proponent, it shall execute and deliver the Project Co Early Work Agreement within 5 days after the date of such selection.

- (b) It is the intention of WDBA that:
  - (i) any issues with respect to the Initial Draft Project Agreement will be discussed during the Commercially Confidential Meetings and fully settled prior to issuance of the Definitive Project Agreement; and
  - (ii) the Definitive Project Agreement will be issued as an Addendum to this RFP prior to the Technical Submission Deadline.
- (c) No substantive amendments to the Definitive Project Agreement will be permitted after the Financial Submission Deadline and prior to execution by the Preferred Proponent, except for changes, modifications and additions:
  - (i) relating to the determination by WDBA of which parts, if any, of the Proposal are to be incorporated by reference or otherwise, into the Project Agreement or otherwise pursuant to the express provisions of the Project Agreement; or
  - (ii) to those provisions or parts of the Definitive Project Agreement that are indicated as being subject to completion or finalization, or which WDBA determines require completion or finalization, including provisions that require:
  - (iii) modification or the insertion or addition of information relating to Project Co's formation (e.g. corporation, partnership or limited partnership) and funding structure; and
  - (iv) modification or the insertion or addition of information in order to reflect accurately the nature of Project Co's relationships with its Prime Team Members;
  - (v) required to reflect Project Co's funding structure and insurance arrangements in respect of the Project Work;

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- (vi) required by WDBA to complete, based on the Proposal, any provision of the Definitive Project Agreement, including changes, modifications and additions contemplated in or required under the terms of the Definitive Project Agreement;
- (vii) that are necessary to create or provide for a legally complete, enforceable and binding agreement; or
- (viii) that enhance clarity in legal drafting,

provided that in each case, the changes, additions or modifications described in this Section 8.3(c) are considered by WDBA to be consistent with the principles set out in the Definitive Project Agreement and are acceptable to WDBA and the Preferred Proponent. WDBA also reserves the right to negotiate changes to the Preferred Proponent's Proposal and to the Definitive Project Agreement before presentation thereof (the "**Substantially Final Agreement**") to the International Authority for approval. Prior to Financial Close, the Substantially Final Agreement must be approved by the International Authority as required by the terms of the Crossing Agreement.

#### 8.4 Preferred Proponent Security Deposit

- (a) WDBA will require the Preferred Proponent to deliver to WDBA an irrevocable letter of credit in the amount of, or multiple letters of credit (each in an amount of not less than **[\$REDACTED]** aggregating, **[\$REDACTED]** (the "**Preferred Proponent Security Deposit**") on or before the date and time specified by WDBA, such date not to be earlier than 5 Business Days after notification of the selection of the Preferred Proponent pursuant to Section 8.2 (*Selection and Award*). On receipt of the Preferred Proponent Security Deposit, the Bid Security Deposit of the Preferred Proponent shall be returned by WDBA to the Preferred Proponent.
- (b) The Preferred Proponent Security Deposit should (i) be issued in an Official Language of Canada, (ii) be valid for a period of 12 months as of its date of issuance, (iii) comply with the Treasury Board of Canada's Policy on the Use of Standby Letters of Credit as an Alternative to Bid or Contract Security for Federal Government Contracts; (iv) reflect the content of the form set out in Schedule 19 [*Form of Letter of Credit for Preferred Proponent Security Deposit*]; and (v) be otherwise acceptable to WDBA.
- (c) If for any reason the Preferred Proponent fails or refuses to deliver the Preferred Proponent Security Deposit on or before the date and time specified by WDBA, then WDBA may, by notice to the Proponent, terminate the Proponent's selection as Preferred Proponent, cease all discussions with the Preferred Proponent and terminate any obligations of WDBA to the Preferred Proponent under any agreement or understanding relating to the Project. In such event the Preferred Proponent will not be entitled to or receive any payment or compensation of any kind relating to the Project and will forfeit its Bid Security Deposit to WDBA as provided in its Proponent Financial Submission Agreement.

#### 8.5 Return of Preferred Proponent Security Deposit

Subject to Section 8.6 (*Forfeiture of Preferred Proponent Security Deposit*), WDBA will return the Preferred Proponent Security Deposit to the Preferred Proponent within the earlier of:

- (a) 10 Business Days after receipt by WDBA of notice of demand from the Preferred Proponent, if:

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- (i) WDBA exercises its right under Section 10.2 (*Rights of WDBA*) to terminate the Competitive Selection Process prior to entering into the Project Agreement for reasons unrelated to the Preferred Proponent or any Team Member of the Preferred Proponent;
  - (ii) WDBA Disqualifies the Preferred Proponent pursuant to Section 6.13(c); or
  - (iii) WDBA does not execute and deliver within the Proposal Validity Period (i) an agreement substantially in the form of the Definitive Project Agreement finalized by WDBA in accordance with Section 8.3 (*Final Project Agreement*) or (ii) the agreements listed on Section 2.2(a) to (g) inclusive of Schedule 2 [*Closing Deliveries and Ownership Information*] to the Project Agreement, substantially in the form attached to such finalized Project Agreement, provided that such inaction by WDBA is not the result of the Preferred Proponent not being able to satisfy or comply with any term or provision set out in the Project Agreement or any such other agreement; and
- (b) 2 Business Days after Financial Close with such Preferred Proponent.

## 8.6 Forfeiture of Preferred Proponent Security Deposit

- (a) If any of the following events or circumstances occur:
- (i) the Preferred Proponent withdraws or is deemed to have withdrawn from the RFP Process;
  - (ii) the Preferred Proponent or any Preferred Proponent Team Member is Disqualified or is in material breach of any term of this RFP, its RFP Participation Agreement, its Proponent Technical Submission Agreement, its Team Member Technical Submission Agreement, its Proponent Financial Submission Agreement or its Team Member Financial Submission Agreement; or
  - (iii) after receipt of written notice from WDBA:
    - (A) the Preferred Proponent fails to cause its Project Co to execute and deliver an agreement substantially in the form of the Definitive Project Agreement finalized by WDBA in accordance with Section 8.3 (*Final Project Agreement*); or
    - (B) the Preferred Proponent fails to cause its Project Co or any Proponent Team Member to execute and deliver any document or agreement set out in Section 2.1 of Schedule 2 [*Closing Deliveries and Ownership Information*] to the Project Agreement, to which Project Co or such Proponent Team Member is to be a party,

unless such failure resulted from the refusal of WDBA without cause or legal right, to execute and deliver the Project Agreement or any agreement referred to in Section 2.2(a) to (g) inclusive of Schedule 2 [*Closing Deliveries and Ownership Information*] to the Project Agreement; or
  - (iv) Financial Close fails to occur within the Proposal Validity Period unless:
    - (A) any such failure was the result of an event which could not have been reasonably prevented by, or was beyond the reasonable control of, the Preferred Proponent including Severe Market Disruption but not as a

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result of the failure of its Finance Prime Team Members to provide financing for any other reason; or

- (B) the Preferred Proponent demonstrates to WDBA's satisfaction, acting reasonably, that the occurrence of such event would constitute a Force Majeure Event for a continuous period of 90 days if the Project Agreement was in force and effect as of the date of expiry of the Proposal Validity Period,

then WDBA will be entitled to draw on the Preferred Proponent Security Deposit, in full or in part and retain the proceeds thereof as liquidated damages. The Preferred Proponent agrees that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that WDBA will suffer as a result of such event or circumstance. Such payment shall constitute full and final settlement of any and all damages that may be claimed by WDBA as a result of the occurrence of such event or circumstance. Such liquidated damages shall be payable whether or not WDBA mitigates its damages. WDBA has no obligation to mitigate its damages.

- (b) If the Preferred Proponent notifies the Contact Person in writing that the Preferred Proponent disputes WDBA's right to draw on the letter of credit and to retain the proceeds as liquidated damages, WDBA shall nonetheless be entitled to draw on the letter of credit, but will remain liable to repay all or a portion of the amount drawn, together with interest charges at the rate prescribed on that amount, until such dispute has been finally resolved. If the Preferred Proponent fails to renew or extend the letter of credit at least 30 days prior to its expiry date, WDBA may, at any time without notice to the Preferred Proponent, draw on the letter of credit and hold the proceeds thereof in the same manner and for the same purposes as the letter of credit.

## 8.7 Progress to Financial Close

- (a) Following selection of the Preferred Proponent, the Preferred Proponent shall proceed diligently to achieve Financial Close by the Financial Close Target Date.
- (b) The Preferred Proponent shall not later than 5 days after receipt of notice from WDBA that it has been selected as the Preferred Proponent, deliver to the Contact Person a timetable setting out its schedule for achieving Financial Close, including:
- (i) delivery of documentation and agreements required to achieve Financial Close;
  - (ii) receipt of final ratings from rating agencies (if applicable); and
  - (iii) final pricing of the financing for review and approval by WDBA.
- (c) WDBA may elect to shorten or extend one or more of the dates identified in such timetable. WDBA may request that the Preferred Proponent include additional information and milestones in the timetable, including milestone dates for the delivery and approval by WDBA of draft and final versions of any agreement, certificate or other document which is, pursuant to the Project Agreement or in the opinion of WDBA, required to achieve Financial Close, including:
- (i) documentation regarding the corporate, organizational and funding structure of Project Co together with confirmation of compliance with the Security Requirements by Project Co and the Proponent Team Members with respect to the Project and any documentation related thereto;

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- (ii) the closing deliveries set out in Section 2.1 of Schedule 2 [*Closing Deliveries and Ownership Information*] of the Project Agreement; and
  - (iii) each agreement or undertaking to which Project Co is to be a party as specified by the Project Agreement.
- (d) The Preferred Proponent will cooperate with WDBA to settle a Substantially Final Agreement as soon as practicable so that it can be presented to the International Authority for approval in accordance with the terms of Article VI Section 5 Part IV of the Crossing Agreement.
- (e) Between selection as Preferred Proponent and Financial Close, the Preferred Proponent should communicate regularly with WDBA with respect to progress towards Financial Close forthwith upon request by WDBA and in any event at least weekly including as provided in Schedule 11 [*Financial Offer Adjustments*]. The Preferred Proponent shall maintain all of the prices set out in its Proposal to Financial Close, subject only to changes permitted by Schedule 11 [*Financial Offer Adjustments*].

### 8.8 Pre-Conditions of WDBA

WDBA has obtained funding and policy approval to proceed with the procurement of the Project pursuant to the Competitive Selection Process. However the entering into the Project Agreement by WDBA is conditional upon and subject to WDBA obtaining the following approvals or reports:

- (a) each approval of the International Authority which is required under the terms of the Crossing Agreement;
- (b) the approval of the board of directors of WDBA;
- (c) favourable reports of the Fairness Monitor as required under the terms of the Crossing Agreement;
- (d) any required approvals by the Treasury Board of Canada;
- (e) the designation of WDBA as the 'operator' of the Bridge by the Minister under the *Bridge to Strengthen Trade Act*; and
- (f) any other required authorizations and approvals in connection with the Project, including the approval of any relevant Governmental Authority.

Without limiting the rights of WDBA under this RFP, if any of the foregoing pre-conditions are not met by Financial Close, WDBA may terminate the Competitive Selection Process and proceed in any manner that WDBA may decide, in consideration of its own best interests.

### 8.9 Design and Bid Fee

- (a) Within 10 Business Days following Financial Close, WDBA will pay \$[REDACTED] (the "**Design and Bid Fee**") plus an amount up to an additional \$[REDACTED] for out-of-pocket expenses incurred in connection with their Proposal, and any applicable HST, to each unsuccessful Proponent that:
  - (i) submitted a Proposal that complied with the Mandatory Requirements and achieved the minimum overall rated score required for its Technical Submission out of the maximum total rated score allocated to the Rated Technical Evaluation

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- Criteria, as set forth in Schedule 6 [Technical Submission Requirements] of the RFP;
- (ii) has not withdrawn or been deemed to have withdrawn from the Competitive Selection Process or been Disqualified by WDBA in accordance with the terms of this RFP;
  - (iii) provides to WDBA:
    - (A) a full and complete release from the Proponent and each Proponent Team Member of all Claims which such Proponent or such Proponent Team Member has or may have against WDBA or a WDBA Party arising out of or related to the Competitive Selection Process;
    - (B) a licence from the Proponent or applicable Proponent Team Member to the Intellectual Property and the Intellectual Property Rights described in Section 6.15 (*Intellectual Property Rights and Licence*) and on the terms and conditions described in such Section; and
  - (iv) with respect to the reimbursement of out-of-pocket expenses, provides to WDBA satisfactory evidence attesting that such expenses were incurred and that they are reasonable.
- (b) A Proponent who (i) withdraws or is deemed to have withdrawn or who is Disqualified from the Competitive Selection Process, solely by reason of its failure to agree to an extension of the Proposal Validity Period and (ii) meets the requirements of Section 8.9(a), shall be entitled to receive a Design and Bid Fee.

#### **8.10 Break Fee**

- (a) If WDBA exercises its right under Section 8.8 (*Pre-Conditions of WDBA*) or Section 10.1 (*No Obligation to Proceed*) to terminate the RFP Process prior to entering into a Project Agreement with a Proponent, it will pay a break fee of up to \$[REDACTED] plus HST ("**Break Fee**"), to each Proponent determined in accordance with this Section 8.10. Such Break Fee plus any applicable HST, shall be payable subject to fulfilment by Proponents of the following conditions:
- (i) if the Project is cancelled prior to submission of Proposals:
    - (A) only a Proponent who has demonstrated, to WDBA's satisfaction, active participation in the RFP Process will be eligible to receive a Break Fee; and
    - (B) WDBA may require a Proponent to substantiate its active participation in the RFP Process in order to receive a Break Fee; and
  - (ii) if the Project is cancelled after submission of Proposals or if a Break Fee is payable for any other reason, a Break Fee will be paid to a Proponent that submitted a Proposal that complied with the Mandatory Technical Requirements and achieved the minimum overall rated score required for its Technical Submission out of the maximum total rated score allocated to the Rated Technical Evaluation Criteria, as set forth in Schedule 6 [*Technical Submission*] of the RFP.

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- (b) The amount of the Break Fee payable to each eligible Proponent will depend on the point in the RFP Process that cancellation occurs, in accordance with the principles set out in this Section 8.10. The timing and percentages are set out in Table 2.

Table 2

Timing of Notification to Proponents of Cancellation	Percentage of Break Fee to be paid to each Proponent
On or after end of 1 <sup>st</sup> month	[REDACTED]%
On or after end of 2 <sup>nd</sup> month	[REDACTED]%
On or after end of 3 <sup>rd</sup> month	[REDACTED]%
On or after end of 4 <sup>th</sup> month	[REDACTED]%
On or after end of 5 <sup>th</sup> month	[REDACTED]%
On or after end of 6 <sup>th</sup> month	[REDACTED]%
On or after end of 7 <sup>th</sup> month	[REDACTED]%
On or after end of 8 <sup>th</sup> month	[REDACTED]%
On or after end of 9 <sup>th</sup> month	[REDACTED]%
On or after end of 10 <sup>th</sup> month	[REDACTED]%
On or after end of 11 <sup>th</sup> month	[REDACTED]%
On or after end of 12 <sup>th</sup> month	[REDACTED]%

- (c) If a Break Fee becomes payable, WDBA shall also reimburse each Proponent for its out-of-pocket expenses incurred based on the timing set out in Table 2, up to a maximum of \$[REDACTED], in the same proportion as the Break Fee is payable, subject to each Proponent providing satisfactory evidence to WDBA attesting that such expenses have been incurred and are reasonable.
- (d) Payment of a Break Fee and any out-of-pocket expenses shall represent full and final satisfaction of any obligation or liability of WDBA and any WDBA Party to the Proponent and Proponent Team Members in connection with the Competitive Selection Process. WDBA's obligation to pay the Break Fee shall be conditional on receipt by WDBA of:
- (i) a full and final release from the Proponent and each Proponent Team Member of all Claims which such Proponent or such Proponent Team Member has or may have against WDBA or a WDBA Party arising out of or related to the Competitive Selection Process; and
  - (ii) a licence from the Proponent or applicable Proponent Team Member to the Intellectual Property and the Intellectual Property Rights described in Section 6.15 (*Intellectual Property Rights and Licence*) and on the terms described in such Section.
- (e) If the Project is cancelled or a Break Fee is payable for any other reason, a Proponent shall (i) only be eligible to receive a Break Fee and out-of-pocket expenses as set out in the Section 8.10, and (ii) will not be eligible to receive a Design and Bid Fee and out-of-pocket expenses relating to the Proponent's participation in the RFP Process as set out in Section 8.9. In no case will a Proponent be entitled to receive both a Break Fee and a Design and Bid Fee.
- (f) If WDBA exercises its right to cancel the Competitive Selection Process after the selection of a Preferred Proponent, the Preferred Proponent must have delivered the Preferred Proponent Security Deposit in accordance with Section 8.4 (*Preferred Proponent Security Deposit*) to be entitled to receive any Break Fee or Design and Bid Fee.

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### 8.11 Disruption in Financial Markets

- (a) If Financial Close with a Preferred Proponent cannot be achieved by the Financial Close Target Date by reason solely of the occurrence of a Severe Market Disruption, the Financial Close Target Date will be extended to the end of the Proposal Validity Period or any extension of the Proposal Validity Period made pursuant to Section 6.13 (*Extension of Proposal Validity Period*) or to such other date as WDBA and the Preferred Proponent agree, acting reasonably.
- (b) If a Severe Market Disruption exists, then at any time before such Severe Market Disruption ceases and prior to the Financial Close Target Date, WDBA may terminate the Competitive Selection Process by notice to the Proponents.
- (c) If WDBA decides to terminate the Competitive Selection Process as a result of a Severe Market Disruption and the Preferred Proponent's Project Co has executed the Project Agreement and such Project Co and the Proponent's Team Members have executed and delivered the Project Documents to which they are a party and such agreements have been delivered into escrow pending Financial Close, then WDBA may at its option, require the Preferred Proponent to assign, or to cause its Project Co to assign, as applicable, to WDBA, Canada or an Affiliate of Canada:
- (i) the Project Agreement;
  - (ii) such of the Project Documents as may be specified by WDBA;
  - (iii) all Permits obtained with respect to the Project, to the extent that they are assignable;
  - (iv) all Project Data,
- and to grant to such assignee a licence to the Project Proposal IP on the terms set forth in Section 6.15 (*Intellectual Property Rights and Licence*).
- (d) If WDBA elects to have such Project Agreement and such Project Documents assigned to WDBA, Canada or an Affiliate of Canada, such assignee will take over the role of Project Co with respect to such agreements.
- (e) If WDBA exercises its rights under Section 8.11(c) and the Preferred Proponent has complied with its obligations under Section 8.11(c), then the Preferred Proponent will be entitled to the return of its Preferred Proponent Security Deposit and WDBA shall pay the Design and Bid Fee to the Preferred Proponent pursuant to Section 8.9 (*Design and Bid Fee*) on and subject to the terms of that Section, but not a Break Fee.

### 8.12 Debriefing

Any unsuccessful Proponent may request a debriefing from WDBA within 20 Business Days after the Financial Close. WDBA is not required to, but may, hold individual and/or group debriefing sessions and otherwise determine the form and format for debriefing unsuccessful Proponents. Any information provided by WDBA in good faith during a debriefing shall not be used by an unsuccessful Proponent or unsuccessful Proponent Team Member against WDBA or a WDBA Party in any way whatsoever, including with respect to making a Claim against any one or more of them. In a debriefing, WDBA will discuss the relative strengths and weaknesses of that Proponent's Proposal, but WDBA will not disclose or discuss any confidential information of another Proponent.

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## 9. CONFLICT OF INTEREST AND INELIGIBLE PERSONS

### 9.1 Conflicts of Interest

- (a) For the purposes of this RFP, the term “**Conflict of Interest**” includes any situation or circumstance where a Proponent, a Proponent Team Member, their respective Representatives and Affiliates and/or a Key Individual, has, could be perceived to have or could possibly acquire:
- (i) contractual or other obligations to WDBA or any WDBA Party that could or could be seen to have been compromised or impaired as a result of its participation in the Competitive Selection Process or the Project;
  - (ii) knowledge or information (other than information disclosed by WDBA in the normal course of the Competitive Selection Process, including as a result of any prior work or services provided to WDBA or any WDBA Party) of strategic and/or material relevance to the Competitive Selection Process or to the Project, that is not available to other Proponents and that could or could be seen to give the Proponent an unfair competitive advantage; or
  - (iii) commitments, relationships, financial interests or involvement in ongoing litigation:
    - (A) that could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of WDBA’s independent judgment;
    - (B) that could or could be seen to compromise, impair, challenge, be in opposition to or be incompatible with the Project or the effective performance of WDBA’s obligations under this RFP or the Project Agreement; or
    - (C) in which WDBA or the International Authority is an adverse party.

Other Disputes relating to any P3 projects or matters involving the procurement and delivery of design, construction, operation, environmental management or maintenance services, including Canada or Michigan, must be disclosed.

In determining Conflict of Interest, WDBA may consider and have regard to relevant codifications in Canada and the United States including, in the United States, 23 CFR 1.33 and 23 CFR 636.116 described in Schedule 40 [*Certain US Requirements*] of the Project Agreement and, in Canada, the Integrity Regime.

- (b) Each Proponent confirms that there has been no change to the information included in its Declaration of Conflict of Interest and Other Matters which was provided by it to WDBA in the RFQ Process and that such information remains true and accurate except as may have been previously notified by such Proponent to the Contact Person in accordance with the terms of the RFQ and this RFP.
- (c) Each Proponent shall:
- (i) use its best efforts to avoid any Conflict of Interest in relation to the Project; and
  - (ii) comply with any requirements prescribed by WDBA to mitigate or resolve any Conflict of Interest which may arise.

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- (d) Throughout the Competitive Selection Process, each Proponent shall and it shall ensure that its Proponent Team Members and their respective Representatives and Affiliates and Key Individuals, promptly disclose to the Contact Person in writing any Conflict of Interest. At the time of such disclosure, the Proponent shall include any information and documentation that demonstrates appropriate measures have been or will be implemented to mitigate, minimize or eliminate the Conflict of Interest. The Proponent shall provide such additional information and documentation and implement such additional measures as WDBA may require in connection with WDBA's consideration of the Conflict of Interest and proposed measures.
- (e) The Proponent acknowledges that individuals who are subject to the provisions of the *Conflict of Interest Act* (SC 2006, c 9, s 2), [Conflict of Interest Code for Members of the House of Commons](#), the [Conflict of Interest Code for Senators](#), the [Values and Ethics Code for the Public Sector](#) or all other codes of values and ethics applicable within specific organizations of Canada cannot derive any direct benefit resulting from the Competitive Selection Process or the Project. No Senator or Member of Parliament of Canada shall be eligible to have any interest whatsoever arising from the Competitive Selection Process, including the RFP. Proponents should refrain from communicating with respect to the Competitive Selection Process, either directly or indirectly, with any Senator or Member of Parliament of Canada, or any of their respective Representatives.
- (f) The experience acquired by a Proponent which is providing or has previously provided WDBA or a WDBA Party with goods and services described in the Proposal (or similar goods or services) will not, in itself, be considered by WDBA as conferring an unfair advantage or creating a conflict of interest.

## 9.2 WDBA's Rights Re Conflict of Interest

- (a) The Proponent acknowledges that WDBA has the right to determine whether a Conflict of Interest exists. The Proponent may apply to WDBA for an advance ruling as to whether a Conflict of Interest exists, in accordance with Section 9.6 (*Request for Advance Rulings*).
- (b) WDBA may waive any and all Conflicts of Interest. A waiver must be in writing and may be upon such terms and conditions as WDBA requires to ensure that the Conflict of Interest has been appropriately managed, mitigated and minimized including requiring the Proponent and/or its Proponent Team Members to put into place such policies, procedures, measures and other safeguards as may be required by and be acceptable to WDBA to manage, mitigate and minimize the impact of such Conflict of Interest.
- (c) WDBA may immediately Disqualify a Proponent or require a Proponent to remove and/or replace a Proponent Team Member and/or Key Individual, if, in each case as determined by WDBA,
  - (i) the Proponent fails to disclose a Conflict of Interest;
  - (ii) the Proponent fails to comply with any requirements prescribed by WDBA to mitigate or resolve a Conflict of Interest; or
  - (iii) the Conflict of Interest issue cannot be mitigated or otherwise resolved.
- (d) The determination of WDBA as to whether a Conflict of Interest exists shall be final and binding.

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### 9.3 Ineligible Person

An ineligible person (“**Ineligible Person**”) is a Person who:

- (a) had, or currently has, participation or involvement in the Competitive Selection Process for WDBA or a WDBA Party; or
- (b) may provide a material unfair advantage or material confidential information to any Proponent who is not, or would not reasonably be expected to be, available to other Proponents (including in relation to the design, planning or implementation of the Project)

and includes (i) each Affiliate of such Person, and any of their respective directors, officers and former and current employees and (ii) each of the Ineligible Person’s subcontractors and Representatives, who meets the criteria set out in clauses (a) and (b) of this Section.

[REDACTED]

### 9.4 Use or Inclusion of Ineligible Persons

Each Proponent is responsible to ensure that neither the Proponent nor any Proponent Team Member, Key Individual nor any of their respective Representatives uses, consults or seeks advice from an Ineligible Person with respect to the Project, or includes an Ineligible Person as a Proponent Team Member. WDBA may Disqualify a Proponent or impose such conditions on the Proponent’s continued participation in the Competitive Selection Process as WDBA may consider as being in the public interest or otherwise appropriate, if the Proponent uses or includes an Ineligible Person in the Proponent’s Team:

- (a) to advise or otherwise assist the Proponent in connection with the Proponent’s participation in the Competitive Selection 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 Proponent Team Member with respect to the Project.

### 9.5 Participation by Affiliates

An Affiliate of an Ineligible Person may be eligible to participate as a Team Member of a Proponent if the Review Committee grants a favourable ruling pursuant to Section 9.6 (*Review Committee/Request for Advance Rulings*). If the Ineligible Person’s Affiliate is determined by the Review Committee to have a Conflict of Interest the impact of which cannot be properly managed, mitigated or minimized, the Ineligible Person’s Affiliate will be added by WDBA to the list of Ineligible Persons set out in Section 9.3 (*Ineligible Parties*) by Addendum.

### 9.6 Review Committee/Request for Advance Rulings

- (a) WDBA has established a relationship review and conflict of interest committee (the “**Review Committee**”) with the mandate of assessing and making recommendations to WDBA regarding the relationship between and among Persons who are involved in the Project, including the Proponents, any Proponent Team Members or any of their respective Representatives or subcontractors during the RFP Process.
- (b) A Proponent or a Proponent Team Member who has any concerns regarding whether a current or prospective Proponent Team Member, Representative of the Proponent or a Proponent Team Member, Affiliate of the Proponent or a Proponent Team Member or a subcontractor or consultant to any of them is or may be an Ineligible Person, has a

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Conflict of Interest or may not be in compliance with any of the Integrity Provisions, is encouraged to request an advance ruling from the Review Committee in accordance with this Section.

- (c) To request an advance ruling of whether a Person is an Ineligible Person, has a Conflict of Interest or is not in compliance with an applicable provision of the Integrity Provisions, a Proponent or prospective Team Member or advisor of that Proponent should submit by email to the Contact Person, the following information:
- (i) names and contact information of the Proponent and the Person for which the advance ruling is requested;
  - (ii) a description of the relationship that raises the possibility or perception of a Conflict of Interest or unfair advantage;
  - (iii) description of the steps taken to date and future steps proposed to be taken to mitigate the Conflict of Interest or unfair advantage; and
  - (iv) copies of any relevant documentation.
- (d) Subject to Section 10.3 (*Access to Information/Freedom of Information Legislation*), all requests for advance rulings will be treated in confidence. If a Proponent, Proponent Team Member or a Representative of either of them becomes an Ineligible Person, becomes subject to a Conflict of Interest or becomes in non-compliance with an applicable provision of the Integrity Provisions, it may be listed in an Addendum as an Ineligible Person. The Review Committee may seek whatever advice it deems necessary to assist in connection with the foregoing and may change any ruling if further or other relevant information becomes known or available to it.
- (e) The onus is on the Proponent to clear any potential Ineligible Person, Conflict of Interest, or non-compliance with an applicable provision of the Integrity Provisions, or to establish any conditions for continued participation, and WDBA may require that the Proponent make an application under this Section.
- (f) The decision of WDBA is final and binding on the Persons requesting the ruling and all other parties including Proponents and Proponent Team Members. WDBA may establish the relevant processes for the Review Committee from time to time, including any circumstances in which a recommendation may be amended or supplemented.
- (g) WDBA may provide any decision made by it pursuant to this Section 9.6 to all Proponents if WDBA determines that the decision is of general application.

## **9.7 Exclusivity**

Except as required by Section 4.8 (*Prohibition on Certain Exclusive Teaming Arrangements*) and Section 4.9 (*Prohibition on Exclusive Teaming Arrangements with Lenders*), (each Proponent will ensure that no Proponent Team Member, or any Affiliate of a Proponent Team Member, participates as a team member of any other Proponent. If a Proponent contravenes the foregoing, WDBA reserves the right to Disqualify the Proponent.

## **10. RFP TERMS AND CONDITIONS**

### **10.1 No Obligation to Proceed**

- (a) The Competitive Selection Process:

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- (i) is not an offer to enter into the Project Agreement with any Proponent or any other Person;
- (ii) does not commit WDBA to select a Preferred Proponent or enter into a Project Agreement; and
- (iii) does not commit WDBA in any way to award a contract or proceed with the Project.

WDBA is entitled at any time to exercise the rights described in Section 10.2 (*Rights of WDBA*) to terminate the Competitive Selection Process and proceed with the Project, in whole or in part, in the same or some other manner, including reissuing the same or a different RFP in relation to the Project.

- (b) Except for the payments set out in Section 8.9 (*Design and Bid Fee*) and Section 8.10 (*Break Fee*) and the requirement in Section 8.5 (*Return of Preferred Proponent Security Deposit*) WDBA has no obligation or duty, in any way, whether in contract, at law or otherwise under this RFP, even if (i) WDBA receives only one Proposal that substantially satisfied the requirements of this RFP, (ii) only one Proponent remains to be considered for selection as the Preferred Proponent or (iii) WDBA selects a Preferred Proponent, to proceed with the Competitive Selection Process or to enter into the Project Agreement or any other agreement relating to all or any part of the Project.

## 10.2 Rights of WDBA

WDBA may at any time, with or without notice:

- (a) reject and not consider a Proposal from a Proponent, or Disqualify any Proponent where:
  - (i) the Proponent or any Proponent Team Member or any of their respective Affiliates or Representatives has been disqualified from a procurement process undertaken by WDBA or a WDBA Party as the result of any criminal charges related to inappropriate bidding practices or unethical behaviour; or
  - (ii) there are any outstanding criminal charges related to inappropriate bidding practices or unethical behaviour by a Proponent or a Proponent Team Member or any of their Affiliates in relation to a public or broader public sector tender or procurement in any jurisdiction; or
  - (iii) there is evidence satisfactory to WDBA that, based on past conduct or behaviour, the Proponent or any Proponent Team Member is unsuitable or has conducted itself improperly; or
  - (iv) WDBA determines that the Proponent or any Proponent Team Member's performance on other contracts is sufficiently poor to jeopardize the completion of the Project;
- (b) amend the scope or details of the Project, or modify, cancel, amend, supplement, clarify or suspend the whole or any part of the Project, this RFP, the RFP Process or any or all stages of the Competitive Selection Process, for any reason;
- (c) reissue a request for proposals for the Project the same as this RFP or a different request for proposals in connection with the Project;

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- (d) reject or not accept Proposals, or Disqualify all or any Proposals including for failing to meet the Mandatory Requirements;
- (e) waive a defect, irregularity, non-conformity or non-compliance in or with respect to a Proposal or failure to comply with the requirements of this RFP, including Mandatory Requirements and accept that Proposal even if such a defect, irregularity, non-conformity or non-compliance or failure to comply with the requirements of this RFP would otherwise render the Proposal null and void;
- (f) require a Proponent to remove and/or replace any Team Member or Key Individual including where such Proponent, Team Member and/or Key Individual has any economic or one or more other interests which are, or could reasonably be perceived to be, contrary to the objectives of the Project, whether or not such interests constitute a Conflict of Interest;
- (g) re-advertise for new responses, call for tenders, or enter into negotiations for this Project or for work of a similar nature following any termination of this RFP and the Competitive Selection Process;
- (h) if a Proponent is for any reason unable or unwilling to proceed in the RFP Process or is Disqualified, invite one or more other Respondents to participate in the RFP Process as a Proponent, based on its ranking in the RFQ Process and request additional or updated submissions, or seek clarification or confirmation, from any such Respondent in connection with its RFQ Response;
- (i) accept or reject any Proposal based on WDBA's evaluation of the Proposals in accordance with Section 7 (*Evaluation*), and in particular WDBA is not obliged to select the Proposal with the lowest net present value;
- (j) make any changes to the terms of the business opportunity described in this RFP;
- (k) negotiate any aspects of a Preferred Proponent's Proposal; and
- (l) amend, from time to time, any date, time period or deadline provided in this RFP, upon written notice to all Proponents,

in each case without incurring any liability of any kind to a Proponent or a Proponent Team Member except as provided in Section 8.5 (*Return of Preferred Proponent Security Deposit*), Section 8.9 (*Design and Bid Fee*) and Section 8.10 (*Break Fee*), as applicable.

### **10.3 Access to Information/Freedom Of Information Legislation**

- (a) Except as expressly stated in this RFP and subject to ATI/FOI Legislation, all documents and other records submitted in response to this RFP will be considered confidential. However, such information or parts of it may be released pursuant to ATI/FOI Legislation. Proponents are also advised that ATI/FOI Legislation may provide protection for confidential and proprietary business information. Proponents are advised to consult their own legal advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in their Proposals.
- (b) Subject to the provisions of applicable ATI/FOI Legislation, WDBA will use reasonable efforts to safeguard the confidentiality of any information identified by a Proponent as confidential but it shall have no liability to any Person if it fails to do so. WDBA and any WDBA Party shall not be liable in any way whatsoever to any Proponent or Proponent Team Member if such information is disclosed pursuant to applicable ATI/FOI Legislation,

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other Applicable Laws, the order of a court or tribunal or otherwise. By participating in the Competitive Selection Process, the Proponent and each Proponent Team Member waives any right it may have to make any Claim or take any other action against WDBA or any WDBA Party as a result of any action taken or required to be taken by WDBA and any WDBA Party for the purpose of complying with applicable ATI/FOI Legislation, other Applicable Laws or the order of a court or tribunal.

- (c) By participating in the Competitive Selection Process, each Proponent and Proponent Team Member agrees that:
- (i) if it disputes a requirement to disclose any Confidential Information pursuant to ATI/FOI Legislation, the sole involvement of WDBA or any WDBA Party will be as a stakeholder retaining such Confidential Information in accordance with ATI/FOI Legislation until otherwise ordered by a court or tribunal having jurisdiction; and
  - (ii) it shall (A) be solely responsible for how it handles such dispute and for all fees, costs and expenses of any kind relating to such dispute, and (B) indemnify WDBA and any WDBA Party from and against all fees, costs and expenses of any kind which may be incurred by WDBA or any WDBA Party in connection with such dispute.

#### **10.4 Cost of Preparing the Proposal**

Each Proponent is solely responsible for all costs and expenses of any kind that it incurs with respect to this RFP including the preparation of its Proposal, providing information requested by WDBA, attending meetings and conducting due diligence and investigations.

#### **10.5 Confidentiality of Information**

Information pertaining to WDBA, a WDBA Party or the Project, which is obtained by a Proponent, a Proponent Team Member or any of their respective Representatives, is subject to the Confidentiality Provisions. By participating in the RFP Process, each Proponent and each Proponent Team Member agrees to continue to comply with the Confidentiality Provisions. The Confidentiality Provisions shall survive any termination or completion of the Competitive Selection Process and shall apply whether or not the Proponent is selected as the Preferred Proponent and whether or not a Proponent Team Member is part of the Preferred Proponent Team.

#### **10.6 No Liability re Information**

- (a) This RFP may not contain all of the information that a Proponent or a Proponent Team Member may need with respect to the submission of a Proposal. WDBA accepts no responsibility for any Person lacking any information.
- (b) WDBA, each WDBA Party and their respective Representatives shall not be liable for any information or advice or any errors or omissions that may be contained in this RFP, the Background Information or any other data, materials or documents (electronic or otherwise) provided to Proponents or Proponent Team Members in the RFP Process or otherwise with respect to the Project.
- (c) WDBA, each WDBA Party and their respective Representatives make no representations or warranties and there are no representations, warranties or conditions, either express or implied, statutory or otherwise, in fact or in law, with respect to the accuracy or completeness of this RFP or the data, materials or other documents referred to in Section 10.6(b). WDBA, each WDBA Party and their respective Representatives will not be liable for any Claim whatsoever arising from a Proponent's reliance on or use of this RFP or

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any such data, materials or other documents which are provided, delivered, made available or required by WDBA, a WDBA Party or their respective Representatives.

- (d) Each Proponent is responsible for obtaining its own independent legal, financial, engineering, architectural, environmental and other technical or professional advice, and making its own investigations with respect to the Project, this RFP, the Competitive Selection Process and any data, materials or other documents provided, delivered or made available or required by WDBA, a WDBA Party or their respective Representatives. Submission of a Proposal is deemed to be conclusive evidence that the Proponent and each Proponent Team Member has made such investigations and has obtained such advice and that the Proponent and its Proponent Team Members are willing to assume and do assume all risks affecting the Project, except as otherwise specifically stated in this RFP and the Project Agreement.

### **10.7 No Liability - RFP Process**

Except as set out in Section 8.5 (*Return of Preferred Proponent Security Deposit*), Section 8.9 (*Design and Bid Fee*) and Section 8.10 (*Break Fee*), as applicable, WDBA does not, by issuing this RFP or by any communication or documentation made or provided in connection with this RFP, incur any duty of care or contractual obligation to any Person. Each Proponent understands and agrees, on its own behalf and as authorized agent of each Proponent Team Member, Key Individual and their respective Representatives and Affiliates, that:

- (a) no Person will have any Claim for compensation or other remedy of any kind whatsoever against WDBA, any WDBA Party or their Representatives as a result of the Proponent or a Proponent Team Member participating in the RFP Process or submitting a Proposal;
- (b) if WDBA exercises any of its rights set out in Section 10.2 (*Rights of WDBA*), neither WDBA nor any WDBA Party nor any of their respective Representatives will be liable, under any circumstances, for any Claim or to reimburse or compensate any Person in any manner whatsoever, including the costs of preparation of a Proposal, loss of anticipated profits, loss of opportunity or for any other matter; and
- (c) by participating in the Competitive Selection Process, each Proponent and each Proponent Team Member waives and releases WDBA and each WDBA Party and their respective Representatives of and from any and all Claims whatsoever, including Claims for loss of profits or loss of opportunity, if the Proponent is rejected or Disqualified or is not successful in being selected as the Preferred Proponent in the Competitive Selection Process or for any other reason.

If WDBA or a WDBA Party exercises any right under the foregoing provisions of this Section 10.7 or any provision of Section 10.12 (*Discretion of WDBA*), and the exercise of such right is determined to be prohibited or restricted by Applicable Law, the maximum aggregate damages which a Proponent and/or a Proponent Team Member may be awarded in any proceeding is limited to \$[REDACTED].

### **10.8 No Lobbying**

- (a) Proponents are expected to conduct themselves with professional integrity with respect to the Competitive Selection Process and the Project. Except as expressly permitted or required by this RFP or as reasonably necessary for a Preferred Proponent to negotiate with WDBA the terms of a Project Agreement and to undertake the Project pursuant to the terms of the Project Agreement, a Proponent, any Proponent Team Member or Key Individual of a Proponent, and any Related Person or Representative of any of them, shall not engage in any form of lobbying whatsoever with respect to the RFP Process, the

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Project, and the Competitive Selection Process. "Lobbying" includes: (i) any communication registrable under the *Lobbying Act* (Canada) or that would be registrable but for the "significant part of duties" test, (ii) any "lobbying contact" under the *Lobbying Disclosure Act of 1995* (U.S.), as amended, (iii) any "lobbying" under the Michigan Lobby Registration Act, Public Act 472 of 1978, as amended, (iv) any activity regulated by a Michigan local ordinance pertaining to lobbying, (v) any communication, except a request for publicly-available information, with a public official related to the RFP Process, the Project or the Competitive Selection Process, (vi) any "influencing or attempting to influence" under 49 CFR Part 20, and (vii) any other attempt to influence, and any conduct that would reasonably be seen as having the potential to influence, directly or indirectly, a public official in relation to the Project or the Competitive Selection Process. A "public official" includes any elected official, employee, or appointee of the legislative or executive branch of the Canadian government, United States federal government, or Michigan state or local governments, and of any agency, department, or other entity owned, controlled or forming part of such governments, and any candidate for Canadian federal office, United States federal office, or Michigan state or local office. These requirements are designed to promote a fair, competitive and unbiased procurement process. Additional requirements or modifications to these requirements may be issued by WDBA in connection with the RFP Process and the finalization and execution of the Project Agreement.

- (b) Without limitation, with respect to the Project and the Competitive Selection Process, each Proponent, and each Proponent Team Member and Key Individual of a Proponent, and any Related Person or Representative of any of them shall comply with all requirements, obligations and prohibitions pertaining to conflicts of interest, ethics, lobbying, and post-mandate or post-employment conduct under Canadian, Michigan, or United States law, including the *Lobbying Act* (Canada), the Lobbyist's Code of Conduct (Canada), the *Conflict of Interest Act* (Canada), the *Policy on Conflict of Interest and Post-Employment* (Canada), the *Lobbying Disclosure Act of 1995* (U.S.), as amended, 49 CFR part 20, the Michigan Lobby Registration Act (Public Act 472 of 1978), as amended, and any other Canadian federal or provincial law, United States federal law or regulation, Michigan state law or regulation, or Michigan local ordinance applicable to the Proponent, Proponent Team Member or Key Individual of a Proponent, or Related Persons or Representatives of any of them.
- (c) If there is a breach of any of the provisions of this Section 10.8 with respect to a particular Proponent, Proponent Team Member or Key Individual of a Proponent, or any Related Person or Representative of any of them, WDBA may at any time, (i) Disqualify the respective Proponent, (ii) reject any Proposal by that Proponent, (iii) require the removal or replacement of a Proponent Team Member, Key Individual, Related Person, or Representative, or (iv) impose such conditions on that Proponent's continued participation in the Competitive Selection Process as WDBA may consider in the public interest or otherwise appropriate.

## 10.9 Ethical Behaviour Confirmation

Without limitation of any other rights of WDBA or the requirements of this RFP, in order to ensure the integrity, openness and transparency of the Competitive Selection Process, WDBA may:

- (a) impose at any time on all Proponents and their Team Members additional conditions, requirements or measures, in addition to the Team Member Certification and Agreement in the form of Appendix E to the RFQ, with respect to bidding practices or ethical behaviour of a Proponent and their Team Members; and

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- (b) require that any or all Proponents and/or any Proponent Team Member at any time during the Competitive Selection Process provide WDBA with copies of its internal policies, processes and controls establishing ethical standards for its bidding practices and evidence of compliance by the Proponent and all Proponent Team Members with such policies, processes and controls.

In the event that any Proponent and/or a Proponent Team Member:

- (c) fails to comply with any requirement prescribed by WDBA pursuant to this Section 10.9; or
- (d) complies with WDBA's requirement as prescribed in accordance with this Section 10.9, but WDBA determines that any Proponent or Proponent Team Member or any of their respective Related Persons or Representatives has or may have engaged in inappropriate bidding practices or unethical behaviour, WDBA shall have the right, at any time to reject and not consider a Proposal from such Proponent, to Disqualify such Proponent or pursuant to Section 10.2(f) (*Rights of WDBA*), require such Proponent to remove and/or replace any Proponent Team Member.

#### 10.10 No Collusion

A Proponent shall not discuss or communicate, directly or indirectly, with any other Proponent or its team members, any information whatsoever regarding the preparation of its own Proposal or the Proposal of another Proponent. Each Proponent shall prepare and submit its Proposal independently and without any connection, knowledge, comparison of information, or arrangement, direct or indirect, with any other Proponent. The Proponent shall ensure that its Key Individuals and Proponent Team Members and their respective Representatives and Affiliates comply with this Section 10.10. By participating in the RFP Process, a Proponent on its own behalf and as authorized agent of each Proponent Team Member, Key Individual and their respective Representatives and Affiliates represents, warrants and confirms to WDBA that:

- (a) its Proposal has been prepared and submitted without collusion or fraud, or in violation of any Applicable Law and in fair competition with other Proponents; and
- (b) no bribe, gift, benefit, nor other inducement has been nor will be paid, given, promised or offered directly or indirectly to any Person, with a view to influencing (i) the selection of a Preferred Proponent, (ii) the insertion or deletion of any term or provision in the Project Agreement, (iii) the entry into the Project Agreement with a Preferred Proponent or (iv) the administration of the Project Agreement.

#### 10.11 Joint and Several Liability

- (a) Where the Proponent is a joint venture or special purpose entity created solely for the purposes of its participation in the Competitive Selection Process, each Equity Member and Prime Team Member of the Proponent is jointly and severally bound and liable with the Proponent to WDBA, each WDBA Party and their respective Representatives for all of the Proponent's covenants, undertakings, obligations and liabilities set out in this RFP. Each Equity Member and Prime Team Member is bound in the same manner as the Proponent by the waivers, disclaimers, limitations of liability and indemnities in favour of WDBA, each WDBA Party and their respective Representatives pursuant to this RFP, regardless of whether the Instructions to Proponents may in certain cases refer only to the Proponent.
- (b) The Proponent, each Equity Member and each Prime Team Member hereby jointly and severally indemnify, defend and hold WDBA, each WDBA Party and their respective

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Representatives harmless against any Losses and Claims suffered, sustained or incurred by any of the Proponent, an Equity Member and a Prime Team Member or their respective Representatives, Key Individuals or any other Person having participated with the Proponent or assisted the Proponent in Site Visits, Commercially Confidential Meetings or Proponent Site Investigations, or any wrongful act or omission, or any Losses or Claims suffered or incurred, by any of them in respect of the Competitive Selection Process, except to the extent that a court of competent jurisdiction determines that such Losses and Claims were caused by or resulted from the gross negligence, wilful misconduct or fraud of WDBA, a WDBA Party or one or more of their respective Representatives.

#### **10.12 Discretion of WDBA**

- (a) Except as otherwise required by Applicable Law, when WDBA has,
- (i) the choice to take or not take an action including to give or grant an agreement, approval, confirmation, acceptance, waiver, permission or consent;
  - (ii) the right or obligation to make an election, determination, designation, rejection, requirement or stipulation, to reserve a right, to make a request, to exercise an option, to make a decision; or
  - (iii) the right to consider or to come to a judgment, view or an opinion,
- with respect to any matter under this RFP, it means that WDBA has the sole, subjective, absolute and unfettered discretion with respect to the matter in question, with no requirement to act reasonably or to provide reasons, unless there is a specific requirement in this RFP for WDBA to act reasonably with respect to such matter. In the exercise of any such unfettered discretion, WDBA shall act in good faith but shall be entitled to have regard solely to what it considers to be in its own best interests and where relevant, in the best interests of any affected WDBA Party or WDBA Person.
- (b) When the exercise of WDBA's discretion is subject to an 'acting reasonably' standard, WDBA shall without limitation be deemed to be acting reasonably if the exercise of such discretion is consistent with (i) the obligations of WDBA under the Crossing Agreement and (ii) the requirements of any Governmental Authority or any Applicable Law.

#### **10.13 WDBA Legal Representation**

- (a) Fasken Martineau DuMoulin LLP represents WDBA in matters related to the Project and therefore is an Ineligible Person. By submitting a Proposal, the Proponent and each Proponent Team Member expressly consents to Fasken Martineau DuMoulin LLP continuing to represent WDBA for all matters related to this RFP and the Project, including litigation, arbitration, or other dispute resolution that is adverse to the Proponent, a Proponent Team Member or Project Co, despite any attorney-client relationship that the Proponent or a Proponent Team Member may have, or may have had, with Fasken Martineau DuMoulin LLP in relation to matters other than this RFP and the Project, and despite any information of the Proponent or a Proponent Team Member that Fasken Martineau DuMoulin LLP may have in its possession as a result of such prior or current attorney-client relationship. This Section is not intended to waive any of the Proponent's rights of confidentiality or attorney-client privilege.
- (b) Warner Norcross & Judd LLP represents WDBA in matters related to the Project and therefore is an Ineligible Person. By submitting a Proposal, the Proponent and each Proponent Team Member expressly consents to Warner Norcross & Judd LLP continuing

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to represent WDBA for all matters related to this RFP and the Project, including litigation, arbitration, or other dispute resolution that is adverse to the Proponent, a Proponent Team Member or Project Co, despite any attorney-client relationship that the Proponent or a Proponent Team Member may have, or may have had, with Warner Norcross & Judd LLP in relation to matters other than this RFP and the Project, and despite any information of the Proponent or a Proponent Team Member that Warner Norcross & Judd LLP may have in its possession as a result of such prior or current attorney-client relationship. This Section is not intended to waive any of the Proponent's rights of confidentiality or attorney-client privilege.

- (c) Each of Section 10.13(a) and Section 10.13(b) constitutes a binding conflict waiver and each Proponent is encouraged to discuss the implications of this Section with legal counsel before submitting a Proposal.

#### **10.14 Powers Not Limited**

No provision of this RFP is intended to operate, nor shall any such provision have the effect of, operating, in any way, so as to interfere with or otherwise fetter the discretion of (i) Canada, the United States or Michigan in the exercise of their respective legislative powers or (ii) the rights and powers of the International Authority in carrying out its mandate.

#### **10.15 Survival**

Except as otherwise provided in this RFP, the completion or termination of the Competitive Selection Process shall be without prejudice to, and shall not affect:

- (a) the representations, warranties and indemnities given or made by a Proponent or Proponent Team Member under or in connection with this RFP; and
- (b) the obligations which are expressly provided to survive termination or expiry of the Competitive Selection Process or this RFP or which by their nature are intended to survive termination or expiry of the Competitive Selection Process or this RFP, including Sections 1.3, 6.14, 6.15, 8.4, 8.5, 8.6, 8.9, 8.10, 8.11, 10.1, 10.2, 10.4, 10.5, 10.6, 10.7, 10.8, 10.10, 10.11, 10.12, 10.13, 10.15, 11.3, 11.4 and 11.5.

### **11. DEFINITIONS AND INTERPRETATION**

#### **11.1 Acronyms**

The following Acronyms are used in this RFP:

**CBP** means the US Customs and Border Protection;

**CBSA** means Canada Border Services Agency;

**CFIA** means the Canadian Food Inspection Agency;

**DBFOM** means a design, build, finance, operate and maintain project;

**FHWA** means the United States Federal Highway Administration;

**GSA** means the US General Services Administration;

**MDOT** means the Michigan Department of Transportation;

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**MSF** means the Michigan Strategic Fund, a public body corporate and politic and public agency of Michigan;

**NHS** means the National Highway System of the United States;

**NPV** means net present value;

**P3** means a public-private partnership;

**POE** means either or both of the Canadian POE or the US POE;

**POS** means Project Output Specifications and includes all requirements set out in Project Agreement;

**PSPC** means Public Services and Procurement Canada;

**USB** means Universal Serial Bus; and

**WDBA** means the Windsor-Detroit Bridge Authority.

## 11.2 Definitions

In this RFP, the following words and expressions have the meanings set out in this Section 11.2.

**Addenda** or **Addendum** means each and every written document issued by WDBA for the purpose of amending or clarifying this RFP, all as provided in Section 3.18 (*Addenda*).

**Advisor** with respect to a Person means each individual or firm who provides professional advice to such Person, including legal, accounting, insurance and financial advice.

**Affiliate** means, in respect of a Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person.

**Affordable** has the meaning set out in Section [REDACTED].

**Affordability Price** means the total price set forth in Schedule 14-2 [*Affordability Price*] consisting of the sum of (i) the Construction Period payments and (ii) the OMR Period payments, as set forth in such schedule.

**Affordability Review** has the meaning set out in Section [REDACTED].

**Affordability Threshold** has the meaning set out in Section [REDACTED].

**Applicable Law** means, in respect of any Person, property, transaction, event, or other matter, as applicable, all present or future Law relating or applicable to that Person, property, transaction, event, or other matter, unless otherwise expressly stated.

**ATI/FOI Legislation** means the *Access to Information Act* (Canada), the *Privacy Act* (Canada), the *Freedom of Information Act* (Michigan), the United States *Freedom of Information Act* and any other Applicable Law, in Canada or the US pertaining to access to information, freedom of information, or the disclosure of information to the public or any Persons.

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**Background Information** means any and all drawings, reports, studies, data, documents or other information made available by WDBA to Proponents, for information purposes prior to Financial Close through the Data Room, but excluding the Guaranteed Engineering Data.

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

**Bid Security Deposit** means the bid security deposit in the amount of \$[REDACTED] in the form provided pursuant to, in accordance with and subject to the terms and conditions set out in, the Proponent RFP Participation Agreement.

**Business Day** means a day other than a Saturday, Sunday or statutory holiday in the Province of Ontario or a day on which banks are otherwise closed for business in the City of Windsor, Ontario.

**Break Fee** has the meaning set out in Section 8.10(a) (*Break Fee*).

**Bridge** means the Main Bridge and the Bridge Approaches.

**Bridge Approach** means each of the Canadian and US approaches to the Main Bridge from the Canadian POE and the US POE respectively, to but not including the last supporting element of the cable stayed or suspension portion of the Main Bridge.

**Canada** means (i) Her Majesty the Queen in Right of Canada, as represented by the Minister of Infrastructure and Communities, (ii) the Government of Canada and each department, ministry, board, commission, corporation or other body that is an agent of Her Majesty in Right of Canada (other than WDBA) or (iii) the country of Canada, as the context requires.

**Canadian Border Services Plaza** means the premises located within the Canadian POE, which will be operated by CBSA to carry out functions such as customs, immigration, border security and CFIA inspection.

**Canadian Bridge Plaza** means (i) the premises located within the Canadian POE, other than the Canadian Border Services Plaza, and (ii) the Tolling Infrastructure.

**Canadian POE** means the premises in Canada consisting of the Canadian Border Services Plaza and the Canadian Bridge Plaza but does not include the Canadian portion of the Bridge and the Bridge Approach in Canada.

**Change** has the meaning set out in Section 4.4(a) (*Changes to Proponent or Proponent Team Members*).

**Change in Control** with respect to a Person, means any direct or indirect change, which results in another Person, or another group of Persons acting jointly or in concert, who did not Control such Person directly or indirectly immediately prior to the change, Controlling such Person after such change.

**Claim** means any claim, demand, motion, action, or cause of action, suit, arbitration or proceeding.

**Code of Conduct - Integrity Provisions** has the meaning set out in Section 1.10 (*Integrity Provisions*).

**Commercially Confidential Meetings** has the meaning set out in Section 3.15 (*Commercially Confidential Meetings*).

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**Commercially Confidential RFIs** has the meaning set out in Section 3.13(c)(ii) (*Questions, Requests for Information and Requests for Clarification*).

**Competitive Selection Process** means the overall process for the selection of a Preferred Proponent for the Project including the RFQ Process, the RFP Process and the execution and delivery of the Project Agreement with Project Co, including in compliance with the terms of the Crossing Agreement.

**Component** has the meaning set out in Section 2.1 (*Facility Components and Services*).

**Confidential Information** has the meaning set out in the Confidentiality Provisions.

**Confidentiality Provisions** means the provisions relating to Confidential Information set out in Appendix A to the RFQ.

**Conflict of Interest** has the meaning set out in Section 9.1 (*Conflicts of Interest*).

**Construction Lead** means the Person who will undertake the lead construction role for the Project.

**Construction Prime Team Members** means the Construction Lead and each other Person who will undertake at least [REDACTED]% of the construction work for any Component of the Facility based on the total estimated construction costs of that Component of the Facility.

**Construction Team** means the Construction Prime Team Members and any other Proponent Team Member who will provide more than \$[REDACTED] worth of construction materials or construction services to the Project.

**Contact Person** means the individual identified as such in the Summary of Key Information section of this RFP, as that individual may be changed by WDBA from time to time, upon written notice to the Proponents.

**Control** with respect to a specified Person shall mean the ability to direct or to cause the direction of the affairs or management of such specified Person, and such specified Person shall be deemed to be controlled by another Person if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly, and whether through the ownership of securities, a trust, a contract or otherwise, and **Controlling** shall have a similar extended meaning.

**Controlled Lands** has the meaning set out in Section 3.10 (*Ownership or Control of Lands*).

**Credit Spread** has the meaning set out in Schedule 11 [*Financial Offer Adjustments*].

**Crossing Agreement** has the meaning set out in Section 1.4 (*Crossing Agreement*).

**Data Room** has the meaning set out in Section 3.7(e) (*Data Room*).

**Data Room Documentation** has the meaning set out in Section 3.7(a) (*Data Room*).

**DB Work** has the meaning set out in the Project Agreement.

**Definitive Project Agreement** has the meaning set out in Section 3.16(d) (*Comments on Project Agreement*).

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**Design and Bid Fee** (referred to in the RFQ as Honorarium) has the meaning set out in Section 8.9 (*Design and Bid Fee*).

**Design Lead** means the Person who will undertake the lead design role for the Project.

**Design Prime Team Members** means the Design Lead and each other Person who will have a material role (being at least [REDACTED]% of the value of the design work) in the design of any Component of the Facility.

**Dispute** means any dispute, controversy, Claim or disagreement of any nature or kind, including arbitration, litigation, or exercise of the contractual remedies of suspension or termination for default.

**Disqualify, Disqualification or Disqualified** means exclusion of a Proponent and its Proposal from the Competitive Selection Process, by WDBA.

**Early Work Submission** means the early work submission to be made by the Proponent as required by and in accordance with the terms of Section 4.14(b) (*WDBA Early Works and Project Co Early Work*) and 6.3 (*Content of Early Work Submission*).

**Early Work Submission Deadline** means the time set out in the Summary of Key Information as the deadline for submitting the Early Work Submission.

**Early Work Schedule of Values** means the subset of the Schedule of Values set out in Appendix 4 to Schedule 20 [*Form of Project Co Early Work Agreement*] pertaining to the Project Co Early Work which was prepared by Project Co and approved by WDBA, and which allocates the Fixed Amount reasonably in respect of the scope of Project Co Early Work and all activities set out in Appendix 20-1.

**Electronic Data Room** has the meaning set out in Section 3.7(c) (*Data Room*).

**Equity Interest** means, as the case may be, shares, units or other similar equity or ownership interests, however they are named, constituting in whole or in part, the capital of a Person, including common or preferred interests or units in a limited liability company, a general partnership or limited partnership, or any other equivalent interest, including securities that are convertible into or which carry the right or obligation to purchase, any such shares, units or interests.

**Equity Member** means each Person who will have an Equity Interest in Project Co.

**Evaluation Committee** has the meaning set out in Section 7.1 (*Evaluation Committee*).

**Evaluation Criteria** has the meaning set out in Section 7.1 (*Evaluation Committee*).

**Facility** has the meaning set out in Section 1.1 (*Purpose of this RFP*).

**Fairness Monitor** means P1 Consulting Inc.

**FAER Minor Deficiency** has the meaning set out in the Project Agreement.

**Federal Aid Eligibility Requirements** means all requirements under US federal law, as provided in the Stewardship and Oversight Agreement, necessary for expenditures on a project to be eligible as the non-federal share for federal aid matching purposes under the FHWA's Federal Aid Highway Program; provided that, (a) in replacement of the "Buy America" provisions otherwise applicable under the FHWA's Federal Aid Highway Program, it shall be required that all iron and steel used in Federal Aid Highway Project Activities must be produced only in the US and

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Canada, and (b) there shall be no discrimination in favour of the US over Canada or in favour of Canada over the US with respect to any products, materials, supplies, labour or services under any of the Federal Aid Eligibility Requirements.

**Federal Aid Highway Project Activities** means all activities and works related to the Michigan portion of the Bridge, the US Bridge Approach, the US Bridge Plaza, and the Michigan Interchange but not to works and activities related solely to the US Border Services Plaza.

**Finance Lead** means the Person who will undertake the lead role in arranging financing for the Project.

**Finance Prime Team Members** means the Finance Lead and each other Person who will have a material role in arranging or providing financing for the Project.

**Financial Close** has the meaning set out in the Project Agreement.

**Financial Close Plan** has the meaning set out in Schedule 12 [*Financial Submission*].

**Financial Close Target Date** means September 18, 2018.

**Financial Evaluation Criteria** has the meaning set out in Section 7.5 (*Evaluation of Financial Submissions*).

**Financial Model** means the financial model included as part of the Proponent's Financial Submission and as further described in Schedule 12 [*Financial Submission*].

**Financial Offer** means the Proponent's financial offer included as part of the Proponent's Financial Submission as set out in Schedule 12 [*Financial Submission*] and as further described in Schedule 14-1 [*Financial Offer*].

**Financing Plan** has the meaning set out in Schedule 12 [*Financial Submission*].

**Financial Submission** means the financial submission to be made by the Proponent as required by and in accordance with the terms of Section 6.4 (*Content of Financial Submission*) and Schedule 12 [*Financial Submission*] and includes the Financial Offer.

**Financial Submission Agreements** means the Proponent Financial Submission Agreement and the Team Member Financial Submission Agreement.

**Financial Submission Deadline** means the time set out in the Summary of Key Information as the deadline for submitting the Financial Submission.

**Financial Support Agreements** means the agreements, support letters and documentation in the forms specified by Schedule 15 to Schedule 18, inclusive.

**Force Majeure Event** has the meaning set out in the Project Agreement.

**Former Public Servant Certification** has the meaning set out in Section 4.3 (*Former Public Servant Certification*).

**FSC** has the meaning set out in Section 4.2(a)(i) (*Security Requirements*).

**Governmental Authority** means any Canadian federal, United States federal, provincial, state, territorial, regional, municipal or local government or governmental authority, quasi-governmental authority, court, or self-regulatory organization, commission, office, board, regulatory,

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administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing and includes WDBA.

**Guaranteed Engineering Data** has the meaning set out in the Project Agreement.

**Host Community** means local residents and businesses in the Olde Sandwich Towne community in Windsor, Ontario and the Delray community in Detroit, Michigan.

**Improvements** has the meaning set out in Section 6.15(a)(iii) (*Intellectual Property Rights and Licence*).

**Independent Certifier** has the meaning set out in Section 4.13 (*Selection of Independent Certifier*).

**Ineligible Person** means any Person identified in Section 9.3 (*Ineligible Persons*) and any Person who may be added to that list by Addendum after the date hereof.

**Initial Draft Project Agreement** has the meaning set out in Section 1.1 (*Purpose of this RFP*).

**Initial Draft Project Agreement Comment Form** has the meaning set out in Section 3.16(b) (*Comments on Project Agreement*).

**Instructions to Proponents** means this RFP, as it may be amended or supplemented from time to time by way of Addenda.

**Integrity MOU** has the meaning set out in Section 1.10(a) (*Integrity Provisions*).

**Integrity Provisions** means (i) the Integrity Regime and (ii) the United States provisions relating to integrity described in Section 1.10(b).

**Integrity Regime** has the meaning set out in Section 1.10(a) (*Integrity Provisions*).

**Intellectual Property** means all access codes, algorithms, application programming interfaces, apparatus, circuit designs and assemblies, concepts, data, databases and data collections, designs, diagrams, documentation, drawings, equipment designs, flow charts, formulae, ideas and inventions (whether or not patentable or reduced to practice), IP cores, know-how, materials, marks (including brand names, product names, logos and slogans), methods, models, net lists, network configurations and architectures, procedures, processes, protocols, schematics, semiconductor devices, software code (in any form including source code and executable or object code), specifications, subroutines, techniques, test vectors, tools, uniform resource identifiers including uniform resource locators, user interfaces, web sites, works of authorship, and other forms of technology.

**Intellectual Property Rights** means all past, present and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world in respect of any Intellectual Property:

- (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights and mask work rights;
- (b) business or trade secret rights;
- (c) patent, industrial design and industrial property rights;
- (d) other proprietary rights in Intellectual Property of every kind and nature; and

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- (e) rights in or relating to registrations, renewals, extensions, combinations, divisions and reissues of, and applications for, any of the rights referred to in subsections (a) through (d) of this definition.

**Intelligent Transportation Systems** means advanced applications to provide innovative services relating to different modes of transport and traffic management and enable various owners, operators and users to be better informed and make safer, more coordinated, and “smarter” use of transport networks.

**International Authority** has the meaning set out in the Crossing Agreement.

**Key Individuals** of a Proponent means the specific individuals, exclusive to the Proponent (subject to Section 4.8), filling the following roles (or equivalent):

- (a) Project Director
- (b) Project Manager
- (c) Design Manager
- (d) Construction Manager
- (e) Safety Officer
- (f) Operations, Maintenance and Rehabilitation Manager
- (g) Lead Finance Manager
- (h) Lead Building Architect
- (i) Lead Bridge Architect
- (j) Lead Bridge Engineer
- (k) Lead Independent Bridge Engineer
- (l) Lead Michigan Interchange Engineer
- (m) Lead Building Structural Engineer
- (n) Lead Mechanical Engineer
- (o) Lead Electrical Engineer
- (p) Lead Security Officer
- (q) Lead Environmental Officer
- (r) Lead Tolling Manager
- (s) Toll Operation Manager
- (t) Lead Quality Manager
- (u) Lead Communications, Community Liaison and Consultation Manager.

**Law** means any:

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- (a) law (including the common law), statute, regulation, treaty, order-in-council, code, by-law, ordinance, rule, court order, judgment, decree, immunity or writ, including the Crossing Agreement;
- (b) any directive, guideline, policy, rule, standard, notice, approval, order, decision or other requirement of any Governmental Authority; and
- (c) any administrative interpretation of any of the foregoing,

having the force of law.

**Local Canadian Workforce Requirement** has the meaning set out in the Project Agreement.

**Losses** means any and all damages, losses, liabilities, charges, judgments, court orders, penalties, fines, assessments, costs and expenses (including reasonable legal and other professional charges and expenses) of any nature and kind whatsoever and howsoever arising, whether under statute, contractually or extra-contractually or in connection with judgments or criminal or penal proceedings, or otherwise, including any indirect losses such as loss of revenue, loss of profits, loss of use, loss of contract, loss of goodwill, loss of production, loss of business, loss of business opportunity, exemplary or punitive or special damages or other indirect losses of any nature.

**Main Bridge** means the cable stayed or suspension bridge crossing the Detroit River between the Canadian POE and the US POE including abutments and any supporting retaining walls, as more specifically described in Schedule 6 [*Technical Submission*].

**Mandatory Financial Requirements** has the meaning set out in Section 7.5(a)(i) (*Evaluation of Financial Submissions*).

**Mandatory Requirements** means the Mandatory Technical Requirements and the Mandatory Financial Requirements.

**Mandatory Technical Requirements** has the meaning set out in Section 7.4(a) (*Evaluation of Technical Submissions*).

**Michigan** means the State of Michigan.

**Michigan Interchange** has the meaning set out in Schedule 1 [*Definitions and Interpretation*] of the Project Agreement.

**Michigan Party** means any one of Michigan, MDOT and MSF.

**Minister** means the Minister of Infrastructure Communities and Intergovernmental Affairs of Canada.

**Minor Deficiencies** has the meaning set out in the Project Agreement.

**Modifications** has the meaning set out in Section 6.15(b) (*Intellectual Property Rights and Licence*).

**OM Infrastructure** has the meaning set out in the Project Agreement.

**OM Lead** means the Person who will undertake the lead role in the provision of operation, maintenance, rehabilitation of, and life cycle replacement for, the Project.

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**OM Prime Team Members** means the OM Lead and each other Person who will provide at least [REDACTED]% of the operation and maintenance services and rehabilitation work for any Component of the Facility based on the estimated operation, maintenance and rehabilitation costs for that Component of the Facility.

**OM Team** means the OM Prime Team Members and each other Person who will provide at least \$[REDACTED] worth of operation and maintenance services, rehabilitation or life cycle replacement for the Project.

**OMR Infrastructure** means collectively the infrastructure which Project Co will design, build, alter or improve and on which Project Co will also carry out the OMR Work, as provided in the Project Agreement and includes the Tolling Infrastructure and the existing infrastructure which have not been removed, demolished or deconstructed by Project Co as part of the Project Work during the DB Period.

**OMR Work** has the meaning set out in the Project Agreement.

**Person** means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company, corporation or body corporate with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency authority or entity however designated or constituted.

**Physical Data Room** has the meaning set out in Section 3.7(b) (*Data Room*).

**Policy** has the meaning set out in Section 1.10(a).

**Preferred Proponent** has the meaning set out in Section 3.3 (*RFP Stage*).

**Preferred Proponent Security Deposit** has the meaning set out in Section 8.4 (*Preferred Proponent Security Deposit*).

**Prime Contract** has the meaning set out in the Project Agreement.

**Prime Team Member** of a Proponent means each:

- (a) Equity Member
- (b) Design Prime Team Member
- (c) Construction Prime Team Member
- (d) OM Prime Team Member
- (e) Security Prime Team Member
- (f) Finance Prime Team Member
- (g) Tolling Prime Team Member

or any other Person who is otherwise designated by the Proponent as providing a critical or material portion of the design, construction, financing, maintenance, operation and/or repair and rehabilitation of the Facility or any Component.

**Project** has the meaning set out in Section 1.1 (*Purpose of this RFP*).

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**Project Agreement** means, (i) during the Competitive Selection Process, the Initial Draft Project Agreement and the Definitive Project Agreement and, (ii) following completion of the Competitive Selection Process, means the project agreement entered into between WDBA and Project Co effective as of Financial Close.

**Project Co** means the corporation or partnership established by a Proponent to enter into the Project Agreement, if the Proponent is selected as the Preferred Proponent.

**Project Co Early Work** has the meaning set out in Schedule 20 [*Project Co Early Work Agreement*].

**Project Co Early Work Agreement** means the agreement to be entered into between WDBA and the Preferred Proponent [**Note to Proponents: WDBA will require the Early Work Contractor and may require one or more other Prime Members or Equity Members of the Preferred Proponent, to execute the Project Co Early Work Agreement and to be jointly and severally bound**] within 5 days after the selection of the Preferred Proponent, in the form annexed as Schedule 20 [*Project Co Early Work Agreement*].

**Project Co Organizational Information** has the meaning set out in Schedule 12 [*Financial Submission Requirements*].

**Project Data** has the meaning set out in the Project Agreement.

**Project Documents** means the Project Agreement and all of the other documents, instruments, and agreements to be executed and delivered by Project Co pursuant to the Project Agreement.

**Project Proposal IP** has the meaning set out in Section 6.15(b) (*Intellectual Property Rights and Licence*).

**Project Work** has the meaning set out in the Project Agreement.

**Proponent** means each Person identified in Section 1.2 (*Eligibility to Participate in this RFP*) who has been selected by WDBA to participate in the RFP Process and any other Person which WDBA may select to participate in the RFP Process as permitted by the terms of this RFP.

**Proponent Financial Submission Agreement** means the agreement in the form of Schedule 13-1 [*Proponent Financial Submission Agreement*] to be submitted by the Proponent as part of its Financial Submission.

**Proponent Mailbox** has the meaning set out in Section 3.7(f) (*Data Room*).

**Proponent Representative** has the meaning set out in Section 1.3 (*Communication between WDBA and Proponents*).

**Proponent RFP Participation Agreement** means the agreement in the form of Schedule 1-1 [*RFP Participation Agreement (Proponent)*].

**Proponent Site Investigation** has the meaning set out in Section 3.11(b) (*Additional Geotechnical Investigations*).

**Proponent Team Member** means each of the Proponent's Prime Team Members, each Key Individual, and each member of its Construction Team, OM Team and Security Team, along with any other entity which has joined with the Proponent as part of its Proponent Team.

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**Proponent Technical Submission Agreement** means the agreement in the form of Schedule 7-1 [*Proponent Technical Submission Agreement*] to be submitted by the Proponent as part of its Technical Submission.

**Proposal** means a proposal submitted in response to this RFP and includes a Technical Submission, an Early Work Submission, a Financial Submission and all related documents and agreements which are required by this RFP to accompany such Submissions, including all amendments and supplements to such Submissions.

**Proposal Information** has the meaning set out in Section 6.15(a) (*Intellectual Property Rights and Licence*).

**Proposal Validity Period** means the period expiring at 16.00 (local Windsor Ontario time) on the date that is 165 calendar days following the date on which the Financial Submission Deadline occurs and, if applicable, includes any extension of such period agreed pursuant to Section 6.13 (*Extension of Proposal Validity Period*).

**PSPC** has the meaning set out in Section 1.10(a).

**Rated Financial Evaluation Criteria** has the meaning set out in Section 7.5(a)(ii) (*Evaluation of Financial Submissions*).

**Rated Technical Evaluation Criteria** has the meaning set out in Section 7.4(b) (*Evaluation of Technical Submissions*).

**Related** when used in relation to a Person, means a Person who is not dealing at arm's length with such first mentioned Person, as provided in the *Income Tax Act* (Canada) on the date hereof.

**Representative** means, with respect to a Person, each officer, director, minister, employee, agent, manager, member, partner, consultant, advocate, Advisor, and all other representatives, of such Person.

**Respondent** means a Person who submitted an RFQ Response in the RFQ Process.

**Restricted Authorities** has the meaning set out in Section 3.19 (*Restricted Authorities*).

**Review Committee** has the meaning set out in Section 9.6 (*Review Committee/Request for Advance Rulings*).

**RFP** has the meaning set out in Section 3.6 (*RFP Documents*).

**RFP Documents** has the meaning set out in Section 3.6 (*RFP Documents*).

**RFP Participation Agreement** has the meaning set out in Section 3.5 (*RFP Participation Agreements*).

**RFP Process** has the meaning set out in Section 3.3 (*RFP Stage*).

**RFQ** has the meaning set out in Section 1.2. (*Eligibility to Participate in this RFP*).

**RFQ Process** means the issue of the RFQ and the selection of the Proponents pursuant to and in accordance with the terms of the RFQ and the Crossing Agreement.

**RFQ Response** means a response submitted by a Respondent in the RFQ Process.

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**RFQ Response Submission Agreement** means the response submission agreement submitted by each Proponent to the Contact Person as part of the RFQ Process.

**Security Design Plan** means the security design plan required pursuant to Schedule 6 [*Technical Submission*].

**Security Lead** means the Person who will undertake the lead role in providing security for all Components of the Facility for which such services will be provided.

**Security Prime Team Member** means the Security Lead and each Person who will have a material role in providing security equipment or security services to the Facility or any Component thereof.

**Security Requirements** has the meaning set out in Section 4.2(a) (*Security Requirements*).

**Security Team** means the Security Prime Team Members and each other Person who will provide at least \$[REDACTED] worth of security services or equipment to the Facility or any Component thereof on an annual basis.

**Sensitive Information** has the meaning set out in Section 3.8 (*Distribution of Sensitive Information*).

**Severe Market Disruption** means any occurrence of exceptional circumstances in financial markets in Europe, the US or Canada which:

- (a) results in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets; and
- (b) adversely affects access by the Preferred Proponent to such markets.

**Short-listed Respondents** means the Respondents (now Proponents) selected pursuant to the RFQ Process to be invited to participate as Proponents in the RFP Process.

**Site Visits** has the meaning set out in Section 3.10(a) (*Ownership or Control of Lands*).

**Stewardship and Oversight Agreement** means the Stewardship and Oversight Agreement dated May 20, 2015 between FHWA and MDOT, as amended from time to time, including pursuant to the Supplement to Stewardship and Oversight Agreement Applicable to the New International Trade Crossing dated October 5, 2014.

**Submission** means any one or all of the Technical Submission, the Early Work Submission and the Financial Submission.

**Submission Deadline** means any one or more of the Technical Submission Deadline, the Early Work Submission Deadline and the Financial Submission Deadline.

**Submission Location** means each location identified in the Summary of Key Information.

**Substantially Final Agreement** has the meaning set out in Section 8.3 (*Final Project Agreement*).

**Summary of Key Information** refers to the table set out at the beginning of the Instructions to Proponents and which summarises certain key information regarding this RFP.

**Team Member Financial Submission Agreement** means the agreement in the form of Schedule 13-2 [*Team Member Financial Submission Agreement*].

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**Team Member RFP Participation Agreement** means the agreement in the form of Schedule 1-2 [*Team Member RFP Participation Agreement*].

**Team Member Technical Submission Agreement** means the agreement in the form of Schedule 7-2 [*Team Member Technical Submission Agreement*].

**Technical Evaluation Criteria** has the meaning set out in Section 7.4 (*Evaluation of Technical Submissions*).

**Technical Submission** means the technical submission to be made by the Proponent as required by Section 5.1(a) (*Proposal Form and Content*) and in accordance with the terms of Schedule 6 [*Technical Submission*].

**Technical Submission Agreements** means the Proponent Technical Submission Agreement and the Team Member Technical Submission Agreement.

**Technical Submission Deadline** means the time set out in the Summary of Key Information as deadline for submitting the Technical Submission.

**Third Party Intellectual Property Rights** means all Intellectual Property Rights of any Person who is not a member of, or a Related to, a Proponent or a Proponent Team Member.

**Timetable** has the meaning set out in Section 3.4 (*Estimated Timetable*).

**Tolling Infrastructure** means the tolling infrastructure and tolling collection system located on the Canadian side of the Bridge as part of the Canadian POE.

**Tolling Lead** means the Person who will take the lead role in the design of the Tolling Infrastructure and creation and management of the system (i) for integrating the toll collection system with other toll collection systems and (ii) for collecting and remitting tolls as required to WDBA.

**Tolling Prime Team Members** means the Tolling Lead and each other Person who will have a material role in the provision of tolling services with respect to the Project.

**Tolling System IP** has the meaning set out in the Project Agreement.

**Unaffordable** has the meaning set out in Section [REDACTED].

**United States** or **US** means the federal government of the US and, where the context so requires, the country of the United States of America.

**US Border Services Plaza** means the premises located within the US POE, which will be subleased by WDBA to GSA, for customs, immigration, agricultural inspections and other international border-related services.

**US Bridge Plaza** means the premises located within the US POE other than the US Border Services Plaza.

**US POE** means the premises in the US consisting of the US Border Services Plaza and the US Bridge Plaza, but does not include the US portion of the Bridge, the Bridge Approach in the US or the Michigan Interchange.

**Value Add** has the meaning set out in Schedule 6 [*Technical Submission*].

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**WDBA Site Investigation** has the meaning set out in Section 3.11(a) (*Additional Geotechnical Investigations*).

**WDBA Party** means Canada and any Michigan Party.

**WDBA Website** means www.wdbridge.com or such other domain name as may be determined by WDBA.

The definitions for terms which are defined and used in only one Schedule are found in that Schedule. Schedules 6 [*Technical Submission*] and Schedule 12 [*Financial Submission*] contain terms which are defined in the Project Agreement.

### 11.3 Conflict or Inconsistency Among Documents

- (a) If there are any conflicts or inconsistencies among the terms and conditions of the documents comprising RFP Documents the following shall apply:
- (i) an Addendum shall prevail over the specific provisions of this RFP which it changes or amends and over Addenda of an earlier date dealing with the same subject matter;
  - (ii) in respect of matters of interpretation related to the RFP Process and all Competitive Selection Process matters, the RFP shall prevail over the Schedules to the RFP during the RFP Process;
  - (iii) in respect of all matters of interpretation of the Project and the Project Agreement during the RFP Process, the Project Agreement shall prevail over the RFP and all other Schedules to the RFP; and
  - (iv) for the purpose of resolving conflicts or inconsistencies among the documents that constitute the Project Agreement, the provisions of the Project Agreement dealing with conflicts or inconsistencies shall govern.
- (b) Any description or overview of the Initial Draft Project Agreement or the Definitive Project Agreement in this RFP is provided for convenience only and does not replace, supersede, supplement or alter the Initial Draft Project Agreement or the Definitive Project Agreement. If there are any inconsistencies between the terms of the Definitive Project Agreement and the description or overview of those terms set out in this RFP or the Initial Draft Project Agreement, the terms of the Definitive Project Agreement will prevail.
- (c) If the Proponent believes that there is any term or condition in any RFP Document that is ambiguous, or that conflicts or is inconsistent with any other term or condition in the RFP Documents, the Proponent shall notify WDBA of that ambiguity, conflict or inconsistency in accordance with Section 3.13 (*Questions, Requests for Information and Requests for Clarification*) by the deadline set out in the Summary of Key Information for the submission of RFIs.
- (d) If there is a conflict or inconsistency between:
- (i) WDBA's electronic version of an RFP Document as contained in Data Room; and
  - (ii) any other version of the same RFP Document (whether in electronic or hard copy),

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WDBA's electronic version as contained in Data Room shall govern.

- (e) If there is any conflict or inconsistency between documents, including RFP Documents, contained in the Data Room and documents that are provided by WDBA to a Proponent on CD-ROM, USB flash drive or equivalent digital media, the documents contained in the Data Room shall govern.
- (f) If there is any conflict or inconsistency between two versions of the same RFP Document contained on the Data Room, the RFP Document of the later date or version number shall prevail over the same RFP Document of an earlier date or version number. Unless otherwise indicated, for the purposes of this Section 11.3(f), the date of each RFP Document shall be determined by the date and time when that document was placed in the Electronic Data Room by WDBA.

#### 11.4 Terms of RFP Binding

By executing and delivering an RFP Participation Agreement, the Proponent and each Proponent Team Member agree to, and they shall cause their respective Representatives to comply with and be bound by, the terms and conditions of this RFP.

#### 11.5 Interpretation

- (a) The headings, captions, and formatting in this RFP are inserted for convenience only and do not form a part of this RFP and in no way define, limit, alter or enlarge the scope or meaning of any term of this RFP.
- (b) Words importing the singular include the plural and vice versa and words importing a particular gender include all genders.
- (c) Time is of the essence of this RFP.
- (d) Any reference in this RFP to a Submission Deadline means the noted time to the second, even where seconds are not explicitly noted. For greater certainty, a submission deadline is as of the zero count in seconds of the noted time.
- (e) Where a defined expression incorporates a term that is also defined herein, e.g. Canadian Bridge Plaza/Bridge, Proponent Representative/Representative, or Michigan Interchange/Michigan, the defined expression shall not be read to incorporate the definition of the term, unless expressly stated otherwise. Where a defined term appears in the name of a statute, e.g. Bridge/the *Bridge to Strengthen Trade Act*, Bridge/the *International Bridges and Tunnels Act*, the name of the statute shall not be read to incorporate the defined term.
- (f) Any consent or waiver contemplated to be given by WDBA in connection with this RFP or the RFP Process must be in writing. Any notice or other communication to be given under this RFP must be in writing. For all purposes of this RFP, the terms "writing" or "written" shall include any text in an electronic communication.
- (g) References containing terms such as "hereof", "herein", "hereto", "thereof", "therein", "thereto" and other terms of like import are not limited in applicability to the specific provision within which such references are set out but instead refer to this RFP taken as a whole.

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- (h) No member of the House of Commons of Canada or elected or appointed officials of Michigan will be admitted to any share of this RFP, the Project Agreement or a Project Document or to any benefit to arise therefrom.
- (i) Each Schedule attached to this RFP and each Appendix to any Schedule is an integral part of this RFP as if set out at length in the main body of this RFP.
- (j) A reference in this RFP to a statute whether or not that statute has been defined, means a statute of Canada, Ontario, Michigan or the United States unless otherwise stated, and includes every amendment to it, every regulation made under it and any enactment passed in substitution thereof or in replacement of it.
- (k) In this RFP, the words “including” and “includes”, when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set out or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.
- (l) This RFP shall be governed by and construed and enforced in accordance with the laws in force in the Province of Ontario (excluding any conflict of laws, rule or principle which might refer such construction to the laws of another jurisdiction) and shall be treated in all respects as an Ontario contract.
- (m) For the purposes of any legal actions or proceedings brought by any party with respect to the Competitive Selection Process or an RFP Document, the parties hereby irrevocably submit to the exclusive jurisdiction of the Courts of Ontario or the federal courts of Canada in Ontario, as applicable, and the parties acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction. After Financial Close, Disputes relating to the Project Agreement shall be governed by the provisions of the Project Agreement.
- (n) All dollar values are Canadian dollars unless otherwise indicated.

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